



Protection of Literary Works in Nigeria: Overview of Developments and Practice

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ABSTRACT

Creators of literary works are protected in Nigeria with the grant of Copyright which has its confines extending to Musical works, Dramatic works, Pictorial graphics, Sculptural works, Motion pictures and other Audio-visual works, Sound recordings as well as Architectural works. In addition to the Copyright Act of 2004 which accords this protection to authors of creative works, is the Nigerian Copyright Commission empowered to implement copyright laws. Nigeria is a signatory to relevant International instruments. There is therefore no doubt that the copyright regime in Nigeria has witnessed some developments irrespective of existing challenges. As the number of creators of literary works accelerates, so is the system being hugely enmeshed with multitudes of violators and in turn there is a demand on the law makers and executors to instill more protective schemes. Challenges posed by the technology world are still hindering effective copyright practice in developing countries including Nigeria. Advancement in technology has quickened access to and spread of information without territorial limitations and with the common practice of 'copy and paste' plaguing the academic society, copyrighted literary works are continually subjected to unpermitted use and various other forms of violations which continue to hamper the growth of quality research, learning culture and economic gains of both the authors and the country at large. This research therefore, glides through the development of our copyright regime, highlights existing challenges and also advances some suggestions towards attaining a better regime which includes mandating the use of anti-plagiarism soft wares in learning and research institutions_____

Keywords: Copyright, Copyright infringements, Plagiarism, Piracy

INTRODUCTION

The product of one's intellect is his property and just as every other physical and tangible property owned deserve maximum protection from theft, abuse and misappropriation so also do intellectual properties created out of one's ingenuity. These products of intellect are classified as intellectual property and generally grouped under two broad classifications namely: Industrial property and Copyright to which the subject of this discourse relates. The crux of having a protective system in this respect hinges not only on catering for the economic rewards of the creator but also on the advancement of creativity and economic, cultural and industrial developments. The gains of intellectual property are seen on its impact on national development and the advancement of creativity in various industrial and human endeavors. It has continually been described as the engine upon which the development of a nation is driven. This has caused countries to initiate solely and collaborative, laws, policies, legislations, executive actions and instruments aimed at granting such property rights, preventing various forms of violation and infringement of the rights as well as tackling any infringement or violations. The intellectual property under discussion is literary works and the violations peculiar to it remain plagiarism and piracy.

The flooding of the market with fake or replicas of copyrighted works, people killing quality academic research for commercial and convenience purposes have all contributed greatly to the challenges faced by persons who exerted true academic and quality effort into birthing originality. Against the backdrop of the saying that a labourer is entitled to his wages and the need to promote unceasingly, acute creativity, is the indispensable need to actualize a very effective legal regime in the curbing of some existing systemic challenges. The question therefore remains "how well equipped are our extant laws in protecting creators of literary works?"

Research Objective

This paper is aimed at appraising the current legal regime of copyright protection of literary works in Nigeria.

CONCEPTUAL CLARIFICATIONS

Literary works

In the legal parlance, literary works enjoy an extensive meaning so that reliance is not placed on the literary quality of the work in determining whether it is a literary work or not (Umaru, 2002). No doubt, novels, stories, poems, stage performances, directions, plays, and scripts and film scenarios are all literary works due to their literary qualities based on style, language, form, contents, aims and objectives of the works. However, under the Nigerian copyright law and in addition to the above list, literary works will include textbooks, treaties, histories, biographies, essays, articles, encyclopedias, dictionaries, directories, anthologies, letters, reports, memoranda, lectures, addresses, sermons, law reports (but not court decisions), written tables, compilations and computer programmes (Copyright Act, Section 39). Also, it may not be correct to see above list as exhaustive. (Umaru, 2002) suggests that since diaries and mathematical formula are analogous to reports and mathematical tables respectively, they may also be acceptable as literary works.

Copyright

Copyright can be defined as the title which an author gets for the protection of his intellectual property, particularly, literary works, musical works, dramatic works, pictorial graphics, sculptural works and sound recordings (Onoyeyan & Awe, 2018). It is a property right and is granted to a creator of an original work. It is a form of protection provided by the laws of a state or international instruments, to the creators of original works, (Faga, 2011). It is granted to subsist for a limited period subject to renewal (Okeke & Kennet, 2014). This implies an expiration of such property right at the end of the allotted time and the availability of the copyrighted work for public use, thereby falling under public domain. It creates a set of exclusive right on the holder enabling him to decide the use and manner of use of his property and reduces third-party use of the work. An intellectual product is copyrightable only if it is in a tangible form (Kenton & Drury, 2020). Consequently, intangible things like ideas, speeches, discoveries and musical scores must be documented in written form before it can be protected by copyright. Similarly, Brand names, logos, slogans, domain names and titles are not protected under copyright, (Kenton & Drury, 2020). Copyright protection gives certain rights to its holder. Respecting literary works, the right holder is entitled to restrict acts such as reproduction of the original work or a translation, commercial distribution of the work or a translation and adaptation of the work (Osundorile & Chuks-Okeke, 2021).

