

The Prospects/Shortcomings of the Nigerian Copyright Act 2022 With Regards to Criminal Liability for Copyright Infringement

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doi: <https://doi.org/10.37745/gjplr.2013/vol12n62043>

Published November 24, 2024

Citation: Ufuoma O.M. and Alloh B.O. (2024) The Prospects/Shortcomings of the Nigerian Copyright Act 2022 With Regards to Criminal Liability for Copyright Infringement, *Global Journal of Politics and Law Research*, Vol.12, No.6, pp.20-43

Abstract: *The legal framework around criminal liability for copyright infringement is examined in this article in light of the latest Copyright Act of 2022. The dynamic nature of the digital landscape has presented novel obstacles to the safeguarding of intellectual property, leading lawmakers to refine and expand the existing legal structure. This article explores the implication, enforcement strategies, and possible repercussions for people or organizations involved in the unauthorized use, duplication, or distribution of works protected by copyright. It does this by examining the particular provisions of the Copyright Act of 2022 that regulate criminal liability for copyright infringement. in order to provide a thorough understanding of the criminal aspects of copyright infringement. To achieve this, the use of doctrinal approach, also known as library based qualitative method was used. This approach involves historical, comparative, and descriptive research analysis, as well as a thorough examination of pertinent sections of the Copyright Act, judicial precedents, and scholarly discourse. It furthermore encompasses emerging domains such as technological evasion, digital piracy, and the interplay between copyright law and other legal disciplines. The essay seeks to further the discourse on intellectual property rights by examining the fairness and effectiveness of criminal sanctions as deterrents for copyright infringement. This article seeks to inform policymakers, legal practitioners, and the general populace on the evolving framework of copyright protection in the digital era by examining the legal foundations of criminal culpability or liability.*

Keywords: prospects, shortcomings, Nigerian copyright act 2022, criminal liability, copyright infringement

INTRODUCTION

One kind of intellectual property that gives the owner of tangible creative works ownership is copyright. It shields literary, musical, or artistic works from unauthorized use and grants the creator the only right to reproduce, publish, sell, or distribute them. Copyright does not safeguard an abstract concept. The concept has to be written down either in paper or on tape, even if it is not published.

In the digital era, copyright infringement has increased due to the simplicity with which material may be copied and shared. Copyright rules promote creativity and safeguard intellectual property; thus, all creators should be cognizant of copyright enforcement mechanisms, given the ease of generating ideas. This article covers the notion of criminal culpability for copyright infringement under the copyright act 2022, the laws' provisions on copyright infringement and the consequences of breaking them. It also looks at the tactics authors might use to protect their rights.

One of the major goals of law is to protect the people's ingenuity, resourcefulness, and inventiveness since it is widely acknowledged that the greatest legacy of a nation is still the innovation of its people. The intangible, incorporeal, invisible, and abstract ownership rights granted by law to the inventor or creator of a physical, visible, and actual product are known as copyright. In a similar vein, copyright is a property right in an original work of authorship (including sound recordings, motion pictures, and other audiovisual works, as well as literary, musical, dramatic, choreographic, pictorial, graphic, and architectural works) that is fixed in any tangible medium of expression and grants the holder the sole right to reproduce, adapt, distribute, perform, and exhibit the work.

The expression of ideas, not the ideas themselves, is protected by copyright law. It maintains artistic expression that has been condensed into a tangible form. Similarly, since the owner invests time and effort into their creation, copyright serves as a means of economic support and empowerment for them in addition to being a private right. This ought to be protected against improper appropriation by those who would want to reap where they did not sow.

One important component of Nigeria's cultural and economic development is the creative industries that are governed by copyright laws. They make a significant contribution to the development of the country. However, acts of piracy have ruined these creative arts. The illegal duplication of copyrighted works, including movies, books, music, phonograms, drawings, images, broadcasts, and computer programs, is known as copyright piracy. The music and film industries are the ones most severely affected by piracy. It is impossible to overstate how detrimental piracy is to Nigeria and the rest of the globe. To just a few, it has seriously harmed Nigeria's government, investors, and right owners. By creating and selling at reasonable prices,

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right owners lose a significant amount of money that might have been theirs. while the government loses money that might have been collected via tax payments.

Copyright Surprisingly, pirates who harvest where they have not sown rob the owners of this intellectual property of their rights.

The native founders could experience social displacement and a decline in status. Furthermore, since piracy erodes funds that ought to go toward genuine goods, foreign investors who would have been thrilled to invest will no longer do so. However, the government has established several agencies like the Copyright Act of 2022 to help curb piracy because of its negative effects. Nigeria has now joined the group of nations that have put in place domestic laws to protect its citizens' inherent rights and creativity from any disproportionate infringement. These organizations include the National Film and Video Censors Board and the Nigerian Copyright Commission (NCC), who along with the Police, Customs, and Economic and Financial Crimes Commission (EFCC) conduct raids against pirates and their syndicates. Copyright piracy is still prevalent in Nigeria despite legal restrictions and agency searches.

Theoretical Framework

One kind of intellectual property known as "copyright" gives the owner of a physical piece of intellectual property ownership. It shields literary, musical, and artistic works against unauthorized use and grants the creator the only right to reproduce, publish, sell, or distribute them.

Abstract concepts are not protected by copyright. Since it is widely acknowledged that a nation's greatest legacy is still the inventiveness of its citizens, protecting this characteristic is one of the main responsibilities of legislation. The intangible, incorporeal, invisible, and abstract property rights granted by law to the inventor or creator of a tangible, visible, and actual product are known as copyright.

Copyright surprisingly, pirates who reap where they have not sown rob the owners of this intellectual property of their rights.

The native founders could experience social displacement and a decline in status. Furthermore, because piracy removes revenue that ought to go toward genuine goods, foreign investors who would have been thrilled to invest will no longer do so. However, the government has established several agencies including the Copyright Act 2022 to help curb piracy because of its negative effects.

