

**AN OVERVIEW OF THE CRIMINAL PERSPECTIVE OF THE
ENFORCEMENT OF COPYRIGHT IN NIGERIA**

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ABSTRACT

The greatest resource and bedrock of every civilization is its creativity, innovation and invention. All these boost the economy of a nation. Creativity of a nation, Nigeria inclusive, is protected by the copyright Law. The goal of copyright protection is to encourage dissemination of information, provide employment and economic benefit to the owner, and reserve the ownership of the right in it to the creator of the work.

This right has been constantly bastardised and infringed upon by unauthorized acts of reproduction and distribution on a commercial scale, called piracy. Piracy is a menace that has negatively impacted on Nigerian economic, social and political wellbeing.

Hence this paper examines the Nigerian copyright law in relation to the protection of literary, artistic and musical works, cinematograph film, sound recording and broadcast; the exclusive rights granted to copyright owners and its infringement; types and causes of piracy; the effects of piracy; and then made some recommendations for the eradication of piracy.

INTRODUCTION

Copyright is an intangible, incorporeal property, which guarantees the owner the exclusive right to deal with his/her work within a stipulated time as provided under the law. Copyright and related rights are today perceived as instruments for development, as well as providing a secured and stable environment for creative activities. The creative industry which encompasses all intellectual productions has contributed in no small measure to economic growth and development of creators in the world in general and Nigeria in particular. Surprisingly, the owners of this intellectual creativity are robbed of their rights by pirates who reap where they have not sown. Piracy is a great challenge to creative industry worldwide and Nigeria in particular. It may be said to be a cankerworm in the growth and development of intellectualism, more deadly than AIDS to human health, and the perpetrators, terrorists.

However, the contributions of the creative industry, particularly in copyright issues to socioeconomic development has been due to efficient management system. In Nigeria today, this management is carried out by the Nigerian Copyright Commission (NCC). This commission administers copyright issues. Its administration and the output of the creative industry has been frustrated by the effect of copyright piracy which discourages creativity. In reaction to this menace the NCC fights against piracy. However, this fight is met with numerous problems, such as poor funding, security, corruption, poor enforcement mechanism, poor knowledge of information and communication technology (ICT) and so on.¹

1. COPYRIGHT

Intellectual Property has been defined by the World Intellectual Property Organisation (WIPO) as “creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce”.²

Under the Nigerian Copyright Act, six works are particularly mentioned as eligible for copyright. They are as follows: literary, musical and artistic works; cinematograph films,

¹ I. M, Nwogu: *“The Challenges of the Nigerian Copyright Commission in The Fight Against Piracy in Nigeria”*, Global Journal of Politics and Law Research, Vol 2, no. 5, 2004:22

² WIPO, *What is Intellectual Property*, available at <http://www.wipo.int/aboutip/en/>. Accessed August 20, 2016

sound recordings and broadcasts.³ For a work to be eligible for copyright under the act, sufficient effort must have been expended on the work to give it an original character and it must have been fixed in a definite medium directly perceivable or perceivable with the aid of any device or machine.⁴ The fact that the making of a work involved some form of copyright infringement would not alone constitute grounds for ineligibility.⁵

The right is protected to the extent that laws and norms support it, and it is threatened to the extent that technology makes it easy to copy. Strengthening the law while holding technology constant, makes the right stronger. Proliferating copying technology while holding the law constant, makes the right weaker. In this sense, copyright has always been at war with technology. Therefore, it is important that the law should be strengthened.

1.2 Powers of a Copyright Owner.

The owner of a copyright work enjoys certain exclusive rights. These rights operate as restrictive rights in that the owner is empowered by Copyright to control the doing of certain actions and without his consent or authorization, such works may not be carried out. The doing of any of such works amount to an infringement of the right of the author or the copyright owner. **Sections 6-9 of the Act** provides for the general nature of copyright and provides for the exclusive actions that the author/copyright owner controls. These exclusive actions include reproducing, publishing, performing, translating, making any cinematograph film or a record in respect of the work, distributing to the public for hire or for commercial purpose copies of the work, communicating to the public and making an adaptation of the work. The doing of any of the afore-mentioned actions amounts to copyright infringement which carry consequence both in the civil and criminal realms.

1.3 Infringement of Copyright.

An important part of the legislation are the infringement provisions of the Act which provide for both civil and criminal actions which may be instituted simultaneously⁶. The Act specifically states amongst other things when prescribing copyright infringement that

³ Section 1 (1) (a)-(f) of Copyright Act

⁴ Section 1 (2) (a) & (b) of Copyright Act

⁵ Section 1 (4) of Copyright Act

⁶ Section 24 Copyright Act

‘Copyright is infringed by any person who without the licence or authorisation of the owner of the copyright (a) does or causes any other person to do an act, the doing of which is controlled by copyright; (b) imports or causes to be imported into Nigeria any copy of a work which , if it had been made in Nigeria would be an infringing copy under this section of this Act;...’⁷

