

AN APPRAISAL OF COPYRIGHT INFRINGEMENTS IN NIGERIA

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ABSTRACT

The infringement of copyright is covered in the paper. Copyright rights entail a corresponding duty, which is not to violate those rights. The copyright system is covered from a naturalist, utilitarian, and economic perspective. The paper recommends the employment of copyright inspectors, as well as damages, injunctions, the Anton-Piller Order, profit accounting, the right of conversion, and eventually, the creation of specific copyright courts and tribunals to curtail copyright infringements in Nigeria.

Keywords: Copyright, Infringements, Protected Works, Eligibility and Remedies

1. INTRODUCTION

In English-speaking nations, the term "copyright" is used to describe the legal acknowledgment of rights to control or profit from the distribution of creative works. Due to the word's etymology, it has two meanings. It refers to both the right "to copy" as well as the right to possess and manage "the copy," or the original work of authorship. Sometimes the term "copyright" is interchanged with ambiguous phrases like "literary property" or "intellectual property."

In order to prevent unlawful acts of reproduction of such a work, copyright is the right that the author of an original creative or academic work possesses against the entire world, typically for the remainder of his or her lifetime and occasionally afterwards. Insofar as it arises out of

the act of producing the original work alone, it is not a registrable right. Thus, it is a negative right that upholds an individual's existing inherent right by forbidding others from acting in a certain way. It basically states that only with the right owner's consent may third parties perform any of the forbidden acts.

The copyright has two facets. The first is the "patrimonial component," which aims to fairly compensate the author for the use of his work whether it be through performance, publication, reproduction, or broadcast. Thus, authors can demand payment for the use of their works or even object to it. The second is the "ethical aspect," which aims to protect a writer from any mistreatment that might be done to his or her works and harm his or her reputation as a man and an artist.

The creative individuals who create plays, write books, compose music, sing, dance, act, print, carve, and draw are crucial because they serve as the social history books. They are the artisans who document our people's history, culture, and growth in one way or another. They are required to help the society preserve the past and foster a sense of our shared heritage that will serve as the cornerstone for future growth. In other words, they should be protected and nourished since their work is important to our culture and civilization. ⁱ

The Blacks Law Dictionary defines copyright as:

as the intellectual property right as acknowledged and sanctioned by positive law, an intangible, corporeal right granted by statute to the author or creator of specific literary or artistic productions, whereby he is invested for a specified period with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them. ⁱⁱ

Original works of authorship that are permanently affixed to any tangible medium of expression, now known or later developed, and from which they can be seen, heard, or otherwise communicated, either directly or with the aid of a machine or device, are protected by copyright laws.

2. PROTECTED WORKS

The Copyright Act protects the following types of works.

- a. Literary works i.e. books, computer programmes, letters, reports, tables and compilations
- b. Musical works i.e. compositions and accompaniments
- c. Dramatic works including accompanying music;
- d. Computer programmes
- e. Artistic work includes paintings, maps, diagrams, sculpture, photography, Architectural drawing.
- f. Cinematographic films including films and soundtracks, sound recording etc
- g. Broadcasts including radio, television, satellite, etcⁱⁱⁱ

However, the current law is contained in the Copyright Act as amended in 1999^{iv} which provides that the following work are eligible for copyright. These are:

- a. Literary works
- a. Musical works
- b. Artistic works
- c. Cinematography films
- d. Sound recordings
- e. Broadcasting

The Copyright Act simply defines copyright as copyright under this Act.^v The following is how copyright is defined in the Moxley and Whitely Dictionary:

The exclusive right to do or to grant permission for others to do specific activities with respect to an original literary, theatrical, or musical work includes publishing the work, performing it in public, broadcasting it, and making any adaptations.^{vi}

3. THE CRITERIA FOR ELEGIBILITY OF LITERARY, MUSICAL OR ARTISTIC WORK FOR COPYRIGHT

Four ingredients for copyright eligibility are:

1. It must be a work of originality
2. It must be affixed in a definite form (fixation).
3. It must be published.
4. It must not be intended by the author to be used as a model or pattern to be multiplied by any industrial process.^{vii}

The legal right that authors have to prevent copying of their works is known as copyright and is a branch of intellectual property. It also refers to the exclusive right granted by law, a person, or an institution to do particular acts on behalf of the author's unique literary, musical, or artistic creation and to forbid others from doing the same.^{viii}

The assessment of copyright usage in Nigeria comprises two components or aspects. They represent two concepts: classic and modern. From a traditional perspective, the idea of copyright has always been fundamental to the people's culture and beliefs. For instance, almost every indigenous culture follows the custom of giving proper credit, especially when works are presented in front of an audience. Before starting a performance, dancers and singers customarily bow down to their forebears in the business.