Nigeria has joined the group of nations that have put in place domestic laws to protect its citizens' inherent rights and creativity from unjustified infringement. These organizations, which work with the police, customs, and the Economic and Financial Crimes Commission (EFCC) to combat pirates and their syndicates, include the Nigerian Copyright Commission (NCC) and the National Film and Video Censor Board.

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Piracy continues in Nigeria in spite of the legal requirements and the searches conducted by different agencies. The Nigerian copyright Act 2022 is the key piece of law in this domain, and it is founded on the premise that any infringement on another person's intellectual property is deemed theft.

The legal entitlement that arises from creative scientific, literary and industrial intellectual work is known as intellectual property (IP)¹.

Copyright legislation has been widely acknowledged and seen globally as essential catalyst to national prosperity and growth in any country².

The flagrant intellectual property theft and severe social value collapse that keep occurring in Nigeria are closely related to the country's non-enforcement of copyright laws. These are concerns that have an influence on our capacity to fully engage in international commerce and are connected to our economic value.

The questions that follow have been appropriately formulated.

1. What is the crucial component of copyright infringement in Nigeria?
2. How are these components defined and interpreted by the courts?
3. How can copyright infringement be prevented?
4. How can the laws be improved and enforced to better protect copyright owners?

The term "property right" may be found in a wide range of "works," including creative and literary creations. Sound recordings, motion pictures, television shows, and musical compositions can all be covered by copyright³.

Kurt in defining copyright says:

Copyright is a form of protection provided by law to anyone who creates an original work of authorship in the form of literary works, musical works, artistic works, cinematographic film, sound recordings, or works of broadcast. Copyright is an intellectual property right that relates to the expression of an idea, not the idea itself, and for this purpose, copyright does not protect ideas and discoveries but may protect the form in which they are expressed.

Copyright and intellectual property rights often establish a kind of property that can be treated like any other property and that may be transferred, mortgaged, and leased.⁴

Copyrights have their peculiar characteristics that differentiates them from other rights. These characteristics include: One, most copyrights are choses in action and choses in action is described in the case of **Torkington V Magee**⁵ Accordingly, "Choses in action" is a recognized legal phrase or statement that refers to all individual rights that may only be maintained by action, not by

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assuming ownership. Second, the copyright holder possesses economic rights, which are rights of exploitation⁶. It also implies that non-creators are prohibited from utilizing the work without permission. Thirdly, copyrights are actual property rights that may be used for a variety of purposes.⁷ They may, of course, be allocated since they are rights. This may be accomplished by transferring ownership in full or in part⁸. Lastly, copyrights provide checks and balances to prevent rights from becoming too strong or broad. For example, the copyright Act of 2022's section II includes Acts that permit use without the owner's knowledge and require compulsory licensing. Even when there is no obvious damage, copyright may be utilized to stop infringement of a right or property⁹.

It is a kind of intellectual property with a distinct personality, a property right that simultaneously demonstrates traits of a personal right.¹⁰ **Justice Erle** rightly argued that;¹¹

It is true that property in the other of words in a mental abstraction, but also are many other kinds of property; for instance, the property in a stream of water, which is not in any of the atom of the water, but in the flow of the stream. The right to the stream is nonetheless a right of property, either because it generally belongs to the riparian proprietors, or the remedy for the violation of the right is by action in the case, instead of the detinue or trover, copyright is intangible, they are enjoyed as other property rights and can be transferred by assignment, by testamentary disposition or by operation of law as a movable property.

In the case of *Macmillan & Co. V Cooper*¹², Lord Atkinson agreed with this line of thinking, saying that the moral basis for copyright protection is rooted in the eight commandments, particularly "Thou shalt not steal." Therefore, the contemporary interpretation of copyright laws is that the major goal of copyright is to improve public welfare via knowledge progress, namely to promote the creation and dissemination of new works for the general public. Incentives include the opportunity to earn from their workforce and the exclusive right to produce and sell their creations. By protecting the creative work's embodiment of an idea and retaining the creator's right therein, copyright protection serves to foster the dissemination of ideas, according to the ruling in *Gero v. Seven-Up Company*. In *Oladipo Yemitan v. Daily Times & Gbenga Odusanya*, it was decided that the purpose of copyright law is to prevent others from appropriating the results of someone else's labor, talent, or taste.

The well-known Nigerian musician Onyeka Onwenu sued Iroking Limited for damages in the case of *Onyeka Onwenu & Anor V. Iroking Limited*¹³ for copyright infringement due to the plaintiff's continued distribution of her music on digital platforms after the parties' digital distribution agreement had expired. The court determined that the defendant's action constituted copyright infringement and granted #500,000 (Five Hundred Thousand Naira) in damages. Additionally, in

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Digital Communications Network (Nig) Ltd V NCC¹⁵, the court of Appeal in determining the copyright infringed held:

As to when copyright is infringed Section 15(1)-(2) of the Act provides as follows: "(1) Copyright is infringed by any person who without the license or authorization of the owner of the copyright:- (a) Does, or causes any other person to do an act, the doing of which is controlled by copyright; (b) Imports or causes to be imported into Nigeria any copy of a work which, if it had been made in Nigeria, would be an infringing copy under this Section of this Act; (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 sales, 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 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. (2) Notwithstanding Subsection (1) of this Section, or any other provision of this Act, where any work in which copyright subsists, or a reproduction of any such works, is comprised in:- (a) The archives stored in the National Archive established under the National Archives Act; or (b) The public records of a state, being records for the storage or custody of which provision is made by law, the copyright in the work is not infringed by the making or the supplying to any person of any reproduction of the work in pursuance of that Act or law.

Although the article will also address the Nigerian Copyright Commission (NCC) within the institutional framework, the instrument under evaluation focuses more on the Nigerian Copyright Commission's (NCC) operations. Instead, the article will explore copyright and the key components of copyright infringement in Nigeria in relation to the Copyright Act 2022.

