

**NATIONAL INSTITUTIONAL FRAMEWORK FOR PROTECTION OF
INTELLECTUAL PROPERTY RIGHTS IN NIGERIA***

Abstract

The technological dynamism of our society has indeed changed the world and affected many areas of today's reality and among them is Intellectual Property. It is now possible to produce and disseminate copies of copyrighted works with a mouse click. This has increased the number of copyright violations. It has equally made the enforcement of Intellectual Property rights more complex. Intellectual property regulations and policies in Nigeria are crippled by obsolete and virtually non-existent policies, counterfeiting and anti-piracy system. The need for a more conducive Intellectual Property legal regime to match the ever growing digital environment in Nigeria cannot be over emphasized. In this article, we are going to look at the national institutional framework for protection of intellectual property rights in Nigeria.

Introduction

The need for a more conducive Intellectual Property Institutional Framework to match the ever growing digital environment in Nigeria cannot be over emphasized. The histories of Intellectual Property Institutional Frameworks in Nigeria have evolved at different times depending on the prevailing circumstances at that time. In this article, we are going to look at the national institutional framework for protection of intellectual property rights in Nigeria. This will go a long way in assisting all the stakeholders in understanding the entire subject matter of this article in Nigeria.

Intellectual Property Defined

Intellectual property has no acceptable definition.¹ 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. It is that intangible property which has no physical existence. Intellectual property is 'choses in action' and corporeal hereditaments. 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. According to Oyewunmi,

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

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¹ Different authors see Intellectual Property from different perspectives.

simultaneously enjoyed by different users without being lost to the creator or owner.²

Oxford Dictionary of Law³ defined intellectual property as "intangible property that includes patents, trademarks, copyright registered and unregistered design right." Among the different forms of intellectual property, Mereth⁴ identified patents, trademarks and copyright as the three most important forms of intellectual property rights while Cromish posits that they see them as models to which aspirants will turn to for the protection of other ideas, information and trade values.⁵ According to Adewopo, the expression intellectual property is taken to mean the legal rights which may be asserted in respect of the product of the human intellect.⁶ 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 fact of new development in technology as well as challenges arising from the competitive nature of international global trading patterns.⁷ 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, 1948⁸ and the International Convention on Economic, Social and Cultural Rights 1966.⁹

National Institutional Framework for Protection of Intellectual Property Rights in Nigeria Under this head, we are going to briefly look at: (a) the Nigerian Copyright Commission (NCC); (b) the Nigerian Intellectual Property Office; (c) National Office for Technology Acquisition and Promotion (NOTAP); (d) National Information and Technology Development Agency (NITDA); (e) National Film and Video Censors Board (NFVCB); (f) National Broadcasting Commission (NBC); (g) National Council of Arts and Culture (NCAC); (h) Trade Malpractices Investigation Panel (TMIP); and (i) Federal Competition and Consumer Protection Commission (FCCPC).

The Nigerian Copyright Commission (NCC)

The Nigerian Copyright Commission, originally known as the Nigerian Copyright Council, was established in 1988 under the Nigerian Copyright Decree and was formally inaugurated in August 19th, 1989. It was elevated to the status of a Commission in April, 1996 and so redesigned under the Copyright (Amendment) Decree 1999 and further redefined under the new Copyright Act. By virtue of *section 77* of the Act,¹⁰ "there is hereby established a body to be

² Oyewunmi, A., 'Nigerian Law of Intellectual Property' (2015).

³ Martin, E.A., and Law, J. 'Oxford Dictionary of Law' (6th edition eds) (Oxford University Press 2006) 280.

⁴ Mereth P., 'Intellectual Property Law' (1996).

⁵ Cronish N., 'Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights, 4th edition (1999).

⁶ 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).

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

⁸ UDHR, Article 27.

⁹ ICESCR, Article 27.

