

NIGERIA'S COPYRIGHT REGIMES AND THE CHALLENGES OF INFORMATION RESOURCES MANAGEMENT IN A GLOBAL AGE

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Abstract

Copyright constitutes one of the legal issues that make up the trinity of intellectual property and is aimed at protecting both the economic and moral rights of author and publishers. Nigeria has had a long chequered history in her copyright regimes. Copyright administration and protection in Nigeria are governed by the Copyright Act (CAP 68, Laws of the Federation of Nigeria, 1990) as amended. The law, while by no means perfect, provides a solid basis for enforcing copyright and checking piratical activities in Nigeria. Unfortunately, the challenges facing Nigeria's copyright regimes have been so overwhelming that they affect information resources management in Nigeria. This paper examines this thorny legal issue from various perspectives. It discusses both the literal and judicial interpretations of copyright, grounds for copyright protection, exclusive right to control copyright in Nigeria, Nigeria's copyright regimes, the hallowed necessity for copyright protection as well as distils the challenges of information resources management vis-a-vis copyright administration in Nigeria. Recommendations are made towards better copyright administration.

Keywords: Copyright regimes, information resources management, global age, Nigeria.

Introduction

The term "Copyright" has both literal and judicial interpretations. **Section 5 of Copyright Act, Cap. 68 Laws of the Federation of Nigeria, 1990** defines copyright as "the exclusive right to control the doing of certain specified acts in respect of the whole or a substantial part of the work either in its original form or any form recognizably derived from the original, subject to certain statutory exceptions".

Copyright is also the right given to artists, literary men, musicians, dramatists, and performers to exclude others from substantial copying of the material form of their works.

Burrows' Words and Phrases, (1946) stated that the term may be understood in two different senses viz:

- i. "The author of a literary composition which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, and to the copies which he chooses to make for himself and for others, If he lends a copy to another his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it or publish it he has a right to enforce that undertaking.
- ii. The other sense of that word is the exclusive right of multiplying copies: the right of preventing all others from copying, by printing or otherwise".

In Stroud's Judicial Dictionary of Words and Phrases, "copyright" is defined as "the sole right to produce or reproduce (original literary dramatic, musical and artistic) work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the same or any substantial part thereof" (S. 1 (2) of Copyright Act, 1911), and consequently of preventing others from so doing (Chappe Vs. Purday, 14 M.. & W. 316), even gratuitously (Novello Vs. Sudlow, 12 C. B. 177).

Copyright - herein distinguished from a PATENT "does not extend to ideas, or schemes or systems or methods: it is confined to their expression-" opinion of Lord Justice Lindley, in the case of **Hollinrake Vs. Truswell, (1894) 3 Ch. 420**. Therefore, there can be no copyright in a single word even though it be name of a book, or other work (**Maxwell Vs. Hogg, 2 Ch. 307**). Note that a copyist does not enjoy copyright. Thus, in **I.C.I.C (Directory Publishers) Ltd. Vs. Ekko Delta Nigeria Ltd**, the court **held** that the plaintiffs had no copyright in the National Telephone Directory of Nigeria having copied the contents of their directory from documents of the P & T and those of the Federal Ministry of Trade.

There is no copyright in an idea. Copyright can only subsist in the literary or other form in which an idea is expressed. The disc jockey Steve Donoghue was accordingly held not entitled to copyright in articles "written up" by a

journalist from material gained at interviews with him **Donoghue Vs. Allied Newspaper Ltd. (1938) Ch. 106.**

Further expedition into Earl Jowitt's lexicon, a.k.a, **The Dictionary of English Law, 1959**, the term "copyright" is defined as the exclusive right to do and authorize other persons to do the acts restricted under the Copyright Act, 1956, by the copyright in a work of that description. The Encyclopedia of Librarian ship (3rd edition) (1968) defines copyright as the sole right in case of unpublished or published works to produce or reproduce or publish any literary, dramatic, musical work or any substantial part of a work in any material form whatsoever, provided the author is qualified to hold copyright. This means that copyright is not restricted to only published works but also include unpublished works or a substantial part of it.

