

# Historical Evolution of Intellectual Property Laws in Nigeria\*<sup>1</sup>

## Abstract

The historical evolution of intellectual property laws in Nigeria predates the Nigerian nation. The history though traceable to the history of the British colonialists, evolved at different times depending on the prevailing circumstances at that time. This paper briefly examined the history of copyright, trademarks and patents laws in Nigeria.

## 1. Introduction

The need for a more conducive Intellectual Property legal regime to match the ever growing digital environment in Nigeria cannot be over emphasized. Intellectual Property laws evolved at different times depending on the prevailing circumstances at that time. This paper will look at the history of intellectual property laws in Nigeria from the earliest time to the present time. This will go a long way in assisting all the stakeholders in understanding the entire subject matter of this article.

## 2. Intellectual Property defined

The concept of intellectual property is that of intangible property which have no physical existence. They are 'choses in action' and corporeal hereditaments. The term has no acceptable definition but there is a consensus that it is a right conferred by law on human innovators and creators and even entrepreneurs to protect the fruits or products of their intellect, their innovative and creative efforts and their commercial reputation and goodwill. Such rights are conferred by law in order to promote creativity, innovation and societal good. In this connection, the right enables creators and innovators to prevent access to the product of their intellect or allow access thereto either freely or for economic gain. The right is not absolute but is limited by time and certain exception. This way, the law ensures that creators and innovators do not exercise their intellectual property to unreasonably or unjustifiably prevent members of the public from assessing the knowledge which springs from their creative and innovative efforts. Adewopo seems to concur with the above conceptualization of intellectual property. According to him, the expression intellectual property is taken to mean the legal rights which may be asserted in respect of the product of the human intellect.<sup>2</sup> Oyewunmi also shares similar understanding. According to the learned author:

*Intellectual Property may be defined as the legal rights conferred to those who engage in creative, inventive and promotion activities which have resulted in original, useful or other beneficial outputs. Such outcome is classified as a form of property, albeit of the intangible, incorporeal variety. This means that unlike physical property, it is incapable of being physically owned or possessed and can therefore be simultaneously enjoyed by different users without being lost to the creator or owner.*<sup>3</sup>

Oxford Dictionary of Law<sup>4</sup> defined intellectual property as "intangible property that includes patents, trademarks, copyright registered and unregistered design right." Among the different forms of intellectual property, Mereth<sup>5</sup> identified patents, trademarks and copyright as

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2 Adewopo A., 'According to Intellectual Property: A Pro-Development Vision of the Law and the Nigerian Intellectual Property Law and Policy Reform in the Knowledge Era' (NIALS, 2012)

3 Oyewunmi, A., 'Nigerian Law of Intellectual Property' (2015)

4 Martin, E.A, and Law, J. 'Oxford Dictionary of Law' (6th edition edn.) (OUP 2006) 280

5Mereth P., 'Intellectual Property Law' (1996).

the three most important forms of intellectual property rights while Cronish posits that they see them as models to which aspirants will turn to for the protection of other ideas, information and trade values.<sup>6</sup> Another perspective to intellectual property law is as the area of law which deals with legal rights associated with creative effort or commercial reputation and good will. This definition is very important in the light of the face of new development in technology as well as challenges arising from the competitive nature of international global trading patterns.<sup>7</sup> It can be deduced from the foregoing, that intellectual property serves two main objectives: the protection of the private interest of creators and innovators by enabling them to gain economic rewards for their innovation and creativity and the protection of public interest in the promotion of science, arts and societal welfare by ensuring equitable access to creative and innovative works by the public. These key objectives are rooted in international human rights legal framework such as United Nations Declaration on Human Rights, 1948<sup>8</sup> and the International Convention on Economic, Social and Cultural Rights 1966.<sup>9</sup> Intellectual property could be categorized into two broad categories; Copyrights and Industrial property.

## 2.1 Copyright

Copyright is a property right that subsists in certain works. It is a statutory right giving the copyright. The extant law on copyright in Nigeria is the Copyrights Act 2022. There is no clear statutory definition that is given for the term 'copyright' under the Copyright Act. Section 2 of the Act includes the following creative work as being for copyright which are: literary works, music works, artistic works, audiovisual works, sound recording and broadcast. This may be attributed to merely being merely simplistic in definition or captures the indefinite posture of the statute of what constitutes copyright. Wilson expansively denotes copy right in the following manner: *[as giving an] owner certain exclusive rights in relation to his/her work such as the right to make copies of the work, to sell those copies to the public or the right to give public performance of the work.*<sup>10</sup> Copyright includes a corollary of rights which include the creator's right to his work of literacy, music, arts, audiovisual works, sound recordings and broadcast. This confers on the owner the right to claim ownership, right to share in the proceeds of sale, right of due recognition and the right of action. The purpose of copyright embraces the following reasons firstly to promote public welfare through the advancement of knowledge. Second, it grants authors/creators right of control in terms of production, reproduction and distribution of their works for a certain period of time, hence providing incentives to further creativity through the authors receiving a financial reward for their works. According to Adams and Yusuf, it is perhaps the most popular and familiar branch of intellectual property law which is used for the protection of literary, artistic and dramatic achievement.<sup>11</sup>

