

CRITICAL AREAS UNDER THE NIGERIAN COPYRIGHT ACT FOR URGENT LEGISLATIVE INTERVENTION: COMPARING WITH THE UNITED STATES COPYRIGHT ACT*

Abstract

The Copyright Act is the extant law on copyright in Nigeria. The Act which was passed in 1988 has undergone few amendments. However those amendments are superficial and did not address current issues especially challenges of copyright protection in the current digital era. Notably works on the internet rampantly infringed and there is no legal framework in the Copyright Act to address the issue. The United States Copyright Act has undergone several amendments to address issues of technology as they arise and there is a robust mechanism in place to study new development in technology as it affects copyright protection. This paper analysed the Copyright Act of Nigeria and the United States of America. The research found that the Copyright Act of Nigeria is inadequate to protect the copyright in its present state especially in the digital environment. The research further found that the Copyright Act of the United States addressed contemporary issues affecting copyright protection especially in the digital era. It further addressed other issues like digital broadcasting including cable transmission, satellite transmission and internet broadcast. It was thus recommended that the Copyright Act should be amended to address the short comings and the United States Copyright Act is a good model that can be referred to in amending the Copyright Act of Nigeria.

Keywords: Copyright Act, Legislative Intervention, Nigeria, United States, Comparison

1. Introduction

Copyright protection is a topical issue in our society today especially in this era of digital technology. Countries across the world strive to bring their laws up to date in order to address challenges thrown up by digital technology especially the internet. The countries achieve this through amendment of their laws to incorporate new developments or bring their laws in line with obligations in international treaties that address new technology. The Nigerian Copyright Act is inadequate to protect copyright especially in the digital era as the Act lacks provisions that address the digital agenda. The Copyright Act of the United States on the other hand has adequate provisions that address the digital agenda and other emerging technology that impact copyright exploitation and protection. This paper analyses the Copyright Act of Nigeria and the United States Copyright Act. This comparative analysis clearly shows the provisions of both laws and exposes areas that the Copyright Act of Nigeria is deficient when compared with the provisions of the United States Copyright Act. The deficiency in the Copyright Act of Nigeria can only be addressed through an elaborate amendment of the law. The United States Copyright Act is a good model that may be adopted in amending the Copyright Act of Nigeria. The amendment will ensure that copyright owners are protected in this era where new ways of exploitation of copyright throws up new challenges to copyright protection.

2. Copyright Regime in Nigeria

Works Eligible for Copyright in Nigeria

The Act listed categories of works that are subject matter of copyright. Any work that does not expressly or impliedly come within these categories is not protectable¹. The Act listed various works that come under the major categories. The works listed under the Act as eligible for copyright are as follows²: Literary Works, Musical Work, Artistic Works, Cinematograph Films, Sound Recording, and Broadcasts.

Rights Conferred and Infringement of Copyright

Literary and Musical Works

The Act³ grants certain rights to authors of literary and musical works in respect of their creations. The Act states that copyright in a literary or musical work is infringed by any person who, without the licence or authorization of the owner of the copyright, does or causes any other person to do or authorize the doing of any of the following acts in Nigeria:

- (i) reproduce the work in any material form;
- (ii) publish the work;
- (iii) perform the work in public;

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¹ JO Asein, *Nigerian Copyright Law & Practice*, (2nd edition, Books & Gavel Publishing, 2012) 45

² Copyright Act Cap C28 LFN, 2010, section 1(1) (a) – (f).

³ Copyright Act, n.1 section 6(1)(a).

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- (iv) produce, reproduce, perform or publish any translation of the work;
- (v) make any cinematograph film or a record in respect of the work
- (vi) distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangements
- (vii) broadcast or communicate the work to the public by a loud speaker or any other similar device
- (viii) make any adaptation of the work
- (ix) do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in (i) – (vii) above

Artistic Works

The discussions on literary and artistic works apply more or less to artistic work. Copyright in artistic work include the right to control in Nigeria any of the following acts:

- (i) reproduce the work in any material form
- (ii) publish the work
- (iii) include the work in any cinematograph film;
- (iv) make any adaptation of the work
- (v) do in relation to an adaptation of the work, any of the acts specified in relation to the work in sub-paragraphs (i) to (iii) above⁴.

Copyright in artistic works extends to the whole or substantial part of the work in its original form or in any form recognizably derived from the original⁵.

Cinematograph Films

The copyright Act prohibits the doing or authorisation of another to do any of the following acts without the licence or authorisation of the copyright owner.

- (i) making a copy of the film
- (ii) causing the film, in so far as it consists of visual images to be seen in public and, in so far as it consists of sounds, to be heard in public
- (iii) making any record embodying the recording in any part of the sound track associated with the film by utilizing such track;
- (iv) distributing copies of the work for commercial purposes by way of rental, lease, hire, loan or similar arrangement⁶.

Sound Recording

Copyright in sound recording is infringed where any person without the licence or authorisation of the copyright owner, does or authorises the doing of any of the following acts in relation to sound recording:

- (i) 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 recognisably derived from the original.
- (ii) distribution to the public for commercial purposes of copies of the work by way of rental, lease, hire, loan or similar arrangement⁷.

Broadcast

Direct infringement of broadcast would occur where any person, without the licence or authorisation of the copyright owner, does or cause another to do any of the following:

- (a) the recording and rebroadcasting of the whole or a substantial part of a television broadcast;
- (b) the communication to the public of the whole or a substantial part of a television broadcast, either in its original form or in any form recognizably derived from the original;
- (c) the distribution to the public for commercial purposes, of copies of the work, by way of rental, lease, hire, loan or similar arrangement⁸

Infringement of Copyright

The Copyright Act prohibited acts which amount to infringement where those acts were done without the authorisation of the copyright owner. These acts do not require guilty knowledge and must be done against the work⁹. These have been termed primary infringement. However there are other acts which the Act prohibits.

⁴ Ibid, Section 6(1)(b).

⁵ Ibid, Section 6(2).

⁶ Ibid; section 6(1)(c).

⁷ Ibid., section 7(1)(a) and (b).

⁸ Ibid; section, 8(1) a – c.

⁹ Ibid, sections 6 – 8.

