

## COPYRIGHT ENFORCEMENT ON THE INTERNET: AN APPRAISAL OF THE COPYRIGHT LAWS OF NIGERIA AND THE UNITED STATES OF AMERICA\*

### Abstract

*The emergence of Multimedia and the Internet led to the upsurge in the creation of works, the use of the Internet and Copyright infringement. The type of unfettered access to copyrightable works afforded by Multimedia and the Internet is detrimental to the right owners upon whom the Copyright Laws conferred a bundle of monopoly rights in relation to their works to encourage authors to create more works. However, the laws encourage public interest right of access to copyrightable works for advancement of knowledge and information. This is achievable through the creation of exceptions to copyright control which tend to strike a balance between the authors' rights and the interest of the public at large. This long existing rule has been distorted by digitalization and the Internet which created more access to copyrightable works; in most cases, unauthorized access; and at the same time defy the traditional Copyright Enforcement Mechanisms. Copyright Laws have since then embraced technological protective measures in relation to these works in the face of the legal uncertainties and a number of lacunae inherent in the obsolete Copyright Laws, especially those of Nigeria, which were oriented towards analogue exploitative technologies. It is envisaged that the continued use of these technological protective measures which most often do not admit of fair use of protected works, will end creativity. This work examined the Copyright Acts of Nigeria, the United States of America and other Copyright related Instruments in order to discover the impact of the use of multimedia and the Internet on Copyright enforcement. Recommendations were made on the ways to promote effective Copyright enforcement and at the same time promote fair use of Internet based works without infringing the rights conferred on authors.*

**Keywords:** Copyright, Enforcement, Internet, Nigeria, United States of America

### 1. Introduction

Copyright protection provides a property in original copyright creations and gives creators control of the creation they contributed to the society. These monopoly rights granted to creators is for a set period of time in relation to such creation/work. In doing so, Copyright Laws promote public welfare by encouraging the production and distribution of new works for public use. However, the emergence of Multimedia and the Internet threw off balance the analogue exploitative technologies; and Copyright Enforcement Mechanism and thereby utterly destroyed the traditional balance between the rights of authors and the public interest right of access to copyrightable works through fair use. This prompted the emergence of Copyright Laws which provide for the use of technological devices to protect digitized works. Most times, these devices do not admit of fair use, thus threatening the existence of creativity. This work will examine the rights conferred on Copyright owners, Multimedia works and the Internet. It will also x-ray the challenges encountered during Copyright enforcement on the Internet and made recommendations on the ways to overcome these challenges.

### 2. Definition of Relevant Terms

Copyright has been aptly defined as 'the right to copy; specifically, a property right in an original work of authorship, including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and architectural works; motion pictures and other audiovisual works; and sound recordings, fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work'.<sup>1</sup> On the other hand, Computer has been defined as 'a machine which can accept data in a prescribed form, process the data and supply results of the processing on a specified format as information or as signals to control automatically some further machine or process'.<sup>2</sup> 'Enforcement' is defined as 'the act or process of compelling compliance with a Law, mandate, command, decree or agreement'.<sup>3</sup> 'Infringement' is defined as 'an act that interferes with one of the exclusive rights of a Patent, Copyright or Trademark owner'.<sup>4</sup> 'Internet' is defined as 'a computer system that allows millions of computer users around the world to exchange information'<sup>5</sup> lastly, the

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<sup>1</sup> B Garner, *Black's Law Dictionary* (9<sup>th</sup> edn, United States of America: Thomas Reuters, 2009). p.366.

<sup>2</sup> M Ozioko, 'Emergence of Digital Technology: Implication for Copyright Protection in Nigeria', *UNIZIK Law Journal*, Vol 7 No. 1 2010.p. 245.

<sup>3</sup> C Bailey, 'Strong Copyright + DRM + Weak Net Neutrality = Digital Distopia?' *Information Technology & Libraries* 25, No. 3, (Summer 2006) p.11.

<sup>4</sup> B Garner, *Black's Law Dictionary*, Op. Cit. p. 851.