Copyright is an intellectual property right that encourages individual efforts and enhances development. Copyright Act defines copyright simply as "copyrights under the Act" This definition appears imprecise but a closer look at section 9 of the Act elucidates copyright as the exclusive right to do or authorize the doing of certain acts in relation to the work in which the

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6 Cronish N., 'Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights, 4th edition (1999)

7 Brainbridge, D., 'Cases and Materials in Intellectual Property Law (2006) at 112

8 UDHR, Article 27.

9 ICESCR, Article 27.

10 Wilson, C.' Intellectual Property in a Nutshell ' (Sweet & Maxwell, 2005)

11 Adam K.I. and Yusuf I. A., Originality of Copyright and the debate on Protection of Traditional Knowledge: A View on Nigerian Law" in Chukwumaeze, U.U. *et al* (ed.) 'Law and Social Justice and Development: A festschrift for Professor Nnabue' (Imo State University Press 2013), 82

right subsists.<sup>12</sup> Such acts include reproducing the work in any material form; publishing the work, performing it in public, make audiovisual work or a record in respect of the work, making adaptation and translation of the work.<sup>13</sup> Copyright encourages more authors to put their works to the public hence there is a clear nexus between copyright and the creative industry. Copyright is intangible; it is individually owned and conferred by statute. This position was adopted judicially in a host of cases including *Jerrold v Houston*,<sup>14</sup> *Corelli v Gray*<sup>15</sup> and *Rees v Melville*<sup>16</sup> where Lord MacCoughton defined copyright “as a right that restricts others from doing a particular act.” The Copyright Act protects works authored or created by Nigerian citizens or persons domiciled in Nigeria. It also protects works of other persons first published in Nigeria. Work first published in a member State of the Berne Convention 1886, Universal Copyright Convention (UCC) 1952, Rome Convention 1964 or other international agreements to which Nigeria is a party is also protected under the Act. Likewise works first published by the United Nations or any of its agencies, or the African Union, or by the Economic Community of West African State. The Act complies with the internationally accepted minimum standard of copyright protection. It protects the works of other nationals the same way as works of Nigerians.

## 2.2 Industrial Property Rights

Industrial property is one of two subsets of intellectual property (the other being copyright). It takes a range of forms including patents for inventions, industrial designs (aesthetic creations related to the appearance of industrial products) trademarks, service marks, layout-designs of integrated circuits, commercial names, designations, geographical indications and protections against unfair competition.<sup>17</sup> They are basically protective rights conferring on such a large scale that capital and labour are significantly involved and includes any office or other accommodation on the same property, the use of which is incidental to such activity.<sup>18</sup> Industrial property could also be viewed as patents for inventions intended to protect innovations of a technical nature, designs and models aimed at protecting inventions of aesthetic nature, plant variety of right for protecting creations in the area of agricultural and also trade mark law, which reserves for the owner of the trade mark the designation under which goods and services are marketed. Industrial property also covers trademarks, service marks, layout-designs of integrated circuits, commercial names and designations as well as geographical indications and protection against unfair competition.<sup>19</sup>

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12 See also the case of *Adenuga v. Ilesanmi Press and Sons Ltd* (1991) 5 NWLR Part 189. Copyright may be defined as a monopoly right which the creator of an eligible work acquires as soon as such a work is put in a tangible form and which right precludes all others from the exploitation of such work without the authorization of the creator for a specified period, See Okoroji, T., ‘*Copyright Neighbouring rights and the New Millionaires: The Twists and Turns in Nigeria*’ (Tops Limited 2009) 42.

13 Section 9 (a) – (k) of Copyright Act 2022

14 (2012) 44 CY Press wood Dr/ 410 Houston TX, 77070.

15 (1913) 29 TLR 570.

16 (1914)3 K& J 703.