Okwilagwe (2001) explains copyright as the exclusive right granted an author and other creative artists to authorize the use of their works in anyway and posited that the concept of copyright was devised for the society for two main purposes: to encourage creative people to produce works of culture and to provide incentives for the effective dissemination of these works, He further stated that copyright law is not designed to limit public access to information but to ensure that the public has access to it by protecting the economic and moral rights of the creators.

Copyright gives legal protection to the creators of certain kinds of materials so that they can control the way their works may be exploited. Copyright protection is automatic and there is no registration or other formality. Copyright law is also concerned to find a balance between the legitimate interests of creators who wish to be rewarded for the reproduction of their works, and the needs of users to have access to their works. Copyright law is, in essence, concerned with the negative right of preventing the copying of physical material existing in the field of literature and the arts. It is concerned only with the copying of physical material and not with the reproduction of ideas and it does not give a monopoly to any particular form of words or design. In this, it is to be distinguished from the rights conferred by patent, trade mark and design legislation.

According to Sambo and Ikem, (2006) copyright is a right in law conferred on authors and owners of creative works indentified as literary, scientific or artistic nature. This definition presupposes t at the law recognizes literary,

scientific and artistic creations as property, which like other property entitles the owner to exclusive, inalienable and imprescriptible right of usage.

The foregoing definitions establish a consensus that the concept behind copyright is that the creators of literary, dramatic, musical and artistic works have rights of ownership of their works, and that those rights should be accorded legal protection in order to prevent unauthorized appropriation (Iorhuna, 2009). By the provisions of **Article XXVII (2) the Universal Declaration of Human Rights** "everyone has the right to the protection of the moral and material interests resulting from any scientific literary or artistic production of which he is the author". It is therefore immaterial that the person works in a developed or a developing country; such protection is a safeguard to his productive ventures. However, the authority following from the person originating the work often authorizing other people to publish it, adapt it, broadcast it and communicate it to the public or reproduce it, forms the enabling platform for the work to be made available to the wider public.

Preconditions for Copyright Protection

Copyright laws are national and strengthened by international laws. Thus individual nations with their Copyright Acts may identify works of their nationals that may be covered by their copyright laws in relation to international conventions.

In Nigeria for instance, the Copyright Act, Chapter C28 laws of the Federation of Nigeria 2004 identifies works in which copyright protection subsists in section (1) of the Act. They are Literary works, Dramatic works, Musical works, Artistic works, Cinematograph films, Sound recordings and Broadcasts, or Cable programmes, films, Pantomines and choreographies, pictorial, graphics and sculptural works, motion pictures and other A/V works by U.S. and foreign authors. Other rights related to copyright protected under the Act include life performances and expressions of folklore. Unarguably, the copyright system sustains the economic base of actors, film producers musicians, architects, artists, biographers, broadcasters broadcasting organizations, cable operators, cartoonists, cartographers, choreographers, compilers, composers, computer programmers, advertisers, anthologists, correspondents. Other beneficiaries of an efficient copyright system include designers, craftsmen, essayists, journalists, novelists, textbook authors, folklorists, illustrators, law reporters, lecturers, lexicologists, librarians, lyricists, script writers, stage directors, painters, etc. Wale (2009) submits that the core copyright industries are adjudged to contribute more to world economies than

most other sectors, accounting for eight per cent of the Gross Domestic Product (GDP) of most countries. He contended that considering Nigeria's vast population and its dynamic network of authors, performers and users, the country has enormous potentials to generate more revenue from the exploitation of the copyright based (CRB) industries.