<sup>5</sup> A. Gadsby, *Longman Dictionary of Contemporary English*, (Edinburgh. Pearson Education Limited, 2007) p.85.

term 'Multimedia' refers to a wide span of technologies which provides an information pull accessible to the computers of average consumers especially through the creation of Information superhighway.<sup>6</sup>

### 3. Rights conferred on Copyright Owners

The Nigerian Copyright Act confers on authors some exploitative rights such as the right to reproduce, distribute, display or perform the protected work, or to make derivative work therefrom, in relation to their works, subject to the exceptions specified in the Second Schedule to the Act.<sup>7</sup> The owner's right to control the doing of any of the above mentioned acts extends to the whole or a substantial part of the work either in its original form, or in any form recognizably derived from the originals.<sup>8</sup> Similarly, the author of an architectural work has the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form, or in any form recognizable derived from the original, but not the right to control the reconstruction in the same style as the original of a building to which the Copyright relates.<sup>9</sup> Furthermore, Copyright in a sound recording shall be the exclusive right to control in Nigeria, the direct or indirect reproduction, broadcasting or communication to the public of the whole or a substantial part of the recording either in its original form or in any form recognizably derived from the original; the distribution to the public for commercial purposes of copies of the work by way of rental, lease, hire, loan or similar arrangement.<sup>10</sup> The rights enjoyed by Copyright owners of broadcasts are similar to the rights enjoyed by authors of other works considered and includes the recording and the re-broadcasting of the whole or a substantial part of the broadcast.<sup>11</sup> Again, Copyright in television broadcast shall be the exclusive right to control the taking of still photographs from the broadcast.<sup>12</sup>

### 4. Multimedia and the Internet

The development of 'Multimedia', which is a convergence of technologies from which many information technology products have emerged, has given rise to a wide range of possibilities hitherto achievable in the information and technological sector.<sup>13</sup> This new possibility of amalgamating or combining a diversity of both traditional and entrepreneurial works into one multimedia work seems to compound existing forms and categories of copyright. For instance, Compton's encyclopedia consisting of 9 million words of text, 15,000 still images, 45 moving image sequences and 60 audio minutes has been put on one CD-ROM disk.<sup>14</sup> It has been reported that a Diet Coke's commercial was made in which actors Humphrey Bogart and James Cagney; and the Musician Louis Armstrong joined Elton John and other actors were in a bar.<sup>15</sup> Bogart was in actual fact not present at the scene because he was dead and buried at that time. Furthermore, with modern media technology, works or portions thereof can be altered. For instance, there is multimedia type of application is 'colorization' which is a process that facilitates the conversion of films initially shot in black and white to be altered such that they seem to have been shot in colour.<sup>16</sup> Similarly, the development of the Internet in the 1980s and the growth of online services such as the World Wide Web,<sup>17</sup> Electronic Mail, and File Transfer Protocol Servers;<sup>18</sup> coupled with other digital technologies that enable very easy reproduction and worldwide dissemination of multimedia/digitized works in high speed quantities with almost no expenses and loss of quality has led to the upsurge in Online copyright infringement. Moreover, because of specific and innovative nature of the Internet, the process could hardly be controlled by the Copyright holders. Music file, video record, visual or literary works can now be obtained for free and without the license given by the right holder. Same can be and transferred to a user thousands of miles away. Furthermore, the fact that the Internet connects Information Centres around the world led to the astounding amount of information and the number of users on the internet. According to Cerf, over 22,000 networks are connected to the Internet in one hundred and thirty-seven countries.<sup>19</sup> It has been stated that while the National Science Foundation alone logs eight terabytes of information transferred per month, the estimate of the number

<sup>6</sup> M Ozioko, 'Emergence of Digital Technology: Implication for Copyright Protection in Nigeria', *Op. Cit.* p.248.

<sup>7</sup> *Ibid.* Section 6.

<sup>8</sup> *Ibid.* Subsection (2).

<sup>9</sup> *Ibid.* Section 8.

<sup>10</sup> *Ibid.* Section 7.

<sup>11</sup> *Ibid.* Section 8.

<sup>12</sup> *Ibid.* Subsection (2).

<sup>13</sup> M Ozioko, 'Emergence of Digital Technology: Implication for Copyright Protection in Nigeria', *UNIZIK Law Journal*, Vol 7 No. 1 2010.p. 65.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Hereinafter referred to as 'WWW'.

<sup>18</sup> Hereinafter referred to as 'FTP'.

