

Copyright Law in Nigeria

An Overview

BY

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Abstract

Copyright Law is one of the most important aspects of Intellectual Property (IP) Law. Sadly, it is an aspect of law which most law students are hardly acquainted with, perhaps, because it does not form part of the strictly regimented syllabus of most Law faculties in the country. This piece is therefore, an attempt to correct this anomaly. It is written primarily, to acquaint the law student to salient aspects of Copyright Law, with particular emphasis to Nigeria and the Copyright Act, Chapter 28, LFN 2004. The writer thus, as far as possible, avoids going too deep into the minute intricacies and complexities of the topic and strives to present the Law in broad strokes in its simplest form without losing its originality. Thus, this piece explores the meaning of Copyright, the works eligible for Copyright, the conferment of Copyright, rights of a Copyright owner and exceptions to such rights. It also goes further to discuss the transfer of Copyright rights and the duration of a Copyright. Finally, it looks at the administration and registration of Copyright in Nigeria, with special regards to the NCC and ends with an apt, albeit concise discourse on the infringement and enforcement of Copyright in Nigeria.

Key terms: *Copyright *Copyright Act 2004 *Copyright owner *Administration, infringement and enforcement

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1.0 Introduction

It is an undeniable fact that man is creative. Man's creativity is an expression of his innate abilities. From time immemorial man has used his creativity to positively change, affect and influence society. Many a great invention technological and otherwise attests to the creative nature of man. Sadly, man's creativity has faced a potent threat, which could possibly prevent man from achieving his true creative potentials. This threat has developed exponentially in the course of the last two decades. It is like a cankerous worm eating away mans creativity. This is the threat posed by the act of man copying the creative work of another and using it as his own, without acknowledging the author of such work. Fortunately, there have been concerted efforts to battle this threat. Different countries have enacted domestic legislations to counter it; Nigeria for instance has her Copyright Act, chapter 28 LFN 2004. Also, there are international treaties and laws regulating Copyright, these include the Berne convention (1886), Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement (1994), the WIPO Copyright Treaty (1996) etc. This write up will however be streamlined to the provisions and operation of the Copyright Act, chapter 28 LFN 2004.

1.1 Copyright Meaning

In law, copyright is the exclusive right given to the owner of a work, to reproduce the work, usually for a limited time¹ it has also been defined as a right granted to the author or originator of certain literary or artistic productions whereby the creator is invested for a limited period with the sole and exclusive privilege of multiplying copies of the literary or artistic works and publishing or selling them.² Copyright, basically is concerned with the protection of the creative work of an author by granting him absolute and exclusive right over his work for a limited period of time. In other words, it allows the author of a work to enjoy the benefits and profits derived from that work to the exclusion of any other person or party. Copyright is thus, a protective mechanism designed to protect the author of a work from the nefarious activities of potential copiers.

2.0 Works Eligible for Copyright Protection.

¹ <https://en.wikipedia.org/wiki/copyright> accessed on the 6th of August 2019

² Blacks Law Dictionary 9th Edition (2009)

As earlier noted, the legal field of Copyright in Nigeria is dominated by the Copyright Act Cap 28, Laws of the Federal Republic of Nigeria, 2004. (Hereinafter referred to as Copyright Act 2004). Section 1(1) provides for works eligible for copyright thus;

(1) subject to this section, the following shall be eligible for copyright-

- (a) literary works;**
- (b) musical works;**
- (c) artistic works;**
- (d) cinematograph works;**
- (e) sound recording; and**
- (f) broadcasts.**

Any work which doesn't fall under the foregoing categories will not therefore be eligible for copyright.

Also, for a work to be eligible for protection the work must be sufficiently original and must be in a form which is expressed. e.g. in writing, a painting, a musical recording etc.³ Thus, section 1(2) of the Copyright Act 2004 provides that;

(2) A literary, musical, or artistic work shall not be eligible for copyright unless-

- (a) sufficient effort has been expended on making the work to give it an original character;**
- (b) the work has been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.**

As could be seen from the foregoing statutory provisions, ideas alone cannot be protected by copyright. To be protected, the work must be more than an idea; it must be "fixed in a definite medium of expression." This is because a copyright does not protect an idea or plan: it protects the expression of that idea or plan.⁴ Thus, the work must not just be original, but must also be expressed. Originality within this context does not connote inventiveness or novelty. It simply denotes that the work was not copied or plagiarised.⁵ Facts, well known phrases, list of names or items are not copyrightable. If such items, facts and/or names are arranged in an original manner, then copyright would protect that arrangement or organization of the items,

³ <https://resolutionlawng.com/copyright-registration-in-nigeria-the-procedure-and-benefits:>

⁴ <http://legalzoom.com/knowledge/copyright/topic/copyright-protected-works:>

⁵ <http://mondaq.com/an-overview-of-copyright-protection-in-nigeria:>

facts and names, and not the actual facts, or names or items so organized.