¹⁰ Copyright Act.

known as the Nigerian Copyright Commission (in this Act referred to as the Commission)." The Commission shall be a body corporate with perpetual succession; shall have a common seal; may acquire, hold or dispose any interest in property; and may sue and be sued in its corporate name.¹¹

Functions of the Nigerian Copyright Commission (NCC)

The functions of the Nigerian Copyright Commission (NCC) under *section 78 (1)* of the Copyright Act are as follows;

- a) The Commission shall be responsible for all matters affecting copyright including administration, regulation and enforcement in Nigeria;
- b) Monitor and advise Government on Nigeria's position in relation to bilateral and multilateral agreements between Nigeria and any other country;
- c) Investigate and redress cases of infringement of copyright and settle disputes of copyright where those disputes have not been specifically reserved for settlement under this Act;
- d) Enlighten and inform the public on matters relating to copyright;
- e) Create and maintain a register and database relating to copyright works;
- f) Provide access to documents and information relating to any copyright kept or maintained by the commission;
- g) Be responsible for such other matters as relate to copyright in Nigeria; and
- h) Exercise any other functions and duties as may be necessary for the attainment of the object of this Act.

The powers of the Commission are stipulated under section 78(2) and (3) of the Act. The Commission constitutes principal instrument for the realization of the goals, functions and matters of copyright in Nigeria. By this institutional arrangement, the essential elements of practicalizing the new copyright law were effectively put in place.

Benefits of Registration with Nigerian Copyright Commission

Registration of a work with the commission has several advantages, including the following:

1. The record generated by the Commission provides an independent source of verifying data relating to a work or its author to the general public.
2. The acknowledgement certificate issued to the author who notifies the Commission of his work provide prima facie evidence of the facts shown on it.
3. The scheme provides a depository for preserving original copies of works notified.
4. The information and data contained in the Notification database offers reliable rights management information to members of the public and prospective licensees to the work.

One of the statutory functions of the NCC is to maintain an effective data base and register of authors and their works in Nigeria. When one registers one's work with the Commission, it becomes part of the data base and register of copyright authors and works required to be kept by the commission under the Copyright Act, and therefore forms part of a public record. All the information you provide on your copyright registration is available to the public and will be available on the internet. Under the old Copyright Act, it was called database and register.¹² Essentially, this means that relevant information about all copyright works made by Nigerians or non-Nigerians found in Nigeria are to be sourced and kept by the commission. This task when viewed from the perspective that formal registration is not required to confer copyright on work appears to be anomalous.¹³

¹¹ *Ibid*; Section 77 (2).

¹² Section 78 (e) of the Act.

¹³ Ocheme, P.A., "The law and Practice of Copyright in Nigeria" (Zaria, Ahmadu Bello University Press Ltd 2000) 123.

The Nigerian Intellectual Property Office

Also known as the Trademarks, Parents and Designs Registry, the Nigeria Intellectual Property Office (Nigeria IPO) regulates the administrations of Intellectual Property in Nigeria. The IPO is set up as a department under the Ministry of Trade and Investment¹⁴ and is responsible for the management of Trademarks, Parents and Designs applications in Nigeria. These management powers are conferred by the provision of the Trademarks Act,¹⁵ and the Patents and Designs Act.¹⁶ For example, section 2 of the Act¹⁷ provides as follows:

1. *There shall continue to be kept the record called the register of trademarks, in which shall be entered all registered trademarks with the names and addresses of their proprietors, the date on which applicants were made for their registration, notifications of assignments and transmissions the name and addresses of all registered users and such other matters relating to registered marks as may be prescribed.*
2. *The register shall continue to be kept under the control and management of the Registrar at the Registrar's office.*

Earlier, section 1 (1) made a provision for the office of the Registrar wherein it provides that "there shall continue to be an officer known as the Registrar of Trade Marks who shall be appointed by the Federal Civil Service Commission and whose office shall be situated in the Federal Capital Territory, Abuja". Also, section 28(1) of the Patents and Designs Act also provides that "there shall be a Registrar of Patents and Designs who shall be appointed by the Federal Civil Service Commission."

Application for the registration of a trademark may be made by the proprietor or by an agent except in the case of a foreign proprietor where a local agent must be used. Barring all bureaucratic delays at the Registry, the entire process of registering a trademark usually takes about 12 to 18 months. Where the owner of a foreign product intends to import it to the Nigerian market or a foreign business intends to carry on business in Nigeria, it is necessary for the trademark of the product or business to be registered in Nigeria to enable the owner benefit from the exclusive right over the trademark in Nigeria.