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Bryant¹⁴ analyzes the trade-offs between owner and user while taking into account the Nigerian defense of fair dealing. He emphasizes how the concept of copyright includes both the right of the copyright holder to profit from his hard work and the right of the copyright user to profit monetarily from the copyrighted activity. He asserts that throughout time, efforts have been made to overemphasize the first right while suppressing the user's right. But in recent years, things have changed.

This article is limited to Nigeria and will go into greater detail about copyright and copyright infringement in Nigeria in relation to the current Copyright Act 2022, unlike Bryant's paper, which did not fully analyze that and whose text is limited to the United States.

Faeji¹⁵ investigated copyright in the music business. He came to the admirable conclusion that these restrictions are meant to protect the rights of owners of musical compositions after considering the exploitative powers that the Nigerian Copyright Act grants to creators of works. Regarding the registration of collecting societies in the music industry. According to him, the Nigeria Copyright Commission complied with all regulations and pertinent provisions of the Nigerian Copyright Act. The holographic stamp was used on musical compositions in the Nigerian market as a result of the Commission and the Collecting Societies' collaborative efforts. The subject of copyright violations in the music business, which will be discussed in this book, was not addressed by him.

The idea of fair use was analyzed by **Bulter**¹⁶ in connection with current copyright legislation in the United States of America, including the Uniform Computer Information Act, the Sonny Bono Copyright Extension Act, the Digital Millennium Copyright Act, and the Technology, Education, and Copyright Harmonization Act. In short, she found that these laws fall short of providing sufficient protection for copyright owners' rights because, they fail to sufficiently address the conflict between copyright and the interests of the public at large. Among other recommendations she made, was for the society to become more conscious of and educate herself about copyright. Before coming to the aforementioned conclusion, She failed to take into account both the public's and copyright owners' varied interests.

Odunowo studied the copyright laws in Nigeria from a legal perspective.¹⁷ She failed to take into account both the public's and copyright owners' varied interests. In addition, he looked at the fines levied on importers of works that have been pirated and came to a conclusion that they are woefully insufficient given the present value of the Nigerian Naira. He went on to say that the current set of penalties against pirates needed to be re-evaluated. However, as will be covered in this article, he did not outline the range of penalties that will assist in discouraging copyright violators.

Ekpere talked about national development and copyright laws.¹⁸ He considered the ownership of these works, the rights of copyright holders, as well as the description of works that fall under copyright protection. He stressed the need of letting writers benefit financially from their creations because a nation's progress is heavily dependent on the inventiveness of her citizens. But he

Publication of the European Centre for Research Training and Development –UK miserably neglected to address copyright infringements and potential means of enforcing copyright in the digital era, this will be covered in this article.

Babafemi studied every aspect of copyright, from author rights infringement to its enforcement.¹⁹ He found that the Nigerian Copyright Commission has made significant progress in combating piracy, he also noted that even with the harsh criminal laws and punishments in place, piracy persisted because copyright holders were not granted the legal power to bring criminal accusations. In order to achieve the noble goal of a comprehensive enforcement of copyright, he suggested that the state and individual copyright owners should work together to raise awareness of copyright in educational institutions and incorporate it into higher education curricula as a required course. He did not, however, investigate copyright infringement in light of the new digital technology that facilitate piracy in the 20th and 21st century.

Samir and colleagues talked about how copyright infringement occurs when mobile phones with cameras are used.²⁰ He claims that there are a number of clear benefits that digital media has over analog ones, like excellent quality, ease of editing, high fidelity copying, etc. Because of this, copyright offenders started using these mobile phones to commit supersonic copyright infringement. To stop the capturer from detecting a secret message in the picture while it's being sent, they recommended using steganography and digital marking, which are techniques for inserting messages into images without the capturer knowing about them. By using these strategies, the phone manufacturers made it simpler to use the Graphic Information System to identify the owners of the phones. However, as will be described in this work, these authors also neglected to look at other mobile phones adaptations which made it possible for the internet users.

According to Thamodaran et al.,²¹ the two main modern technologies for safeguarding multimedia contents are encryption and watermarking. Upon analysis of these technologies, they introduced a hybrid picture protection strategy that uses a watermarking system for copyright protection and a novel cryptosystem based on matrix transformation to generate encryption on keys for a robust content-based authentication. To assess the viability and effectiveness of these technological enforcement tools, the writers did not, however, look into the legal system that was in place, at least in India, where it first originated.

In order to provide the theoretical framework for collective management of copyright, Garvis²² studied how copyright and related rights are managed in the UK and other Commonwealth nations. He also spoke about the split of rights and the copyright dilemma. He believed that although copyright law gave copyright holders the authority to prevent others from duplicating, performing, or distributing their works, it also aimed to maximize the production of new works and their distribution. He claims that if society is totally barred from building upon these artists' creations via trade alone, creativity would be totally suppressed. He said that the way copyright owners handle it shouldn't burden upcoming artists and inventors by producing unnecessary stagnation at their desire. However, he did not address the issues of copyright infringement brought on by the

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monetary losses suffered by rights holders as a consequence of infringers' routine use of anti-circumvention tools to unlawfully get copyrighted works.

Oguamanam investigated film industry piracy in Nigeria.²³ He acknowledged that the Nigeria Copyright Commission had excellent intentions when it comes to copyright protection and he took into account the country's intellectual property regulatory environment. He did note, however, that its limited and legitimate staffing shortage to function in other IP regimes is one of the clear drawbacks of its role as the de facto focal point for Nigeria's IP policy. He neglected to take into account the Commission's other resources for enforcing copyright protection, such as the Copyright Inspectors and the Copyright Licensing Panel.