17 Wikipedia, ‘Industrial Property’ <[https://en.m.wikipedia.org/wiki/industrial\\_property](https://en.m.wikipedia.org/wiki/industrial_property)> Accessed 21/2/2022; Lehman, Jeffrey and Ors, ‘*West’s Encyclopedia of American Law* (2005) vol. 5 (2 ed.) Detroit: Thomson/Gale. P. 424.

18 Law Insider, ‘Industrial Property Definition’ <<https://www.lawinsider.com/dictionary/industrial-property>> Accessed 27 February, 2022

19 Nwana. C.E., ‘Intellectual Property Rights in Nigeria: Issues and Challenges’ (2020) *American Journal of Law and Legal Studies*

### 3. Historical Evolution of Intellectual Property Laws in Nigeria

Under this head we shall briefly discuss the history of copyright, trademarks and patents laws in Nigeria.

#### 3.1 Copyright

The first attempt to provide a legal framework for copyright in Nigeria by the then colonial administration was the extension of the English Copyright Act of 1911 to Nigeria by Order in Council No. 912 of 1912. This Act remained in force in Nigeria until 1970 though repealed and replaced with the Copyright Act of 1956 in its country of origin.<sup>20</sup> Decree No. 61 of 1970 was the first indigenous legal instrument regulating issues relating to copyright in Nigeria. This Decree was promulgated just after the Nigerian civil war ended; but salient provisions in the law did not foresee the rapid socio-economic development, as well as influx of products of advanced technology into the country which made illegal reproduction of works protected by copyrights much easier. The consequence of the inadequacy of Decree 61 in protecting creativity and scholarship was high scale piracy that robbed creators, organizations and individuals who helped produce or disseminate creative works as well as the society of potential income.<sup>21</sup> As a result of increased pressure from artists, authors and creators who are originally the copyright owners, the then Federal Military Government promulgated into law, the Copyright Decree No. 47 of 1988, which existed as Copyright Act Cap 28, Laws of Federation of Nigeria, 2004.<sup>22</sup> The Act also incorporated the establishment of a machinery for the administration of copyright and neighboring rights matters in Nigeria, that is, Nigerian Copyright Commission.<sup>23</sup> The Nigerian Copyright Act was amended twice by the Copyright (Amendment) Decree (No. 98) of 1992 and Copyright (Amendment) Decree (No. 42) of 1999 respectively. The justification for the establishment of the Commission and the amendment of the Copyright Act was to adequately cater for the rising national and international responsibilities within the copyright industry as well as emerging challenges in the sphere of copyright globally.<sup>24</sup> A unique outcome of the 1992 Amendment of the Act was the provision in section 32A of the Act<sup>25</sup> for appointment of Copyright Inspectors with specific powers to enforce the law. The Copyright Act also incorporates the Trade-Related Aspects of Intellectual Property Rights (TRIPS) protection for copyrights.<sup>26</sup> As a part of the overhaul of the copyright system in Nigeria which began in November 2012, the Nigerian Copyright Commission (NCC) created a committee consisting of some of its officials and representatives of the relevant intellectual property professional bodies to undertake the task of drafting a new Copyright Bill. The committee published the draft bill on 30th October, 2015.<sup>27</sup> The bill was eventually passed into law on 17<sup>th</sup> March, 2023

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20 Umaru, M.J., *'Intellectual property Law in Nigeria: An Introduction'* (Usmanu Danfodiyo University Press, Sokoto, 2011), at 15

21 'NCC Historical Background', <<http://www.copyright.gov.ng/index.php/about-us/ncc-historicalbackground>> Accessed 30/3/2023

22 Cap 28, Laws of Federation of Nigeria of Nigeria, 2004

23 The Nation, 'Wanted: Intellectual Property Reform', <<http://thenationonline.net/new/law/wanted-intellectual-property-laws-reform/>> Accessed 31/3/ 2023

24 Ibid.

25 Section 38 of Cap C28, Laws of Federation of Nigeria, 2004

26 US Department of State, Bureau for Economic and Business Affairs, '2012 Investment Climate Statement-Nigeria' <<http://www.state.gov/e/eb/ris/othr/ics/2012/191211.html>> Accessed 11/3/2022.

27 See <[http://graduatedresponse.org/new/wp-content/uploads/2016/02/DRAFT\\_COPYRIGHT\\_BILL\\_NOVEMBER\\_2015.pfd](http://graduatedresponse.org/new/wp-content/uploads/2016/02/DRAFT_COPYRIGHT_BILL_NOVEMBER_2015.pfd)>

and is known as the Copyright Act 2022.<sup>28</sup> It repealed the Copyright Act 1988 and is presently the basic framework law that regulates copyrights in Nigeria.