These other acts apply to all the classes of works already discussed in relation to infringing copies of the work. These are provided for under section 15(1)(b) – (g) of the copyright Act as follows:

- (a) importing or causing to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy under that section
- (b) exhibiting in public any article in respect of which copyright is directly infringed
- (c) distributing by way of trade, offering for sale, hire or otherwise for any purpose prejudicial to the owner of the copyright any article in respect of which copyright is directly infringed.
- (d) making or being in possession of plates, master tapes, machines, equipment or contrivances used for the purpose of making infringing copies of the work
- (e) permitting a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright
- (f) 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.

The difference between primary infringement and secondary infringement is that the former involves making the infringing copy while the latter involves ‘dealing’ with those copies, providing the premises or apparatus for the performance or possessing contrivances for the purpose of making infringing copies. If a secondary infringement has been committed, there will almost certainly have been a corresponding infringement of one or more of the acts restricted by copyright¹⁰.

Criminal Infringement

The copyright Act makes it offence for person who

- (a) makes or causes to be made for sale, hire, or for the purposes of trade or business any infringing copy of a work in which copyright subsists; or
- (b) imports or causes to be imported into Nigeria, a copy of any work which if it had been made in Nigeria would be an infringing copy;
- (c) makes, causes to be made, or has in his possession, any plate, master tape, machine, equipment or contrivance for the purposes of making any infringing copy of any such work¹¹.

Section 20(2) of the Act provides that any person who-

- (a) sells or lets for hire or for the purposes of trade or business, exposes or offers for sale or hires any infringing copy of any work in which copyright subsists; or
- (b) distributes for the purposes of trade or business any infringing copy of any such work; or
- (c) has in his possession, other than for his private or domestic use, any infringing copy of any such work; or
- (d) has in his possession, sells, lets for hire or distribution for the purposes of trade or business or exposes or offers for sale or hire any copy of a work which if it had been made in Nigeria would be an infringing copy¹².

This section provides for criminal liability for secondary infringement of copyright. It also provides for mens rea in order to ground liability and upon conviction the person is liable to a fine of ₦100 for every copy dealt with or to a term of imprisonment not exceeding two years or to such fine and imprisonment in the case of an individual. Any person who distributes in public for commercial purposes, copies of a work in which copyright subsists in the Act¹³, by way of rental, lease, hire, loan or similar arrangement is guilty of an offence and liable upon conviction to a fine of ₦100 for every copy dealt with or imprisonment for six months or to both such fine and imprisonment¹⁴. In *Nigeria copyright commission v Christopher Edolo*¹⁵ the accused was charged under what is now section 20(1), 20(1)(c) and 20(2)(c)¹⁶ of the copyright Act in relation to infringement of copyright in broadcast for being in possession of contrivances for cloning of smart cards of multi-choice Africa. The court held that a person who deals in or uses material upon which copyright resides without the authority or consent of the copyright owner is guilty of infringement of copyright. However the court acquitted the accused on the ground that the contrivances found on him could be used for other purposes other than cloning of smart cards. Section 22 of the copyright Act also provided for where the offence was committed by a body corporate. In that case the

¹⁰ D Bainbridge, n 10, 141.

¹¹ Copyright Act, n.1 section 20(1)(a) – (c).

¹² *Ibid.*, section 20(2)(d).

¹³ *Ibid.*, sections 6(1)(a)(iv), 6(1)(c)(iv), 7(1)(b) or 8(1)(c).

¹⁴ *Ibid.*, section 20(3).

¹⁵ [2008 – 2011] 6 I.P.L.R, 1.

¹⁶ Previously section 18 of the Copyright Act.

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body corporate and every person who at the time the offence was committed was in charge of, or was responsible to the body corporate for the conduct of the business of the body corporate shall be deemed to be guilty of such offence and liable to be proceeded against and punished accordingly.

Remedies and Jurisdiction

It has been earlier on been discussed that the copyright owner, exclusive licence and the assignee has the *locus standi* to institute an action for infringement. The remedies available for copyright, neighbouring rights and expression of folklore are similar. The remedies are as follows:

Damages

The copyright owner, exclusive license or assignee will usually ask the court for damages. Damages is monetary compensation usually granted the plaintiff in order to compensate him for the loss he has incurred in the infringement of his copyright. This is usually calculated on the basis of putting the plaintiff in the position he would have been had the infringement not been committed¹⁷. The actual loss suffered must not be too remote. In *Claydon Architectural Metawork Ltd v D.J. Higgins & Sons*¹⁸ it was held that the normal measure of damages for copyright infringement is the amount by which the value of the copyright as a chose in action has been depreciated.

Injunction

Injunction is another remedy the copyright owner can ask the court to issue. Injunctions may be granted where damages cannot adequately compensate the copyright owner for the infringement. It is granted to prevent a person from doing or continuing to do a wrong. It can be granted to prevent a threatened infringement¹⁹. In granting an order of injunction the applicant must establish a probability or prima facie case that he is entitled to the right whose violation he complains. If he shows this, then the status quo is to be maintained and the res preserved pending the determination of the suit²⁰. In *Married Media Ltd v Akapa & Anor*²¹, the court also held that the court considers balance of convenience in awarding an order for injunction.

Account of Profits

Section 16(3) of the Act provides that where, in an action for infringement of copyright, it is proved or admitted that an infringement was committed but that at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement but shall be entitled to an account of profits in respect of the infringement, whether or not any other relief is granted under the section. A plaintiff cannot recover damages from an innocent infringer. In ordering for account, the court will only be concerned with the net profit of the infringer²². In determining the profit made by the infringer, the court looks at invoice, cash books, way bill used by the infringer to determine how much profit has been made in the course of infringement. The profit is then given to the copyright owner.

