

DIGITAL INFRINGEMENT AND ADMINISTRATION OF COPYRIGHT IN NIGERIA***Abstract**

Copyright as the creation of statute is protective. It is a personal non-tangible right vested in an author, holder, and/or owner (originator or creator) with exclusive right in relation to such eligible work, provided the work, is fixed in a definite medium of expression (now known or later to be developed) from which it may be perceived, reproduced, or communicated either directly or by means of a machine or other device, which right does not remain in perpetuity. Being that technologies that raises issues for copyright are those related to storage, identification and transmission or distribution of works held in digital format, this paper makes the assertion that the need for copyright protection cannot be over emphasized, more so, now it is no more in issue that digital technology is a threat and indeed has threatened through infringing techniques, the conventional modes of enforcement and administration of copyright. Several amendments and regulations introduced over the years, and those yet to be introduced, to address these shortcomings is a pointer to the fact of the existence of these challenges. The draft copyright bill 2015 if enacted, its provisions may beam array of hope for enforcement and administration of copyright in this era.

Keywords: Digital, Infringement, Copyright, Nigeria

1. Introduction

Digital developments have occasioned disruptions in how humans conduct their affairs and carry on business relations. This development has compelled irreversible changes to the legal landscape and the trajectory of legislative enactments and judicial decisions.¹ Copyright awareness and growth arose with the introduction of the printing press in the 16th century, and the industrial revolution it provoked, hinged on the need for authors and publishers of works to profit from their task. This significantly marked its recognition and development globally. In 1709, the United Kingdom parliament enacted the world's first Copyright Act called Statute of Anne, which established principles of copyright law that has developed to the current copyright laws existing globally, Nigeria inclusive. The introduction of player-pianos of the 1800s; radio transmitters in the 1920s; cable television in the 1960s; photocopying in the 1970s; home video cassette recorders in the 1980s and digital transmissions and downloads of the internet of the present era has triggered a turning point not only in the growth of copyright law, but in aspects of infringement and its administration. These periodic occurrences introduced significant conceptual issues not anticipated and provided for under the legal regimes then in force.² The introduction of relational platforms and mediums of expression raises vexed questions of modern age copyright exploitation and unauthorized appropriation. These challenges further extend to the range of exclusive rights available to copyright authors and rights-holders, use of technological tools for copyright protection and administration of copyrighted works as it affects digitisation.

2. Importance of Copyright Protection**Economic Rights**

This refers to the rights conferred on the author to commercially exploit his work to the exclusion of others.³ Sections 6, 7 and 8 of Nigerian Copyright Act can be summarized as exclusively authorizing the copyright owner to control the reproduction, performance, and adaptation, distribution for commercial purposes and other like acts in relation to the work. The summary of the law is that nobody is allowed to reap the fruits of the copyright owner's labour without his or her permission.

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¹George Thuronyi, 'Copyright Law and New Technologies: A Long and Complex Relationship', available at: <https://blogs.loc.gov/copyright/2017/05/copyright-law-and-new-technologies-a-long-and-complex-relationship/> accessed 28th May 2019.

² *White-Smith Music Publishing Co. v. Apollo Co.*, 209 US 1 (1908), held that manufacturers of music rolls for player-pianos were not liable to make royalty payments to composers as these did not form part of sheet-music but were in fact machine readable works ineligible for copyright protection. The 1909 amendment to the Copyright Act introduced statutory protection for mechanical reproductions of protected compositions whether made by machines or humans.

³ Nigeria Copyright Act Cap C28 Laws of Federation of Nigeria 2004, sections 6, 7 and 8; U.S Copyright Act, s. 106, which includes, right to reproduce, produce derivative works, distribute to the public, perform publicly and broadcast.

Moral Right/Droit Moral

These are inalienable and imprescriptible rights granted to the author of the work. It includes the right to claim authorship and prevent distortion or mutilation of his work especially where such would be prejudicial to his honour and reputation. These are referred to as the right of paternity and integrity respectively. The moral right is upheld in Article 6 of the Berne Convention and has been enshrined in Section 12 of Nigeria Copyright Act.