National Office for Technology Acquisition and Promotion (NOTAP)

The National Office for Technology Acquisition and Promotion (NOTAP) was established in 1979. The functions of NOTAP are as provided for in section 4 of the NOTAP Act.¹⁸ The Act provides among other things, that the functions of NOTAP shall include:

The registration of all contracts or agreements having effect in Nigeria on the date of the coming into force of this Act, and all contracts and agreements hereafter entered into, for the transfer of foreign technology to Nigerian parties; and without prejudice to the generality of the foregoing, every such contractor agreement shall be so registrable if its purpose or intent is, in the opinion of the National Office, wholly or partially for or in connection with any of the following purposes, that is to say: the right to use patented inventions.¹⁹

¹⁴ (Formerly Ministry of Trade and Commerce)

¹⁵ Sections 1 and 2 of the Trademarks Act, Cap T13, LFN, 2004.

¹⁶ Section 28 of the Patents and Designs Act.

¹⁷ Trade Marks Act.

¹⁸ National Office for Technology Acquisition and Promotion Act, Cap N62, LFN, 2004.

¹⁹ S 4(d)(ii) of the NOTAP Act.

Furthermore, *section 5(2)* makes it mandatory that every agreement entered into by any person in Nigeria with another person outside Nigeria in relation to any matter referred to in *section 4(d)* of the Act, to be registered with the National Office of NOTAP in the prescribed manner not later than sixty days from the execution or conclusion of the said contract.²⁰ Thus, it can be seen that NOTAP systemically tracks the inflow of technology into Nigeria and strategizes for its adaptation and domestication. It also coordinates Nigeria's initiatives in technology transfers; evaluation and registration of technology transfer agreement; promotion of innovation, patenting and intellectual property; technology advisory and support services; commercialization of Research and Development (R & D) results; research industry linkage; production of compendium management information system, etc. NOTAP serves as a functional bridge in sustaining the link between the research community and industry, thus making it a strong anchor for simulating national development.²¹

National Information and Technology Development Agency (NITDA)

Section 6 of the NITDA Act tasks NITDA to among others create a framework for the I planning, research, development, standardization, application, coordination, monitoring, valuation and regulation of information technology practices, activities and systems in Nigeria; provide universal access for information technology and systems penetration in rural, urban and under-served areas; develop guidelines for the standardization and certification of information technology escrow source code and object code domiciliation, application and delivery systems in Nigeria.²²

In pursuance to its statutory functions, NITDA maintains and operates the '.gov.ng' domain name in Nigeria. In this connection, NITDA (in cooperation with the Nigerian Internet Registration Association- NIRA) is responsible for the registration of users²³ of the domain name. It is also responsible as a forum of first instance where parties cannot settle for the resolution of disputes arising from the use of the domain name.²⁴

National Film and Video Censors Board (NFVCB).

The National Film and Video Censors Board was established by Act²⁵ as the official regulatory agency for the film and video industry in Nigeria. It provides that there shall be a body to be known as the National Film and Video Censors Board which shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.²⁶ On the functions of the Board, *section 2* of the Act provide thus:

It shall be the duty of the Board:

To licensed:

- i. A person to exhibit film and video works;
- ii. A premises for the purposes of exhibiting films and video works;

²⁰ *Ibid*; section 5(2).

²¹ In furtherance to its mandate under the Act, NOTAP has among others so far embellished over 40 Intellectual Property and Technology Transfer Offices (IPTTOS) in tertiary institutions in Nigeria. It also runs very vibrant intellectual property commercialization and technology transfer services.

NOTAP <https://www.notap.gov.ng> accessed 14 February, 2022.

²² NITDA, 'Service' <https://nitda.gov.ng/gov-ng-domain-registration/> accessed 10 June, 2022.

²³ Mainly Federal, State and Local Government Agencies.

²⁴ NITDA/NIRA, 'Gov.ng Domain Management Guide' <https://www.naira.org.ng/images/pdf/Government-domain-guidelines.pdf> accessed 27 June, 2022.

²⁵ No. 85 of 1993.

²⁶ S 1 of the National Film Video Censor Board Act, N0 85, 1993.

- iii. To censor films and video works;
- iv. To regulate and prescribe safety precautions to be observed in licensed premises;
- v. To regulate and control cinematographic exhibitions; and
- vi. To perform such other functions as are necessary or expedient for the full discharge of all any of the functions conferred on it by this Act.