Order for Inspection and Seizure (Anton Piller Order)

An infringer who knows that an action is about to be instituted against his action may destroy the evidence that the copyright owner may use in the suit. The infringer can also move out of the jurisdiction of the court or remove equipment and contrivances used in the infringement. In order to prevent the above the plaintiff may bring an action ex parte for order for inspection and seizure otherwise called the Anton Piller Order²³. The Anton Piller Order was made in *Anton Piller K.G.V. Manufacturing Processes Ltd. & Ors*²⁴. The order directs the defendant to permit the plaintiff to enter and inspect the defendant's premises as well as to seize, make copies of or photograph materials that are relevant to the alleged infringement. In *Ferodo Ltd v Unibros Stores*²⁵, the court ordered the defendants to permit up to six persons, including a police officer, to enter their premises for inspection, detention and preservation of anything that would constitute infringement or capable of being used for infringement of the plaintiff's registered trade mark. The court further ordered the defendants to allow the plaintiff's solicitor to inspect all or any documents in the custody or control of the defendants. The defendants were to produce on oath, any documents in their possession or power relating to the matters in question in the suit.

¹⁷ D Bainbridge, n 10. 149.

¹⁸ [1997] FSR 475.

¹⁹FO Babafemi, *Intellectual Property, the Law and Practice of Copyright, Trade Marks, Patents and Industrial Designs in Nigeria*, (Justinian Books Ltd, 2006) 114.

²⁰ *Saraki v CBN* (1981) 1 NWLR (Pt 98) 419; *Married Media Ltd v Akapa* [1990 – 1997] 3 I.P.L.R 202 at 203

²¹ *Supra*.

²² JO Asein, n.1, 314.

²³ *Anton Piller KG v Manufacturing Processes Ltd* [1976]1 Ch. 55 at 61

²⁴ *Supra*.

²⁵ [1980] F.S.R. 489.

Conversion Right

Section 18 of the Copyright Act provides:

All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates, master tapes, machines, equipment or contrivances used, or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner, assignee or exclusive licensee, as the case may be, of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

In *Caxton Publishing Co. Ltd v Sutherland Publishing Co. Ltd*.²⁶ The court held that damages for conversion and ordinary damages for infringement are cumulative subject to the general principle against over lapping. The Act deems the infringing copies, materials, equipment or contrivances the property of the copyright owner and thus entitled to sue to recover them or sue for conversion. It is our opinion that in accordance with section 16(1) of the Act the copyright owner can claim other relief as is available in any corresponding proceedings in respect of other proprietary rights. Therefore the remedies available to the copyright owner are not limited to the remedies listed under section 16(1) of the Act.

3. Legal Framework for the Protection of the Entertainment Industry in United States of America

The Principal Act regulating copyright in the entertainment industry in the United States is the Copyright Act of the United States²⁷. The constitution of the United States²⁸ contains a constitutional provision in respect of Copyright. It states that 'the congress shall have power...to promote the progress of science and useful Arts, by securing for limited time to Authors and Inventors the exclusive Right to their respective writings and discoveries'²⁹. The U.S copyright Act has undergone several amendments to respond to emerging issues in the copyright which resulted in many amendments to address the issues.

Subject Matter of Copyright

The US Copyright Act provides that copyright protection subsists, in original works of authorship fixed in any tangible medium of expression, now known or later developed from which they can be perceived reproduced or otherwise communicated, either directly or with the aid of a machine or device. Work of authorship are categorized as follows:³⁰

- (i) literary works
- (ii) musical works, including any accompanying work
- (iii) dramatic works, including any accompanying music
- (iv) pantomimes and choreographic works;
- (v) pictorial, graphic and sculptural works;
- (vi) motion pictures and other audiovisual works
- (vii) sound recordings; and
- (viii) architectural works

The U.S Copyright Act provides that Unpublished works are subject to protection without regard to nationality or domicile of the author. The U.S Copyright Act further provides that copyright protection does not extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated or embodies in such work³¹.

Such works as mentioned under section 102 when published, are subject to protection if

- (1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty state, or is a stateless person, wherever that person may be domiciled; or³²
- (2) the work is first published in the United states or in a foreign nation, that, on the date of first publication, is a treaty party; or³³
- (3) the work is a sound recording that was first fixed in a treaty party; or

²⁶ Supra.

²⁷ The Copyright Act, 1976, Pub. L. Notice. 94 – 553, 90 stat. 2541, enacted on October 19, 1976 (hereafter referred to as U.S. Copyright Act) is contained in Chapters 1 – 8 and 10 – 12 of title 17 of the United States Code.

²⁸ United States Constitution, 1787.

²⁹ Ibid, article 1, Section 8.

³⁰ U.S Copyright Act, n 39, section 102(a).

³¹ Ibid, section 102(b).

³² Ibid, section 104(b)(i).

³³ Ibid, section 104(b)(ii).

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- (4) the work is a pictorial, graphic, or³⁴ sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or³⁵
- (5) the work is first published by the United Nations or any of its specialized agencies; or³⁶
- (6) the work comes with the scope of a presidential proclamation.

The Act further provides for reciprocity by the United States to countries that offer the same protection to nationals and domiciliaries of the United States as it offers to its own nationals³⁷.

Exclusive Rights in Copyrighted Works

The U.S Copyright Act provides that subject to sections 107 – 122, the owner of copyright has the exclusive rights to do and to authorize any of the following;

- (1) to reproduce the copyrighted work in copies or phonorecords;³⁸
- (2) to prepare derivative works based upon the copyrighted work;³⁹
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;⁴⁰
- (4) in the case of literary, musical, dramatic and choreographic works, pantomimes, and motion picture or other audiovisual works, to perform the copyrighted work publicly;⁴¹
- (5) in the case of literary, musical, dramatic and choreographic works, pantomimes, and pictorial, graphic or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly;⁴² and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission⁴³.

It also provided for right of attribution and integrity which gives the author of visual art the right to claim ownership of his work and to prevent the use of his or her name as the author of any work of visual art which he or she did not create⁴⁴. He can also prevent the use of his name as the author of the work in the event of distortion or mutilation, or other modification of the work which would be prejudicial to his or her honour or reputation⁴⁵.

Limitation on Exclusive Rights: Fair Use

The United States made elaborate provision on limitations on exclusive rights to copyright⁴⁶. It provides that subject to the provisions in exclusive rights in copyrighted works, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. It further provides that in determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for non profit educational purpose;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work⁴⁷.

Limitation of Copyright for Libraries and Archives

The fair use is generally viewed as an open-ended flexible regime which allows courts to determine what qualifies as fair use within certain criteria fixed by the United States Copyright Act and developed by US courts⁴⁸. This

³⁴ Ibid, section 104(b)(iii).