Performer's Right

Performer under the Act is not comprehensively defined, beyond the provision that 'performance' includes a dramatic performance (which includes dance and mime); a musical performance; and a reading or recitation of literary act or any similar presentation which is or so far as it is, a live performance given by one or more individuals.⁴ A performer is therefore a person carrying out activities such as acting, dancing, singing, recitation, or other live performance alone, or along with other persons.⁵ Therefore, recording, reproducing, broadcasting... a whole or substantial part of the live performance without the consent of the performer constitutes an infringement. This right subsists for a period of 50 years from the end of the year in which the performance took place.

Folklore Protection

Folklore⁶ is a group-oriented creation reflecting the expectation of the community as an adequate expression of its cultural and social entity. Its source must be indicated when used in accordance with any exceptions provided in the second schedule of the Act. The Folklore right is infringed where the work is reproduced, adapted, translated or transformed and communicated to the public for commercial purposes or outside their traditional context, without the consent of Nigerian Copyright Commission (NCC).

3. Copyright Protection and Shortcomings

Copyright *sui generis*⁷ includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works i.e. drawings, paintings, photographs and sculptures, and architectural designs. It also includes performing and recording rights. Technologies that are raising issues for copyright and its law are those related to storage, identification and transmission or distribution of works held in digital format. Due to global nature of the internet, digital infringement usually happens not only within a country but also across borders, posing question of how to enforce copyright law on a global scale imperative. These have raised many difficulties for the protection of copyrighted works in internet sphere, hence anxiousness of concerned stakeholders of what the actual laws are concerning copyrights in relation to digital activities. Under the Act, the narrow definition of 'communication to the public' as including, in addition to any live performance or delivery, any mode of visual or acoustic presentation, but does not include a broadcast or re-broadcast,⁸ does not anticipate digital transmissions which are prevalent today. Similarly, the reproduction and distribution rights stipulated in the Act are also restrictive. The most effective tool of enforcement now is technological tools that ensure copyright protection, access control measures and digital rights management. There even appears to be no clear regulatory or statutory guidance for digital transmission of ringtones on mobile devices and the extent of liability, for unlawful reproduction or for public performance of these derivative works, and the liability of users, content creators and aggregators.⁴⁵ The definition of protectable literary, musical or artistic works under the Act clearly is afflicted by all the problems and challenges which the digital era has engendered. Although the Act attempts to anticipate improvements in technology and scientific knowledge, the intended flexibility and broadness are hampered by the other eligibility requirements and parameters for copyright protection stipulated in the same Act.⁹ However, several amendment and regulations have been introduced over the years to address these shortcomings and more are still expected to occur.¹⁰ Section 21 of the Act¹¹ which provides for anti-piracy measures, empowers NCC to prescribe suitable marks, labels, designs or impressions or other anti-piracy devices in connection with any works over which copyright subsists. It proscribes the offer for sale, rental or hire, importation, possession, unauthorized replication or circumvention of anti-piracy devices. This amendment was followed up in 2006 with the

⁴ Copyright Act, 1988, Part II, S. 26 (2) (a) (b) (c).

⁵ The important qualifying requirement is that the performance is a live one, mainly because the objective of the law is to protect works which might not otherwise qualify for protection as copyright on the basis of non-fixation.

⁶ Copyright Act, s. 31.

⁷ IM Olueze, *Nigerian Copyright Law* (Lagos: Maglink International Limited 1998) 2.

⁸ Interpretation section, s. 51(1). Even s.6 (1)(vii), communication by a loud speaker or its likes is highly restrictive.

⁹ Nkem Itanyi and Chinelo Ngwu, 'Expanding the Frontiers of Nigerian Copyright Laws in the Age of Social Media' [March 2018] (9) (1) *The Gravitas Review of Business & Property Law* 96-107.

¹⁰ The proposed Copyright Bill 2015 was reviewed in para. 4 of this work.

¹¹ Backed up by the provisions of The Copyright (Security Devices) Regulation of 7th September 1999, made pursuant to section 45(4) of the Act. Also Adejoke Oyewunmi, 'Towards Sustainable Development of Nigeria's Entertainment Industry in the Digital Age: Role of Copyright Law and Administration' [November 2011] *NJIP* 89-94.

introduction of Copyright (Optical Discs) Plants Regulations,¹² empowering the NCC to monitor and regulate the activities of optical disc manufacturing and production plants and the importation of relevant equipment into the country. In 2010, the NCC also introduced the mandatory inscription of Source Identification Codes (SIDs) on all optical discs produced in Nigeria.¹³