The current concept of copyright, on the other hand, is thought to be the result of outside political and economic factors. The first copyright legislation was included in a package of laws that were required for the colonial administration, as it is in many other areas of our laws, and it was extended to Nigeria as part of that package. Consequently, the Southern Protectorate of Nigeria's colony received the 1911 English Copyright Act's extension in 1912. As a result of the demands of western education and the expanding cultural impact of the colonial power, there is a rising local dependence on foreign literature, music, and films. This programme aimed to address this issue. But in 1970, the Federal Military Government issued the first autonomous copyright law, known as the Copyright decree 61 of 1970, in response to the

necessity for domestic regulation. The Imperial Copyright Act of 1911 was repealed by section 18 of the decree.

The decree was later changed, and as a result, the Copyright Act of 1999 exists today. According to section 14(1)(a)-(g) of the Copyright Act, 1999, copyright infringement refers to performing any act that is subject to copyright restrictions without the owner's consent. Furthermore, the section states that ordering someone else to perform an act that is subject to copyright restrictions without first receiving their consent constitutes an act of infringement. Importing any item that is a copy of a piece of intellectual property that is protected by copyright and that was created without the owner's permission is also a violation. An infringement also occurs when such items are sold, given away for trade or hire, or put on display for purchase in public.

Regarding the decision of whether or not there was infringement, the infringer's mental state is irrelevant. This issue was raised and decisively resolved in the case of *Plateau Publishing Company Ltd v. Chief Chuks Adophy*^{ix} where the court found that the infringer's state of mind is only important when deciding whether to award damages or request an enquiry into profit.

In Nigeria, the body responsible for copy right cases is known as The Nigerian Copyright Council.^x Some of its functions are stated thus:

1. A body that will be known as the Nigeria Copyright Council is hereby established.
2. The council will be a corporate entity with perpetual succession, a common seal, and the ability to bring and defend legal actions.
3. That the council shall:
 - a. Be in charge of all issues pertaining to copyright cases in Nigeria as specified by the order.
 - b. That the council will oversee Nigeria's compliance with international agreements and provide guidance to the government;
 - c. Offer guidance and set rules for the negotiation of bilateral and multilateral agreements between Nigeria and any other nation.
 - d. Educate and inform the public about copyright-related issues.
 - e. Keep a useful database of authors and their published works.

- f. be in charge of any further issues relating to Nigerian copyright as deemed necessary by the Minister.

Nigeria has one of the most comprehensive and robust copyright laws, yet the rules are not properly enforced. At the zonal workshop on the protection of authors' and performers' rights conducted at the movie Hall, National Theatre, Lagos, Emeka Mba of Multichoice (Nigeria)^{xi} made this declaration. He discussed broadcasting rights piracy. According to international data, Nigeria has a piracy rate of over 86 percent, which demonstrates the inadequacy of the enforcement environment there.

4. COPYRIGHT INFRINGEMENTS

A copyrighted work is considered to be infringed upon when it is copied, made available to the public, or transformed into a derivative work without the owner's consent. In other words, it can imply violating the exclusive right of the copyright holder. It's frequently referred to as theft or piracy in everyday speech. However, a copyright owner needs to be aware of the rights that are legitimately theirs in order to completely comprehend an infringement. If the pirate does not directly reproduce the work, as is often the case in music and the arts, copyright infringement may take the form of apparent infringement. The following are the most significant acts of piracy in Nigeria:

1. **Production of Piracy Option Discs:** According to reports, piracy factories in Nigeria are capable of producing 100 million copies, and these discs have been shipped as far as Senegal, South Africa, and Nigeria.
2. **Business Software Piracy Book:** In nations where it is allowed to flourish, piracy causes significant economic and cultural harm. Local producers, programmers, and authors are forced to operate in an unfriendly environment since they cannot get paid for the creativity, intelligence, or financial investments they have made.

Modern technology, which has made replication simpler and less expensive, along with people who are willing to breach the law as long as there is money to be made at the end of the process, is the most destructive link in the chain of piracy.

The ineffectiveness of the Nigerian copyright legislation is a further crucial factor. In a nation like Nigeria, it might be challenging to uphold strong laws, let alone weak ones. These pirate issues would have been resolved or, at the very least, significantly reduced if these copyright rules were adequately enforced by punishing violators.