³⁵ Ibid, section 104(b)(iv).

³⁶ Ibid, section 104(b)(v).

³⁷ Ibid, section 102(b)(vi).

³⁸ Ibid, section 106(1).

³⁹ Ibid, section 106(2).

⁴⁰ Ibid, section 106(3).

⁴¹ Ibid, section 106(4).

⁴² Ibid, section 106(5).

⁴³ Ibid, section 106(6).

⁴⁴ Ibid, section 106A(1)(A) & (B).

⁴⁵ Ibid, section 106A(2).

⁴⁶ Ibid, section 107.

⁴⁷ Ibid, section 107(1) – (4).

⁴⁸ G Geist, 'Fairness Found: How Canada Quietly shifted from Fair Dealing to Fair Use' in M Geist, (ed) *The Copyright Pentology: How the Supreme Court of Canada shook the Foundations of Canadian Copyright Law* (University of Ottawa Press, 2013) 157 – 186.

approach requires a test for determining whether new uses should be permitted and is done on a case-by-case basis⁴⁹. The US copyright specifically provides that it is not an infringement of copyright for a library or achieves to reproduce no more than one copy or phonorecord of a work⁵⁰ except as provided under sub sections (b)⁵¹ and (c)⁵² or to distribute such copy or phonorecord under the conditions specified by this section, if-

- (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage
- (2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other person doing research in a specialized field⁵³.

The fair use doctrine is fact intensive as it requires an assessment of the ‘fairness’ of the use in question based on balancing of several factors as enumerated under section 107(1) – (4)⁵⁴. Thus where there is no established precedent it is difficult for prospective users to know whether a fair use defense will avail them⁵⁵. The fair use doctrine is flexible and is adaptable to new technologies and has been used to determine fair use in the online environment⁵⁶. It has been used by the courts to enable the use of thumbnail images in internet search results,⁵⁷ caching of web pages by a search engine,⁵⁸ and a digital plagiarism detection service⁵⁹. The DMCA⁶⁰ amended section 108 of the US copyright Act to allow libraries and archives to take advantage of digital technologies when engaging in preservation activities. Libraries and archives are permitted by DMCA to make up to three copies or phonorecords in digital as well as analog formats, for purposes of preservation and security or for deposit for research use in another library or archive⁶¹. The amendment imposed restrictions on the use of any digital copies made, in order to ensure that they are not freely distributed outside library premises⁶².

Exemption of Certain Performances and Displays

The US Copyright Act provides that despite the provisions of section 106 that the following are not infringement of Copyright;

- (1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution in a classroom or similar place devoted to instruction, unless in the case of motion picture or other audiovisual work, the performance or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;
- (2) except with respect to a work provided or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited non profit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a non dramatic literary or musical work on reasonable and limited portions of any other work, or display of a work in an amount comparable to

⁴⁹R Ghafele, G Gibert, ‘A Counter Factual Impact Analysis of Fair Use Policy on Copyright Related Industries in Singapore’, (2014)3, *Laws*, 327 – 352 available at <www.mdpi.com/2075-471x/3/2/327> accessed 3 March 2017

⁵⁰ US Copyright Act, n. 39 section 108(a).

⁵¹ The rights of reproduction and distribution under this section apply to three copies or phonorecords of Unpublished work duplicated solely for purposes of preservation and security or for deposit for research sue in another library or achieve of the achieve described by clause(2) of subsection (a) if the copy or phonorecord in the collections of the library or archives and is reproduced in digital format and not made available to the public in that format outside the premises of the library or achieve

⁵² The right of reproduction under this section applies to three copies or phonorecords of published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored is obsolete if the library or archieve has after a reasonable effort determined that an unused replacement cannot be obtained at a reasonable price and the reproduced digital format is not made available outside the premises of the library or archieve in lawful possession.

⁵³ US Copyright Act, n. 39, section 108(i) & (7).

⁵⁴ The provisions are already reproduced. See footnote 21

⁵⁵ US Department of Commerce, ‘Copyright Policy, Creativity and the Innovation in the digital Economy’, (The Department of Commerce Internet Policy Taskforce study on Copy right and the Internet Technology) 21 <[http://www.uspto.gov/sites/default/files/news.../copyright green paper.pdf](http://www.uspto.gov/sites/default/files/news.../copyright%20green%20paper.pdf) accessed 1 Nov 2016

⁵⁶ Ibid

⁵⁷ *Perfect 10, Inc v. Amazon.com, Inc.*, 508 F.3d 1146, 1163 – 68 (9th Cir.2007) but see *Associated Press v Meltwater U.S. Holdings, Inc.*, No. 12 Civ. 1087, - F. supp. 2d.-, 2013 WL 1153979 (S.D.N.Y. Mar. 21, 2013) rejecting subscription news clipping service that used algorithm similar to search engines to locate and excerpt news stories.

⁵⁸ *Field v Google Inc.*, 412 F. Supp. 2d 1106, 1117 – 23 (D. New. 2006).

⁵⁹ *A.V. v. Iparadigms, LLC*, 562 F.3d 630, 637 – 45 (4th Cir. 2009).

⁶⁰ Digital Millennium Copyright Act, 1998.

⁶¹ See US Copyright Act, n. 39, section 108(b).

⁶² US Department of Commerce; n.67, 23.

that which is typically displayed in the course of a line classroom session, by or in the course of a transmission⁶³.

The foregoing provisions is subject to where amongst others, the work is limited to instructional educational activities that is non-profit and accessible only to students who are registered in the course and there are information that the content may be protected by copyright and the performance and display is made by the direction or supervision of the instructor as an integral part of classroom session offered as a regular part of the systematic mediated instructional activities of the government body or non profit educational institution⁶⁴. In the case of digital transmission where the institution applies technological measures that prevent retention of the work in accessible form by recipients of the transmission for longer than the class session; and present unauthorized further dissemination of the work in accessible form by such recipients to others and does not interfere with technological measures used by the Copyright owners to prevent such retention or unauthorized further dissemination⁶⁵. The Technology, Education, and Copyright Harmonization (TEACH) Act⁶⁶ amended sections 110(2) and 112(f) of the copyright Act. The amendment allow instructors to sue wider range of works in distance learning environments; students may participate in distance learning sessions from virtually any location and participants have more latitude to store, copy and digitize materials. The academic institution must however comply with requirements to protect against piracy of digital content and to preserve the viability of markets for educational materials⁶⁷.