Adebambo researched how Nigerian copyright laws evolved. He asserts that copyright was always a prerogative for artists in ancient Nigeria. When the English Copyright Act, 1911 was applied to the Southern Protectorate of Nigeria in 1912, he asserts, it was the first attempt to enact copyright legislation in Nigeria. According to him, "The General Yakubu Gowon's Administration in 1970 promulgated the Nigeria's first indigenous Copyright Act which was a direct result of the Act's inherent shortcomings." According to him, the 1988 and 2004 Copyright Acts were passed because the 1970 Act was unable to address issues of copyright infringement. He admitted that the administration and promotion of copyright had advanced in spite of a number of socioeconomic, political, and technical developments that hampered the rapid ascent of copyright. He added that, the reason why it was so hard for the Regulatory Bodies set up by the Copyright Acts to stop piracy was because of how widely used the internet is and how advanced technologies was becoming. However, he did not investigate the Copyright Acts of the other jurisdictions covered in this article to ascertain the degree of copyright infringement and enforcement in those jurisdictions.

In Delta State's tertiary institutions, Ishola investigated copyright breaches resulting from photocopying.²⁴ He came to the conclusion that substantial efforts are needed to reposition the Nigeria Copyright Commission so that it can successfully fight copyright infringement after analyzing its activities. To determine how to end copyright infringement in Nigeria, his research was limited as he did not take into account, infringement in the other states that comprise the country.

Adekola and Eze looked at the steps the Nigerian Copyright Commission took to prevent copyright violations. They discovered that intellectual property has been more protected in the US and other countries as global commerce and technology have developed. However, they did note that a number of nations continue to allow the mass selling of counterfeit intellectual property products. They concluded that Nigeria's efforts to safeguard copyright and intellectual property had undoubtedly made great progress in recent years. This is mostly because the Nigerian Copyright Commission's leadership has given the nation's creative rights administration system a strong boost, including coordinated efforts to stop intellectual property work theft. Since then, substantial progress has been made in the management, use, and defense of intellectual property rights. These

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writers did not list the accomplishments of the Commission or look at the different divisions and their involvement in copyright enforcement.

In order to determine whether any legal provision encouraged or intended to encourage piracy or skewed the balance between the rights granted to authors and the public interest right of access to their works for the advancement of knowledge and information, this article will carefully examine the rights granted to copyright owners, the circumstances under which these rights were woven, the mechanisms for enforcing copyright, and the methods used by the enforcement authorities in the various jurisdictions under consideration. This is done in light of the shortcomings in the previously discussed literature. Finding a balance between these rights and interests to promote innovation will be the subject of suggestions.

LEGAL AND INSTITUTIONAL FRAMEWORKS FOR COPYRIGHT INFRINGEMENT IN NIGERIA

Legal Frameworks for Copyright Infringement

The legal frameworks that safeguard copyright both internationally and domestically will be discussed along with the role they play in preventing copyright infringement and guaranteeing public access to these works without violating copyright and owners' rights. Below is a discussion of the legal frameworks:

International Legal Frameworks/Instruments

International legal framework/instruments for copyright will be examined as follows:

Berne Convention for the Protection of Literary and Artistic Works 1886 - Berne Convention 1886.

The foundation of international copyright law is acknowledged to be the Berne Convention, the first international accord to provide copyright protection. The Berne Union, which was established on September 9, 1886, in Berne, Switzerland, is the union of countries that ratified the Berne Convention.²⁵ The Convention's 1886 text was changed multiple times and the most recent was in Paris in 1971 to reflect the significant shifts in the methods for producing, using, and disseminating imaginative literary and artistic creations.²⁶

The Berne Convention lacked a definition of copyright infringement. However, it was made clear that copyright holders held exclusive rights to their works. However, the convention's protection of writers' rights would be violated if such actions were taken without the creator's consent.

Important clauses in the Berne Convention guarantee that copyrights have not been infringed. These include minimum rights, national treatment, which mandates that works produced in a

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member state be protected in all member states in the same way to show how those states protect the works of their own citizens, and which requires member states to enact laws that offer the minimal levels of protection outlined by the Convention. Article 9, which protects writers' exclusive rights to reproduction, is one such clause. Any unapproved reproduction is regarded as a violation of copyright.²⁷ Any action taken in violation of articles 10 and 11 would be considered a copyright infringement. These clauses protect the authors' only rights to distribute and perform their works in public places. Article 14 maintains writers' exclusive rights to modify their works, On the other hand, Article 12 safeguards writers' rights to distribute their works to the public by wire or wireless means. Any of the following actions are deemed to be infringing if they are not previously approved or authorized by the copyright owner.

Apart from the several noteworthy aspects regarding copyright infringement mentioned previously, the Berne Convention granted writers a broad moral right that safeguarded the copyright owner's authorship. An author was entitled to prevent his work from being altered in any way that could harm their reputation.

Universal Convention for Copyright 1971 (UCC 1971).

Geneva approved the Universal Copyright Convention 1952 on September 6, 1952. Commencing in 1955, it served as the precursor to the Universal Convention for Copyright in 1971. Both the Berne Convention's requirements and membership in the Berne Union remained unaltered. A key component of the UCC was the creation of a minimum requirement based on the idea of national treatment for copyright.²⁸ The procedures necessary for a work to qualify for copyright protection are one area where the UCC 1971 deviates from the Berne Convention.²⁹ Under the UCC, works of literature, science, and the arts were protected, including but not limited to plays, compositions, drawings, films, paintings, engravings, and sculptures.³⁰ Similar to the Berne Convention of 1971, it offers protection for both published and unpublished works.³¹

The sole right to permit reproduction is one of the author's safeguarded financial interests.³² The only right to approve a translation of an author's work shall belong to authors whose works are protected.³³ The author will have the sole authority to approve any adaptations, arrangements, or other modifications made to their works, and their protected works will have the sole authority to be performed in public.³⁴ Copyright infringement results from performing any of the aforementioned activities without the author's authorization, with the exception of situations in which the use of the work qualifies as fair dealing, as stated in Article 14(1) copyright owners' exclusive right to permit the broadcasting of their works.