In the event of an infringement, the copyright owner, assignee or exclusive licensee may bring an action before the Federal High Court and may claim for damages, injunctions and/or accounts. Ignorance is a defence to copyright infringement, but it must be proved that at the time of the infringement the defendant was actually unaware and had no reasonable grounds to suspect that copyright subsisted in the work. In such situations plaintiffs are not entitled to damages but rather account for profits in respect of the infringement.⁸ The Act criminalises copyright infringement with **Section 20 of the Act** providing conviction or fine and conviction and fine punishment to those found guilty. It provides that where a person is found guilty of making or causing to be made for sale, hire or other commercial purposes any infringing copy, or imports or causes to be imported into Nigeria a copy of any work which if it had been made in Nigeria would be an infringing copy, or makes, causes to be made or has in his possession, any plate, master tape, machine, equipment or contrivances, for the purpose of making any infringing copy of any such work, such a person shall be liable to a fine of an amount not exceeding N1,000 for every infringing copy or a term of imprisonment not exceeding five years, or to both such fine and imprisonment. The criminal provisions with stiff penalties have been tested in the courts and have in many ways served as deterrence to further copyright infringements.

In the cases of **NCC V Godwin Kadiri**,⁹ **NCC V Michael Paul**¹⁰ and **NCC V Emordi Henry Chukwuma** ¹¹ all on charges infringing broadcast rights, the defendants were all

⁷ .Section 15 (1) of Copyright Act

⁸ Section 16 (3) of Copyright Act

⁹ NCC V GODWIN KADIRI, FHC/B/43C/2010, (Federal High Court, Benin- City. 17/12/2012). (Unreported)

¹⁰ NCC V MICHAEL PAUL, FHC/LF/CR/2/2013, (Federal High Court, Lafia 3/10/2013). (Unreported)

found guilty. In the case of *NCC V Godwin Kadiri*, which held in the Benin judicial division, the defendant was sentenced to serve a 6 ½ years jail term with no option of fine and is being made to serve two jail terms. In *NCC V Emordi Henry Chukwuma* and *NCC V Micheal Paul* which were heard in the Abuja and Lafia jurisdictions of Nigeria, they were both sentenced upon conviction to pay fines of N10,000 and 5,100 respectively. Convictions have been made with regards to infringements of other works. In *NCC V Nwoke Isreal*¹², the Lagos judicial division of the Federal High Court, convicted and sentenced the defendant to 1 year imprisonment without the option of fine for infringing upon literary rights. In *NCC V. Anoke Celestine* on charges bordering on infringements of sound recording and cinematograph film rights, the Benin judicial division of the federal high court sentenced the defendant to 10 months imprisonment

2. NIGERIAN COPYRIGHT COMMISSION

As necessary machinery for the administration, regulation and enforcement of copyright in Nigeria, *section 34 of the Copyright Act* created the Nigerian Copyright Commission (NCC) as a body corporate with perpetual succession and common seal¹³. The Commission (NCC) has zonal offices in some states of the Federation for the purposes of decentralised administration of copyright matters. It is headed by a Director-General, who is responsible for the day to day administration of NCC.¹⁴ A governing board is established for the effective management of NCC.¹⁵ The Commission has numerous functions/roles provided under the copyright Act,¹⁶ which include the following:

- a. To be responsible for all matters provided for in this Act.
- b. To monitor and supervise Nigeria's position in relation to international conventions and advise government thereon.
- c. To advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country.

¹¹ *NCC V EMORDI HENRY CHUKWUMA*, FHC/ABJ/CR/90/2013, (Federal High Court, Abuja. 19/06/2013). (Unreported)

¹² *NCC V NWOKE ISREAL*, FHC/L/159C/2013, (Federal High Court, Lagos 6/05/2013). (Unreported)

¹³ S. 34(1) of Copyright Act

¹⁴ I.M Olueze, *Nigerian Copyright Law* (Lagos: Maghlink International Ltd) 1998 :148

¹⁵ Copyright Act, *op. cit*, S. 35

¹⁶ *Ibid*, S. 34 (3)

- d. To enlighten and inform the public on matters relating to copyright.
- e. To maintain an effective data bank on authors and their works.
- f. To be responsible for such other matters as related to copyright in Nigeria as the minister¹⁷ may from time to time, direct.

In addition to the above functions, the commission has power to appoint copyright inspectors.

¹⁸The Copyright Inspector shall have power to:¹⁹

- Enter, inspect and examine at any reasonable time any building or premises which he reasonably suspects is being used for any activity which is an infringement of copyright under this Act, such as piracy;
- Arrest anyone who he reasonably believes have committed an offence under this Act;
- Make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with;
- Request the production of the register required to be kept under section 14 of this Act and to inspect, examine and copy it;
- Request any person who he finds in such building or premises to give such information as it is in his power to give in relation to any purpose specified in this Act;
- Carry out such examinations, test or analysis within or outside the premises as is required to give effect to any provision of the Act; and
- Exercise such other powers as the commission may delegate to it to give effect to the provision of this Act²⁰.