Secondary Transmission

The US Copyright Act exempted from copyright secondary transmission of a performance or display of a work embodies in a primary transmission if

- (1) the secondary transmission is not made by a cable system, and consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the federal communications commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission⁶⁸; or
- (2) the secondary transmission is made solely for the purpose and under the conditions specified under clause (2) of section 110; or
- (3) the secondary transmission⁶⁹ is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission⁷⁰ or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others. This provision extends only to the carriers secondary transmission and not to third parties primary or secondary transmissions.
- (4) the secondary transmission is made by satellite carrier for private home viewing
- (5) the secondary transmission is not made by a cable system but is made by a government at body, or other non-profit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessment, necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service⁷¹.

However, the willful or repented secondary transmission to the public by a cable system of a primary transmission made by a broadcast station embodying a performance or display of a work is actionable as an act of infringement;⁷² if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public⁷³.

⁶³ US Copyright Act, n. 39, section 110(1) & (2).

⁶⁴ Ibid, section 110(2)(a) – (d).

⁶⁵ Ibid, section 110(2)(D)(ii).

⁶⁶Technology, Education and Copyright Harmonization Act of 220, Division C, title 111, sub title C of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107 – 273, 116 stat. 1758, 1910 (amending chapters, title 17, United States Code to incorporate provisions relating to use of Copyrighted works for distance Education) enacted November 2,2002.

⁶⁷ US Department of Commerce, n. 67, 25.

⁶⁸ US Copyright Act; n. 39, section 111 (a)(1)

⁶⁹ A Primary transmission is a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted.

⁷⁰ “A secondary transmission is the further transmitting of a primary transmission simultaneously with the primary transmission, or non simultaneously with the primary transmission, or non simultaneously with the primary transmission...”

⁷¹ US Copyright Act, n. 39, section 111(2) – (5).

⁷² Ibid, section 111 (b).

⁷³ Ibid, Section 111 (b).

Copyright Infringement and Remedies

The US Copyright Act provides that any of the exclusive rights of the copyright provided by sections 106 – 122 or of the author as provided in section 106 – 122 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States is an infringer of the copyright or right of the author as the case may be⁷⁴. The legal or beneficial owner of an exclusive right under a copyright is entitled to institute an action for any infringement of that particular right committed while he or she is the owner of it⁷⁵. In the case of a secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under section III (c), a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station. In case of transmission under section III (c) (3)⁷⁶ by a cable system that amounts to infringement; the primary transmitter whose transmission has been altered by the cable system and any broadcast station within whose local service area the secondary transmission occurs has locus standi to sue⁷⁷. In the case of any secondary transmission made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 11a(a) (5)⁷⁸, a network station holding a copyright or other license to transmit or perform the same version of that work shall be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station⁷⁹. Remedies for Infringement are:

Injunction

The Act provides that any civil court having jurisdiction may grant temporary or final injunction on such terms as it deems reasonable to prevent or restrain infringement of a copyright⁸⁰.

Impounding and Disposition of Infringing Articles

The Act empowers the courts while an action is pending to order the impounding, on such terms as it may deem reasonable, of copies or phonorecords claimed to have been made in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives or other articles by means of which such copies or phonorecords may be produced⁸¹. The court may order the destruction of such articles as mentioned earlier as part of its final judgment⁸².

Damages and Profits

The copyright owner is entitled to recover from the infringer actual damages and profits which comprise of actual damages suffered by him or her as a result of the infringement and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages⁸³. The copyright owner may elect at anytime before final judgment is given to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action⁸⁴. The court are also empowered to award additional damages⁸⁵.

Cost and Attorney's Fees

The court may in its discretion allow the recovery of full costs by or against any party other than United States or its officer, the court may also award a reasonable attorney's fee as part of the costs⁸⁶.

Criminal Offences

The US Copyright Act also created offences for Copyright infringement. It provides that any person who infringes a copyright willfully either for purpose of commercial advantage for purpose of commercial advantage or private financial gain, or by the reproduction or distribution, including by electronic means during any 180-day period,

⁷⁴ Ibid, section 501 (a)

⁷⁵ Ibid, section 501 (b)

⁷⁶ The section provides that the secondary transmission to the public by a cable by system of a performance or display of a work embodied in a primary transmission made by a broadcast station duly licensed is actionable as an act of infringement under section 501.

⁷⁷ US Copyright Act, n.39, section 501 (d).

⁷⁸ The Section provides that it is actionable as an infringement for a satellite carrier to willfully or repeatedly make a secondary transmission of a primary transmission made by a network station embodying a performance or display of a work to a subscriber who does not reside in an unreserved household.

⁷⁹ US Copyright Act, n.39, section 501(e).

⁸⁰ Ibid, section 502(a).

⁸¹ Ibid, section 503(a).

⁸² Ibid, section 503 (b).

⁸³ Ibid, section 504 (b).

⁸⁴ Ibid, section 504 (c).

⁸⁵ Ibid, section 504 (d).

⁸⁶ Ibid, section 505.

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of 1 or more copies or phonorecords of 1 or more copyrighted works which have a total value of more than \$1,000 shall be punished under section 2319 of title 18 of United States Code⁸⁷. Where any person is convicted under the above section, the court may in addition to conviction order the forfeiture or destruction or other disposition of all infringing copies or phonorecords or other machines or devices used for such infringement⁸⁸. It also makes it an offence for any person to fraudulently put a notice of copyright on any article or words of the same purport which he knows to be false or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false shall be fined \$2,500⁸⁹. The same fine goes to any person who with fraudulent intent removes or alters any notice of copyright appearing on any copyrighted work⁹⁰. Actions for infringement must be brought within 5 years and 3 years for criminal and civil infringement respectively⁹¹. The foregoing does not apply to right of attribution and integrity.