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations-Rome Convention 1961

Protecting artists, phonogram manufacturers, and broadcasting companies from specific acts related to their inventions was the primary goal of the convention. The treaty requires a state to be a member of both the Berne Union and the United Nations. The treaty stipulates that each member

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state must safeguard works produced inside its boundaries in the same way that it does its own citizens' works. We refer to this as national treatment.³⁵ Performers have the right to stop their live performance from being broadcast and shared with the public, and to stop their unfixed performance and its fixation from being copied.³⁶ Phonogram creators have the authority to permit or forbid phonogram duplication, either directly or indirectly.³⁷

Broadcasting companies have the power to allow or forbid the fixing, rebroadcasting, and duplicating of their programs. Phonograms and performances covered by it must be protected for at least 20 years after the end of the year the fixation was made.³⁸ The Rome Convention's rights are subject to some restrictions that are allowed under specific conditions. Private use, brief excerpts used in event reporting, transient fixations, and use for study or instruction are some examples of these restrictions.³⁹

World Intellectual Property Organization (WIPO) Internet Treaties 1996

The World Intellectual Property Organization's (WIPO) Performance and Phonograms Treaty and the WIPO Copyright Treaty comprise the WIPO Internet Treaties of 1996.⁴⁰ Technological advancements like the internet, photocopying, and printing technologies, or reprography, have impacted the creation, usage, and distribution of copyrighted performances, phonograms, and other works. This made it necessary to establish new international regulations to adequately safeguard copyrighted works, performances, and phonogram producers. In light of this, the World Intellectual Property Organization (WIPO) established the Copyright Treaty and the Performance and Phonograms Treaty during a diplomatic conference that took place in Geneva from December 2–20, 1996.

The agreements acknowledge that no provision should be interpreted as denying the obligations that Contracting Parties have to one another under the 1961 International Convention for the Protection of Broadcasting Organizations, Performances, and Producers of Phonograms and the 1886 Berne Convention for the Protection of Literary and Artistic Works. The beneficiaries of this agreement will be the people who live in the Contracting States.

National/Domestic Statutes or Instruments

National/Domestic statutes or instruments relating to copyright infringement are examined as follows:

Constitution of the Federal Republic of Nigeria 1999 as Amended

According to the 1999 amended Constitution, every citizen of the Federal Republic of Nigeria is entitled to a set of fundamental rights, unless the Constitution specifies otherwise. Since their rights are inalienable, they cannot be taken away. The "Fundamental Rights," the UN's equivalent of the International Covenant on Civil and Political Rights (ICCPR), are established in Chapter IV of the

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Constitution. These "fundamental rights" include, among other things, the rights to life, human dignity, one's personal dignity, right to privacy, right to a fair trial, and property ownership.

Section 44(1) of the 1999 Constitution as amended states that no movable property or any interest in an immovable property shall be taken into compulsory possession, and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and purpose prescribed by a law. Section 43 of the 1999 Constitution as amended guarantees every citizen the right to acquire and own immovable property, but it makes no mention of movable property.

It is abundantly evident from the provision of Section 44 of the 1999 Constitution that Nigerians are entitled to purchase and possess both immovable and moveable property. Property in this context includes both tangible and intangible assets, such as copyright, which possesses all the characteristics of tangible assets. As a result, just as Nigerians are allowed to purchase and possess tangible assets, they are also entitled to own intangible assets under the 1999 Constitution as amended.

Police Act 2020

To put things in perspective, the Act's objectives are to create a police force that is more receptive to public demands and to inculcate in its operations the values of justice, equity, and fairness. The other objective is to increase the police force's capacity to perform its responsibilities, which include protecting all Nigerians, communities, and property.⁴¹

Section 4 of the Act expanded the Nigeria Police's responsibilities beyond preserving public safety, preventing and detecting crime, safeguarding rights, lives, and property, executing agency regulations, and keeping law and order to include helping people in need, victims of traffic accidents, earthquakes, floods, and fire disasters, and enabling unrestricted movement on public roads, highways, and streets. According to what has been said above, the Police Force is empowered to defend people's rights, lives, and property, including properties that are the product of people's intellectual properties, which ensures their right to protection and the ability to prevent others from utilizing their works of art without permission. The Copyright Act 2022 provides for an order for inspection and seizure under section 38(1) of the Act where a copyrighted work is suspected of being infringed upon in a place.

Additionally, section 48 of the Police Act 2020 gives police officers the authority to seize and hold onto anything for which a search warrant has been granted. In any case where property is seized under this section, the person whose premises it was at the time of the seizure, or the person from whom it was taken, if not the person whose premises it was, may be summoned or arrested and brought before a court to account for his possession of the property. The court will then make an order regarding the property's disposition and may award cost as the case may demand.⁴²

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Copyright inspectors work alongside the Nigeria Police to carry out their duties; they are often appointed by the Nigeria Copyright Commission. Any person suspected of violating the Act may be arrested by the inspectors, who may also enter, examine, and do research on any facility or property that is suspected of being used for any copyright-violating activity.

The Nigerian Copyright Act 2022

Nigeria's copyright protection is currently based on the Copyright Act 2022, which repeals the Copyright Act 2004 and Cap. C28 Laws of Federation of Nigeria 2004. Sound recordings, transmissions, literary, musical, and artistic works, as well as audio-visual works, are all included in Section 2(1)(a)–(f), which lists the protected works. The Copyright Act 2022 protects works that are copyrighted and that are distributed digitally, as well as works that overcome technological protection measures that were not previously protected in Nigeria. This is in contrast to the previous Act, which did not include provisions for computer programmes.⁴³ Thus, it is necessary to amend the Act to offer protection for the aforementioned.