Furthermore, section 38(3) of the Copyright Act empowers the copyright inspector to prosecute, conduct or defend before court any charge, information, complaint or order proceedings arising under the Act. The Act did not expressly in any of its provisions empower the copyright inspector to institute civil proceedings in respect of infringement of copyright. The expression “or other proceedings” in section 38(3) could be interpreted using the ejusdem generis rule to include civil proceeding. The Copyright Commission also has power to approve the functioning of a collecting society. A collecting society is an

¹⁷ Minister of Culture, Tourism and National Orientation

¹⁸ Copyright Act *op. cit.*, S. 38

¹⁹ *Ibid*, S. 38 (2)

²⁰ *Ibid*

association of copyright owners which has as its principal objectives the negotiation and granting of licenses, collecting and distributing of royalties in respect of copyright works.²¹

In addition, the Nigerian Copyright Commission also has the power to grant compulsory licence, for the translation and reproduction of literary or dramatic work for the purposes of teaching, scholarship or research.²²

However, for effective and efficient administration of copyright, enforcement of copyright laws and fight against infringement, the Nigerian Copyright Commission has been divided into various departments, headed by duly appointed officers. Such departments include regulatory department, enforcement department, public affairs department, administrative department, legal unit, governing board, prosecution department and internal audit unit. These departments are saddled with varying functions, including fight against copyright piracy.

2.1 Nigerian Copyright Commission (NCC) and the Fight Against Piracy

The Nigerian Copyright Commission established under the Act ²³ is the only government agency responsible for copyright administration in Nigeria. The mandate of the Commission (NCC) includes administration, enforcement and regulation of copyright activities in Nigeria, of which fight against piracy is inclusive. The Nigerian government has adopted a zero tolerance for acts of piracy. In line with the zero tolerance for piracy, the copyright Act ²⁴ in its wisdom provides for anti-piracy measures to assist the commission effectively and efficiently carry out its functions.

Thus Section. 21 of the Act provides that;

the commission shall have power, with the consent of the minister, to prescribe any design, label, mark, impression or any other anti-piracy device for use on, in or in connection with

²¹ *Ibid*, S. 39

²² *Ibid*, 4th Schedule, Para. 2

²³ Copyright Act *op cit*, S. 34

²⁴ *Ibid*, S. 21

any work in which copyright subsists;²⁵ any person who sells, rents, hires; or offers for sale, rent or hire, any work in contravention of the prescription made pursuant to subsection (1) of this section, commits an offence and is liable on conviction to a fine not exceeding N100,000 or imprisonment for a term not exceeding 12 months or to both such fine and imprisonment;²⁶ any person who without the permission of the commission; imports into Nigeria; or has in his possession any anti-piracy device prescribe under this section or any machine, instrument or other contrivances intended for use in the production of anti-piracy device is guilty of an offence and is liable on conviction to a fine not exceeding N500,000 or imprisonment for a term not exceeding five years or to both such fine and imprisonment;²⁷ any person who without the permission of the commission is in possession of; or reproduces; or counterfeits; any anti-piracy device prescribed under this section is guilty of an offence and is liable on conviction to a fine not exceeding N50,000 or imprisonment to a term not exceeding five years, or to both such fine and imprisonment;²⁸

The commission shall have power, with the consent of the minister to make regulations specifying the conditions necessary to give effect to the purpose of this section.²⁹

Thus by the above provision and that of S. 34 of the Act, the Nigerian Copyright Commission (NCC) is clearly and explicitly empowered to fight and curb piracy in Nigeria. Since the establishment of the NCC in 1989³⁰, it has worked, (through its enforcement unit) tirelessly to clamp down on piracy and reduce it to the barest minimum. Campaigns such as strategic Actions Against Piracy (STRAP) and the Copyright litigation and mediation programme (CLAMP) launched in 2005 are testimonies to this. Since December 2010, however, the NCC has intensified its copyright fight (enforcement) and anti-piracy activities.³¹

²⁵ *Ibid*, S. 21 (1)

²⁶ *Ibid*, S. 21 (2)

²⁷ *Ibid*, S. 21 (3)

²⁸ *Ibid*, S. 21 (4)

²⁹ *Ibid*, S. 21 (5)

³⁰ Following the implementation of Decree No. 47 of 1988

³¹ A Ezekude, 'Anti Piracy Drive Field Result' (2012) WIPO magazine Available at http://www.wipo.int.wipo_magazine/end/2012/03/article accessed August 20, 2016.