4. Copyright Administration in Nigeria

The relative ease of reproduction, distribution, transmission or retransmission and storage of copyrighted works with the use of new technologies pose additional challenges for copyright laws and administration to contend.¹⁴ The advent of new forms of dissemination of protected materials has made it near impossible for rights-holders to regulate and control unauthorized distribution of works. Under the interactive functionality of this digital dispensation, ability of users and third parties to manipulate protected works online and on digital platforms blurs the conceptual lines between the author and users of copyrighted works and the authorial integrity of these works.¹⁵

Section 34(1) of the Act establishes the Nigerian Copyright Commission,¹⁶ a body corporate with perpetual succession and common seal, with distinct functions and powers is saddled with the responsibility to administer copyright in Nigeria. The digital changes, its nature and peculiar challenges have exposed the loopholes in Nigeria copyright system as far as administration of copyright in the cyberspace is concerned. It is however difficult to contemplate that the law will at some point be at par with technology and maintains an optimal balance between interest of the society and the copyrighted. The functions and powers of the NCC can be summarised as follows;¹⁷

- a. To administer copyright in Nigeria and performs all other functions necessary for the administration of copyright in Nigeria (like enlightening the public, granting compulsory licenses, appointing copyright inspectors)¹⁸.
- b. To approve collecting societies.
- c. To monitor Nigeria's position in relation to international copyright treaties, working together with international and local agencies and other functions which facilitate the smooth administration of copyright in Nigeria.

Accomplishment of NCC in Administration of Copyright includes:

- a. Facilitation of the establishment of the National Copyright Information Centre in conjunction with UNESCO.
- b. Involvement in the establishment of the National Copyright Institute (NCI) as a research and training facility.
- c. Introducing Copyright Notification Scheme in 2005. The scheme has a databank of authors and their works, merely to serve as public notification of the existence of such work. However, registration under the scheme is not a prerequisite for copyright protection.¹⁹
- d. Launch of Strategic Action against Piracy (STRAP) on May 3, 2005 and Copyright Litigation and Mediation Programme (CLAMP)²⁰ to better apprehend and deal with copyright infringers²¹. A host of cases were successfully prosecuted by the NCC. Cases like: *NCC v Oba Okechukwu*²², *NCC v Dominion Kalu*²³, *NCC v Godwin Kadiri*²⁴, *NCC v Godwin Kadiri*²⁵, *NCC v Nwoke Israel*²⁶. The NCC was able to secure the conviction

¹² Regulation No. 63 vol. of December 20, 2006 and the Guidelines for the (Optical Disc Plants) Regulations, initiated by the NCC as part of the Strategic Action Against Piracy (STRAP) through public enlightenment, proactive enforcement and rights administration

¹³ Reg. 7 of the Regulations. A joint initiative of the International Federation of Phonographic Industries (IFPI) and Philips Consumer Electronics.

¹⁴ *Ibid.*

¹⁵ John C Onyido, SPA Ajibade & Co. 'Nigeria: Copyright In The Digital Age' being Keynote address at the University of Ilorin Intellectual Property Summit (2019) citing, Marshall A Leaffer, 'Protecting Authors' Rights in a Digital Age', *University of Toledo Law Review* (1995) (27).

¹⁶ Decree No.47 of 1988

¹⁷ Copyright Act 1988, s. 34(3)

¹⁸ These inspectors have the powers of police. Such power has been confirmed in *Nigerian Copyright Council v. Musical copyright society of Nigeria* (1999) FHCL 419.

¹⁹ <<https://nlipw.com/embracing-the-option-nigerian-copyright-commissions-copyright-notification-scheme/>> Accessed 18 June 2020.

²⁰ This has been reformed to Medium Term Corporate Plan and Strategy (MTCPS) which is saddled with the responsibility of improving the policy and legislative Framework and enhance awareness and enforcement.

²¹ MIO Nwogu, 'The Challenges of the Nigerian Copyright Commission (NCC) In the Fight against Copyright Piracy in Nigeria' [Dec. 2014] (2) (5) *European Centre for Research Training and Development UK* 30.

²² (2012) 55 NIPJD (FHC).

²³ *Ibid.*

²⁴ (2010) 53 NIPJD (FHC).

²⁵ FHC/B/43C/2010.