Thus, the Board censors, classifies and rates both films and videos works produced in Nigeria, and foreign films and videos works imported for the Nigerian market. The Board also licenses and registers all film and video outlets across Nigeria and keeps a register of the registered outlets among other functions.²⁷

National Broadcasting Commission (NBC)

The National Broadcasting Commission Law of the Federation 2004 set up the NBC which is tasked by *section 2* of the Act to among others, regulate and control the Nigerian broadcast industry; undertake research and development in the broadcast industry; receive, process and consider applications for the ownership of radio and television stations, including cable television services, direct satellite broadcast and any other medium of broadcasting and to recommend applications through the Minister to the President, for the grant of radio and television license. The NBC is also enjoined to promote Nigerian indigenous cultures, moral and community life through broadcasting. In this connection, the NBC's role seems to align with the functions of the NCAC.

National Council of Arts and Culture (NCAC)

NCAC was established by Decree No. 3 of 1975 and amended by Decree No. 5 of 1987.²⁸ The NCAC is empowered among others to promote and foster the appreciation, revival and development of Nigerian arts and culture; foster the development of literary, visual and the performing arts in Nigeria; assist the National Commission for Museums and Monuments (NCMM) in the creation, acquisition and preservation of artistic works, cultural monuments and depositories; organize and promote exhibitions in visual, performing and literary art; and to promote the development of music, traditional dancing, drama, opera, cinema, films, photography, folklore, oral tradition, literature, poetry, painting, sculpture, architecture, town planning and general arts, woodwork, embroidery, weaving and similar crafts.²⁹

Trade Malpractices Investigation Panel (TMIP)

The TMIP was established by *section 2* of the Trade Malpractices Miscellaneous Offences Act 1992, to investigate offences under the Act and report its finding to the Attorney General of the Federation for prosecution. By virtue of *section 1* of the Act,³⁰ the offences include the labeling, packaging, selling, offering for sale or advertising of any product that is false or misleading or likely to create a wrong impression as to the character, quality, brand name, value, composition, merit or safety of the product.

Federal Competition and Consumer Protection Commission (FCCPC)

²⁷ Under section e 2 of the NFVCB Act, the NFVCB is empowered among others to license persons to exhibit films and video works in Nigeria; license premises for the purpose of exhibiting films and video works in Nigeria; censor films and video works in Nigeria; regulate and prescribe safety precautions to be observed in licensed premises; and regulate and control cinematographic exhibitions.

²⁸ Now Cap. 25 Laws of the Federation of Nigeria, 2004.

²⁹ NCAC, 'About us' <https://www.ncac.gov.ng/aboutus/> accessed June, 2022.

³⁰ Trade Malpractices (Miscellaneous Offences) Act 1992 N0. 67.

The FCCPC is the foremost competition and consumer protection authority in Nigeria. The commission was established by the Federal Competition and Consumer Protection Act 2018 to among others develop and promote fair, efficient and competitive market in the Nigerian economy, facilitate access by all citizens to safe products, and secure the protection of rights for all consumers in Nigeria.³¹ In terms of *section 17* of the FCCPC Act, the functions of the FCCPC include; to initiate broad-based policies and review economic activities in Nigeria; to identify anti-competitive and anti-consumer protection and restrictive practices which may adversely affect the economic interest of consumers; eliminate anti-competitive agreements, misleading, unfair, deceptive or unconscionable marketing, trading and business practices; regulate and seek ways of removing from the market hazardous goods and services and cause offenders to replace such goods and services with safer and more appropriate alternatives; and to encourage trade industry and professional association to develop and enforce quality standards designed to safeguard consumers within their various fields the areas of intellectual property.³²

Conclusion

We have by this article been able to look at national institutional framework for protection of intellectual property rights in Nigeria. We were able to look at: (a) the Nigerian Copyright Commission (NCC); (b) the Nigerian Intellectual Property Office; (c) National Office for Technology Acquisition and Promotion (NOTAP); (d) National Information and Technology Development Agency (NITDA); (e) National Film and Video Censors Board (NFVCB); (f) National Broadcasting Commission (NBC); (g) National Council of Arts and Culture (NCAC); (h) Trade Malpractices Investigation Panel (TMIP); and (i) Federal Competition and Consumer Protection Commission (FCCPC). This has gone a long way in better understanding of the national institutional framework for protection of intellectual property rights in Nigeria.

³¹ FCCPC, <https://www.fccpc.gov.ng/about/commission/> accessed 24 July, 2022.

³² Okorie, C. I., 'An analysis of the IP related provisions of the Nigerian Federal Competition and Consumer Protection Act 2018' (2019) 14(8) Journal of Intellectual Property Law and Practice, 613-621.