The Prosecution Department of the Nigerian Copyright Commission (NCC) filed seven copyright cases based on the concluded case files of recent nationwide anti-piracy raids conducted in various parts of the country in September 2011. In Lagos four new criminal cases were filed at the Federal High Court, Ikoyi Lagos, and they are *NCC v John Bright*; *NCC v Obisam Ltd & Ors*; *NCC v Tecomy & Ors*; and *NCC v Paragon Technologies Ltd & Ors*.³² The four accused/defendants were charged for illegal reproduction of musical works cinematography films and sound recordings. The Director, Prosecution Department of NCC Mr. Kohol, added that two criminal charges on broadcast piracy, *NCC v Akhaguayin E. Famous* and *NCC v Harrison Ugute* were filed at the Federal High Court Asaba and Benin respectively.³³

Interestingly the commission has secured many convictions against accused persons through the court system. Such convictions include *NCC v Oba Okechukwu*³⁴ where the accused was charged with the sell and possession of local and foreign musical and cinematography films which is contrary to S. 20(2) (a) and (c) of the Nigerian Copyright Act. The Federal High Court Abuja sentenced the accused to 3 months imprisonment and a fine of N12,600; and the infringing copy handed over to the NCC. Also the same decision was given by the court in *NCC v Dominion Kalu*³⁵. In *NCC v Godwin Kadiri*,³⁶ the accused was charged with selling and distributing to about 100 subscribers the whole or substantial parts of HiTV broadcast channels in which copyright subsist, without the consent or authorization of the copyright owner in breach of s. 20 (2) (a) and (b) of the Copyright Act, And also having in his possession equipment and contrivances including decoders, smart cards and splitters for the purpose of illegal rebroadcasting of HiTV channels contrary to S. 20(1) (c) of the Copyright Act. The Federal High Court Abuja convicted the accused and sentenced him in accordance with S. 20 (2) (a) of the Copyright Act.

³² NCC, Notice Board, September 11, Issue No. 2, P. 4, Available at <http://www.copyright.gov.ng/noticeboard>, accessed on 23rd March 2014.

³³ *Ibid*

³⁴ (2012) 55 NIPJD (FHC)

³⁵ (2012) 55 NIPJD (FHC)

³⁶ (2010) 53 NIPJD (FHC)

More interestingly, the Director-General of NCC, Mr. Afam Ezekude revealed that during his administration, NCC secured 46 criminal convictions and seized 16 containers of pirated products from China, which included books.³⁷ He further stated while declaring open a training workshop on Digital/Internet piracy organized for staff of NCC, that NCC is collaborating with Google Nigeria to fight Internet piracy and cybercrime in Nigeria.³⁸ This is really a giant stride by the NCC to fight piracy in Nigeria. This collaboration of NCC with google is necessitated by the increasing challenge posed by online piracy to creativity. The NCC in addition to proper implementation of their duty enshrined in the Act, also sets out policy initiatives and strategic plans in their mission and vision of curbing piracy. This can be illustrated in their bid to provide avenue for rebranding the ideology of Nigerians towards the evil called piracy.³⁹ This can be achieved through the use of Strategic Action Against Piracy (STRAP). This is a national anti-piracy campaign that employs various tools such as public enlightenment to combat all forms of piracy; empower local industries and attract foreign investment, through a sustained campaign, to restore the image of Nigeria as a country that upholds the ideals of creativity and abhors international crimes; and substantially raise awareness on piracy and other copyright infringements among Nigerians.

3. RIGHTS ADMINISTRATION.

When the 1988 Copyright legislation was passed, the agitations leading to the legislation was centred on the outcry for greater protection of the rights of copyright owners. To ensure protection of these rights, the Commission has been saddled with the responsibility for all matters affecting copyright in Nigeria and this responsibility is both symbolic and significant. It is symbolic because the Commission has been made the designated reference point for all copyright matters in Nigeria and it is significant because whilst the Commission protects the rights of Copyright Owners, it simultaneously must protect the rights of user. It must therefore carry out this very sensitive role of maintaining an uncertain balance and must at the same time avoid delving into the arena of conflict. To achieve this symbolic and significant role, the Commission has been involved in and has also developed a number of

³⁷ J. Alakam *op cit*

³⁸ Y. Akinsuyi, 'NCC Partners Google to Fight Internet Piracy' *This Day Live*, Available at <http://www.thisdaylive.com/articles/nccpartnersgoogle>. accessed on August 20, 2016.

³⁹ I Auth, "Exporting Professional Service Seizing Opportunity" (2012) Available at <http://www.abillionem.com> accessed August 20., 2016.

mechanisms to administer copyright in Nigeria. These mechanism include administration of the following:

3.1 Copyright (Reciprocal Extension) Regulation 1972.

This regulation was issued to enable the extension of copyright protection in works protected under the Act to countries to which Nigeria shares treaty obligations. The regulation was issued on the 1st of February 1972.⁴⁰

3.2 Copyright (Security Devices) Regulation 1999.

Advancement in technology has enabled the invention of machines such as the photocopiers, printers, cassette recorders and other recording machines. These machines have made it much easier to reproduce contents and a lot of these contents are copyright protected. Section 21 of the Nigerian Copyright Act empowers the Commission to prescribe the use of any antipiracy device for use on any work in which copyright subsists. The intention is dual; first of which is to help the general public identify genuine products and secondly to curb the menace of piracy thereby providing authors an additional incentive for further creativity and for copyright owners to recoup their investments. In view of the above, the Commission issued the Copyright (Security Devices) Regulation 1999 which majorly focused on the issuance of hologram stamps⁴¹. The regulation was issued on the 7th of September 1999.