Seizure and Forfeiture

All copies or phonorecords manufactured reproduced, distributed or sold or otherwise used intended for use or possessed with intent to use in violation of section 506(a) and all plates, molds matrices, masters, tapes, film negatives or other articles by means of which such copies or phonorecords may be reproduced, and all electronic, mechanical or other devices for manufacturing, reproducing or assembling such copies or phonorecords may be seized and forfeited to the United States⁹².

The Digital Millenium Copyright Act 1998

The digital Millenium Copyright Act⁹³ is an Act that addressed the challenges of Copyright in the Online environment. The legislation implemented two World Intellectual Property Organsiation (WIPO) treaties namely: WIPO Copyright Treaty (WCT) and WIPO performances and Phonograms Treaty (WPPT). The DMCA created new prohibitions in the Copyright Act on circumvention of technological measures used by copyright owners to protect their works and one on tampering with copyright management information. It also adds civil remedies and criminal penalties for violating the prohibitions.

Circumvention of Technological Protection Measures and Copyright Management System

The two WIPO treaties contain similar provisions obligating member states to prevent circumvention of technological measures used to protect copyrighted works, and to prevent tampering with the integrity of copyright management information. These obligations serve as technological adjuncts to the exclusive rights granted by copyright law. They provide legal protection that the international community deemed critical to the safe and efficient exploitation of works on digital networks. Circumvention of Technological Protection Measures Article 11 of the WCT provides:

Contracting parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this treaty or the Berne Convention and that restricts acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.⁹⁴

Section 103 of DMCA added a new section 1201 which implements the obligation to provide adequate and effective protection against circumvention of technological measures used by copyright owners to protect their works. The section divides technological measures into two categories: measures that prevent unauthorized access to a copyrighted work and measures that prevent unauthorized copying of a copyrighted work. Making or selling devices or services that are sued to circumvent either category of technological measure is prohibited in certain circumstances. As to the circumvention itself, the provision prohibits circumventing the first category of technological measures but not the second⁹⁵. This distinction was employed to assure that the public will have the continued ability to make fair use of copyrighted works. Since copying of a work may be a fair use under appropriate circumstances, section 1201 does not prohibit the act of circumventing a technological measure that prevents copying. By contrast, since the fair use doctrine is not a defense to the act of gaining unauthorized access to a work, the act of circumventing a technological measure in order to gain access is prohibited⁹⁶. Section 1201 outlaws the following:

⁸⁷ Ibid, section 506 (a) (1) & (2).

⁸⁸ Ibid, section 506 (b).

⁸⁹ Ibid, section 506 (c).

⁹⁰ Ibid, section 506 (d).

⁹¹ Ibid, section 507 (a) & (b).

⁹² Ibid, section 509.

⁹³ Pub. L. No. 105 – 304, 112 Stat. 2860 (Oct. 28, 1998).

⁹⁴ WIPO Copyright Treaty, 1996, Article II. The WPPT also contains similar provision in Article 18 of the treaty.

⁹⁵ US Copyright office ‘The Digital Millenium Copyright Act of 1998’ <[http://www. Copyright.gov/legislation/dmca.Pdf](http://www.Copyright.gov/legislation/dmca.Pdf)> visited 10 March, 2017

⁹⁶ Ibid.

- (i) devices and services primarily designed to circumvent.
- (ii) devices and services that have only limited commercially significant purpose or use other than to circumvented
- (iii) devices and services that are marketed for use in circumventing

Integrity of Copyright Management Information

Article 12 of the WCT and Article 19 of the WPPT makes identical provisions as follows:

Contracting parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know that it will induce, enable, facilitate or conceal an infringement of any right covered by this treaty or the Berne Convention:

- (i) to remove or alter any electronic rights management information without authority;
- (ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

The DMCA in section 1202 makes provisions implementing this treaty obligation. The first paragraph deals with copyright management information and the second with removal or alteration of Copyright Management Information (CMI). DMCA prohibits the knowing provision or distribution of false CMI, if done with the intent to induce, enable, facilitate or conceal infringement⁹⁷. The Act also bars the intentional removal or alteration of CMI without authority, as well as the dissemination of CMI or copies of works, knowing that the CMI has been removed or altered without authority⁹⁸. Liability under (D) requires that the act be done with knowledge or, with respect to civil remedies, with reasonable grounds to know that it will induce, enable, facilitate or conceal an infringement⁹⁹. Section 1202 is subject to exceptions for law enforcement, intelligence and other government activities¹⁰⁰. It also contains limitations on the liability of broadcast stations and cable systems for removal or alteration of CMI in certain circumstances where there is no intent to induce, enable, facilitate or conceal an infringement¹⁰¹.

Remedies

Contravention of Section 1201 and 1202 gives the courts power upon the institution of civil action by an aggrieved person to grant equitable and monetary remedies similar to those available under the US copyright Act including statutory damages¹⁰². Criminal action may also be instituted against offenders under section 1201 and 1202 who willfully and for purposes of commercial advantage or private financial gain violates the section. Penalties ranges upto a \$500,000 fine or up to 5 years imprisonment for a first offense and up to \$1,000,000 fine or up to 10 years imprisonment for subsequent offenses¹⁰³.

Non profit libraries, archives and educational institutions are exempted from liability¹⁰⁴.

Online Copyright Infringement Liability Limitation

The DMCA adds a new section 512 to the copyright Act to create four new limitations on liability for copyright infringement by online service providers. The limitations are based on the following four categories of conduct by a service provider.

- (i) Transitory communications
- (ii) System caching
- (iii) Storage of information on systems or networks at direction of users; and
- (iv) Information location tools

The limitations bars monetary damages and restrict the availability of injunctive relief against the providers of the service mentioned above¹⁰⁵. There are conditions set for qualification or the limitations¹⁰⁶ but failure of a service

⁹⁷ *Ibid*, section 1202 (a).

⁹⁸ *Ibid*, section 1202(b).

⁹⁹ CMI is defined as identifying information about the work, the author, the copyright owner, and in certain cases, the performer, writer, or director of the work, as well as the terms and conditions for use of the work, and such other information as the Registrar of copyright may prescribe by registration. Information concerning users of works is excluded. See *Ibid*; section 1202(c).