The law enforcement authorities' nonchalant approach, which also goes with bribery and corruption, is not improving the situation with regard to copyright infringement. This means that more than 80% of all video clubs in Nigeria who rent out and sell local and foreign movies do so without the owner's permission. Therefore, when these law enforcement officials approach, they are bribed with money. As a result, owners or producers will not benefit from their labor, which has not assisted the system.

As was previously mentioned, large copying of protected work without the owner's consent constitutes infringement, which also has to do with piracy. There isn't and never will be an absolute test. Only the most desirable and marketable items are stolen by the pirates. The economic damage to the owner, therefore, lies at the heart of the entire copyright controversy. For music and literary publishers, photocopying is a threat to their fundamental ability to continue operating as a business because the core of textbooks are stolen from educational institutions' copier equipment.

The recording of music at home is prohibited by the record industry, and the cinematograph industry has been devastated by the videotaping of movies and large casts. The current advancements in advanced electronic technology have opened up new opportunities for pirates who can now afford to sell their copies of the originals for considerably less than the originals' cost. As concisely stated in a just released textbook. ^{xii}

The practical implementation of copyright law and protection is in disarray due to the rapid development of communications and the information industry, and franchising and endorsement have raised questions about the purpose of the very rights that they exploit. ^{xiii}

Publishers, radio companies, producers of motion pictures and music are less interested in churning out new materials. New items are being stolen in all of these industries with no concern for detection. What then is the answer?

5. THE REMEDIES, SHORT COMINGS, AND SOLUTIONS TO INFRINGEMENTS TO COPYRIGHT

Types of remedies as they relate to copyright and a variety of other related issues are covered in this section.

Remedies to Infringements

5.1 Administrative Remedies

The administrative remedial powers of the Nigerian Communications Commission include the appointment of copyright inspectors with the authority to: access, inspect, and investigate at reasonable times structures and premises thought to harbor infringement; Arrest those who are reasonably suspected of violating the law, inspect the statutory register, request the production of documents from anyone found on the property, register collecting societies with the authority to represent owners, and negotiate, grant licenses and collect and distribute royalties.

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5.1 Criminal Remedies

Manufacturing, importing, or processing equipment for the purpose of producing an unauthorized replica of a work of intellectual property are all offenses in Nigeria that are punished by fines or prison time (punishment imprisonment not exceeding 5 years). Infringing copies may also be sold or owned for purposes other than personal or household usage (punishment is fine of #1000 per infringing copy or term of imprisonment not exceeding 2 years).

Unauthorized dissemination of written works, cinematic sound recordings, and broadcasts is punishable by a fine of #100 per copy infringed upon or by a jail sentence.^{xv}

In Nigeria, any of the following behaviors is illegal and subject to a fine or prison sentence: Contravening anti-piracy measures by selling works (punishment is fine of #100,000 or term of imprisonment not exceeding 12 months or both)

the importation of works and their possession in violation of anti-piracy laws (punishment is fine of #500,000 or term of imprisonment not exceeding 5 years or both) ^{xvi} etc.

5.2 Civil Remedies

Equity and common law provide the following remedies: The Anton Piller Order is a particular type of injunction that permits the applicant to visit a location and confiscate evidence or materials that are infringing. A prima-facie case is required. The potential or actual damage must be significant. The likelihood that it may be destroyed is real and there is strong evidence of infringement in the materials or other evidence. ^{xvii}

Equity and common law provide the following remedies:

1. Damages: To put the owner back in the position that would have been had the accident not occurred and the owner charged a licensing fee for the work: If he had been paid royalties.
2. In Nigeria, the term "copyright" refers to the author's exclusive right to control certain actions with regard to the entirety or a significant portion of a work, whether in its original form or in any form that can be recognized as deriving from the original. This right is subject to certain statutory requirements, including our specified act for research purposes, private use, criticism or review, and use in specified educational institutions.
3. The fundamental remedy provided by the Act for copyright infringement is an ownership-based right of action.

6. SHORTCOMINGS AND SOLUTIONS

Section 15 of the Copyright Act^{xviii} provides:

Infringement of a copyright, subject to this Act, shall be actionable at the suit of the owner, assignee, or an exclusive licensee of the copyright, as the case may be, in the Federal High Court with jurisdiction in the location of the infringement, in any action for such relief by way of damages, injunction, accounts, or otherwise shall be available in any

comparable proceedings with respect to infringement of other proprietary rights.

