

The Implication of New Technology on Nigerian Copyright Protection Practices in Today's Computer Age

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ABSTRACT

Because of the advancement witnessed in scientific and technological innovations since the beginning of the 20th century which have changed the face of modern society, many have concluded by terming this present civilization “the jet age”. Areas affected by this technological advancement includes the worlds legal system, changing traditional ways of safeguarding intellectual property and the economy policies of many nations by getting its legal frame work attracted to protecting copyright. Due to the ever changing forms of innovations ; such as computers which includes hi-tech phones, satellite and cable receivers /signals, facsimile transmissions and the perpetual growing internet, our laws has been kept completely in a state of flux, which calls for active innovation in our legal system. Thus, in the fight against piracy and copyright infringements of digital innovations, this article strongly recommends, exploitation of copyright works as regards to licensing, sensitization of the populace and some extra legal measure such as judicial and administrative among others to tame the tide of an otherwise socio-legal problem.If we never do anything which has not been done before we shall never get anywhere, the law will stand still whilst the rest of the world goes on and that will be bad for both. “LORD DENNING¹”.

Keywords: technology, copyright, protection, computer age.

INTRODUCTION

The impact of new technology on copyright law cannot be overemphasized. The CPDA 1988² was an attempt to keep abreast of development in technology. Of particular concern is the protection of computer programs and other works stored or reproduced in digital models³.

It is a trite fact that the most important heritage of a nation remains the creativity of its citizens, and hence one of the primary functions of law is to protect the ingenuity, resourcefulness and creativity of the citizenry. Thus the Obiter of Belgore J. in *Oladipo Yemitan v. The Daily Times Nigeria Ltd*⁴ is very apt when he said that; *The right of a man to that which he had originally made is an incorporeal right and must be protected.*

Nigeria has enacted domestic legislations to protect the incorporeal rights and creativity of its citizens against any undue infringement. The principal legislation in this regard is the Nigerian copyright Act⁵.

Section 1(1) of the copyright Act⁶ provides protection and confers copyright status on; (a) literary works (b) musical works (c) artistic works (d) cinematographic films (e) sound recordings, and (f) broadcasts. A close consideration of these products obviously covers digital innovations⁷.

Thus, as at 2008, the totality of copyrights based industries operating in the country contributed just about #1.2 trillion to the Nigerian gross domestic income⁸, a figure publicly made known by Adebambo Adewopo during the 50th anniversary of the Nigerian copyright commission⁹. Even at that, Nigeria still remains one of the largest piracy destination and market in the world particularly computer software¹⁰ in this same

¹ Packer v. packer (1984) 2 ALL E.R. 15 P.32

² Copyright patent and design act 1988.

³ National Open University: Law of intellectual property 1 LW435

⁴ (1980) FHCR (Federal High Court Reports) 186 at 190

⁵ cap c. 28, laws of the federation of Nigeria 2004

⁶ op. cit., note 5

⁷ see s.51 which defines literary works to include computer software.

⁸ Tosin Ajirere “the anniversary of the Nigerian copyright” (WWW document) (created 2008), available at: URL://<http://www.ndunigeriadailynews.com>. (visited 9th December 2013).

⁹ The director general of Nigerian copyright commission, see Tosin Ajirere, ibid

¹⁰ Locit, note 11

product said to be protected by the copyright act¹.

The main purpose of this article is to discuss the implication of new technology on copyright, especially the computer software and programs. It will also explore the idea behind computer generated works and how well they can be protected vis a vis some stringent recommendations.

MEANING OF DIGITAL AND COPYRIGHT

Copyright; according to the black's law dictionary², is; *the right of literary property as recognized and sanctioned by positive law. An intangible incorporeal right granted by statute to the author or originator of certain literary or artistic productions whereby he is vested for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.*

The position that copyright can be licensed, transferred and /or assigned by the author of the work³ was adopted judicially in the case of *Corelli v Gray*⁴, and also *Jerrold v Houston*⁵, where Lord Maccoughton define it as a negative right (because it restrict others from doing a particular act).

In Nigeria, the copyright⁶ Act does not expressly define the term, but on a deducible perspective, the meaning can be appreciated in the provision of section 6 of the act, which provide that: *copyright in Nigeria of an eligible work is the exclusive right to control, do or authorize the doing of any of the act restricted to the copyright owner.*

DIGITAL

The term digital emanate from the latin word "digitus" meaning fingers used for discrete counting⁷. Digital works is simply all those technologies that make use of information transmitted by means of discrete values using the binary system (combination of 1 and 0) rather than continues range⁸.

