

# THE INFRINGEMENT OF COPYRIGHT IN NIGERIA: AN OVERVIEW

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## Abstract

Copyright under the law in Nigeria is an area of law that has not yet been fully explored. This is not because the law is not known, but because people are so reluctant to deal with the law and also the awareness has not so much been canvassed. Copyright is facing a legion of problems in Nigeria and these problems are causing losses of income to authors, actors, publishers etc. An owner of copyright has the exclusive right to do certain acts in relation to the work and the copyright is infringed when someone else deals with the work without the consent of the owner. In this paper, we will be looking at the meaning, nature and scope of copyright, what constitute an infringement of copyright, the remedies available to an aggrieved person whose copyright is infringed and the recommendation on how best to reduce the infringement of copyright.

## Introduction

The primary function of copyright under the law is to protect from annexation the fruits of a person's "work". This protection is of immense importance to actors, play writers, performers and other artists, to musicians and composers of music, to authors, publishers, newspaper proprietors and librarians, to architects, designers and other professionals, to editors of law reports, lecturers, professors, broadcasters, makers of cinematograph films, photographers, producers of computer systems, laptops and their numerous software etc.

In a country such as Nigeria, the importance of the law of copyright can hardly be over-emphasized. This is a country where book, film and music piracy still reign supreme with attendant losses of income to authors, publishers, film makers, musicians and many other copyright owners. Effective laws to combat these problems are very important.

## What is Copyright?

According to the Black's Law Dictionary, 5<sup>th</sup> ed. p.94, Copyright is the rights or literary property as recognized and sanctioned by positive law. An intangible incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

Osborn's Concise Law Dictionary, 3<sup>rd</sup> ed p.90 defines Copyright as the exclusive right of printing or otherwise multiplying copies of, inter alia, a published literary work; that is, the right of preventing all others from doing so.

From the foregoing, Copyright is the right given to artists, literary men, musicians and performers to exclude others from substantial copying of the material form of their works. It is not all "works" that enjoy copyright protection. Accordingly, the law has laid down specifically the types of "work" which are recognized and enjoy statutory protection. The questions are: what constitute work under the copyright Act and when a work will be deemed eligible for copyright?

## What is a "Work"?

Section 51 of the Copyright Act Cap, C.28 Laws of the Federation 2004 defines a "work" as any translations, adaptation, new versions or arrangements of preexisting works and anthologies or collection of works which by reason of the selection and arrangement of their content, present an original character. The term "work" under section 1(1) of the Copyright Act Cap. C.28 Laws of the Federation 2004 embraces literary, musical and artistic works, cinematograph films, sound recordings and broadcasts. We shall now take it in turn.

Literary work includes, irrespective of literary quality, any of the following works or works similar thereto: -

- (a) Novels, stories and poetical works;
- (b) Plays, stage directions, film scenarios and broadcasting scripts;
- (c) Choreographic works;

- (d) Computer programmes;
- (e) Textbooks, treatises, histories, biographies, essays and articles;
- (f) Encyclopedias, dictionaries, directories and anthologies;
- (g) Letters, reports and memoranda;
- (h) Lectures, addresses and sermons;
- (i) Law reports, excluding decisions of courts;
- (j) Written tables or compilation;

Musical work means any musical composition, irrespective of musical quality and includes works composed for musical accompaniment.

Artistic work includes, irrespective of artistic quality, any of the following work or works similar thereto:-

- (a) Paintings, drawings, sketchings, lithographs, woodcuts, engravings and prints;
- (b) Maps, plans and diagrams;
- (c) Works of sculpture
- (d) Photographs not comprised in a cinematograph film;
- (e) Works of architecture in the form of buildings models; and
- (f) Works of artistic craftsmanship and also (subject to subsection (3) of Section 1 of this Act) pictorial woven tissues and articles of applied handicraft and industrial art.

Cinematograph film includes the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and includes the recording of a sound track associated with the cinematograph film.

Sound recording means the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced, but does not include a sound track associated with a cinematograph film.

Broadcast means sound or television broadcast by wireless telegraph or wire or both, or by satellite or cable programmes and includes rebroadcast.

### **When will a Work be Deemed Eligible for Copyright?**

Section 1(2) of the Copyright Act Cap. C.28 Laws of the Federation 2004 states that a literary, musical or artistic work shall not be eligible for copyright if-

- 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;
- c) When will sufficient effort be deemed to have been expended on the work to give it an original character?