Under the terms of the Act, copyright can be transferred via assignment, testamentary disposition of law, or operation of law. With respect to a work that is either in the future or that currently exists but does not have copyright, it is conceivable to successfully issue an assignment, license, or testamentary disposal. The creation and publication of translations, as well as the replication and publication of works for specific purposes, are subject to license requirements under Sections 31 and 32 of the Copyright Act.⁴⁴

The Act's Part II lists fair use as one of the circumstances in which using someone else's work without their consent is acceptable. There are some rather significant exceptions listed in the schedule.

This article focuses on Part IV of the Copyright Act 2022, which lists the situations in which copyrights may be deemed to have been violated. The presumptions, limitations on the right of action, confiscation of copies that violate copyright, action for infringement, order for inspection and seizure, infringement action actionable as a violation of statutory obligation, and admissibility of affidavit evidence are all covered in Part IV. The following chapter will go into greater detail on the latter.

Institutional Framework for Copyright

The institutional frameworks for copyright administration and protection in Nigeria as well as at the national and international levels will be covered in the essay.

International Institutional Frameworks

In order to manage and protect intellectual property rights throughout the world, states have united to create intergovernmental organizations like the United states. A few of the agencies are covered in the sections that follow.

World Intellectual Property Organization (WIPO)

The United International Bureaux for Protection of Intellectual Property was replaced by the World Intellectual Property Organization (WIPO) during the diplomatic conference in Stockholm in 1967. After the administrative and final terms of all the multilateral treaties that the Bureaux had been in charge of administering were revised, WIPO was designated as a specialized agency of the UN.⁴⁵

The World Intellectual Property Organization (WIPO) helps developing nations whose innovations have not yet been fully utilized to reap the rewards of their citizens' creations by encouraging intergovernmental collaboration in the administration of intellectual property. WIPO helps emerging nations set up and implement laws, build strong institutions and administrative frameworks, and hire qualified staff.⁴⁶ It is becoming more common for WIPO to take a global perspective on copyright and other intellectual property rights, as well as how IP fits into the larger context of new issues like biological variety, traditional knowledge, and environmental preservation, among others.⁴⁷

The WIPO Convention creates four distinct organizations: the International Bureau of WIPO, sometimes known as the Secretariat; the General Assembly; the Conference; and the Coordination Committee.⁴⁸ If a state is a party to the Statute of the International Court of Justice, a member of the United Nations, or one of the specialized agencies of the United Nations or International Atomic Energy Agency, or is invited to join by the WIPO General Assembly, it may join WIPO, which is self-funded. A Union is made up of all the states that have ratified a specific UN treaty.⁴⁹

(World Intellectual Property Organization) WIPO Arbitration and Mediation Centre

Following unanimous approval by the WIPO General Assembly, the (World Intellectual Property Organization) WIPO Arbitration Center—now known as the (World Intellectual Property Organization) WIPO Arbitration and Mediation Center—was founded in September 1993. It provides arbitration and mediation services for the settlement of intellectual property disputes, particularly those involving private parties and copyright infringement.⁵⁰ The Center manages some administrative procedures to resolve disputes arising from internet domain name registration.⁵¹ The Center was established to act as a link between intellectual property (IP) and arbitration, or more broadly, alternative conflict resolution.⁵²

The Center was established, among other reasons, because of the growing use of international intellectual property (IP) protection and the existence of multiple national and regional rights pertaining to the same subject matter, which suggests the necessity of dispute resolution processes to prevent the need for various national court actions.⁵³ The four dispute-settlement processes that the center provides services for are mediation, arbitration, expedited arbitration, and the combination of the three.

Institutional Framework for Copyright in Nigeria

This article has discussed briefly the institutional frameworks administering and protecting copyright in Nigeria.

The Nigerian Copyright Commission

The Nigeria Copyright Commission (NCC), in collaboration with copyright societies, solicitors, and the judiciary, is primarily responsible for managing copyright.⁵⁴ The four dispute-settlement processes that the center provides services for are mediation, arbitration, expedited arbitration, and the combination of the three,⁵⁵ oversee and monitor Nigeria's stance on international conventions and advise the government on them, advise and set conditions for the conclusion of bilateral and multilateral agreements between Nigeria and other nations, educate and inform the public on issues pertaining to copyrights, and maintain an efficient database of writers.⁵⁶ Additionally, the commission has the authority to receive and approve applications for compulsory licenses, as well as to approve and register copyright societies so that they can begin operations.⁵⁷

Although copyright protection is automatic, the commission established the copyright notification scheme in order to fulfil its responsibility to keep a database of all authors and their works. This system enables authors of copyright to inform the commission about the production and existence of their works.⁵⁸ People who hold rights to copyrighted works or those who are the producers of such works may register their original works online with the commission using the Nigerian Copyright e-Registration System (NCeRS).⁵⁹

Federal High Court

The Federal High Court is the only court in Nigeria with the authority to consider cases involving copyright, patents, trademarks, and industrial designs, among other things. The Federal Republic of Nigeria 1999 Constitution, as amended, provides in Section 251(1)(f). The Federal High Court is the only body authorized by the numerous statutory requirements to make decisions regarding copyright, trademarks, patents, and industrial designs.⁶⁰ This has been decided in a number of cases like *Jamal Steel Structure Ltd. v. A.C.B Ltd*,⁶¹ *Savannah Bank v. Pan Atlantic Shipping*,⁶² *Societe Anonyme de Vente and Anor v. Alhaji Amodu and Anor*,⁶³ *Amavo Limited v. Bendel Textile Mills Limited*.⁶⁴ In *Omnia Nigerian Limited v. Dyke Trade Limited*⁶⁵ the Supreme Court being the apex court has affirmed the exclusive jurisdiction of the Federal High Court to hear intellectual property disputes in civil and criminal proceedings in compliance to section 251(1)(f) of the Constitution.