Thus, before a work will enjoy copyright protection, the Nigeria Copyright Act provides conditions that have to be met. The grounds are;-

- a. **Originality:** Sufficient effort must have been expended to give the work an original character. Section 1 (a) of the Act.
- b. **Fixation of the work:-** A copyright work must be fixed in a definite medium of expression now known or later to be developed into a form which can be perceived, reproduced or otherwise communicated either directly or with the aid of a device.
- c. **Qualification of Author:** A work is eligible for copyright protection if the author or one of the authors is:
 - i. A Nigerian citizen or a non - Nigerian who is domiciled in Nigeria.
 - ii. A body corporate incorporated by or under the laws of Nigeria.
- d. **First publication in Nigeria:** - The work must be seen to be first published in Nigeria. Section 2(1) of the Act.
- e. **Copyright by Reference to International Agreements:** Any work made in another country is eligible for copyright protection if that country has an agreement with Nigeria for equal protection of works.
- f. **Works of Government:** Made by or under the control or direction of the Government, a State authority and prescribed international body.

Note that an artistic work shall not be eligible for copyright if it was intended by the author to be used as a model or later to be multiplied by any industrial process. (Section 1(3) of the Act.). A work shall not be ineligible for copyright by reason only that the making of the work or doing of any act in relation to the work involves an infringement of copyright in some other work. (Section 1 (4) of the Act.)

Exclusive Right to Control Copyright in Nigeria.

The eight (8) exclusive rights reserved for the owner of a copyright are enshrined in **section 5 of second schedule of the Act. They are:**

- (a) Reproduction of the work in any material form
- (b) Publishing the work
- (c) Performing the work in public
- (d) Producing, reproducing, performing or publishing any translation of the work

- (e) Making any Cinematograph film or a record in respect of the work
- (f) Distributing to the public for commercial purposes copies of the work by way of rental, lease, hire, loan or similar agreement
- (g) Broadcasting or communicating the work to the public by a loud speaker or another similar device; and
- (h) Making an adaption of the work.

The doing of the afore-mentioned acts shall be in respect of the whole or substantial part of the work either in its original form or in any form recognizably derived from the original. **See Section 5 (2). Section 14 (1)** provides for infringement which attracts both civil and criminal sanctions at the suit of the owner, assignee, or an exclusive licensee of the copyright, **see sections 15 (1); 18 (1) (2); 19 (1) and 27 (1)** respectively.

Nigeria's Copyright Regimes

Nigeria's first experience of a legal framework regulating copyright was the **1911 British Copyright Act** which was in force in Nigeria during the early colonial era, under an Order-In-Council (1912). This was replaced by Nigeria's first national copyright law in 1970 (that is, the **Copyright Decree No. 61 of 1970**), which for its crudeness, mildness, docility and spiritlessness, was replaced by the **Copyright Decree No. 47 of 1988**, full of sharpness over and above the 1970 law. The 1988 Decree grew out of government's recognition of the need for an effective copyright system. Being the substantive law, it is enshrined and incorporated in the **Laws of the Federation of Nigeria, 1990**. The Laws on copyright in Nigeria are therefore explicitly spelt out and can be discussed with due reference and application to the following legal provisions viz:

- Laws of Federation of Nigeria and Lagos, 1958, vol. I, cap. 40; p. 551.
- Laws of the Federation of Nigeria and Lagos, 1958, vol. 2 cap. 42: the Criminal Code, ss. 491-493.
- Decree No. 47 of 1988 which is also contained in Laws of the Federation of Nigeria, 1990, vol. V, cap 77, SS. 491-493.

Other laws within the precinct of Nigeria copyright Regimes and herein relevant to the discourse are in the International Conventions and these include the **Berne Copyright Convention of 1886 and 1971**, the **Universal Copyright Convention (UCC) of 1952** and the **Rome Convention of 1961**. Nigeria belongs to both conventions for the protection of literary and artistic works, and also belongs to the **Rome Convention 1961** for the protection of performers, producers of phonogram and broadcasting organizations.

Countries belonging to the Conventions thereto undertook to grant reciprocal protection to each other's works, in effect assimilating to the national repertory and protecting according to the same principles of works of which another country in the Conventions is the country origin. Again no formalities were needed on the part of authors from countries in the conventions to get their works accorded protection. Copyright once acquired in the country of origin applies with equal force in all countries holding membership of the Convention.