Copyright Infringement

Plagiarism and piracy are at the core of copyright infringement and are grossly inimical to literary works. The idea of a writer having his intellectual product ridiculed by these vices after expending quality time and energy is most disheartening and a strong reason to be discouraged. While plagiarism refers to the copying either wholly or partly of another's work into another work without alluding to the source, piracy involves unauthorised and illegal reproduction of a copyrighted work for commercial gains (Nwogu, 2014). Both indicate acts relating to a use of a copyrighted work without permission and authority from the holder. Plagiarism denotes stealing and misappropriating of another's work (Omotayo, 2014). Any act that will constitute an unpermitted or unlicensed use or relation with a copyrighted work will give rise to an infringement. Accordingly, when a person without permission uses or utilizes a copyrighted work in a manner inconsistent with the exclusive ownership and use rights and privileges of the copyright holder, such act will be deemed an infringement of copyright. The law states clearly that such unpermitted acts will include: the doing or causing another to do anything controlled by copyright without the license or authorisation of the holder, the importation or participation in the importation of a copyrighted work, a public exhibition or display without permission and trading or selling without permission or license of the copyright holder (Osundorile & Chuks-Okeke, 2021). Therefore, it is glaring that copyright infringement thrives in the absence of permission or license. The offense of copyright infringement is deemed committed by a person whether he actively or passively caused it provided it can be shown that such act constitutes an inconsistency with the exclusive rights and privileges of the holder.

Legal Framework on Copyright Protection In Nigeria

The introduction of a legal platform to cater for Copyright matters in Nigeria began with the English Copyright Act of 1911 and the Common law (. The English law of 1911 didn't really suit the Nigerian factor due to the differences in cultural values and methods and thus was not substantially appreciated. While the creative works of the English people had all along acclimatized to being fixed and tangible, those of Nigerian made was scarcely in that matter, they were predominantly unwritten and verbally expressed. There were drama performances, tales told and songs sang of course but they were mostly not expressed as literary works due to the fact that reducing them in written were still somewhat novel to the cultural methods of the people (Kunle, 2014). Further, the people were largely communal with respect to their settlements and property ownership and copyright promoted individualism (Kunle, 2014). This contrast further hampered the appreciation and acceptance of the law. Nevertheless, the law subsisted till after independence and remains the first legislative framework and cornerstone for the inception and development of Copyright in Nigeria. The second phase of the legal regime began with the promulgation of the Copyright Decree of 1970 under the Gowon military administration. As the first indigenous on Copyright, it was expected to attend bountifully to our local circumstances thereby affording more protection and rights than a foreign law would. The provisions of the Decree included the eligibility for the conferment of Copyright, nature of Copyright in certain works, first ownership, assignment and licensing of Copyright, infringement and actions for infringement (Kunle, 2014). Commendable as this move was, there were obvious lapses on the effectiveness and exhaustiveness of the law which eventually caused it's repel. These included the reduction of the durability of Copyright is from 50 to 23 years, the lack of an executive body saddled with administering the Decree, the absence of strict punitive measures against piracy and plagiarism (Oriakhogba & Fenemigho, 2014). The Decree was often described as cumbersome and verbose.

Then came the 1988 Copyright Act, as a measure to curb the lapses of the former. The provisions of the Act were further enhanced. For instance, the law allowed for a simultaneous prosecution of both civil and criminal cases on infringement of Copyright (Copyright Decree: Section 24). Subsequently, the Decree was amended in 1992 and 1999 was later re-codified into the laws of the Federation of Nigeria, 2004. The extant law on Copyright is the Copyright Act, Cap, 28, LFN, 2004. The legislation is divided into five parts and five schedules, with the first part dwelling on Copyright. In respect to literary works, the forgoing are some of the relevant provisions.

Eligibility for Copyright

A literary work shall be eligible for the grant of copyright where the work is original and fixed in a definite medium (Copyright Act, section 1(2)). Requirement for originality as regards literary works simple means “not copied”, entailing that the work is not a word to word repetition of an existing work or do not fall prey to plagiarism. The Act states that a copyrightable work must have sufficient effort expended towards accomplishing it and as well fixed in any definitive and communicative form. For instance, some thoughts on how to develop an article paper on a subject approved by his supervisor fill A’s mind. Without reducing such thoughts into writing, thereby making it fixed in a definitive form, he cannot claim copyright on such as it remains an idea or thought.