²⁶ FHC/L/159C/2013

and sentencing of offenders in accordance with section 20(2)(a) of the Act. Millions of pirated works were destroyed publicly, raids conducted in strategic markets like Alaba International, Ojo, Ariaria²⁷, Isashi market e.t.c. Hacking equipment were also seized in the process.²⁸

- e. Embarking on enlightenment and anti-piracy campaigns, organises press briefings to address and discuss copyright issues, with interactive website created to further interact with the public and other stakeholders.
- f. Enjoying cooperation of various enforcement agencies like Nigerian Police Force, Nigerian Customs Services, Economic and Financial Corruptions Commission (EFCC) among others.²⁹
- g. Facilitating the incorporation of copyright as a subject in universities, in collaboration with the National Universities Commission and World Intellectual Property Organization (WIPO).

On challenges, the NCC is plagued with plethora of such which includes, inability to record similar successes in digital and online infringement; undue delay in the judicial process, untrained staff; poor remuneration and financing; inadequate mobility; insecurity; favouritism; poor enforcement mechanism; language barrier; poor information and communication technology knowledge; poor implementation equipment for anti-piracy and related infringement policies, and so on³⁰. The staff should be trained to be Information and Communication Technology (ICT) Savvy and compliant.

Challenges of Nigerian Copyright Commission in the Discharge of their Duties under the Law

Poor Financing

The NCC is underfunded. By its functions and enforcement procedure it needs adequate funds to operate and carry out her duties efficiently. This hinders comprehensive investigations, reduces quantum of information gathered, and as a result affects the commission's optimum performance.

Corruption

Some of the NCC officials who are saddled with the responsibility of carrying out raids on infringed works are corrupt and compromised by the pirates or infringers. The officials at times have private dealings or transactions with the infringers (pirates), and consequently, they deliberately refuse or find it difficult to fish them out during their regular raids. This is quite unfortunate and unbecoming of such trusted officials, who were sent on this raid in confidence.

Enforcement

Effective enforcement of copyright laws is a key to curbing at least conventional infringement of works of copyright. Consequently, the role of law enforcement agencies like the Police, Nigeria Security and Civil Defence, Army, Customs e.t.c in developing countries like Nigeria is very demanding. These personnel are faced with challenges such as, lack of knowledge and technical knowhow in the issues involved; poor training; poor funding of enforcement activities; and absence of good working tools either to aid detection or in the conduct of post arrest operations. Also attitude of the public, sometimes the judiciary and law enforcement agencies, that piracy is a low level of mischief with little real consequence is discouraging. The judiciary system delays and lacks transparency in the enforcement, which discourage copyright litigation, and enforcement.

Culture

Culture been the way of life of people within a community is also a strong factor militating against enforcement of copyright laws. The way and manner people behave affect their lives and will also determine the extent of the behavior of NCC officials who are on anti-piracy related raid. For instance, in a situation where the people usually patronize and are used to buying pirated copies of works at reduced prices, will definitely be difficult to convince on the negative impact of piracy.

Mobility of Officials

NCC departments and units, especially the enforcement departments face the difficulties of strong, good and mobile vehicles that the officials go to raid with. As a result, effective surveillance and raids will be a mirage and nearly impossible, especially where the officials should cover more than one location during the raid.

²⁷ <<http://m.guardian.ng/art/literature/publishers-laud-copyright-commissions-anti-piracy-drive/>> Accessed 18 June 2020.

²⁸ Ebele Ojukwu, *et al.* 'Intellectual Property Rights Enforcement in Nigeria: A Prop for Music Industry' [June 2015] (5) (6) *U.S China Education Review B* 379.

²⁹ <<http://m.guardian.ng/art/literature/publishers-laud-copyright-commissions-anti-piracy-drive/>> Accessed 18 June 2020.

³⁰ MIO Nwogu, *op. cit.* (n 19) 22-34.

Insecurity

Officials of NCC find it difficult to successfully carry out raids without police because of fear of the unknown in the field of operation. At times, the copyright pirates tend to be aggressive and fully armed with harmful instruments, that the officials need security and protection. In addition, the issue of insecurity in the country has made it difficult at times for the hierarchies to release their men to NCC, putting up lack of work force as a defence. This hampers the raid operations because the officials find it difficult to go alone. This makes the fight against piracy so difficult, consequently pirated works flourishes and pirates smiles to the bank.