¹⁰⁰ *Ibid*, section 1202(d).

¹⁰¹ *Ibid*, section 1202(e).

¹⁰² *Ibid*, section 1203.

¹⁰³ *Ibid*, section 1204.

¹⁰⁴ *Ibid*, sections 1203 (B) (5)(3), 1204(6).

¹⁰⁵ *Ibid*, section 512(j).

¹⁰⁶ *Ibid*, section 512(l).

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provider to qualify for any of the limitations in section 512 does not necessarily make it liable for copyright infringement. The service provider can still avail itself of Defenses in the other sections of the copyright Act. Service providers are not required to monitor its service or access material in violation of any law¹⁰⁷.

Limitation for Transitory Communications

Section 512(a) limits the liability of service providers in circumstances where the provider merely acts as a data conduit, transmitting digital information from one point on a network to another at someone else's request. This limitation covers acts of transmission, routing, or providing connections for the information, as well as the intermediate and transient copies that are made automatically in the operation of a network.

Limitation for System Caching

The US Copyright Act limits the liability of service providers for the practice of retaining copies, for a limited time, of material that has been made available on line by a person other than the provider, and then transmitted to a subscriber at his or her direction. The service provider retains the material so that subsequent requests for the same material can be fulfilled by transmitting the retained copy, rather than retrieving the material from the original source of the network¹⁰⁸. The limitation applies to acts of intermediate and temporary storage, when carried out through an automatic technical process for the purpose of making the material available to subscribers who subsequently request.

Limitation for Information Residing on Systems or Networks at the Direction of Users

The Act also limits liability of service providers for infringing material on websites (or other information repositories) hosted on their systems. It applies to storage at the direction of users¹⁰⁹.

Limitation for Information Location Tools

The US copyright Act provides limitation of liability for service like upperlinks, online directories, search engines etc. It limits liability for the acts of referring or linking users to a site that contains infringing material by using such information location tools¹¹⁰. These limitation of liability is to exempt providers of online services from liability for infringement resulting from the services they provide for people when they have no control over the content of materials they pass on to users. The limitation of the liability avails them if they meet the conditions set out in the law. This is because while hosting, routing and linking to 'infringing material harbouring' sites or services, internet service providers themselves become vulnerable to changes of copyright infringement¹¹¹.

4. Observations

It can be seen from the analysis of the law above that the United States of America has through legislative intervention brought its Copyright law up to date with technological developments in that area of law. The US Copyright Act made elaborate provision to protect copyright in the online environment and specifically to protect right owners against infringement of their works on new media of exploiting works. The Millennium Copyright Act addressed the challenges of the digital era. There are also provisions on cable and satellite transmissions, limitation of liability for Internet service providers etc. It also provided for copyright registration to ensure certainty in copyright ownership and which aids proof of ownership in litigation. There are also remedies in the online environment like take down, blocking, warning, education etc that is relevant and effective in the online environment.

This paper found that the Copyright Act¹¹² of Nigeria, the current law that regulates copyrighted works in Nigeria is not adequate to protect rights of copyright owners especially in this era of the internet and digital technologies. Although digital technology in the varied forms known to us today was not expressly contemplated for protection under the Nigerian Copyright Act, most of the new digital innovations can be accommodated in some form under the Act if they approximately fall under any of the six genres protected under the copyright Act.¹¹³ However, it is not all the new forms of digital innovations that can be accommodated under the Copyright Act. For instance how would certain digital products derived from satellite and cable broadcast relate to the protected genres under the Act? Section 51 of the Copyright Act defines broadcasting to include satellite or cable programmes as well as rebroadcast. This section is complemented by section 8(1) of Copyright Act which stipulates that copyright in a (satellite or cable) broadcast shall be the exclusive right to control the recording and broadcasting of the whole or

¹⁰⁷ Ibid, section 512(m).

¹⁰⁸ US copyright Act, n.39, section 512(b).

¹⁰⁹ Ibid, section 512(c).

¹¹⁰ Ibid, section 512(d).

¹¹¹ A Kumar, 'Internet Intermediary (ISP) Liability for Contributory copyright Infringement in USA and India: Lack of Uniformity as a Trade Barrier' (2014)19 *Journal of Intellectual Property Law*, 272.

¹¹² n. 2

¹¹³ Ibid, section 1(1)(a – f). The genres include: Literary works, artistic works, musical works, cinematograph films, sound recordings, and broadcasts.

substantial part of the broadcast, communicating to the public of the whole or substantial part of such broadcast either in its original form or in any form recognizably derived from the original and the distribution to the public for commercial purposes of the copies of the work by way of rental, lease, hire, loan or similar arrangement.

Flowing from this, any television station that transmits or re-transmits a broadcast must consider section 8(3) of the Copyright Act which stipulates the exceptions to the copyright created in section 8(1) contained in paragraphs (a), (h), (k), (n) and (o) of the Second schedule to the Copyright Act. The implication of section 8(1) (b) and (c) of the Copyright Act is that consent for the use of Copyright works in a broadcast should be obtained before there is a reception by the general public. However section 51 of the Copyright Act defines 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. This means that where a T.V station pirates off the broadcast of another T.V station and re-broadcasts the same to the public, the T.V station will be exonerated by Section 51 of the Copyright Act.¹¹⁴ As regards format rights,¹¹⁵ our law does not recognize format rights nor does it mention them by implication in the Copyright Act.