However, an artistic work shall not be eligible for copyright, if at the time when the work is made, it is intended by the author to be used as a model or pattern to be multiplied by any industrial process.⁶

3.0 Conferment of Copyright

The Copyright Act 2004, conferred copyrights based on the nationality of the author and by reference to the country of origin. Section 2(1) thus provides as follows;

2(1) Copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the authors is at the time when the work is made, a qualified person, that is to say-

- (a) an individual who is a citizen of, or is domiciled in Nigeria; or**
- (b) a body corporate incorporated by or under the laws of Nigeria.**

Section 3(1) meanwhile provides that;

3(1) Copyright shall be conferred by this section on every work, which is eligible for copyright and which-

- (a) being a literary, musical or artistic work or a cinematograph film, is first published in Nigeria; or**
- (b) being a sound recording, is made in Nigeria, and which has not been the subject of copyright conferred by section 2 of this Act.**

Copyright is also conferred on every work eligible for copyright made by Government, or prescribed international organization.⁷

4.0 Rights of a Copyright Owner

According to World Intellectual Property Organisation (WIPO)⁸ copyright protects two types of rights (economic and moral rights). Economic rights allow right owners to derive financial reward from the use of their works by others. Moral rights allow authors and creators to take certain actions to preserve and protect

⁶ Copyright Act 2004 s1(3)

⁷ Copyright Act 2004 s4(1)

⁸ One of the 15 specialized agencies of the UN. WIPO was created in 1967 to encourage creative activity, to promote the protecti

their link with their work.⁹

Economic Rights - Like any other property, the owner of a Copyright may decide how his property may be used. Others must seek permission from him in order to enjoy use of his property. The Copyright owner therefore has the right to benefit exclusively from his work and is usually allowed to have control over any financial or profit bearing aspect of his work. Right owners can therefore authorise or prohibit:

- ☒ reproduction of the work in various forms, such as printed publications or sound recordings;
- ☒ distribution of copies of the work;
- ☒ public performance of the work;
- ☒ broadcasting or other communication of the work to the public;
- ☒ translation of the work into other languages; and
- ☒ adaptation of the work, such as turning a novel into a screenplay.¹⁰

Moral Rights ☒ these are rights concerned with the non economic right of a creator. They protect the author's connection to his work as well as the integrity of the work.¹¹ It is the moral right of an author to claim authorship of a work, and to reject any action that will change the nature of his work. For instance The Berne Convention¹² requires its members to grant authors the following rights:

- The right to claim authorship of a work (sometimes called the right of paternity or the right of attribution); and
- The right to object to any distortion or modification of a work, or other derogatory action in relation to a work, which would be prejudicial to the author's honour or reputation (sometimes called the right of integrity).

5.0 Exceptions and Limitations to Copyrights

The exclusive nature of Copyright for original authors and right owners are limited by certain exceptions and limitations contained in schedule 2 and 3 of the Copyright Act 2004.¹³ These exceptions and limitations could be grouped into three sub stratum. These are;

⁹ WIPO, Understanding Copyright and Related Rights 20th April, 2019

¹⁰ see also section 5(1) of the Copyright Act 2004

¹¹ <https://en.wikipedia.org/wiki/copyright> accessed on the 6th of August 2019.