<sup>19</sup> V Cerf, Address delivered at the online 93 CD – Rom Conference Exposition (Nov. 1, 1993), quoted by M Charles, (1995) National and International Copyright Liability for Electronic System Operations, *Indian Journal of Global Legal Studies*, Vol. 2: ISS.2, Article 8. p.497.

of people using the Internet are as high as 30 million.<sup>20</sup> These activities associated with the Internet are made possible through System Operators<sup>21</sup> who run these computer systems and make information available on the superhighway. These Sysops are also responsible for monitoring the activities on their systems as well as controlling the types of information present.<sup>22</sup> The Copyright consequences of operations on the Internet may be tabulated as follows:<sup>23</sup>

- i). the digitization of a Copyright work for the purpose of storage in computer- held databases linked to the internet;
- ii). the actual storage of the Copyright work in the computer- based data bases;
- ii). the act of downloading or uploading of such working computer based databases whether intentionally;
- iv). exploiting or appropriating the work, for example, making copies or reproduction, giving public performance of the work etc, without the consent or authorization of the Copyright owner.

It has been observed that one of the main characteristics of digital exploitation of works is that it is not limited to one single national territory but in many cases, crosses borders.<sup>24</sup> Cate aptly observed that:<sup>25</sup>

Digital information not only ignores national borders, but also those of states, territories and even individual institutions... governments are finding it increasingly difficult, and in some cases impossible to regulate information effectively, at the very time that the economic power of information is increasing the political pressure for them to do so. The globalization of information may be rendering the traditional concept of sovereignty of the nation states obsolete.

Today, softwares are transported to a computer user through the interstate telephone lines of the WWW, just as it can travel on the interstate highways in the back of a truck to a computer store and the eventual end user.<sup>26</sup> In this manner, the Internet through the highways, serves the same purpose of moving goods across state lines. For instance, it is easy for a person in Owerri, Imo State to access a FTP location in Canada at the touch of a button. Again, most Educational Institutions have access to the Internet or other computer networks at their Schools through which they send out assignments; and even conduct examinations or other related exercises over the e-mail.<sup>27</sup> Besides, most Educational Institutions and many other Corporations that are connected to the Internet networks allow their staff, customers and visitors to access these resources *via wifi*, while sitting at their desks. For instance, 'Libraries without walls' allow people to use materials such as magazines, journals, or newspaper; search card catalogs; or read books *via* their home computers.<sup>28</sup> Similarly, electronic communications now aid scientists all over the world to cooperate on research and share ideas in ways that were never feasible before.<sup>29</sup> Electronic communication has since spread to other areas of academia, which have utilized this new spread and access to create public forums where a diversity of views can be heard and discussed.

## 5. Copyright Infringement

Ordinarily, primary infringement of Copyright occurs when any person without the license or authorization of the Copyright owner, does or causes any other person to do any of the acts reserved to the Copyright owner.<sup>30</sup> On the other hand, secondary infringement of Copyright includes doing the following acts without the authority of the right owner: importing 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;<sup>31</sup> unauthorized exhibition,<sup>32</sup> distribution by way of trade, offering for sale, hire or otherwise or for any purpose prejudicial to the right owner;<sup>33</sup> making or being in possession of plates,

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<sup>20</sup> F Vizard, Building the Information Superhighway that Promised to Revolutionize Communication – and the Way We All Live, *POPULAR MECHANICS*, Jan., 1994, at 28, 32.

<sup>21</sup> Hereinafter referred to as 'Sysops'.

<sup>22</sup> M Charles, (1995) National and International Copyright Liability for Electronic System Operations, *op.cit.* p.503.

<sup>23</sup> M Olueze, *Copyright Law* (Lagos: Maglink International Ltd. 1998) p.11.

<sup>24</sup> *ACLU v RENO*, *supra*, 354.

<sup>25</sup> F Cate: 'Introduction: Sovereignty and the globalization of intellectual property' *Indiana Journal of Global Legal Studies*. Vol. 6. No. 1 at <<http://ijgls.indiana.edu/archive/06/01/cate.shtml>> Accessed 30/03/2020.

<sup>26</sup> *Ibid.*

<sup>27</sup> M Charles, (1995) National and International Copyright Liability for Electronic System Operations, *op.cit.* p.503.

<sup>28</sup> A Chapin, 'The Internet Architecture Board and the Future of the Internet', *EDUCOM Rev.*, Sept/Oct. 1992, p.42.