THE ONUS BETWEEN COPYRIGHT AND DIGITAL WORKS

Section 1(1) of the copyright act contains the works eligible for copyright protection in Nigeria which includes (a) literary works (b) musical works (c) artistic works (d)cinematography (e)sound recording and (f) broadcast. The impact of this categorization is multifaceted, so that when any of these products includes or uses information which is automatically a combination.

COPYRIGHT AND COMPUTER SOFTWARE

Computer software is taken mostly to include computer programs, database, preparatory materials and associated documentation (in printed or electronic form) such as manuals for uses of the program and for persons who have to maintain the programs⁹.

The computer device is usually divided into two basic components, which are the computer hardware and the computer software¹⁰.

The computer hardware (which is the physical interconnections and devices of a computer set¹¹) is a subject of protection by the law of patent, the computer software is a subject of protection by the law of copyright¹² as characterized by the copyright act of Nigeria.

COMPUTER PROGRAMS

In *New datacom ltd v. satellite decoding systems (1995) FSR 201*, it was accepted that a smartcard decoder for use with scrambled satellite television broadcast was a computer program.

Also in *NEC corp v. intel corp 645 F supp 1485 (D minni 1985)* it was held that even though the

¹ Akinjede and co "Nigerian computer software protection" (www document) (created 2007) available at: URL: <http://www.lawedit.co.uk>. (visited 9th December 2013).

² Bryan. A. Garner, Black's law dictionary, (8th edition west publishers: N.Y.), P.361.

³ Wikipedia the free encyclopedia "meaning of copyright" (www document) available at URL: <http://www.wikipedia.org> visited 9th December 2013.

⁴ (1913) 39 TLI 570 at 571.

⁵ (1857) nac G COP 117.

⁶ Op. cit. ,note 5.

⁷ see computer desktop encyclopedia, "meaning of digital system" (created 2010), (www document) available at URL: <http://www.answers.com> visited 7th December 2013.

⁸ Null Linda et all, the art of digitalization, (2nd ed. Cambridge university press), p.471.

Of discrete values rather than continuous values, it yields in a digital innovation for the purpose of protection under the act.

⁹ Op. cit., note 3

¹⁰ See free online dictionary "meaning of computer", (created 2008), (www document), available at: URL: <http://www.freedictionary.com>

¹¹ ibid

¹² See s. 51 of the copyright Act op. cit., note 5.

computer programs were permanently stored in read only memory (ROM) the programs were still capable of copyright subsistence.

LEGAL FRAMEWORK FOR COPYRIGHT (DIGITAL) PROTECTION IN NIGERIA.

Before delving into full consideration of the subheading above, it is apt to notice that works made available in digital form can be downloaded from website which poses a serious concern. That is, such as the identity of the copyright owner and what acts are authorized in respect of the work may be removed and the work then circulated to the public in that new form¹.

To start with, the law of copyright accords protection to computer software and this is to be found expressly in section 51(1)² of the copyright Act, which defines computer software or programs as; *a set of statements or instructions to be used directly or indirectly to bring about a certain result*.

Furthermore, the section defines computer software as an aspect of literary works³. Hence, any provision of the copyright Act applicable to literary works is applicable to computer software. Section 1(a)⁴ of the Act list works eligible for protection and two requirements are needed for their eligibility to be accorded, which includes (1) that sufficient effort must have been expended to give it originality of character and (2) it must be fixed in a definite medium of expression.

Section 10(1) of copyright stipulates that ownership of a computer software is vested on the author first, more so, this is subject to cases of computer software created as part of an employment duty in cases of contract employment, as held in *Joseph Ikhudiora v campaign service ltd and Anor*⁵. Where the plaintiff's claim to entitlement to copyright in a work he created in the course of working for the defendant was dismissed by the court and the defendant was held to be entitled to the copyright work.

The Nigerian copyright Act⁶ confers the under listed scope of right in relation to digital works on copyright owners:

- i. The right of production and related rights.
- ii. The right to control the distribution of copyrighted work and issuing of copies⁷ to the public.
- iii. The rights to control the making of adaptation⁸ which have been define as the modification of pre-existing works from one genre to another and consist in altering works within the same genre to make it suitable for different conditions of exploitation.