At the formation and adoption of the Universal Copyright Convention in 1952 in Geneva for instance, delegates from about seventy-two (72) countries recognized the principle that a work by a foreign author enjoys the same protection as a work of an author who is a national of a state. The Convention provides for the simplification of formalities which if required by the domestic laws of a contracting state, are regarded as satisfied, if at the time of publication of a work all copies bear the copyright symbol. It also introduced social provision to govern translation rights.

Note specially that countries that have ratified either of the Conventions are under no strict obligation to keep their national copyright laws in line with the provisions of the Convention to which they belong. Rather individual countries can make laws to provide for and suit specific needs dictated by prevailing domestic circumstances. This provision is what gave birth to Nigeria's autochthonous copyright law-the Nigerian Copyright Act.

All over the world, nations have one copyright regime or the other. Nigeria's copyright system is replete with chequered history. The Nigerian Copyright Council was established in 1989 by the Copyright Council Decree No. 47 of 1988 with a mandate to oversee copyright administration. The council was upgraded to a Commission in 1996. The Nigerian Copyright Commission has, in less than three decades of its existence, had its enabling statute, the Copyright Act, amended twice by the **Copyright (Amendment Decree No. 98) and the Copyright (Amendment Decree No. 42) of 1999**. Pursuant to the two amendments, the Commission currently governed by the Copyright Act CAP. C28 Laws of the Federation of Nigeria 2004, is responsible for all copyright matters with an expanded mandate for the administration of copyright; enforcement of copyright; regulation of Copyright - based (CRB) Industries; and promotion of copyright. As a corollary to the enforcement of the mandate, the statutory amendments enable the Commission to appoint copyright inspectors with all police powers of investigation, arrest, seizure and prosecution in the enforcement of the copyright law. Above all, the

Constitution of the Federal Republic of Nigeria 1999, and (2011 as amended) Part 1, item 13 of its second schedule classifies copyright on the exclusive legislative powers of the federation. Against the backdrop of the growth of piracy of copyright -protected works into a systematically organized industry over the years, the commission has been faced with enormous responsibilities and challenges which it has been addressing within available, though limited resources. Having identified piracy i.e. the theft of intellectual property rights or unauthorized exploitation of the creative industries, the Commission conceptualized and launched the Strategic Action Against Piracy (STRAP) on May 3, 2005 as a plan of action for copyright protection and as public -private sector platform for the collective action of regulatory institutions, rights owners and enforcement agencies to address the problem of piracy from all fronts. STRAP was articulated in line with the Federal Government Policy on National Economic Empowerment and Development Strategy (NEEDS) and geared towards actualization of the country's Vision 2020.

The Necessity of Copyright Protection

The purpose of copyright is two-fold

- a. To encourage creative people to produce works of culture; and
- b. To provide incentives for the dissemination of these works by allowing the author, the exclusive right to exploit his work in material form..(as stated in most national statutes).

According to Nnaji and Aderibigbe (1984) it is just, proper and necessary that authors should be protected for the following reasons:

- i. Without copyright protection, authors will be reluctant to engage in the difficult task of writing as a reasonable hope of financial return will be lacking. As many authors have expressed, little returns accrue from authorship even with the existence of copyright with the possible exception of best sellers.
- ii. It accords with public policy and interest that authors' rights should be protected. Without this, few peoples will embark on the exerting work of writing if no restriction exists to check intellectual banditry which will, in effect, minimize possible remuneration due to their work.
- iii. Publishers will also find it impracticable to produce and disseminate literary works if unauthorized reproductions are allowed to go into competition with the strains of overheads
- iv. Above all, the joy and pride of authorship will be void in the face of unrestricted reproduction of works accruing from head racking and costly research directed mainly to the establishment of a disciplinary authority,

Therefore, copyright is a means of protecting creative people and their works; it not only provides this legal protection and lights but also serves to encourage the development and propagation of works of authorship, by giving to authors certain rights in their works.

The global economy witnessed the emergence of knowledge driven industries with Copyright Based (CRB) industries constituting a significant number. These CRB industries have served largely as the engine room for rapid economic transformation and development in both the developed and developing economies. They have been able to achieve this by their input to national economic advancement in terms of employment generation; foreign exchange earnings; Foreign Direct Investment (FDI) inflow; boosting internally generated revenue through tax; facilitating accelerated technological development; projecting the national image of our country; preservation of traditional knowledge, etc.