One can be excused, for believing that the "original" requires that the work must be new or innovative in some sense, but in copyright\* law "original" does not have its ordinary dictionary meaning and the Courts have interpreted the concept very loosely. The work does not have to be unique, or even particularly meritorious rather, originality is more concerned with the manner in which the work was created and is usually taken to require that the work in question originated from the author, its creator, and that it was not copied from another work. In the case of **Offrey v Chief S. O. Ola & Ors** Suit No. HOS/23/68 decided 27<sup>th</sup> June 1969, the plaintiff in 1963 while the headmaster of All Saint's School Oshogbo, designed and put out for sale a school record book known as "New Era Scheme of Work and Record Book". The plaintiffs labour in the book consisted mainly in the drawing of several horizontal and vertical lines. In 1967, the plaintiff realized that the 2nd defendants who are publishers, printers and book sellers were producing and selling some record books which are materially the same as his book especially at pages 1 to 42. The 2nd defendants knew of the existence of the plaintiffs book prior to 1967 through the first defendant who was then an administrative assistant of Anglican Schools in Oshogbo area, and the 2nd defendant printed and published the record books on the instructions of the 1st defendant. The plaintiff claimed against the defendants an account of all monies received by them either jointly or severally from various copying and printing, and sales of the books from January 1967 to the date of judgment and the payment over to the plaintiff of the amount found due on the account rendered; £2,500 as special and general damages for unlawful infringement of copyright of the plaintiff and an injunction to restrain the defendants, their servants or agents from further infringing the plaintiffs copyright. The court held that copyright would exist in a given product if that product is the result of some substantial or real expenditure of mental or physical energies of the producer and the labour or skill was not a negligible or common place one.

(b) The work has been fixed in a 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.

There is as yet, no decided Nigerian Case on this provision but as long as the "work" has been definitely expressed in a language already known or a language which is later to be developed and from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device, then such "work" will be eligible for copyright.

### **What then Constitute an Infringement of Copyright?**

The Copyright Act Cap. C28 Laws of the Federation 2004 marks out the rights of copyright owners by reference to certain acts which only the owner can do or authorize. He is given exclusive rights of these acts. These are the acts restricted by copyright. Other activities, which are mainly of a commercial nature, such as dealing with infringing copies of a work if they are done without the licence of the copyright owner, are described as secondary infringements. Anyone who does one of the acts restricted by the copyright, including the secondary infringements, without the permission or licence of the copyright owner infringes copyright, unless a defence or any of the exceptions known collectively as the permitted acts apply. These are described in the Act as exceptions to copyright infringement. This is because any activity in relation to a copyright work which is neither a restricted act nor a secondary infringement of copyright can be performed by anyone without the permission of the copyright owner. For example, lending a book to a friend does not infringe copyright neither does making an artistic work from a literary work. Therefore, unless there is an issue of infringement, the relevance of the permitted acts does not enter into the case. If there is no infringement, there is no need to rely on the permitted acts to excuse the particular activity concerned. Copyright may be infringed vicariously, where a person without the permission of the copyright owner authorizes another to do a restricted act. An aggrieved copyright owner can seek for civil remedies for copyright infringement, the Act also provides for criminal offences.

Section 15(1) Copyright Act Cap. C28 Laws of the Federation 2004 provides that the right of the copyright owner will be deemed to be infringed by any person, who, without the licence or authorization of the owner of the copyright, does any of the following acts, viz:

- 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;
- 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 offers 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 taking 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 so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;
- g) performs or causes to be performed, for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists,

A copyright owner whose right has been infringed through any of the acts as stated above can enforce such right through civil or criminal proceedings or both.

It is to be noted that the remedies available to a copyright owner whose copyright is infringed in civil proceedings are Damages, Injunction, Anton pilfer order, Accounts and conversion.

#### **1. Damages**

Damages are divided into general and special damages, exemplary or punitive damages and nominal damages.

**General and Special Damages:** General damages are losses which flow naturally from the defendant's conduct and its quantum need not be pleaded or proved as it is generally presumed by law. Special damages are damages which law does not presume but must be specifically pleaded.

**Exemplary or Punitive Damages:** This class of damages is not intended to compensate the plaintiff but to punish the defendant and to deter him from similar behaviour in the future.