Language Barrier

Nigeria been a multi-lingual state, it will be difficult for officials of NCC to operate in some areas where deployed if they do not understand the language of the natives, consequently, they will not understand each other and the operations will be highly impossible due to lack of communication.

Information and Communication Technology (ICT)

ICT which includes the internet is the world leading technology today. Internet is a global network and has made the world to become a global village. By its nature and activities, internet has vast information contained in it. It is necessary for NCC officials to be ICT compliant to enable them check this method of online infringement, being that most officials are not computer literates.

Favoritism

A competent official owing to favoritism or nepotism may be left out while an incompetent official sent out to perform a particular task, and it hinders successful raids. Again, some infringers may be known, but due to established contacts with the highly placed, officials may find it difficult or impossible to enforce the law. The NCC officials and the government must be firm in this fight.

5. Nigerian Draft Copyright Bill 2015 and Key Provisions³¹

The NCC in November 2012, with intent to repeal Copyright Act, 1988 and upgrade the copyright regime to catch up with evolving digital technologies, encourage creativity and innovations through adequate copyright protection, constituted seven-member technical working group to draft new Copyright Bill. The team published the draft Bill on October 30, 2015 which comprised of 88 sections and divided into 11 parts. The Bill was approved by the Federal Executive Council, before the 8th Assembly got dissolved, and proceedings stalled. The main objectives of the Bill are to: 'Reposition Nigeria's creative industries for greater growth; strengthen their capacity to compete more effectively in the global market place; and enable Nigeria to fully satisfy its obligations under the various International Copyright Instruments, which it has earlier ratified or indicated interest to ratify'.³² The Bill contained provisions on anti-piracy measures,³³ circumvention of copyright technology protection measures,³⁴ liability of Internet Service Providers (ISP) for online infringing material, issuance of Take-Down notices,³⁵ empowering NCC to block access to infringing online content, among others.³⁶ We shall review few provisions as it affects Online Infringement and Administration.

Exceptions to Copyright Control

In determining when use amount to fair use or not, the Bill introduced four factors to be considered:

- i. The nature of the work
- ii. The amount and substantiality of the portion used in relation to the work as a whole;
- iii. The effect of the use upon the potential market for or value of the work; and
- iv. If the use does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the owner of copyright.³⁷

Compulsory Licence for Public Interest

NCC is empowered to authorize the use of copyright works by any person for the purposes of:

³¹ <<https://www.mondaq.com/nigeria/copyright/866262/a-brief-review-of-the-nigerian-draft-copyright-bill-2015-oluwafunmilayo-mayowa>> Accessed 3 February 2020.

³² <http://graduatedresponse.org/new/wp-content/uploads/2016/02/draft_copyright_bill_november_2015.pdf> Accessed 8 February 2020.

³³ Proposed Copyright Bill 2015, s. 43.

³⁴ *Ibid* s. 44.

³⁵ *Ibid* s. 47.

³⁶ *Ibid* s. 48.

³⁷ S. 22. These four factors were derived from the opinion of Judge, Joseph Story, in *Folsom v. Marsh* 9.F. Cas 342 No. 4901 (*CCD Mass 1841*), which is widely regarded as the first 'fair use' case in the U.S. These factors were later statutorily recognized under the U.S Copyright Act 1976 codified at 17 USC S. 107.

- rectifying an abuse of dominant market position;
- to remedy abuse of rights; and
- to promote public interest.³⁸

Provisions Relating to Online Content

This is an important innovation, a time the copyright legislation not only caters for the protection of works produced and exchanged over the internet, but recognizes the menace of digital infringement and consequently makes provision for remedies. The Bill made provision as follows:

Take Down of Infringing Content

The owner of an infringed copyright work is entitled to issue a notice in writing of such infringement to the appropriate ISP requesting for the take down or disable access to the infringing content or link to such content hosted on its system.³⁹ Upon receipt of such notice, the ISP shall promptly notify the subscriber responsible for the infringing content informing him of the notice. If after ten (10) days, the subscriber fails to provide justifiable reasons for continuing to keep the infringing content, the ISP is empowered to take down or disable access to such infringing content and thereafter notify the copyright owner. Conversely, where the subscriber provides a justifiable reason for not removing the infringing content, or where the ISP is convinced that the complaint of the alleged copyright owner is without merit, the ISP shall promptly inform the copyright owner of his decision not to take down the content.⁴⁰