Copyrights Administration in Nigeria and the Challenges of Information Resources Management

Notwithstanding its legal and literary significance, copyright administration in Nigeria is fraught with multi-dimensional challenges. This is in deference to the laudable achievements so far recorded by the Nigerian Copyright Commission. The following constitute some of the numerous challenges facing copyright administration and information resources management in Nigeria.

- a. **Manifest violation:** Nigeria is not excluded from the global violation of copyrights, top of which is the issue of piracy, plagiarism, counterfeiting, unauthorized reproductions (reprography), to mention but a few. The *Oxford Advanced Learners Dictionary*, 6th edition defines piracy as the act of making illegal copies of video tapes, computer programmes, books among others in order to sell them. Okwilagwe, (2001) states that piracy is theft of copyright, which occurs for reasons of want, scarcity and inaccessibility to books. She further opines that piracy of books in Nigeria is facilitated by the inability of the publishers to serve the market when books are needed and not the toothlessness of the copyright Act. Piracy is a major challenge facing copyright administration and the publishing industry in Nigeria. It has assumed an international dimension, has become an international crime that contribute to 25% loss of revenue of publishing firms. Efforts being made by Nigerian Copyright Commission in collaboration with the nation's Security Agencies to fight the scourge of piracy have been futile simply because the Asian countries have a loose law on copyright.

According to Adelekan (2010), because of the permissive regulations in China, foreigners now collude with some dubious Nigerians to pirate works of Nigeria publishers. What they do is just to take a copy of our book to these countries and mass produce them and ship them back into the country for sale. They make huge profit at the expense of authors and publishers. "If this must stop, the international community must prevail on these Asians to adopt the Copyright Convention, which disallows piracy", he asserted

However, a number of reasons have been given for the increase in the violation of copyright through piracy. They include:

- Lack of effective copyright Law enforcement machinery
 - Poor national security system and porous/poor policing of borders. Indigenous publishing houses decry the porosity of the security at Nigerian ports and borders.
 - Poor state of the economy which promotes piracy business. Given the economic hardship in the country, local bookshops are affected by the lackadaisical attitude towards copyrights and anti-piracy laws as peoples' preference shift from original books to pirated versions.
 - Authors' versus publishers'/booksellers' rights. At various literary gatherings authors lament that Nigerian publishers and booksellers unduly benefit at their expense accusing them of not paying royalties.
 - Global economic downturn or meltdown.
 - Change in the value system and value of the information derived from print and non-print materials as against transient pleasures.
 - Reprehensible national value system, which derides the value of information.
 - New trends in digitization: the presence of e-books in the Internet and the introduction of gadgets for viewing digital media is an obvious threat to conventional printing and publishing.
- b. **Limited awareness:** There is limited awareness and critical buy-in on the value and essence of copyright in the context of individual well-being and national development as well as the necessity of its protection. This awareness problem manifests in the low level sympathy and critical buy-in for proactive copyright protection support from the consumer publics, the three arms of government and manifesting in the complicity and conflict of interest among the right holder' community.
- c. **Inadequate adjudicatory capacity/faulty legal system.** Actions for copyright infringements are rare in our judicial system and reports of such

are hardly found in Nigerian law reports. The bottleneck in the prosecution of the copyright infringement is attributed to factors such as restriction of original jurisdiction to right owners to facilitate diligent prosecution, inadequate judicial capacity for effective handling of copyright and IP issues, lack of awareness of copyright and IP matters amongst judicial officers and legal practitioners. Where at all a culprit is prosecuted, the suit suffers undue long process of court hearings, which may only end in payment of fines considered not sufficient deterrent for such willful/glaring infringement and ultimately not cushion the effect of economic losses suffered.

d. **High level pirate enterprise:** Levels of piracy are grossly alarming and rife in the following areas:

- **Pirate Optical Disc Plant Production:** Reports by the International Intellectual Property Alliance confirm the existence of well over 25 optical disc plants that operate illegally in Nigeria, some of which have migrated to Nigeria from Asia and operate to supply Central and West Africa. They are capable of producing at least 182 million discs per year. Bemoanably, many of the plants are not licensed to produce any kind of copyright content.
- **Retail piracy:** Pirated CD-Rs (e.g. songs by local and international artistes containing copyright materials are domestically produced and are sold for less than equivalent of US \$1
- **Book Piracy:** Creates a climate fostering illegally and plagues the academic market.
- **Business software piracy:** For the business software industry, hard disk loading of pirate software and unauthorized use of software in businesses remain significant problem with an unacceptably high piracy rate of 82%.
- **Organized crimes/violence:** There is crime associated with piracy, especially at Alaba international market in Lagos where pirates openly engage police in sporadic shooting, burn public vehicles, throw stones, bottles and other dangerous weapons in self-defence.

e. **Legal battles between authors and publishers over e-book rights to older books (digital fate of authors):**

Both the legal and literary significance of authors of written or legally copied works presuppose their exclusive, inalienable and imprescriptible right to do or authorize any production or distribution of their works. Authors have both moral and economic rights. There is flagrant abuse of authors' rights by publishers, especially with the advent of E-Books, Most leading literary icons face the challenge posed by publishers who lure

digital-age readers with e-book versions of the authors' titles, the question of exactly who owns the electronic rights to such older titles is in dispute, making it a rising source of conflict in the publishing industry. Across the book industry nowadays, publishers, hustle to capture the rights to release e-versions of backlist titles or back issues, There is apparent tussle over who owns the electronic right and how much the authors should earn in digital royalties.

Conclusion

Although Nigeria has a well articulated copyright law, administered by the Nigerian Copyright Commission Copyright enforcement leaves room for improvement. There is high incidence of piracy notwithstanding the sporadic efforts being made to fight the menace. All over the world, copyright laws are not designed to limit public access to information but to promote access while protecting the economic and moral rights of authors and publishers. As an intellectual property, citizens' undue exploitation of this nation's wealth and the consequent erosion of the country's information resources management cannot but be vigorously checked.

Recommendations

The observable challenges in the administration of Nigeria's copyright regimes can be handled hence the following recommendations:

- A coordinated approach focused on criminal enforcement must be mounted.
- Full adherence to authorized library copying provisions should be encouraged.
- There should be regulated photocopying of books and other printed materials.
- The role of the Reproductions Right Society of Nigeria (REPRONIG) is paramount and should be applauded. REPRONIG, Nigeria's collecting society for the reprographic rights has gone far to fight for royalty payment for authors and publishers especially for photocopied documents in higher schools and allied institutions in Nigeria.
- There should be joint partnership efforts/vigilance of the Nigeria Publishers Association, the Nigerian Copyright Commission, the Standards Organization of Nigeria, the Association of Nigerian Authors (ANA), the Nigeria Customs Service, and the Ministry of Justice towards ensuring the proper policing of Nigeria's borders and strict enforcement of copyright and other intellectual property laws.

- Enlightenment campaigns on the negative effects of organized piracy on Nigeria's economy should be mounted.
- New and wide open frontiers should be opened for authors in digital and audio publishing. This should be vigorously canvassed in the light of the exponential growth of sales of e-books and other publications attracting new readers. Authors and publishers should figure out how best to harness the new technology. New ventures focusing explicitly on e-books are cropping up regularly, some offer authors better financial terms than the traditional publishers.

In addition, with the rapid expansion of digital publishing and the exponential growth of piracy, many publishers respond to the perceived threat with the strict Digital Rights Management (DRM) software - even though it may not be sufficient protection from piracy.

- There should be co-operation between government agencies to implement and enforce the copyright law, since observably enforcement in this area of law is sparse and erratic. There needs for better co-ordination between the two enforcement entities—the Nigerian Copyright Commission (NCC) and the Nigerian Customs Service (NCS) - the nation's gateway police.

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