3.3 Copyright (Video Rental) Regulations 1999

As the hiring and renting of video cassettes, cd's and dvd's became common in most parts of Nigeria, the need to consider the issue of sells, rentals and hiring of cinematograph films became imperative. The practice amongst those involved in video rental was to buy one video cassette, cd or dvd, reproduce the single copy into multiple copies and then rent them out to as many people as were willing to rent or hire them. To the ordinary mind, this meant that the general public appreciated the films and that the actors were becoming famous. On the contrary, what was happening was that illegal reproduction, sells, rentals and hiring of cinematograph (audio – visual) works was taking place. These acts by virtue of the Nigerian

⁴⁰ Nigerian Copyright Commission NCC, Copyright (Reciprocal Extension) Regulation 1972 (1972), available at <http://www.copyright.gov.ng/images/downloads/Copyright%20Reciprocal>.

⁴¹ Adebambo Adewopo, “*Intellectual property regime and the global financial crisis: lessons from Nigeria*”, Journal of Money Laundering Control, Vol. 14 no. 1 (2011):186.

Copyright laws constitute infringement of copyright.⁴² In addressing these new challenges, the Commission came up with the Copyright (Video Rental) Regulation. The regulation prescribed the issuance of a rental copy, which copy was meant to be produced by the copyright owners and would be purchased by the rental shops.⁴³ The intention was that hiring, rentals, leasing or distributing in the public for commercial purposes would be regulated by the use of rental copies. A task force to monitor the rental shops would ensure compliance. This regulation was issued on the 7th of September 1999. The major challenges to the regulation remain the failure of the industry to produce the prescribed rental copies. Another challenge is that the cost of purchasing cinematograph films in Nigeria have become very cheap due to competitions between optical discs manufacturing plants, Asian importation of pirated films and multiple cinematograph films on a single disc.

3.4 Copyright Notification Scheme.

The notification scheme of the Commission is the mechanism through which a national copyright databank of authors and their works are kept.⁴⁴ This scheme is not a mandatory registration system and does not confer any additional right than what copyright already confers. The scheme operates by encouraging authors to notify the Commission of the existence of copyright in their creative endeavours or the transfer of such copyright. The advantage of the scheme is that one's work is in the databank of the commission and in the event of litigation or uncertainty, it could constitute prima-facie proof of the date of the existence of the work. Works eligible for notification include, literary, musical, artistic, cinematograph films, sound recording and computer programmes and may be filed by the author, the copyright owner, an assignee, a licensee, an agent or a transferee. The Copyright Notification Scheme was introduced in 2005.⁴⁵

⁴² Section 20 (2) a, b, c & d. Cap C28 (2004).

⁴³ Regulation 5(1&2) Nigerian Copyright Commission NCC, *Copyright (Video Rental) Regulation 1999*(1999).

⁴⁴ S.34 (2) e Cap C28 (2004).

⁴⁵ Nigerian Copyright Commission NCC, *Copyright Notification Scheme*(2005), available at <http://www.copyright.gov.ng/index.php/regulatory-schemes/copyrightnotification>. accessed August 14, 2016

3.5 Copyright (Optical Disc) Regulation 2006.

This regulation became imperative to address the issue of piracy from the point of production.⁴⁶ The discovery of two pirate plants in 2004 and 2005 necessitated the regulation. Prior to the discovery of the plants, works in which copyright subsists and embedded on optical discs were imported into Nigeria from Asia. The aim of the regulation was therefore to identify the sources of production and provide a legal regime for optical disc manufactures and producers to operate within a regulated legal framework. The regulation which requires all manufactures, importers and producers of optical discs and production parts to be registered with the Commission was issued on the 15th of December 2006.⁴⁷

3.6 Copyright (Collective Management Organisation) Regulations 2007.

Authors all over the world create works which users enjoy. Works made by authors find their way around the world and users continue to discover new works and use them. Considering that the human race is currently above 7 billion and the number is still on the increase, all 7 billion humans are potential users as well as potential creators of copyright works. Creative works enjoy copyright protection and except use of such works fall under some form of limitation and exception, the current legal regime for copyright requires that authorisation be obtained from the copyright owner prior to use. However, considering the vast number of copyright owners and users, it is impracticable to expect every user to track down every copyright owner and obtain the requisite authorisation.⁴⁸ To address the above challenge, collective management organisations (CMO) exist to negotiate on behalf of copyright owners and grant licences to users as well as to collect payments from users and distribute royalties on an agreed rate to copyright owners. CMO's could therefore be considered as a one stop shop for clearing copyright contents in the interest of both copyright owners and the user publics. Considering the above and that Nigeria has a growing creative industry, the need for collective management organisations to serve both the copyright owner and the user community cannot be overemphasized. In 1993, the first regulation in this regards was issued