Suspension of Accounts of Repeat Infringers

The ISP, upon receipt of notice of repeat infringement, shall suspend the account of the alleged repeat infringer for at least one month after sending him warnings to that effect. A subscriber receiving such a warning may challenge the notice on grounds of mistake or misidentification.⁴¹

Blocking Access to Online Content, etc

Under the proposed amendment to the law, the Commission has the power to block or disable access to any content or link, hosted on a system or network, which it reasonably believes to infringe the rights of copyright owners.⁴²

Computer Generated Work

One of the major debates disrupting global copyright landscape is ownership of computer-generated works especially by Artificial intelligence (AI), with no direct human contribution in the creative process. While some countries contemplates attributing copyright to AI,⁴³ countries like UK and U.S attributes copyright protection over such works to the human authors responsible for inventing the AI.⁴⁴ Section 24(1) of the Copyright Bill only states that copyright in a work shall vest in the author, by virtue of sub section (2) and section 25(1), it may be inferred that the 'author' in section 24 above refers to a human being or the artificial entities recognized under the Act.⁴⁵ The Bill made no provision for ownership of computer-generated works or for a work jointly authored by a human being and a sentient machine. In light of the above, it is pertinent that the Bill makes clearer provisions on the authorship of these unique works, especially as it relates to works created by computers/Artificial Intelligence.

Appointment of Director General (DG) of the NCC

In addition to the criteria for the appointment of the DG of the NCC, the Bill provides that the DG must be a legal practitioner with not less than fifteen (15) years post-call experience and must be knowledgeable in copyright law and administration.⁴⁶ The Bill also modifies the criteria for membership of the governing board.⁴⁷

³⁸ *Ibid* s. 31(1)

³⁹ *Ibid* s. 47. Note similar provisions contained in the earlier Nigerian Communications Commission, "Guidelines for the provision of Internet Services" published pursuant to s. 70(2) of the Nigerian Communications Act 2003, <<https://www.ncc.gov.ng/docman-main/legal-regulatory/guidelines/62-guidelines-for-the-provision-of-internet-service/file>> Accessed 28 February 2020.

⁴⁰ S. 48 of the Bill.

⁴¹ *Ibid* s. 49.

⁴² *Ibid* s. 54.

⁴³ It is worthy of note that Saudi Arabia has conferred citizenship on an AI robot named Sophia and there is the possibility that Sophia would be accorded copyright over her creations.

⁴⁴ Copyright, Design and Patent Act 1988 UK, s. 178.

⁴⁵ Draft Copyright Bill, 2015, s. 2

⁴⁶ *Ibid* s. 71(1).

⁴⁷ *Ibid* s. 70.

Regulation of Collective Management Organisations (CMO)

Section 74 of the Bill allows for the establishment of a CMO for the management of the rights of copyright owners upon the approval of the NCC.⁴⁸ Any organization that operates as a CMO without the approval of the NCC, shall be guilty of an offence and shall be liable on conviction to a fine of N500,000.00 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.⁴⁹ Where the above contravention is by a body corporate, it shall be guilty of an offence and liable to a fine not exceeding N2,000,000.00.⁵⁰ On collective administration of copyright works, more legislative work is required to address the challenges occasioned by the Act on the appointment of sole collective management society in the various genres of protected works.⁵¹ The lingering dispute between Copyright Society of Nigeria (COSON) and Musical Copyright Society of Nigeria (MCSN), the recent suspension of COSON and authorization granted to MCSN to function as collecting society by NCC are reflection of multiple challenges faced by copyright owners, managers and stakeholders. The recent decisions of the Supreme Court in *Adeokin Records*⁵² and *Compact Disc Technology Ltd.*,⁵³ have introduced additional complexities deserving of urgent legislative attention.⁵⁴

Establishment of Dispute Resolution Panel

The NCC has the discretion under the Bill to constitute a dispute resolution panel charged with the responsibility of resolving disputes relating to the payment of royalties or terms of a license or any other matter as maybe authorized by the NCC. The panel shall comprise of three (3) persons knowledgeable in copyright matters. Any person dissatisfied with the decision of the panel may appeal to the Federal High Court.⁵⁵