The remedy of financial compensation for copyright infringement is made plain in the aforementioned clause. However, the methodology for determining damages is not set in stone. The primary category of losses to be taken into account is the plaintiff's loss of profit as a result of commerce being diverted away from him.

The winner of the case may be awarded damages. But it's vital to remember that no compensation can be awarded if the defendant at the time of the infringement had no knowledge of or reason to suspect that copyright had been substituted in the work. Based on the real values of the pirated copies, this has been determined.^{xix}

These were seen as punitive because they may lead to the payment of sizeable damages that are frequently greater than the actual loss incurred by the owner of the work. These have been eliminated by the new Act, but the court now has new authority to award further damages, with the advantage to the infringer and the flagrancy of the Act to be considered in determining the amount.^{xx} The owner of the copyright may request what is known as an Anton Piller Order from the court through an expert motion if there are reasonable grounds to suspect that the infringer may try to conceal or destroy evidence that points to his guilt that is in his possession.^{xxi} This order enables the owner to look at and take away any materials that the defendant is in charge of. This has the benefit of preventing the defendant from having the chance to get rid of the harmful evidence by giving him advance notice of the plaintiff's intention.

According to the Copyright Act, the plaintiff is entitled to receive any and all forms of relief, including injunctions, accounts, and damages awards, if infringement is proven. However, the subsection offers the "innocent copyright"^{xxii} defense, which nullifies the plaintiff's ability to pursue damages. When there has been egregious infringement and the defendant has offered additional damages, the court has always had the discretion to determine the amount of damages to be awarded.

First, there is the civil remedy, which places a heavy responsibility on the plaintiff to support his claims and justify the amount of damages he believes he is entitled to. The owner of the copyright must wait until his rights have been violated before taking any preventative action. Civil remedies serve as a deterrence to future infringement by compensating the rights holder for economic harm incurred as a result of the infringement, typically in the form of monetary damages. This usually takes the form of a court order directing the destruction of the infringing goods and the materials that were primarily employed in their manufacture. The court may also impose restraining orders against infringing behavior if there is a chance that it will continue; if this happens, the offender will be required to pay a fine.

Criminal penalties are designed to hold those accountable who intentionally engage in large-scale acts of piracy and, like with civil remedies, to deter similar behavior in the future. The goal of punishment is fulfilled by hefty fines and prison terms^{xxiii} that are in line with the severity of the punishments imposed for crimes of correspondingly graver offenses, especially for repeat offenses. Orders for the seizure and destruction of infringing items, as well as the materials and equipment used primarily to commit the offense, serve the deterrent purpose.

The Copyright Act^{xxiv} permits concurrent prosecution of criminal and civil claims for the same infringement. Given the significant risk that performers experience as a result of more sophisticated methods of utilizing their actions for profit, the range of therapies is all significant. Copyright infringement lawsuits may be brought by the following parties:

- a. the copyrights holder,
- b. An assignee or
- c. a copyright license that is exclusive, if appropriate.
- d. Such a lawsuit may be heard by the Federal High Court, which also has jurisdiction over the infringement's location.^{xxv}

Having discussed and defined what a copyright is, its infringement and remedies, by relying on the Copyright Act, Cap 68, Laws of the Federation of Nigeria 1999, there remains still the need to review the law by updating it.

7. CONCLUSION

The obvious absence of enforcement of our laws, particularly when it comes to copyright infringements, has increased the inclination for crime in Nigeria. Would-be infringers would be discouraged from engaging in such illicit activity by the government's strict actions.

Because of the protracted delays and exorbitant costs associated with litigation and judicial procedures, the development of copyright Arbitration panels is strongly advised. Experte motion is likely to stop the infringer from trying to remove or destroy important evidence, nonetheless. Radio and television stations must pay royalties before airing the work of musicians or artists, as is the case in other countries, as is the practice. That would make a nice place to start.

8. RECOMMEDATIONS

1. The Nigerian copyright law has to be updated immediately in order to reflect several contemporary necessities that it either overlooked or took for granted. This paper advises that this be done. Additionally, the application of penalties for violations will be rendered null and void. Therefore, chasing one at the expense of the other can only lead to wandering in circles and accomplishing nothing.^{xxvi}
2. The creation of panels for copyright arbitration. Encouragement of discussion and arbitration over litigation is one surefire strategy to advance the principles of copyright. The current Nigerian copyright laws are only designed to encourage litigation, with all the associated expenses and delays. The lengthy court process in Nigeria may be to blame for the prevalence of copyright abuses rather than legitimate usage. As a result, persons who have been hurt may be deterred from asserting their legal rights.
3. Every state in the Federation should form a panel called the National Anti-Piracy Commission. They will try to reduce piracy within the Federation.
4. Given that Federal High Courts are located in each state capital of the Federation, other courts, such as the High Courts in every state, should share jurisdiction with the Federal High Courts. Due to the distance involved, it might be impossible for the copyright plaintiff to file his case before the Federal High Court.
5. Section 15(3) of the Copyright Act^{xxvii} should be expunged. Nobody can claim ignorance of the law, The Latin proverb *ignorantia juris neminem excusiat* states this. Regardless of whether the defendant was innocent at the time of the infringement or not,