⁴⁶ ibid

⁴⁷ Nigerian Copyright Commission NCC, Copyright (Optical Discs Plants) Regulation 2006. B 697-711 (2006), available at [http://www.copyright.gov.ng/images/downloads/Optical%20Disc %20Regulation.pdf](http://www.copyright.gov.ng/images/downloads/Optical%20Disc%20Regulation.pdf). accessed August 14, 2016

⁴⁸ OLA, Copyright Collective Administration in Nigeria Lessons for Africa 8. 2013."The rationale for this system of management arises from the impracticability of managing these activities individually, namely the inability of the individual right owner to personally monitor and enforce all of his rights in every situation"

and more recently, the Copyright (Collective Management Organisation) Regulations 2007 was issued which repealed the earlier regulation⁴⁹. Two organisations are currently approved as collective management organisations, Reprographic Rights Organisation of Nigeria (REPRONIG) for the literary industry and Copyright Society of Nigeria (COSON) for the music industry.

3.7 Copyright (Levy on Materials) Order 2012.

This is the most recent regulation issued by the commission. It takes its route from the provisions of the Act in Section 40 which provide for levies on copyright materials and more directly mandates the payment of a levy on any material capable of being used to infringe copyright in a work. The intendment of the regulation is to create a platform where right-owners are able to receive some form of remuneration for the exploitation of their work however through a compulsory licensing methodology. The order prescribes levies payable in respect of materials used or capable of being used to infringe copyright. The rationale for the scheme lies in the need to ensure that right owners are properly remunerated for their works whilst at the same time enabling users exploit the work without any fear of contravening the legal provisions of any Law(s). The regulation was issued in 2012.⁵⁰

4. ENFORCEMENT.

In addition to public enlightenment and rights administration, the Commission uses enforcement mechanisms in tackling the challenges in the industry. It does this in collaboration with the traditional enforcement agencies in the country such as the Nigerian Police Force (NPF), the Nigerian Customs Services (NCS), the Economic and Financial Corruptions Commission (EFCC) and other non-enforcement sister agencies. The Commission shares information with other agencies and maximizes available platforms. The Commission embarks on regular anti-piracy raids, arrests and prosecution of pirates. These raids are conducted in conjunction with sister organisations and cover notorious areas such as well-known markets where the products are usually trafficked and the borders through which the products are known to be brought in or taken out. In the discharge of the Commission's

⁴⁹ Nigerian Copyright Commission NCC, *Copyright (Collective Management Organisation) Regulation 2007*(2007), [http://www.copyright.gov.ng/images/downloads/CMO%20Regulation %202007.pdf](http://www.copyright.gov.ng/images/downloads/CMO%20Regulation%202007.pdf). accessed August 14, 2016. The earlier regulation was called Copyright (Collecting Societies) Regulation 1993.

⁵⁰ Nigerian Copyright Commission NCC, *Copyright (Levy on Materials) Order 2012* (2012) available at [http://www.copyright.gov.ng/images/downloads/REVISED%20DRAFT%20LEVY %20ON%20COPYRIGHT%20MATERIALS%20ORDER.pdf](http://www.copyright.gov.ng/images/downloads/REVISED%20DRAFT%20LEVY%20ON%20COPYRIGHT%20MATERIALS%20ORDER.pdf). accessed August 14, 2016

enforcement mandate, the Commission carries out its operations through Copyright Inspectors who are empowered by Section 38 of the Act to enter, inspect and examine any premises they reasonably believe is being used for infringing activities. They are also empowered to seize items which they reasonably suspect to be infringing items as well as to arrest any person who they reasonably believe has committed an offence as stipulated by the Act.⁵¹

4.1 Challenges of the Enforcement of Copyright in Nigeria

There is no gainsaying that the fight against piracy has not been an easy task for the NCC, it has been fraught with various challenges, hence the need for the discourse below.

- **Poor Financing⁵²**

The NCC by its function and enforcement procedure needs adequate fund to operate and carry out its responsibilities efficiently. Sadly, and surprising too, the NCC is not adequately funded. This automatically hinders necessary and comprehensive investigations and reduces the quantum of information gathered and as a result affects the commission's optimum performance.

- **Corruption**

Some of the NCC officials who are charged with the responsibility of carrying out raids on infringed works are corrupt, so are compromised by the pirates. The officers at times have private dealings or transactions with the infringers (pirates), and consequently, they deliberately refuse or find it difficult to find them out during their regular raids. By this, these officials close their eyes to the evil being perpetrated by the pirates. This is quite unfortunate and unbecoming of such trusted officials, who were sent on this raid in confidence.

⁵¹ Kunle Ola: "*Evolution and Future trends of Copyright in Nigeria*". Journal of Open Access to Law, Vol 2 no 1. (2004):25

⁵² A Odoh, "Factors Militating Against Enforcement and Administration of Copyright and Possible Solutions; A paper Presented at the In-House Training Organized by Enugu zonal office of the NCC on the 11th March, 2013.