Jurisdiction

The Federal High Court shall have exclusive jurisdiction for the trial of offences and the trial of offences shall be by summary trial.⁵⁶ Generally, the growth of digital technologies and the internet has greatly enhanced copyright development; unfortunately, it has also fostered the ease of infringement of copyright works. The porosity of the digital environment has greatly encouraged wide-spread sharing of protected works mostly without authorization, and the provisions of the reviewed Copyright Bill, except necessary adjustment is made, still appear inadequate to counter copyright piracy on the cyberspace.⁵⁷

6. Conclusion and Recommendations

In the 500-year period that copyright has existed in one form or the other, the law has always lagged behind in adapting to the new environments that have been brought about by technical innovation. The law recognising author's rights in their works, for example, took over 200 years in developing between the invention of the printing press and the codification of the Statute of Anne. With the passage of time, the law has been reacting faster to technological changes, but has yet to match pace with innovation. It is therefore not reasonable to expect that at one point, the law will be at par with technology and will be able to finally maintain an optimal balance between interest of the society and the copyrighted. It is settled that technologies that is raising issues for copyright and its law are those related to storage, identification and transmission or distribution of works held in digital format.⁵⁸ Copyright protection is the brain-child of the developed countries while less developed countries are showing less interest in favor of it. The emergence of the internet has both positive and negative effects for works of copyright. The commercial success and transactions of works of copyright are now mostly dependent on the digital technology and internet. Besides, it puts risk to infringements as well, and infringement through the Internet is more frequent and safer. Though national, regional and international legislations are in force banning the dissemination of circumvention tools; it has become implausible to protect the copyrights in the internet

⁴⁸ The CMO is known as 'Collecting society' under the Copyright Act 1988.

⁴⁹ S 74(5) of the Bill. Under the current Act, the fine is N1,000.00 upon first conviction and N2,000.00 upon subsequent conviction or terms of imprisonment not exceeding 6 months or both.

⁵⁰ *Ibid* s. 74(6). Under the current Act, the fine is N10,000.00 on the first conviction and N2,000.00 for each day on which the offence continues.

⁵¹ Copyright Act of Nigeria, s. 39

⁵² *Adeokin Records v. Musical Copyright Society of Nigeria* (2018) SC 336/2008.

⁵³ *MCSN v. Compact Disc Technology Ltd. & Anor.* (2018) SC 325/2010.

⁵⁴ John Onyido, 'Administration of Collective Management Organisations in Nigeria: Lessons from U.S, UK, Europe and Canada' Keynote Address delivered on the occasion of the 30th Anniversary celebration of the NCC, Abuja, August 2019.

⁵⁵ *Ibid* s. 76. See also the Copyright (Dispute Resolution Panel) Rules 2007 contained in the Second Schedule of the Copyright Collective Management Organisations) Regulations 2007. The Rules outlines detailed provisions on commencement of proceedings, the constitution of the panel etc.

⁵⁶ *Ibid* s. 81.

⁵⁷ John Onyido, 'Copyright in the Digital Age', unpublished Keynote address delivered at the University of Ilorin Intellectual Property Summit 2019 <<http://www.spaaajibade.com/resources/copyright-in-the-digital-age-keynote-address-at-the-university-of-ilorin-intellectual-property-summit-2019-john-onyido/>> Accessed 20 March 2020.

⁵⁸ We will discuss that in details subsequently.

environment. It is the reality that driving by necessity people will continue introducing new ideas and inventions. Thus, based on the internet, some will find new passage to copy or use another's work or product for his own benefit. A model that universally reduces prices of digital content may have been proposed as a possible solution to illegal downloads, however, such may not be a workable solution because it does not consider the huge income disparities across the globe. What might be very attractive pricing in Europe may very well be prohibitive in Nigeria, where the demand for the same content can easily outstrip that in the UK, due to sheer population.