Rights of A Copyrights Holder

Copyright equips the holder with some exclusive rights. Accordingly, the enjoyment of such rights by another without permission or license obtained makes it an infringement. These rights are enumerated under Section 6 of the Act and include the reproduction, publication, distribution, trading on the copyrighted works and translations and adaptations. The holder of a copyright is also entitled to have converted to him, infringing copies and equipments in respect to his copyrighted work. (Copyright Act: Section 18).

Penalties for Copyright Infringement

The Act recognizes and allows both civil and criminal actions for a Copyright infringement and by Section 24, it is permissible to run both actions simultaneously on the same infringement.

The contravention of the rights to first ownership of copyright and claim of authorship is regarded as a tort and attracts the civil remedies of damages, injunction or any other remedy as specified by the court, (Copyright Act: Section, 19).

The Act makes very elaborate acts that are considered criminal as to attract a criminal sanction. According, acts of piracy and plagiarism fall within this scope. Section 20 therefore provides as follows:

1. Any person who willingly or with intention partakes in the making for sale, hire, trade or business any infringing copy of a copyrighted work, partakes in the importation of any such infringing copy, partakes in the making or possesses any equipment used in the making of such infringing copy shall be guilty of an offence and liable to either pay a fine not exceeding N 1000 for every copy dealt with or a term of imprisonment not exceeding 5 years.
2. Any person who with intent hires, offers for sale any infringing copy of a copyrighted work, possesses and distribute commercially such infringing copies, or relates in like manner with any work which if made in Nigeria would have been in infringing copy, shall be guilty of an offence and liable upon conviction to a fine of N 100 for every copy dealt with or a term of imprisonment not exceeding two years.

Enforcement

Further protective actions by the government is the establishment of an administrative body to administer and enforce the Copyright Act and related policies and the enablement of the administrative body to collaborate with the security agencies in the country. The administrative body saddled with this function is the Nigerian Copyright Commission (NCC) established under section 34 of the Copyright Act and empowered specifically to carry out the following functions:

1. Monitor and supervise Nigeria’s position in relation to international convention and advise government thereon
2. Advice and regulate conditions for the inclusion of bilateral and multilateral agreement between Nigeria and any other country
3. Enlighten and inform the public on matters relating to copyright
4. Maintain an effective databank on authors and their works
5. Grant compulsory licenses
6. Approve collective societies
7. Make regulations subject to the approval of the Minister
8. Appoint Copyright inspectors
9. Be responsible for such other matters as relate to copyright in Nigeria as the Minister may from time to time direct.

In actualizing these functions, the body has adopted some strategies like Strategic Action against Piracy (STRAP), Copyright Litigation and Mediation Program (CLAMP) and the recent Medium Term Corporate Plan and Strategy (MTCPS) which also incorporates STRAP. The main directives of STRAP are carrying out mass enlightenment, rights administration and adequate enforcement procedures. The goals of the MTCPS at inception are:

1. Improving the policy and Legislative Framework for copyright Protection

2. Enhancing copyright awareness and education
3. Promoting effective rights management and regulation of copyright industries
4. Proactive enforcement intervention
5. Strengthening prosecutorial activities
6. Strengthening human and institutional capacity for better service delivery
7. Deepening strategic engagement with stakeholders
8. Expanding international cooperation
9. Strong public private partnership
10. Enhancing the funding profile of the commission

In view of above STRAP mechanism of public enlightenment particularly as regards literary works, NCC have endeavored on sensitize the public against the ills of piracy and plagiarism. Some of the efforts are itemized as follows (Kunle, 2014):

1. Implementation of an interactive website that is constantly updated with information on the commission's activities and relevant issues on copyright.
2. Carrying out anti-piracy sensitization exercises against book piracy in Zaria, Central Market, Chang Chang Market, Kakuri and Sabo Market, Kaduna in September, 2012.
3. Organizing an induction, training and sensitization workshop on copyright for students at the Nigeria Law School campuses in Abuja and Lagos in November, 2012. The workshop exposed students to the basics of copyright.