<sup>29</sup> *Ibid.*

<sup>30</sup> C.R.A.N. Section 15 (1) (a).

<sup>31</sup> *Ibid.* Paragraph (b).

<sup>32</sup> *Ibid.* Paragraph (c).

<sup>33</sup> *Ibid.* Paragraph (d).

master tapes, machines, equipment or contrivances used for the purpose of making infringing copies of a work;<sup>34</sup> permitting a place of public entertainment or of business to be used for a performance to the public of the work, where the performance constitutes an infringement in the work, unless the person permitting the place to be used was not aware and has no reasonable ground for suspecting that the performance would be an infringement of the Copyright in such work;<sup>35</sup> and performing or causing 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.<sup>36</sup> Similarly, criminal infringement of Copyright occurs when a person, without the authority of the Copyright owner does any of the acts discussed above in relation to secondary infringement.<sup>37</sup>

## 6. Copyright Enforcement on the Internet: The Challenges

The Copyright Laws of the jurisdictions under consideration put in place proper Enforcement Mechanisms for the effective implementation and administration of Copyright. These Enforcement Mechanisms include: Nigeria Copyright Commission, Copyrights Inspectors, Copyrights Licensing Panel, Collecting Societies, Department of Customs and Excise, Police, Copyright Office, and the Courts. However, because of the aforesaid activities associated with the Internet and Multimedia, coupled with the fact that Copyright enforcement is territorial; these traditional Enforcement Mechanisms succumbed to the challenges posed by these developments. The need for an enforcement mechanism that will remedy these anomalies fostered the development of the Digital Rights Management system<sup>38</sup> which enabled right holders to physically control access and use of a work made available online. DRM usually make use of technological measures such as Encryption and Watermarking techniques to protect digital media. Unfortunately, these measures/devices do not admit of fair use of protected works. The challenges encountered in Copyright enforcement shall be discussed below.

### Determination of Online Infringement Liability

It must be stated that in determining Copyright infringement liability on the Internet, some critical issues have to be revolved; ranging from how to identify or determine what constitutes unauthorized exploitation of works *vide* the Internet, to who may be liable therefor; how will liability be determined in the long chain of information transmission ranging from content provider *via* several service providers, Network Operators and Access Providers to the end user?<sup>39</sup> Olueze submitted that:<sup>40</sup>

where a Site Operator merely hyperlinks to another website which has obtained the license of the owner of Copyright in respect of a work to post the work on the Internet, it poses some difficulties to ascertain who is guilty for Copyright infringement. Is it the Site Operator who posted or uploaded that work on the internet; or the Manager of the website, or the Internet service provider?

Furthermore, it is often difficult to ascertain which activities or operations that amount to Copyright infringement on the Internet.<sup>41</sup> *Assafa* questioned whether the storage of information in a database placed at the disposal of those with the means of access constitutes publication?<sup>42</sup> It is submitted that the answer should be in the affirmative considering the authority of *Playboy Enterprise v Frena*,<sup>43</sup> where an Electronic Bulletin Board Operator was held liable for Copyright Infringement of magazine pictures that had been put online. The operator did not know that the pictures were online, and actually deleted them as soon as he became aware of the infringement; although at that time, other people had loaded these pictures. However, it has been observed that despite this authority, the Courts reach various conclusions when dealing with the liability for the posting and uploading of materials on the internet depending on the facts of the case.<sup>44</sup> For instance, while some Courts found liability where a person merely created and managed a Bulletin Board onto which infringing materials are posted by others without the knowledge of the Bulletin Board Operator, others require something more than mere creation of the forum in order to impose liability. Moreso, other decisions have declined to find liability due to traditional Copyright

<sup>34</sup> *Ibid.* C.R.A.N. Section 15 (1) (e).

<sup>35</sup> *Ibid.* Paragraph (f).

<sup>36</sup> *Ibid.* Paragraph (g).

<sup>37</sup> *Ibid.* Section 20 (1) (a)-(c).

<sup>38</sup> Hereinafter referred to as 'DRM'

<sup>39</sup> M Ozioko, 'Copyright Provisions Impacting on Access to knowledge: A Comparative Analysis', *UNIZIK Law Journal*, Vol 7 No. 1 2010.P. 65.

<sup>40</sup> M Olueze, *Copyright Law* (Lagos: Maglink International Ltd. 1998) p.11.