Noticeably, digital technology has threatened the conventional modes of enforcing copyright. This article has provided insight on how Nigeria copyright community has attempted to adapt to these changes over the years, and its continuous effort to so adapt, though the impact of the effort is yet to be felt. There is however a pointer of hope for administration and enforcement of copyright, with the Draft Copyright Bill, 2015 proposed by the NCC at sight. Obviously too, the law as it is, is inadequate in addressing issues relating to digital transmissions and public performances over digital/internet platforms, and the proposed Copyright Bill 2015 may come to the rescue.⁵⁹

Legal solutions now appear to be struggling to keep up with the changing environment, can we plausibly propose that the copyright regime should adapt to the new technology by subjectively, finding new legitimate ways in which to derive financial benefit from protected work? If history has shown us one thing, it is that technology will change in ways that we cannot fathom, and it is unreasonable to expect the law to be prepared for unimaginable changes. Businesses are adapting their ways of doing business to the new technological and digital landscape, devising new business models to fashion alternative revenue streams is never a wrong idea. A total re-evaluation of the rights associated with copyright might be due and government should take the drastic changes in the environment into account to formulate new rules and regulations that will restore balance in favour of the public and not stifle legitimate advances in digital technology and the internet. The public being consumers of digital technology are greater consumers of copyrighted content. While digital technology permeates many areas of our lives, copyrighted content achieves universal penetration. Not everybody has a radio, but everybody has listened to music or seen pictures and photographs. The public may not be expected to recognise the long-term effects that illegally consuming copyrighted content can have on its supply. It is the duty of policymakers to identify these relationships and regulate the environment for the sustained production of both. The legal institution for the production of information superhighway gateway should be prepared. This means due to rapid technological changes, there is urgent need to establish appropriate copyright law and strong legal institutions to effectively address challenges of copyright infringement in the cyberspace. On top of that, a multidimensional approach which will include adoption of legal, social, and technological measures, with stringent legal framework needs to be encouraged. Social awareness of such step however must be spread amongst the general public. ICT which includes the internet is the world leading technology today. Internet is a global network and has made the world to become a global village. By its nature and activities, internet has vast information contained in it. It is necessary for NCC officials to be ICT compliant to enable them check this method of infringement. Most officials not been computer literate if trained on ICT, will use the expertise and curb infringement of works on the net. With functional computer connected to the global network, and surfing the net from time to time detecting infringers, even going into alliance with Google, one of the largest search engines on the internet to fight internet and digital piracy, the NCC must has taken a good step in the right direction.

The Draft Copyright Bill been an improvement on the current Act, takes into consideration some modern exigencies which have been affecting copyright protection since ages. It is recommended that before representation of the Bill at the floor of the present 9th Assembly, that steps be taken to incorporate all the missing links on protection of works digitally/online, as well as solutions to contemporary issues. As it was rightly emphasised by Francis Gurry, the Director-General of the World Intellectual Property Organization (then) in a landmark speech:

History shows that it is an impossible task to reverse technological advantage and the change that it produces. Rather than resist it, we need to accept the inevitability of technological change and to seek an intelligent engagement with it. There is, in any case, no other choice, either the copyright system adapts to the natural advantage that has evolved or it will perish.⁶⁰

⁵⁹ See the proposed Copyright Bill 2015, treated substantially in Chapter 4 of this work, para 4.3.2; Adebambo Adewopo, 'Analysis of Copyright in Digital Music: Implications for New Media Licensing for Ringtones Under the Nigerian Copyright Act' [March 2017] (8) (1) *The Gravitas Review of Business & Property Law* 1-23.

⁶⁰F Gurry, 'The future of copyright', Blue Sky Conference, Queensland University of Technology, Sydney <http://www.wipo.int/about-wipo/en/dgo/speeches/dg_blueskyconf_11.html> Accessed 20 March 2020. See, for similar conception, Neelie Kroes, the Vice-President of the European Commission for the Digital Agenda, 'A digital world of opportunities', Speech on the future of copyright in Europe at the International Meetings on Culture, Economy and Media, Avignon, 5 November 2010, 'we will not stop exploring ideas for as long as the system is not working. Instead of a

Finally, borrowing from the wisdom of Lord Denning, who said:

What is the argument on the other side? Only this, that no case has been found in which it had been done before. That argument does not appeal to me in the least. If we never do anything which has not been found in which it had been done before we shall never get anywhere. The law will stand still while the rest of the world goes on and that will be bad for both.⁶¹

dysfunctional system based on a series of cultural Berlin walls, I want a return to sense. A system where there is scope to create new opportunities for artists and creators, and new business models that better fit the digital age.'

⁶¹ AI Chukwuemerie 'Affidavit Evidence and Electronically Generated Materials in Nigerian Courts' [2006] (3) 185; Ally Abdallah, The impact of ICT Revolution in Tanzania's legal system; A Critical Analysis of Cybercrime and Computer Forensic Evidence (2010) 214.