Also as regards administration of the copyrights on literary works, NCC has initiated the following regulations and schemes:

1. Copyright (Collective Management Organization) Regulations 2007: Collective management Organizations exists to represent copyright holders and negotiate on their behalf with persons and bodies that are interested in being licensed to use or exploit their works. This becomes necessary given the numerous numbers of copyright holders worldwide and the difficulties most likely to be met in trying to reach them. In a bid to ease the process, the Regulation ensures a platform whereby holder's interests are well expresses and protected. They negotiate, grant license, receive payments/royalties in respect to such works on behalf of the holders and distribute the proceeds accordingly. For the regulation literary works in Nigeria, the applicable organization is Reprographic Rights Organization of Nigeria (REPRONG).
2. Copyright (Reciprocal Extension) Regulation (1972): the import of this Regulation is to allow copyrighted works in Nigeria be recognized accordingly and enjoy the same protection in countries which share common international instrument with Nigeria on copyright protection.
3. Copyright (Security Devices) Regulation (1999): This regulation was made pursuant to Section 21 of the Act, empowering the commission to order the use of antipiracy devices in respect of copyrighted works. By this, the public is able to detect genuine works and the amount of pirated works are checkmated, (Kunle, 2014).
4. Copyright Notification Scheme (2005): This scheme encourages authors and copyright holders to notify NCC of the existence of their works for documentation and references purposes in cases where there maybe need to trace the date of such work. It provides a data bank for authors but not a prerequisite for registration; neither does complying with this policy afford any additional right. This implies that the scheme does not connote compulsory or mandatory registration.
5. Copyright (Levy on Materials) Order (2012): This regulation is made pursuant to section 40 of the Act and mandates persons with materials capable of being used to infringe Copyright to pay levies on such materials. The benefit is that it caters for both the holders of copyright and users of the works. As more remuneration goes to the copyright holders, the users also gain the right to exploit the work without contravening the provisions on the law.

CONCLUSION

We have been able to highlight some important aspects of the Nigeria's protective system on copyright. Successes have been recorded no doubt but the system is still challenged by some factors. Very glaring is the poor mindset students have towards research in our various academic settings. These acts of plagiarism and piracy thrive amongst students and within the academic settings because of the absence of productive schemes at checkmating their prevalence. With the "just get the certificate" syndrome, these scholars aim at doing all sorts of aberrations just to arrive at the end point thereby paying no good attention to the rudiments and nitty-gritty of standard scholarship. (Onuoha & Ikonne, 2013) cited some survey carried out indicating the various forms and levels of plagiarism practiced amongst students thus:

1. A survey by plagiarism.org (2012): 54% students admitted to plagiarizing from the internet, 74% of students admitted to "serious" cheating
2. A survey by Babalola (2012): 8.2% of the responding students bought term paper from paper mills often, 46% admitted copying from a

colleagues assignment with his knowledge while 4.7% admitted from a colleagues assignment without his/her knowledge, 69.2% of the responding students admitted copying and pasting portions of text from the internet, 65.7% copied verbatim from textbooks or journals without using quotation marks, 58.5% often included references they did not use in their work and 46.7% often submitted assignments without references.

3. A survey by Adebayo (2011): 63.6% admitted to paraphrasing without source acknowledgment.

It has also been seen that the lecturers are also associated with plagiarism. (Onuoha & Ikonne, 2013) also cited (Adeyemo, 2013) on the dismissal of four university lecturers at the University of Calabar, Nigeria for plagiarism and (Chiedozie, 2012) on a United States based Nigerian lecturer who sued the Governor of the Central Bank of Nigeria, Dr. Lamido Sanusi for allegedly plagiarizing his works. It is also the practice that lecturers partake in the reproduction of copyrighted works for commercial gains. There is therefore a clarion call for the reawakening of the spirit of quality research amongst students and academic staff in tertiary institutions. Further, there are some challenges hindering a more effective implementation of NCC tasks which include poor financing, corruption amongst staff, poor enforcement mechanisms, poor ICT literacy amongst others, (Nwogu, 2014). Again, the penalties stipulated in the Act appear to be inadequate (Owushi, 2020). By section 20 of the Copyright Act, the penalty for distributing or possessing infringing copies of a work for commercial purposes or for dealing with imported infringing works is N100 for every copy.

RECOMMENDATIONS

The following are recommended as possible steps at checkmating copyright infringement:

1. Mandatory use of anti-plagiarism software in all tertiary institutions
2. A periodic organizing of seminars and forums enlightening students on the nitty-gritty and benefits of academic integrity
3. Curbing the challenges of the NCC and reinforcing them for better productivity. The commission had very recently aired its resolve to ensure a stringent enforcement of the Copyright laws in order to curb piracy (Agency Report, 2020). Such resolution is a stepping stone in the right direction.
4. Amendment of section 20(2) to reflect a more adequate penalty.

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