Generally the Copyright Act is inadequate to protect copyright in Nigeria in the digital era. Nigeria being a signatory to many international treaties on copyright has not domesticated these international law treaties neither have the Copyright Act been amended to provide for obligations Nigeria has undertaken under these treaties, some of these treaties includes, Trade Related Aspects of Intellectual Property Rights, (TRIPS), WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) sometimes called the internet treaties. These treaties addressed the challenges the internet has posed to copyright. Specifically, the Copyright Act currently has no provision relating to circumvention of technological protection measures¹¹⁶ and falsification, alteration or removal of rights management information.¹¹⁷ These provisions aim at protecting copyrighted works online and are major safeguards against unauthorized use of copyrighted works online. Similarly the Copyright Act does not have provision for actions that may be taken by law enforcement agencies or copyright administration office in the event of circumvention of technological protection measures and right management information. The Copyright Act is also deficient in other measures that may be taken by enforcement agencies in case of online infringement of copyrighted works. Measures like take down of infringing content, suspension of accounts of repeat infringers, blocking access to online content; liability of service providers and provisions on information location tools. The United States of America is a signatory to the internet treaties ie WCT¹¹⁸ and WPPT¹¹⁹ and has accordingly amended her local legislation to address the challenges of online infringement of Copyright.¹²⁰ The Copyright Act did not also provide for ‘On demand services’ which is accessing content online by users at a time and place of their choosing. Instructively, Nigeria has a huge online market and works of Nigerian artistes in the music and film industries are online, the protection and enforcement of their rights in the digital era is not guaranteed in the present copyright law regime in Nigeria.

On the issue of digital broadcast by cable and satellite, the greatest challenge is the effect produced by the skeletal nature of our Copyright Act with regard to copyright regulation in this field. The various forms of piracy of digital broadcast in Nigeria is so digitized and complicated in nature that it is only a specific legislation that would effectively contain the situation.¹²¹ An example is the ‘subscriber under-declaration’ which is a situation where cable companies, who legitimately subscribe to major satellite stations, or cable operator, do not pay for all the channels they rebroadcast to the public.¹²² We also have unauthorized cable access¹²³ where individuals or groups that have high receptive television set tap lines of legitimate cable T.V companies through signal bleedings, without paying subscription fees. The nature of these forms of copyright infringement is such that it cannot be

¹¹⁴ HP Faga, H.P & Ole, N ‘Limits of Copyright Protection in Contemporary Nigeria: Re-Examining the Relevance of the Nigerian Copyright Act in Today’s Digital and Computer Age’ (2010) <www.ajol.info/index.php/naujili/article/view/file/82405/72560> Accessed 21 July, 2016.

¹¹⁵ The right associated with the programmes in a broadcast which is in broadcasting language. Once a programme is broadcasted or published, it becomes public and the law of confidence being weak, the rights associated with it before it is copyrighted is dissipated. In *Green v Broadcasting Corporation of New Zealand* [1989] RPC 700, the dramatic format of a television show failed to attract copyright protection. The law of confidence states that a work must be kept confidential until copyright is conferred. See *Attorney General v Guardian Newspapers Ltd (No.2)* [1990] AC 109.

¹¹⁶ WIPO Copyright Treaty, 1996, article 11, WIPO Performances and Phonograms Treaty, 1996, article 18.

¹¹⁷ Ibid, articles 12(2) and 19(2) respectively.

¹¹⁸ The World Intellectual Property Organization (“WIPO”) Copyright Treaty (opened for signature 20th December, 1996, 36 ILM 65 (entered into force 6th March 2002).

¹¹⁹ WIPO Performances and Phonograms Treaty, opened for signature, 20th December 1996, (entered into force 20th May, 2002) 36 ILM 76.

¹²⁰ See for example United States Copyright Act, sections 1201 and 1202 that provides for protection against circumvention of technological protection measures and rights management information respectively.

¹²¹ Example is the US’s Family Entertainment Act, governing family related broadcast.

¹²² HP Faga, &N Ole,n. 141, 222.

¹²³ Ibid.

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adequately addressed within the legal framework of the skeletal provisions in the Copyright Act. This is even more challenging as Nigeria has embraced digital broadcast by Satellite and cable. Digital broadcasts emanating from Nigeria may not be adequately protected and enforced by the Copyright Act.¹²⁴ Where the signals are transmitted in Nigeria it will be difficult to protect the right of copyright owners in the content being disseminated as various international treaties of which Nigeria is signatory have not been domesticated and the Copyright Act has not been amended to incorporate the provisions of such treaties. Furthermore, such broadcast transmission especially by satellite emanating from Nigeria will not be accorded protection once outside Nigerian boundaries as Nigeria is not a signatory to the Satellite Convention of 1974.

Furthermore, this research has found that the penalty for Copyright offences, particularly the fines are not adequate to deter infringers. Penalties for copyright offences in the United States are as high as \$500,000 to \$1 million dollars. The Copyright Act provision of ₦200,000 to ₦1 million is grossly inadequate to deter infringement in the face of the endemic nature of copyright infringement in Nigeria especially through Online media.

5. Conclusion and Recommendations

The Copyright Act which is the extant law on copyright regulation and protection in Nigeria is obviously outdated and needs urgent legislative intervention through amendment of the Act to address new ways of exploiting copyright arising from new technology especially the internet and the challenges of copyright protection arising therefrom. The United States Copyright Act addressed these new technologies and the challenges they have brought by enacting the Millenium Copyright Act. Nigeria needs to do the same especially the need to ratify and domesticate international treaties touching on the new technologies and domesticating them. It is only when this is done that copyright can adequately be protected in Nigeria and afford copyright owners the opportunity to fully benefit from their copyright.

Thus, the copyright Act requires to be updated to cater for new developments in the society, both from the creative side and that of intellectual property consumer. To this end it is once again suggested and recommended that matters arising from interest and other exploding technologies be given express provision in a copyright statute. By the same token, a better appreciation of copyright would be achieved if owners are statutorily required to register for copyright protection. This would make him or her more conversant with the concept, and streamline the apparatus of enforcement for better result. Furthermore, the partnership between the commission and other agencies should be strengthened. This would checkmate incidence of cross-border copyright violation. The part of the copyright Act regulating collecting societies should be liberalized. This in itself will help to create awareness. Copyright owners also have a role to play for optimum administration of copyright in the country. Authors, creators and various copyright owners should decisively litigate any serious case of infringement. The copyright Act need to incorporate the Internet treaties: WIPO Copyright treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) which have been signed but have not domesticated in line with the Constitution of the Federal Republic of Nigeria 1999 as amended. The Copyright Bill before the national assembly has some provisions which deal with the issue of copyright protection on the internet. It is therefore recommended that the Copyright Bill before the national assembly should be given expedited attention so that the bill can be passed into law. This will make Nigeria's copyright laws meet international standards in copyright law. This will attract more foreign investments in Nigeria's copyright industries.

¹²⁴ Ibid.