<sup>41</sup> *Ibid.*

<sup>42</sup> Assafa Endeshaw, 'Reconfiguring Intellectual Property for the Information Age: Towards Information Property', <http://iissrn.com/abstract=461180> Access on 10/04/2020.

<sup>43</sup> 839 F. Supp. 1552 (M.D. Fla. 1993).

<sup>44</sup> Don Martens & S Halpern, 'Copyright Law in Cyberspace', *International Business Lawyers*, April 1999 Vol. 27. No. 4. p.152.

defences such as fair use.<sup>45</sup> In *Marobie-FL Inc.v National Association of Fire Equipment Distributors*,<sup>46</sup> the plaintiff sued the defendant for unauthorized copying of its clip art and joined the Online Service Provider, Northwest Nexus Inc. The court held that the service provider, by merely providing the facilities for public use by third parties was not liable to the plaintiff for the copyright infringement act of the defendant. It is submitted with the greatest respect that this decision was reached in error and should not be relied upon in Nigeria, at least. This is because it runs contrary to the express provisions of the Nigerian Copyright Act which renders the unauthorized usurpation of the author's exploitative rights of production, reproduction, publication, copying, etc, or cause any other to do any of these acts, a strict liability offence.<sup>47</sup>

### **Authorship and Copyrightability of Multimedia Works**

The new possibility of amalgamating or combining a diversity of both traditional and entrepreneurial works into one multimedia work seems to compound existing problems in Copyright infringement cases. It was stated earlier in this work that Compton's Encyclopedia which consists of 9 million words of text, 15,000 still images, 45 moving image sequences, and 60 audio minutes has been put on one CD-ROM disk. If peradventure infringement arises in relation to such work, confusion/injustice may ensue as to what kind of protection will be accorded the work. This is because under the Nigerian Copyright Act for instance, the 9 million words of text will be protected as literary works; the photographs as artistic works; the 45 moving-image sequences as cinematograph films; the 60 audio minutes will be covered by copyright in sound recordings, while the underlying computer programs will also enjoy protection as literary works. Besides, the duration of protection for each of these works will vary with their nature. Similarly, enforcement problems usually occur in infringement cases where modern media technology is used to create works or alter portions thereof. For instance, the afore mentioned Diet Coke's commercial wherein the actors Humphrey Bogart, James Cagney; the musician Louis Armstrong, Elton John and other actors participated. Same situation may occur in works subject of 'Colorization' earlier discussed in this work. It is not in doubt that since multimedia work is a derivative work, it will enjoy Copyright protection depending on the nature the work substantially takes. This protection extends only to the original contribution of the maker. However, the maker of such work must necessarily seek the consent of the original author of the work. However, the parameters for determining the quantum of such original content in order to attract protection for the end product might be difficult to determine. This is because the Copyright Acts under consideration do not provide for separate protection of a work made up of a combination of other protectable works, as distinct from the protection afforded to constituent works. This development necessitates urgent amendment of the Nigerian and U.S. Copyright Acts to provide that a protectable work can consist of the combination or merger of different individual works. This will ensure that the prerequisites for protection are not examined separately but in relation to the multimedia work as a whole.

### **Jurisdictional Challenges**

It has been observed that one of the main characteristics of digital exploitation of works is that it is not limited to one single national territory but in many cases, crosses borders.<sup>48</sup> Cate aptly observed that:<sup>49</sup>

Digital information not only ignores national borders, but also those of states, territories and even individual institutions... governments are finding it increasingly difficult, and in some cases impossible to regulate information effectively, at the very time that the economic power of information is increasing the political pressure for them to do so. The globalization of information may be rendering the traditional concept of sovereignty of the nation states obsolete.

It is not in doubt that the Courts have proven to be the most effective Copyright Enforcement Mechanisms. In the jurisdictions under consideration, the Courts are empowered to exercise jurisdictions over Copyright cases in their respective geographic enclaves.<sup>50</sup> Thus, unlike Criminal Law which can be enforced internationally through the International Criminal Court, the jurisdiction to entertain Copyright matters is territorially limited. Furthermore, there is no *sui generis* Copyright Law between countries.<sup>51</sup> Although there are bilateral and multilateral Copyright Treaties such as the Berne Convention and Universal Copyright Convention, there is no International Copyright Agreement on electronic medium. This development has left authors with no choice than to fold their hands and

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<sup>45</sup> *Ibid.*

<sup>46</sup> 983 F. Supp. 11167, 45 US PQ 2d. 1236.