- **Enforcement**

Effective enforcement of intellectual property laws is a key to curbing piracy, consequently, the position and role of law enforcement agencies like the police, army customs and officers of other relevant government agencies is crucial. In most developing countries, like Nigeria, these personnel are faced with various challenges such as, poor understanding of the issues involved; poor training; poor funding of enforcement activities; and absence of good working tools either to aid detection or in the conduct of post arrest operations.⁵³ However, a disturbing attitude also exists in the minds of the public and sometimes in the judiciary and in law enforcement agencies, that piracy is a low level of mischief with little real consequence. The members of the International Intellectual Property Alliance (IIPA) reported that the police lack the overall will, and the Economic and Financial Crimes Commission (EFCC) generally considers copyright as a secondary issue in their mandate and will rather assist the NCC to carry out its mandate rather than take the lead. ⁵⁴Delays in the judicial system and lack of transparency in the enforcement system discourage copyright litigation and enforcement. This lack of transparency is as it affects right holders, for they are generally in the dark about the cases and ongoing investigations.

- **Culture**

Culture is the way of life of the people within a given community. Culture of the people is a strong factor/challenge militating against the enforcement of anti-piracy measures, because the way and manner people behave affect their lives and will definitely determine the extent of the behaviour of NCC officials who are on anti-piracy raids. For example, in the hinterlands where the people patronize and are used to buying pirated copies of works at reduced prices, it will definitely be difficult to convince them about the negative impact of piracy and carry out raids.

- **Mobility of Officials**

This is one of the major and fundamental constraints in the fight against piracy. The NCC departments and units, especially the enforcement departments should have strong, good and

⁵³ NCC, *Survey of Copyright Piracy in Nigeria*, op cit, P. 5

⁵⁴ International Intellectual Property Alliance, (IIPA), *IIPA Report, Published by the Nigerian Copyright Commission*, June 2008, P. 51.

mobile vehicles that the officers will use to go on raids. Without these vehicles, effective surveillance and raids will be a mirage and nearly impossible, especially where the officials should cover more than one locations during the raid.

- **Insecurity**

Importantly, the NCC officials find it difficult to successfully carry out raids without the police, this is because of the fear of the unknown in the field of operation. At times the copyright pirates may be aggressive and armed with different harmful instruments, that the officers need security and protection. Also the issue of insecurity in the country has made it difficult at times for the police hierarchies to release their men to NCC, and so they give the excuse that they do not have enough manpower on the ground. This definitely hampers the raid operations, because the officers find it difficult to go alone. This makes the fight against piracy difficult and consequently the pirates flourish and thrive in their businesses.⁵⁵

- **Language Barrier**

This is another challenge facing NCC in its enforcement programs. Nigeria is a multi-lingual state and there are instances where officers are deployed to operate in an area where they do not understand the language of the natives, consequently, they will not understand each other and the raid operations will be practically impossible because of lack of communication.

- **Information and Communication Technology (ICT)**

ICT is the world leading technology today, it includes the Internet. The Internet is a global network, it is a network of computer networks and has made the world to become a global village. The Internet by its very nature has vast information in it and various activities take place on the Internet including crimes and torts. Copyrighted works uploaded on the Internet are bastardised and copied with impunity. It is always common to see surfers at the cyber cafes or in their houses or offices, with few clicks on their computer distributing a copyrighted work to the entire world; Some even downloading the works and selling them. This anomaly must be checked.

However, to check the above method of piracy which is global and very vast, the NCC officials must be ICT compliant. The commission should train their officers on ICT, so as to

⁵⁵ O. Odoh *op cit*

use their expertise to curb piracy on the net. Most of the NCC officials are not computer literate. Each of them should have a functional computer connected to the global network, the Internet, so as to go through the Internet from time to time detecting infringers. The NCC has also taken a step in the right direction, as stated earlier, in this work, by going into alliance with Google, which is one of the largest search engines on the Internet to fight Internet Piracy.

RECOMMENDATIONS

- **Amendment of the existing legal framework.**

There should be a review of the existing Copyright Act to reflect increase in the penalties for criminal infringement. For example, the fine for infringement per copy should be increased from N100 to N500. While the imprisonment for serious offenses under the Act should be between 3 to 8 years. Provision relating to infringement of copyright by corporations should be amended to include the closure of any corporation convicted of copyright infringement. Digital works, internet works, and softwares should be adequately protected under the Copyright Act. The civil liability for copyright infringement should be not just “damages” but “exemplary damages”. In the case of making Anton pillar order by the court, the infringing copies, plates, films or contrivances used or intended to be use for making infringing copies should be confiscated, in addition to sealing-up the premises where the infringement is taking place. Furthermore the proposed amendments should include provisions which make it an offence to circumvent technological protective measures such as encryption used by right holders to protect their works online as provided under Article 11 of WIPO Copyright Treaty (WCT), Article 18 of WIPO performances and phonograms Treaty (WPPT) and Berne Convention.