If one is unhappy with the Federal High Court's decision, one may, however, appeal it to the Court of Appeal and ultimately the Supreme Court. Section 103 of the Copyright Act 2022 states that the Federal High Court will be the sole court having the authority to hear civil claims and proceedings concerning breaches of this Act. Generally speaking, the Federal High Court of Nigeria has jurisdiction over any legal dispute involving copyright enforcement and protection. Government ministries and agencies may establish tribunals to settle IPR-related disputes, and the

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Federal High Court may consider appeals of the tribunals' decisions. For example, a denial of trademark registration can be challenged all the way to the Federal High Court, the Court of Appeal, and the Supreme Court.

Furthermore, the Federal High Court of Nigeria has played a significant role in the development of the legislation dealing to intellectual property rights (IPRs). A problem of the Federal High Court of Nigeria is that, when it comes to copyright issues, the majority of its justices are equipped to provide legal rulings rather than technical ones. Furthermore, most of the proposed judges were Nigerian. lack enough knowledge about copyright.

The Nigerian Police

The general duties of law enforcement are outlined in Section 4 of the Nigerian Police Act. The police are expressly charged with preventing crime, maintaining peace and order, protecting people and property, and implementing all applicable laws and regulations both inside and outside of Nigeria as appropriate, according to the Police Act. The Nigeria Police vigorously enforce copyright in Nigeria. A police officer searching the defendant's property can impound any work or product found to be infringing on intellectual property rights (IPRs). This remedy, also known as an inspection and seizure remedy, is carried out by the police in collaboration with copyright inspectors.⁶⁶

In the UK, the London Police's specialized unit known as the Police Intellectual Property Crime Unit (PIPCU) is the national lead force for fraud. It is responsible for investigating and deterring serious and coordinated intellectual property offenses in the UK.⁶⁷ To safeguard IPRs and guarantee effectiveness in that domain, the Nigeria Police should establish a unit similar to this. Inadequate equipment, shortage of skilled personnel, bribery and corruption among the Men of the Nigerian Police Force is a well-known shortcoming and all of these hinder its ability to discharge their duties. Until these issues are resolved, the Nigerian Police will not perform at its best.

The National Assembly

The National Assembly was established and given the legislative authority of the Federal Republic of Nigeria by Section 4 of the 1999 Constitution of the Federal Republic of Nigeria, as amended. The National Assembly would be made up of the Senate and the House of Representatives. Sections 47 to 51 of the 1999 Constitution, as amended, and provisions in both Houses' Rules and Standing Orders establish the composition of each chamber.

The National Assembly may enact laws for the peace, order, and good governance of the federation or any part of it on any subject covered by the Exclusive Legislative List in Part 1 of the Second Schedule to the Constitution, according to Section 4(2) of the 1999 Constitution as amended. Furthermore, with regard to any subject on the Exclusive Legislative List, the House of Assembly of the States must refrain from exercising the aforementioned powers unless the Constitution expressly states otherwise.⁶⁸

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Additionally, the National Assembly will have the power to enact laws pertaining to any subject on the concurrent Legislative List as well as any other subject for which it is permitted by this Constitution, all without sacrificing the privileges granted by section 4(2). In order to prevent abuses, the National Assembly also has oversight duties on the executive branch of government. The aforementioned states that all national legislation, including those pertaining to intellectual property, such as the Copyright Act 2022, must be passed by the National Assembly in order to uphold law and order. They also make sure that government ministries, agencies, and departments carry out their duties as specified by the Acts that established them as part of their oversight function. The National Assembly's oversight function makes it essential to the implementation of these Acts.

Limitation to the Right of Action

The right of action is subject to limitations. Regardless of the provisions of this Act or any other law, no person or organization that negotiates and grants licenses, collects and distributes royalties for copyrighted works, or represents more than 50 copyright owners in any category of works protected by this Act may initiate or pursue a copyright infringement or any right under this Act unless they are granted a certificate of exemption by the commission or are permitted to operate as a collective management organization under section 88 of this Act.⁶⁹ This position of law is supported in the case of Performing and *Mechanical Right Society v. Skye Bank & Ors*,⁷⁰ where the Court of Appeal while interpreting sections 17 and 39 of the Copyright Act, Cap 68 Laws of the Federation of Nigeria held that:

The plain, clear and unambiguous provisions of Section 17 are to the effect that: - (a) No legal action by way of the judicial process of initiating commencing or filing a suit in a Court of law shall be undertaken or maintained by a person carrying on the business of negotiating or granting licenses or collecting and distribution of royalties in respect of the copyright of works protected by the Act, unless it is approved under Section 39 of the Act to operate as a collecting society or otherwise exempted by the NCC. Section 39 provides for how a collecting society may be formed and when may be approved by the NCC, as well as prohibition and penalty for contravention of the section. The community purport of the provisions of the two (2) Sections is that a collecting society in respect of a copyright of a work protected by the Act, cannot lawfully purport to perform its duties without approval or exemption by the NCC and cannot initiate or commence a legal action in a Court of law for the infringement of the copyright or any other right under the Act.

Remedies and Orders for Copyright Infringement

If copyright owners believe that someone else is using any of the rights that the Act restricts exclusively for them without their knowledge or consent, they may file a lawsuit and ask the court for specific relief or order action against the infringing material. In any connected proceedings pertaining to violation of other intellectual rights, a copyright owner may be able to acquire remedies against copyright infringers, including accounts, damages, an injunction, and other remedies.⁷¹

It is significant to remember that the court may award additional damages in cases where copyright infringement is proven and acknowledged and the court is convinced that the plaintiff would not be able to obtain effective relief. This is done by taking into account the severity of the infringement and any benefit that the defendant may have received as a result of the infringement. The court that hears a criminal case has the authority to order that any infringing copies of works, plates, master tapes, machines, equipment, and contrivances, whether or not the accused is found guilty, be destroyed, turned over to the copyright holder, or handled in any other manner the court sees fit. Subsections (1), (2), and (4) of Section 44 are subject to this authority.⁷²