**Nominal Damages:** these are awarded in those cases where the plaintiff establishes a violation of his rights by the defendant but he is unable to show that he suffered any actual damages as a result of the defendant's wrongdoing.

## 2. Injunction

An injunction is granted by the Court to prevent a person from doing or continuing to do a wrong. It is also granted to compel a person to do an act.

## 3. Anton piller order

An Anton piller order is an order which can be given for inspection, photographing and delivery up of infringing materials in the possession or control of an infringer.

## 4. Account of Profits

This is an order to produce and account for the profits in respect of the infringing materials.

## 5. Conversion

A copyright owner whose work is infringed can bring an action for conversion.

In respect of the criminal proceedings, there are stringent provisions in the law for any criminal act committed against the copyright owner. Section 20(1) Copyright Act Cap. C28 Laws of the Federation 2004 provides that any person who:

- (a) makes or causes to be made for sale, hire or for the purposes of trade or business any infringing copy of a work in which copyright subsists, or
- (b) imports or causes to be imported into Nigeria more than two infringing copies of such work
- (c) makes, causes to be made, or has in his possession any plate, master tape, machine, equipment or contrivances for the purposes of making any infringing copy of such work, shall, unless he proves to the satisfaction of the Court that he did not know and has no reason to believe that any such copy was not an infringing copy of any such work, or that such plate, master tape, machine, equipment or contrivance was not for the purpose of making infringing copies of any such work, be guilty of an offence and liable on conviction to a fine of an amount not exceeding N1,000 for every copy dealt with in contravention or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.

Furthermore, Section 20(2) Copyright Act Cap. C28 Laws of Federation 2004 provides that any person who

- a) sells or lets for hire or for the purposes of trade or business, exposes or offers for sale or hire any infringing copy of any work in which copyright subsists or
- b) distributes for the purpose of trade or business any infringing copy of any such work or
- c) has in his possession other than for his private or domestic use any infringing copy of any such work
- d) d) has in his possession, sells, lets for hire or distribution for the purposes of trade or business, or exposes or offers for sale or hire any copy of a work which if it had been made in Nigeria, will be an infringing copy of any such work, guilty of an offence and liable on conviction to a fine of N100 for every copy dealt with in contravention, or a term of imprisonment not exceeding two years or, in the case of an individual, to both such fine and imprisonment.

### e) Conclusion

f) It is sad that despite the stringent criminal provisions and penalties in our legal system, the piracy of books, films, music, tapes and records still goes on unabated in this country. The Nigerian Copyright Commission should intensify their efforts to arrest, prosecute and summarily convict those found guilty of piracy. Pirated works should be seized and destroyed by the Commission. The copyright owner should sue anyone who infringes his copyright in a Court of law even if the Nigerian Copyright Commission fails to prosecute the person. It is indeed very sad that since the enactment of the Copyright Act of 1988 and its amendments of 1992 and 1999 which corrected many of the defects and anomalies of the 1970 Copyright Law, we can only cite very few reported cases on copyright. Indeed, if we, as a nation are serious about stamping out piracy from our society, then both the state and the individuals must make a combined effort towards the achievement of this noble objective. The State should prosecute immediately those who are arrested. The individual whose work is being pirated should also take the infringer to Court immediately without minding the legal cost. It is then that our artists,

writers, musicians, authors, filmmakers and other numerous copyright owners can reap the benefits of their labour.

g) There is little or no awareness about this area of law. It is recommended that the Nigerian Copyright Commission should liaise with the National Universities Commission, private, state and federal universities including state and federal polytechnics and urge them to introduce the law of copyright into their curricular in their faculties of law, arts and social sciences. Even at the primary and secondary schools, the basic principles of copyright can be taught. The copyright commission should organize more seminars and workshops all over the country, where various stakeholders in this area of the law will be invited as participants. Specific issues such as music and software piracy, video rental outfits and the photocopying of literary works must be addressed at these workshops and seminars.

h) Finally, the copyright inspectors should monitor from time to time the photocopying centres all over the country, chase from time to time film, book and music pirates; step up raids against computer software pirates, ensure that the use of hologram stamps in relation to sound recordings and cinematograph films intended or offered for sale, rental, hiring or lending is strictly adhered to; ensure that the video rental outfits all over the country are duly accredited by the commission and liaise with the interception of so many fake copyright products which enter the country through\* the airports, sea ports and various land borders.

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