- **Public Enlightenment**

There should be enlightenment and awareness campaigns that will be taken down to the grassroot on piracy and its ills. This can be achieved through seminars, symposia, workshops, conferences and advertisement in the media, in a way that the layman on the street will

understand. Emphasis should be laid on the bad effects of piracy, the use of pirated products and how to identify pirated works.

- **Monitoring of Infringing Works by Right Owners and the Public**

Right owners and the general public should monitor pirated works in contradistinction with genuine and original products, so as to report incidences of piracy to copyright inspectors, Economic and Financial Crimes Commission (EFCC) and the police. Individual right owners should also try as much as possible to self protect (self defence) their works on the Internet; such self protection as passwording, setting up firewall and encrypting the work will be part of it. Also, since the Internet, which is a world wide web has made the world a global village and information on the net spreads like wild fire, owners of intellectual property rights should also go through the Internet from time to time and check for the infringement of their works, so as to stop piracy timeously. Consequently the pirates and their syndicates will be called to order by taking them to the law court.

- **Government Incentives/Assistance**

The Government should give incentives to right owners of well written and highly demanded products, in addition to giving them subventions or assistance in monetary form to reduce the production costs of the works. Consequently making them affordable to a reasonable number of people.

- **Training of Government Agencies**

The astronomical rate with which new computer technology moves and the spate and nature of the infringement on the Internet, government agencies and persons in charge of this branch of the law like the Copyright Commission and the copyright inspectors should receive continuous training on information and computer technology (ICT). Inadditon to their domestic training on the subject, they should also participate in training given to other countries, so that they will be well grounded on the subject. This will enable them effectively conduct raids on Internet service sites; The inspectors and right owners should also prowl through the Internet at intervals to find out infringing products and call the infringers to order.

- **Adequate Funding of Regulatory Bodies**

The copyright regulatory bodies like the Nigeria copyright Commission, the National Film and Video Censors Board should be adequately funded by the government to be well equipped to effectively and efficiently carryout the piracy raids. They should be provided with good and functional offices, among other facilities, to assist in the raid.

- **Protective Technological Measure**

With respect to computer software, the best measure of protection is by adopting a technology created by a software expert on behalf of his firm Info Logic Software Incorporation (A consulting and software firm in the United States) and modified in 2009. This technology is called the ‘software envelope’, and refers to a situation where copyright works are transmitted in an encrypted form into a single envelope such that automatic messages are sent to a central authorizing site at regular intervals. Each time a user starts to use copyrighted work, a reply is sent back to the central authorising site for authorization to continue or a denial of authorization. By this technology, the central authorizing site would detect when a computer software is about to be used in a manner prejudicial to the right of the copyright owner. This kind of technology would be most appropriate in Nigeria, even though we are yet to develop the requisite infrastructure that would support such an elaborate detective mechanism.

CONCLUSION

Copyright piracy has been recognized by the whole world as an enemy of creativity and innovations. It obstructs genuine investments and corrupts cultural values of a nation. However, the problem of piracy spans through the entire globe and ravages different categories of copyright works. As observed by the Irish Recorded Music Association (IRMA) as cited in NCC (2008), piracy is a billion dollar problem. It rears its ugly head everywhere, often completely ruining the livelihoods of creators and those working in the creative industries. Its consequences are multidimensional as it impacts on the economy, the social and political foundations of the society.

This act of piracy is most prevalent in the entertainment industries, particularly the music and film industries. The case of the Nigerian film industry is quite illustrative. The rising profile of our indigenous films has led to their high demands, even outside Nigeria. This has led to

illegal distribution of these films over the internet. The estimated value of these illegalities can only be imagined. Locally, in our country films are hired, rented and distributed at will, some without even knowing the implications of their acts. Software are also pirated, which has made Nigeria lose about 82 billion Naira every year.

Consuming public differentiation of pirated works from the original is individualistic and depends largely on the level of literacy of a particular individual. Some differentiate pirated products because of their poor quality, while others do not have an idea of how to differentiate between them. This is not surprising because a lot or many Nigerians are not ICT compliant, not to talk of identifying pirated software or how an individual user licensee can carryout acts of piracy with the licenced software. Also Nigerians find it difficult to distinguish between pirated music CDs and original/genuine ones. Nigerian government losses enormous revenue to copyright piracy. This is amplified by NCC (2008) wherein it states that copyright piracy affects the government seriously in four key areas, namely; loss of tax revenue; discouragement of investments as creativity diminishes in the face of economic loss; bad image for the country, because it will be regarded as a rogue nation that does not protect the economic interests of other nationals; loss of cultural identity.

However, to check piracy, the copyright Law has protected copyrighted products and provided for civil remedies and punishment for their infringements. It also provides for agencies that will be checking the menace of piracy from time to time and calling the pirates to book. These agencies work in conjunction with the law enforcement agencies and in collaboration with some non-government organizations (NGO), like Google, yet piracy still abound. This might be because of the inadequacy of the Laws concerned; illiteracy of the populace; poverty etc. To these, several recommendations have been proffered including amending the existing legal regime. This it is hoped, will reduce piracy to its barest minimum.