After considering the legal framework already in place in Nigeria and relating it to our digital age today, it will still be right to say that Nigeria still have a long way to go with respect to the protection of digital broadcast by cable and satellite and also the area of adequate protection for computer software. The lack of adequate legislative incursion in this area⁹ has led to a dearth of judicial jurisprudent on the field, which results to Nigeria been the highest incidence of piracy of computer programs and other digital innovation in the whole of Africa¹⁰.

The greatest concern is the impact produced by the skeletal nature of our copyright Act with regards to copyright regulation in this subject¹¹. An illustration of the digitalized form of piracy of digital broadcast in Nigeria is the subscriber under decoration which is a situation where cable companies who legally subscribe to major satellite stations do not pay for all the channels they rebroadcast to the public. There is also unauthorized cable access where individuals that have high receptive television set tap into lines of legitimate television companies through signal bleedings, without paying for subscription. This menace cannot be protected by our skeletal legal framework.

Another worrisome challenge is that, before a computer program becomes eligible for protection, it must be subjected to the test of originality and expression in a definite form. In consideration of this, some new innovations may not fit into the requirement, for instance, most computer programs in their technical nature may involve computer language made by different authors which differs from the interface that might be created by another author. It is worthy of note that, as far as our jurisdiction is concerned the creator of a computer language is not entitled to a distinct copyright on the creation of language only under the copyright Act; whereas this is

¹ Paul Marett intellectual property law: London: Sweet and Maxwell (1996).

² Op. cit., note 5

³ That is to say that it belongs to the same category with books, maps, short story et cetera.

⁴ Copyright Act op. cit., note 5.

⁵ (1986) F.H.R (federal high court report), 308.

⁶ s. 6(1) of copyright Act, op. cit., note5.

⁷ s. 6(1) (a) vii, ibid.

⁸ S. 6(1) a vii ibid.

⁹ A country like U.S.A has enacted the digital millennium Act specification to cater for computer software and other digital innovations protection.

¹⁰ Akinjide and co., op. cite., note where Nigeria was rated 84%of piracy level in the world as at 2004.

¹¹ s.1(2) of copyright Act, ibid.

not obtainable in the united states.

There is a form of copyright infringement of computer software known as re- bounded software which is the assembling of different parts of legitimate software components by technical means and re-bounding them, and giving it the name of a major software company.

The implication of the whole consideration is that new technological advancement have really exposed the lacunas of copyright protection in Nigeria.

RECOMMENDATIONS

Having considered the challenges and short comings of the Nigerian legal framework as regards digital copyright protection. Its my opinion that stringent measures should be quickly taken to salvage the situation some of which are inundated and briefly discussed below.

1. I am of the opinion that different legislative measures should be enacted to take care of the increasing new species of digital innovations as it is obtainable in the U.S.A (an Act for digital copyright protection). It is also advised that good consultative work should be done while deliberating on such law.
2. As regards socio legal measures, I am of the opinion that enlightenment and awareness campaign that will be taken down to the grassroot level should be embarked upon by the copyright protection administrative bodies. Various commercial ringlets and advertisement in radio and television can be used to achieve this.
3. A separate tribunal or court should be established for the administration of quick dispensation of justice on copyright infringement cases.
4. Cable operators in the country should adopt the use of digital signature and key encryption, so that only legitimate receivers would be given the activation code to decipher the encrypted work¹.
5. In the area of software protection, I strongly recommend the adoption of a technology created by a software expert on behalf of his firm, Info Logic Incorporation² and modified in 2009. This technology is called the software envelope³.

CONCLUSION

The implications of new technology on copyright is numerous and the idea that copyright subsist in a computer is a welcomed development. But more is still needed to be done as regards our legal framework to arouse flexibility, protection and avoid complacency in our copyright market.

¹ CASBAA “piracy estimate” (created 2008) (www.document) available at URL:http://www.casbaa.com/report.report_estimates.html (visited Nov 20 2013)

² John. H. Ryder and Smith, “public key encryptograph standards: R.S.A. data security” (created july 3 2002) (www document), available at: URL://www.org/docs.

³ A consulting and software firm in the united states.

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