he or she should be penalised and, if possible, found guilty in circumstances where the defendant claimed not to have known that copyright existed in a work.

6. In order to prevent copying through a technical system, research should be funded and carried out with the goal of creating an appropriate technology that will make piracy impossible. Copy Management Systems could be the name of such an electronic device or invention (CMS). These technological tools will either completely forbid copying or render copies of such poor quality that they are useless. These technical tools can also be used to block the reception of commercial television programs that have been encrypted.

REFERENCES

- Anton Piller KG v. Manufacturing Processes and Others* [1976] 1 All. E.R. 55.
Copyright Decree of 1999 Cap. 68 Laws of the Federation of Nigeria 1999.
Copyright Designs and Patent Act Cap C28, LFN, 2004.
Garner, BA Black's Law Dictionary (11th Edition, West Publishing Company, Dallas) 89.
General Tire & Rubber Co. v. Firestone Tire & Rubber Co., 349 F. Supp. 333 (N.D. Ohio 1972).
International Intellectual Property Alliance (IIPA) 2009 Special 301 Report on Copyright Protection and Enforcement.
Nigel E, Gallafent R, Dauppe V and Kimber J. *Intellectual Property Law and Taxation* Sweet and Maxwell. London 2021 at 67.
Okany MC. *The Nigeria Law of Property* Enugu. 2000 at 57.
Penner J.E. *Mozley's and Whitely Law Dictionary* 12th Edition at 23.
Plateau Publishing Company Ltd v. Chief Chuks Adophy [1986] 4NWLR (Pt 36) 265.
Uvieghara EE *Essays on Copyright law and Administration in Nigeria* (Y – Books, Ibadan 1992) 162.

ⁱ Uvieghara EE *Essays on Copyright law and Administration in Nigeria* (Y – Books, Ibadan 1992) 162.

ⁱⁱ Garner, BA Black's Law Dictionary (11th Edition, West Publishing Company, Dallas) 89.

ⁱⁱⁱSection 1, Cap C28, LFN, 2004.

^{iv}Section 1 of the Copyright Decree of 1999.

^vSee Cap 68, Laws of the Federation of Nigeria, 1990.

^{vi}Penner J.E. Mozley's and Whitely Law Dictionary 12th Edition at 23.

^{vii}See Sections 2 and 3 of the Copyright Act.

^{viii}Okany MC. The Nigeria Law of Property Enugu. 2000 at 57.

^{ix}[1986] 4NWLR (Pt 36) 265.

^x Section 30(1), (2), (3)(a) – (f). The Copyright Act as amended in 1999.

^{xi}Copyright Newspaper, January – March, 1999.

^{xii}Nigel E, Gallafent R, Dauppe V and Kimber J. Intellectual Property Law and Taxation Sweet and Maxwell. London 2021 at 67.

^{xiv} Sections 38 and 38. Cap (28, LFN, 2004).

^{xv} Section 20, Cap (28, LFN 2004).

^{xvi}Section 20 and 21Cap C 28, LFN, 2004.

^{xvii}Anton Piller KG v. Manufacturing Processes and Others [1976] 1 All. E.R. 55.

^{xviii}Cap 68 Laws of the Federation of Nigeria, 1999.

²¹Copyright Act 1999, Section 18.

²² 1998, section 97 (2) Copyright Designs and Patent Act.

²³Anton Piller note 18 above.

²⁴See section 15(3) of the Copyright Act, 1999.

²⁵ See section 18(1) (c) (2) (a) – (c), (3), (4) and (5) of the Copyright Act cap 68 of the Laws of the Federation 1999.

^{xxiv}Section 21 of the Copyright Act, cap 68, Laws of the Federation of Nigeria 1999.

^{xxv} Ibid. Section 15 (1).

²⁸ Uvieghara note 14 above.

^{xxvii}Cap. 68 Laws of the Federation of Nigeria 1999.