<sup>47</sup> C.R.A.N. Section 15 (1) (a).

<sup>48</sup> *ACLU v RENO*, *supra*, 354.

<sup>49</sup> F Cate: 'Introduction: Sovereignty and the globalization of intellectual property' *Indiana Journal of Global Legal Studies*. Vol. 6. No. 1 at <<http://ijgls.indiana.edu/archive/06/01/cate.shtml>> Accessed 30/03/2020.

<sup>50</sup> Sections 251 (1) (f) & 251 (3) 1999 Constitution of Nigeria (as amended), C.R.A.N. Section 46; C.D.P.A. Section 115 (1).

<sup>51</sup> M Boguslavsky, Copyright in International Relations: International Protection of Literary and Scientific Works, quoted by M Charles, '(1995) National and International Copyright Liability for Electronic System Operations', *Op. Cit.* p.512.

watch extra territorial infringement of their works go on unabated. It is submitted that Copyright being a natural right attached to work upon creation, there is need to jealously guard this right, especially now that reciprocal enforcement of Copyright through Conventions is not yielding the desired fruits. It is suggested that Regional and International Copyright Courts be established through Convention, to tackle Trans National border piracy.

### Challenges Associated with the Use of Technological Protective Devices

It was earlier stated in this work that because of the aforesaid activates associated with the Internet, the traditional Enforcement Mechanisms failed. This prompted the development of Digital Rights Management system<sup>52</sup> which enabled right holders to physically control access and use of a work made available online. DRM usually make use of technological measures such as Encryption and Watermarking techniques to protect digital media. Digital Watermarking is a promising technology that supports Copyright information such as the owner's identity transaction dates, and serial numbers to be embedded as unperceivable signals into digital contents.<sup>53</sup> Apart from these technological protective devices, certain types of technological enforcement mechanisms have emerged to deal with the problem of sovereignty and jurisdiction. These include the creation of electronic borders around a state to secure compliance with laws and policies; imposition of electronic blockades; and the imposition of electronic sanctions to punish violators.<sup>54</sup> Electronic borders entail the blocking of states of outsiders from entering the state online through packet interception of filtering.<sup>55</sup> Nowadays, Countries such as China and Saudi Arabia have established the equivalent of online national borders by requiring service providers to filter Internet traffic.<sup>56</sup> These electronic borders replicate general national boundaries on the Internet. By creating an electronic boarder, a state prevents communication with prospective offenders and isolates those offenders outside the state.<sup>57</sup> As a corollary to an electronic Internet border, states may initiate police action to stop an offender's transmission from going outside the offender's country.<sup>58</sup> This type of blockade bars an offender from participating on the Internet outside his country as if he is under incarceration or home confinement. By so doing, the enforcing state creates an electronic prison that is co-extensive with the host country. Furthermore, states may electronically sanction offenders by using technological means to penalize or destroy the offender's online resources.<sup>59</sup> Such sanctions may include denial of service or seizure of offender's web pages, or indeed crippling of the offender's host server. Recently, the Association of American Publishers proposed the use of a digital object identifier system to indicate the origin and ownership of online material, as well as copyright restrictions those accessing it are subject to'.<sup>60</sup> A tag is thus placed in the online material such as books or articles, and accepted by users clicking on an icon which would transport them to the relevant publisher's homepage.<sup>61</sup>

Today most Nations of the world have authorized the use of technological protective devices and even criminalized their circumvention. For instance, the Nigerian Copyright Act authorizes the use of same and confers on the Nigerian Copyright Commission, the authority to prescribe any design, label, mark, impression or any other anti-piracy device for use on, in, or in connection with any work in which Copyright subsists.<sup>62</sup> The Act contains provisions barring the importation into Nigeria, or being in possession of any anti-piracy device, or any machine, instrument or other contrivance intended for use in the production of the anti-piracy device.<sup>63</sup> In the United States, the Digital Millennium Copyright Act has amended the U.S. Copyright Act<sup>64</sup> to gives Internet Service Providers protection from liability against claims of Copyright infringement concerning material residing at the direction of a user or subscriber on their systems or networks; or arising from infringing materials that a third party routes through their servers in return for making it easier for an infringement claim to be made, and acting expeditiously

<sup>52</sup> Hereinafter referred to as 'DRM'.