If a copyright officer or the owner of the copyright in the article requests it, a court may order the destruction of the item or turn it over to the copyright owner if it has been seized by law enforcement in connection with a suspected violation of this Act. The court may, upon receiving an ex parte application and an affidavit, grant an order allowing the applicant, accompanied by a copyright officer or police officer, to enter the home or premises at any reasonable time of day or night in order to seize, detain, and preserve the infringing copy or contrivance if infringing. Additionally, the applicant has the right to view any pertinent documents that the defendant might have.⁷³

When someone is in possession of an infringing copy of a work while conducting business, or when someone is in control of an article specifically designed or adapted for making copies of a particular copyright work and knows or has reason to believe that it has been or will be used to make infringing copies, the owner of the copyright in that work may ask the court to order that the infringing copy or article be forfeited to him or any other person, destroyed, or dealt with as the court may deem appropriate.⁷⁴

THE WAY FORWARD

A number of activities could be taken in order to totally eradicate copyright infringement in the country in question. Thoroughly following the recommendations listed below will significantly help achieve a thorough enforcement of copyright by striking a balance between the conflicting interests of authors and the public.

Amendment of the Acts

It is advised that the Copyrights Act be amended in order to establish strong enforcement measures as required by the World Trade Organization and to efficiently implement the World Intellectual Property Organization Obligations. Strong anti-piracy provisions should also be included in the Act. Above importantly, the new statute should include harsher consequences for copyright infringement. The modified law should do away with the statute of limitations and the defense of innocent infringement. Furthermore, the wide variety of fair use standards should only apply to excusable conduct that the Act's Copyright Enforcement Agencies may oversee and regulate.

Establishment of Copyright Enforcement Units as a Department in the Law Enforcement Agencies

The Army, Navy, Air Force, Customs Service, and all other Nigerian law enforcement agencies State Security Services, International Police, Civil Defense Corps, and the Police, needs to establish a Copyright Enforcement Units department. This will guarantee that everyone is working together to combat copyright violations.

Creation of Nigerian Copyright Commission in the Local Government Areas

Nigeria is the largest and most populous nation in Africa. According to estimates, copyright violators and violators can be found all over Nigeria. As a result, it is imperative that the Nigerian Copyrights Commission set up branch offices in each Local Government Council's headquarters.

Anti-Piracy Legislative Measures

Legislation, no matter how good, will be a bulldog without teeth if it cannot be implemented effectively. Since copyright enforcement is the cornerstone of protection for various digital technologies, the Nigerian Copyrights Commission should establish suitable administrative procedures for the protection of copyright in digital works. The Federal Government of Nigeria should work with various international organizations, market authorities, trade unions, etc. to ensure that copies of pirated works and other harmful digital inventions are seized and that individuals involved in the crime suffer severe consequences.

Addressing the increasing number of digital innovations that enable copyright violations requires the adoption of legislative measures. The parliamentarians should consult experts in the fields of computer technology, copyright, and information technology in order to obtain the technical know-how that would highlight the difficulties in avoiding digital systems that safeguard works. Additional regulatory organizations should be established with the responsibility of ensuring that the laws are upheld. According to law established by the Nigerian government, every television sold in Nigeria shall have the V-Chip, which is currently used to monitor broadcasts in the US. Legislation of this kind need to be created to safeguard copyrightable works technologically. It is also advised that copyright holders implement certain stringent technical safeguards to prevent

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unlawful use of their transmissions in the areas of digital broadcasting via cable satellite transmission. For instance, using key encryption and digital signatures would ensure that only authorized recipients would be provided with the activation code needed to unlock the encrypted document.

Social Awareness Campaigns

It is necessary to raise sufficient understanding about copyright in order to support Nigerians. Enlightenment and awareness efforts at the grassroots level are among the social actions that will be used. Using commercial ringlets and radio and television ads in a way that even the general public can understand and appreciate the significance of copyright law, the dangers of piracy, and the possibility of supporting infringers is one approach to do this. An average Nigerian should be able to report apparent instances of copyright infringement to the Nigeria Copyright Commission by calling a social helpline. Such whistleblowers should get financial compensation if, in the end, their allegations turn out to be accurate. Better public education on the concept, nature, and protection of copyright should be provided to all citizens, regardless of their level of education. Seminars, workshops, conferences, radio and television broadcasts, and new media should all be used to teach copyright as a subject in elementary, secondary, and university curricula.

Judicial Measures

The Federal Government ought to establish copyright courts around the nation, considering the complexity of copyright matters. These courts will be tasked with handling copyright cases as quickly as possible, using the same process used by the Nation Industrial Courts for labor law issues. By doing this, judges of the Copyright Courts should only be chosen by judicial officials who are knowledgeable in intellectual property, particularly copyright. Furthermore, in accordance with the copyright enforcement rules that will be created for this reason, the technicalities included in copyright cases that often hinder the prompt resolution of ongoing copyright actions should be dropped. In order to address copyright infringement on a global scale, it is also advised that regional and worldwide copyright courts be formed.

CONCLUSION

As an intellectual property right that protects works of literature, art, music, film, and television, the Copyright Act 2022 emphasizes the significance of copyright. It is concluded that the Copyright Instruments in place in the jurisdiction under consideration in this work have not gone far enough in safeguarding copyright and the interests associated with it after examining the concept and history of copyright, the conflicting interests of copyright holders and the public, as well as the defense and enforcement of these interests. By permitting infringers to assert innocent infringement, this legal tool also fell short of offering complete copyright enforcement. Enforcing and improving copyright is crucial, and the new Act's implementation should signal a new chapter in this area. This will guarantee the promotion of copyright as an essential driver of national economy. Because of this, copyright owners' moral and financial rights are unalienable and

Publication of the European Centre for Research Training and Development –UK shouldn't be contested. Any violation of copyright, whether direct or primary or indirect or secondary, ought to be illegal, and those who do so need to be held accountable.

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