### 3.2 Trademarks

Intellectual property protection relating to trade marks in Nigeria can be traced back to the colonial era when the English Trademarks Act was introduced into the colonies as an Ordinance even before the amalgamation of Northern and Southern Protectorates to form what is now called Nigeria in 1914.<sup>29</sup> With the amalgamation of the Northern and Southern Protectorates in 1914, the existing statutes applicable to the respective protectorates were repealed by the Supreme Court Ordinance of 1914. This Ordinance also made English Law almost in the same terms with the repealed legislation to be extended or applicable to the whole Nigeria. The relevant English law comprises of common law, doctrine of equity and statutes of general application which were Acts of British Parliament enacted on or before 1<sup>st</sup> January, 1900.<sup>30</sup> However, the first intellectual property law to be extended to Nigeria was the Trade Marks Promulgation of 1900 which was promulgated by the High Commissioner of the Protectorate of Southern Nigeria. It was an adaptation of the Trade Marks Act of 1888 of the United Kingdom as at that time. This 1900 promulgation went through series of reviews, repeals and amendments before the present Trademarks Act was enacted in 1965.<sup>31</sup>

### 3.3 Patents and Designs Act

Like the copyright and trade marks before it, the Nigeria's Patent law is traceable to the British patent regime because of its historical colonial connection with Nigeria. Patent system was first introduced in the former colonies of Lagos and Southern Nigeria by the colonial administration in 1900.<sup>32</sup> This was later extended to the Northern Nigeria by the Patent Proclamation Ordinance No. 12 of 1902. On the amalgamation of the Northern and Southern Protectorates in 1914, all the existing legislations on patents in the different protectorates were repealed by the Patents Ordinance No. 30 of 1916. This Ordinance was amended in 1925 only as to its title. It became the Registration of United Kingdom (UK) Patents Ordinance No.6 of 1925.<sup>33</sup> It provided for the registration in Nigeria of patents that were already granted in the United Kingdom. Thus, an inventor in Nigeria had first to apply in the United Kingdom's Patent Office to be granted a patent for his invention before he could proceed to have it registered in Nigeria. This was the position until Nigeria became independent and subsequently attained a republic status. In view of the inadequacies of the Ordinance, the Nigerian government enacted the Patents Right (Limitation) Act No. 8 of 1968 conferring on Nigerian government and its agencies powers and rights similar to those enjoyed by the United Kingdom government under Section 46 of the United Kingdom Act of 1949. It was not until 1970 when the Patent and Designs Act No. 60 was promulgated that brought an end to vestige of colonialism in the patent system. The 1970 Act which came into force on the 1<sup>st</sup> day December, 1971, repealed the Registration of United Kingdom Patents Ordinance of 1925, the United Kingdom Designs (Protection) Act, Cap 201 Laws of Nigeria, 1958, the Patent (Limitations) Act 1968 and the United Kingdom Patent Act of 1949 in so

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28 Wikipedia, 'Copyrights Act 2022' <<https://placng.org/i/wp-content/uploads/2023/04/copyright-Act-2022pdf>> Accessed 30/3/23.

29 Zunia, A., 'Review of the Nigerian System of Intellectual Property' <<http://zunia.org/post/a-review-of-the-Nigerian-System-of-intellectual-properpy>> Accessed 12 March 2022

30 Umaru, M.J., op cit., at 94

31 Ibid at 95

32 See Patent Ordinance N0 17 of 1900 and the Patent Proclamation Ordinance N0. 27 of 1900

33 Umaru, M.J., op. cit. at. 135

far as it was in force in Nigeria. The 1970 Act remains the principal legislation regulating patents and designs systems in Nigeria till date.<sup>34</sup> Currently, the Patent and Designs Act of 1970 is a governing patent law in Nigeria and prescribes if and whose products may be granted the statutory rights.<sup>35</sup>

#### **4. Conclusion**

We have painstakingly looked at the historical evolution of Intellectual property laws in Nigeria. This will go a long way for the understanding of the past and present legal regime of intellectual property laws. It will assist the legislators and the stakeholders in formulating the road map for the development of intellectual property laws in Nigeria.

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34 Ibid.

35 Kenna Associates, 'Intellectual Property Rights Nigeria' <[http://Nigeria.smetoolkit.org/nigeria/en/content/en/303/intellectual-property-right in Nigeria](http://Nigeria.smetoolkit.org/nigeria/en/content/en/303/intellectual-property-right%20in%20Nigeria)> Accessed 13 March 2023