<sup>53</sup> Kuma et al, 'Staffing Scheme for Copyright Protection in Multimedia', *International Journal of Network Security & Its Applications (IJNSA)*, Vol. 3. No.2, March 2011, p.135.

<sup>54</sup> M Ozioko, 'Emergence of Digital Technology: Implication for Copyright Protection in Nigeria', *Op. Cit.* 265.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, p.266.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> M Henry, Image 'Watermarking Hidden Bits: A Survey of Techniques For Digital Watermarking' <http://www.vu.union.edu/shoemakc/watermarking/html>. Accessed 12/04/2020.

<sup>60</sup> Assafa Endeshaw, 'Reconfiguring Intellectual Property for the Information Age: Towards Information Property'. *Op. Cit.* p. 20.

<sup>61</sup> *Ibid.*

<sup>62</sup> C.R.A.N. Section 20 (1).

<sup>63</sup> *Ibid.* Subsection (3).

<sup>64</sup> Online Copyright Infringement Liability Limitation Act which is part of Digital Millennium Copyright Act, 1998 of the United States of America, hereinafter referred to as 'DMCA', 1998, amended the U.S. Copyright Act, 1976 by introducing section 512 thereto.

to remove or disable access to the infringing material.<sup>65</sup> However, like the Nigerian Act, the U.S. Act does not enumerate the type of technological protective devices to be used in the United States.

There is no gain saying that the technical protection of works has vast negative implications on Copyright in that it does not allow fair use of works. Whilst the rationale for effective Copyright enforcement cannot be debated, the damage of legitimizing over restrictive Copyrights Management Systems will eventually kill creativity. It is therefore recommended that the Nigeria Act, which does not admit of fair use of technologically protected works, be amended to provide otherwise. This will help eliminate the hardship encountered by fair users of protected works.

## **7. Conclusion and Recommendations**

It is concluded that both the Nigerian and U.S. Acts failed to consider the challenges faced in the enforcement of Copyright in relation to internet-based works. The only remedial step these Acts took with respect to online piracy was to provide for the use of technological protective devices on digitized works without prescribing the type of technological devices to be used in these jurisdictions. Most unfortunately, these Acts have not addressed the issue of territorial enforcement of Copyright which led to the upsurge of infringement on the Internet. It is also concluded that the Copyright Act of Nigeria is obsolete. It has not done enough to enhance Copyright protection and enforcement in relation to Internet based works. This is because, unlike the U.S. Act, the analogue oriented Copyright Act of Nigeria failed to consider online exploitative techniques which threw off balance the original balance between the enjoyments of the rights conferred on authors, and the public interest of right of access to works.

There are a good number of steps that could be taken to the challenges facing Copyright enforcement on the Internet. It is recommended that the Copyrights Act of Nigeria and United States be amended to prescribe the type of anti piracy devices to be used in these jurisdictions. The Amended Nigerian Act should fully incorporate the afore discussed Copyright friendly provisions of D.M.C.A. and the Online Copyright Infringement Liability Limitation Act of the United States in relation to the use of anti-piracy devices and fair use of technologically protected works. There is also the need to introduce a Copyright Enforcement Units as a Department in each of the Law Enforcement Agencies in the jurisdictions considered, such as the Police, Civil Defence Corps, the Customs Service, State Security Services, the Army, Navy, Air Force, as well as the International Police. Again, adequate Copyright awareness should be created to educate the populace, Internet users and Law Enforcement Agencies on Copyright matters and the *modus operandi* of technological protection mechanisms and the circumvention of protective devices on grounds of fair use. Enlightenment and awareness campaigns should also be organized through commercial ringlets and advertisement in televisions and radios, seminars, workshops, conferences, and by the introduction of Copyright as a course in the curricula of Primary, Secondary and Tertiary Institutions. Above all, Municipal and International Copyright Courts saddled with the responsibilities of discharging expeditiously cases relating to Copyright, in the manner adopted by the International Criminal Courts in cases involving Copyright matters, should be established. Copyright Courts' Enforcement Rules should also be made to aid the proceedings in Copyright matters in these Courts as the case may be.

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<sup>65</sup> United States Copyright Act, section 512.