¹² Berne Convention for the Protection of Literary and Artistic Works article 6 bis

¹³ Second and third schedule to the Copyright Act 2004

- Fair dealing provisions
- Compulsory licencing
- Exceptions for the visual and hearing disabled.¹⁴

➤ **Fair Dealing Provisions**

The Copyright Act allows the use of Copyrighted works without authorization for purposes of research, private use, criticism or review or reporting of current events, parody, pastiche, or caricature, public interest broadcasts, educational purposes (though, it should not exceed three copies in a library).¹⁵ Copyright works may also be used for other purposes without authorization such as judicial proceedings, short excerpts in a literary or musical works, the incidental inclusion of an artistic work in a film or broadcast etc.¹⁶

➤ **Compulsory Licencing**

The Copyright law allows any qualified person to apply to the Council for licence to produce and publish a translation of a literary or dramatic work which has been published in printed or analogous form of reproduction for the purposes of teaching, scholarship or research.¹⁷ This application is usually granted subject to the payment of certain prescribed fees and after holding such prescribed inquiry and other relevant conditions are fulfilled.¹⁸

➤ **Exceptions for the visual and hearing disabled**

The Copyright Act also permits reproduction of published work in Braille for the exclusive use of the blind, and sound recordings made by institutions or other establishment approved by the Government for the promotion of the welfare of other disabled persons for the exclusive use of such blind or disabled persons.¹⁹

¹⁴ National judicial institute, Emerging issues in Copyright and Information and Communication Technology: An overview of the Nig

¹⁵ Second and third schedule to the Copyright Act 2004

¹⁶ Ibid

¹⁷ Fourth Schedule to the Copyright Act 2004

¹⁸ Ibid

¹⁹ Second Schedule to the Copyright Act 2004

6.0 Assignment and Licensing of Copyright

A Copyright owner may transfer his/her Copyright rights in two ways; through an assignment or a license.

In an assignment, a Copyright owner sells his or her rights completely to another party and has no control over how that party uses those rights. In Nigerian law, the transmission of Copyright is seen as the same with that of movable property.²⁰

A valid assignment of copyright must be in writing²¹ and signed by, or on behalf of the copyright owner/assignor. The subject of the assignment must be clear as to what copyright is being assigned in which work(s).

In a license of copyright rights, the owner maintains his or her copyright ownership rights, but allows another party (the licensee) to exercise some of those rights without the licensee's actions being considered copyright infringement.²² Consequently a copyright owner under a license still has control of how his work is used. A license is thus preferred over an assignment if the Copyright owner still wants to exercise some control over the rights. A license may be written or oral, or maybe inferred from conduct.²³

7.0 Duration of Copyright

Copyright doesn't subsist infinitely. The Copyright law provides for definite duration for Copyright after which they become public and free from all kinds of exclusivity. When this happens, authorization is no longer required for the use of the work. The length of the term can depend on several factors, including the type of work (e.g. musical composition, novel), whether the work has been published, and whether the work was created by an individual or a corporation. In most of the world, the default length of copyright is the life of the author plus either 50 or 70 years.²⁴

In Nigeria, the duration of a Copyright depends on the work being copyrighted. For Literary, musical or artistic works other than photographs, the Copyright subsists for Seventy years after the end of the year in which the author dies; in the case of government or a body corporate, seventy years after the end of the year in which the work was first published.²⁵ For Cinematograph films and photographs, fifty years

²⁰ Copyright Act 2004 s10(1)

²¹ Copyright Act 2004 s10(3)

²² <http://edwardallenlaw.com/the-difference-between-copyrights-assignments-and-licenceses> accessed on the 6th of August 2019

²³ Copyright Act 2004 s10(4)

²⁴ <https://en.wikipedia.org/wiki/copyright> accessed on the 6th of August 2019

²⁵ First Schedule to the Copyright Act 2004

after the end of the year in which the work was first published.²⁶ Also, for Sound recordings, fifty years after the end of the year in which the recording was first made.²⁷ And finally, in respect of Broadcasts, fifty years after the end of the year in which the broadcasting first took place.²⁸

8.0 Administration of Copyright in Nigeria.

The administration of Copyright is vested on the Nigerian Copyright Council (NCC). The NCC was established by section 30 of the Copyright Act, it is a corporate body empowered to sue and be sued in its name. Section 30(3) provides for its statutory functions. For the purpose of clarity, the subsection is reproduced herein below;

(3) The council shall-

- (a) be responsible for all matters affecting copyright in Nigeria as provided for in this Act;**
- (b) monitor and supervise Nigeria's position in relation to international convention and advise Government thereon;**
- (c) advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country;**
- (d) enlighten and inform the public on matters relating to copyright;**
- (e) maintain an effective data bank on authors and their works;**
- (f) be responsible for such other matters as relate to copyright in Nigeria as the Minister may, from time to time, direct.**

8.1 Registration of a Copyright

It should be noted that registering for copyright is not a precondition for protection. You do not have to register your copyright. It subsists automatically in a work from the moment the work is created²⁹

The Nigerian Copyright Council (NCC) has however, established a voluntary copyright registration scheme, designed to enable authors and right owners notify the Commission of the creation and existence of a work.

You can register a copyright with the NCC by submitting a completed

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹ <https://resolutionlawng.com/copyright-registration-in-nigeria-the-procedure-and-benefits:>

registration form along with two (2) copies of the work and evidence of payment of the prescribed fee. Registration can be done online or physically at the NCC office.³⁰

9.0 Copyright Infringement and Enforcement in Nigeria.

A person infringes Copyright in Nigeria when he without the licence or authorisation of the owner of the copyright;

- (a) does, or cause any other person to do an act, the doing of which is controlled by copyright;**
- (b) imports into Nigeria, otherwise than for his private or domestic use, any article in respect of which copyright is infringed under paragraph (a) of this subsection;**
- (c) exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this subsection;**
- (d) distributes by way of trade, offer for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a) of this subsection;**
- (e) makes or has in his possession, plates, master tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work;**
- (f) permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be used is not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;(ibid)**
- (g) performs or cause to be performed for the purposes of trade or business or as supporting facility to a trade or business or as supporting facility to a trade or business, any work in which copyright subsists.³¹**

The Act, makes it actionable at the suit of the owner, assignee or an exclusive licensee of the copyright, as the case may be, and in any action for such infringement, all such relief by way of damages, injunction, accounts or otherwise shall be available in any corresponding proceedings in respect of infringement of other proprietary.³²

Generally, the infringement of Copyright attracts civil liabilities as the infringement is actionable at the instance of the owner, assignee or an exclusive

³⁰ <http://lawpadi.com/how-to-register-copyright-in-nigeria>

³¹ Copyright Act 2004 s14

³² Copyright Act 2004 s16

licensee.³³

However, the infringement of Copyright may also attract criminal liabilities as it is an offence and any person found guilty shall be liable upon conviction to a fine.³⁴ Thus in **Nigerian Copyright Commission v Oba Okechukwu**³⁵ the accused was sentenced to three months imprisonment and a fine of N12,600 for the sale of 126 infringing copies of cinematograph films and musical works in DVDs, VCDs, CD formats in breach of section 20 (2) (a) and (c) of the Copyright Act. In fact, a good survey of recent decisions will reveal that more cases involve criminal liabilities than civil liabilities.³⁶

More so, the Act makes it permissible for both criminal and civil actions to be taken simultaneously in respect of the same infringement.³⁷ This was the case in **NCC V MTN 9** where the NCC instituted this criminal suit after a civil proceeding that was settled out of court for #50billion naira. According to the NCC the ongoing criminal proceeding when concluded will serve as stronger deterrent against Copyright infringement³⁸

10.0 Conclusion

In conclusion, it could be said that Nigeria has a solid foundation for the enforcement of Copyright law. The extant law, it is submitted adequately provides for relevant issues in Copyright law. Theoretically then, it could be said, that Nigeria is on the fore front in the fight against Copyright infringement. The reality is however not so promising. Copyright infringement occur everyday. And one factor that accounts for this is the ignorance of many when it comes to Copyright law. This piece has however, attempted to fill this lacunae by lucidly explaining what Copyright is all about in the foregoing paragraphs. It is the hope of this writer to spark a far reaching interest in Copyright law amongst law Students in particular and Nigerians in general.

³³ Ibid

³⁴ Copyright Act 2004 s16

³⁵ 55 NIPJD (FHC. 2012) ABJ/CR/56/2012

³⁶ Nigerian Copyright Commission v Nworo Anayo 55 NIPJD (FHC. 2012) ABJ/CR/10/2012; Nigerian Copyright Commission v Godwin Obasi 55 NIPJD (FHC. 2012) ABJ/CR/16/2012; Nigerian Copyright Commission v Eze Igwe 55 NIPJD (FHC. 2013) ABJ/CR/93/2012.

³⁷ Copyright Act 2004 s21

³⁸ <http://www.vanguardngr.com/2015/12/ncc-files-criminal-charges-against-mtn-over-alleged-copyright-infringement/>