

Abstract

Nigeria's entertainment industry is arguably the biggest in Africa and the second in the world after India in terms of the number of films produced yearly. So far, it has contributed to the growth of Nigeria's economy especially the provision of employment to many hitherto unemployed persons in Nigeria. This study examined the Copyright Act, 2022 to determine how adequate it is to protect and enforce copyright in the entertainment industry in the digital era and the role of enhanced copyright protection in the diversification and development of the Nigerian economy through adequate protection of rights in the entertainment industry. The paper found among other things that the Copyright Act, 2022 is largely adequate to protect copyright in the entertainment in this digital era. The paper also found that copyright enforcement machinery in Nigeria is weak and not adequate and further that the entertainment industry in Nigeria will only have the potential of contributing huge revenue and aid the diversification of the Nigerian economy if the enhanced copyright legislation is adequately enforced. The paper therefore recommended that the enforcement machinery of copyright should be strengthened to address copyright infringement particularly piracy in digital platforms. This work further recommended that government should consciously include intellectual property in its economic development policy. These recommendations will help to diversify the Nigerian economy and to a large extent address copyright infringement in the entertainment industry in Nigeria.

Keywords: Copyright Act 2022, Entertainment Industry, Economic Development, Nigeria

1. Introduction

Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and such rights of the public to have access to those creations. The second is to promote, as a deliberate act of government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.¹ Belgore, J. in *Oladipo Yemitan v The Daily Times Nigeria Ltd*² aptly held that 'the right of a man to that which he had originally made is an incorporeal right and must be protected.' Copyright law is that branch of intellectual property law that protects the right of authors in their intellectual creations. The intellectual creations comprise of works in literary, musical, artistic, audio-visual, sound recordings and broadcast.³ However, since the beginning of the 20th century, the world has continually experienced technological developments and innovations that have impacted on every aspect of life, thus changing the ways things are done. The technological developments have also impacted the copyright works and the traditional ways of protecting the work of authors. This invariably have led to new legislations to address the challenges thrown up by these new technologies and thus device ways of protecting intellectual property rights including copyright and performer's rights in these new media.

Nigeria enacted the Copyright Act, 2022, to protect copyright and ensure its effective administration and enforcement in Nigeria and address the challenges thrown up by the digital era, especially the internet in the protection and enforcement of copyright. The entertainment industry thrives on the protection of copyright. In a 2017 report on entertainment and media outlook for 2017-2021, the film industry in Nigeria according to the report was estimated to have contributed US\$ 7 billion to the national economy. The industry accounted for 1.4% of Nigeria Gross Domestic Product (GDP) in 2016⁴. The music industry revenue in 2016 was US\$39 million and was estimated to have risen to US\$ 73 in 2021.⁵ This is estimated to be very low compared to what the copyright industries in developed countries which the entertainment industries benefits from contributed to the economy of their countries. In the United States for example, media and entertainment industries contributed US\$ 461.0 billion in 2019 and is estimated to have contributed US\$496.5 billion in 2021, US\$ 529.3 billion in 2022 and is projected to generate US\$ 561.9 billion in 2025.⁶ The importance of the entertainment industry to the economy of Nigeria is highlighted as Nigeria is mainly dependent on oil for its economic sustenance. Thus Nigeria has to turn to and develop a knowledge based economy to diversify her economy and turn around her economic fortunes and the entertainment industry is a viable option in reversing the economic downturn of Nigeria. The objective of this paper is to examine the Copyright Act, 2022, the entertainment industry and how the entertainment industry can contribute to Nigeria's economic development.

The paper begins with the introduction and examines the provisions of the Copyright Act, 2022 and the entertainment industry in Nigeria and the rights protected in the entertainment industry. It further discusses how an effective copyright system can help to develop Nigeria's economy. The paper further discusses challenges to the development of the entertainment industry in Nigeria, and made recommendations.

2. Copyrights Protection in the Entertainment Industry in Nigeria

Copyright works are used in the entertainment industry. The traditional copyright works like literary works, musical works, artistic works are transformed into other derivative works that form the fulcrum of the entertainment industry like films, music in the form of sound recordings or musical videos.. The broadcast industry including new media platforms like the internet broadcast content to the public. There is therefore a need to protect copyright in the entertainment industry to encourage creativity and to enable right holders who have

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¹ WIPO, *Intellectual Reading Material* (2nd edn, WIPO Publication, 1998) .3.

² [1980] FHCR 186 at 190.

³ IM Olueze, *Nigerian Copyright Law* (Magna Press Ltd, 1998) .3.

⁴ PriceWaterCopper, 'The Business of Entertainment: Harnessing Growth Opportunities in Entertainment, Media, Arts and Lifestyle' being a paper presented at National Branding Conference, October, 2017, 8. Available at <<http://www.pwc.com/pdf>> accessed 12 November, 2023. It was estimated that the average growth in the entertainment and media industries between 2017-2021 was 4.2%.

⁵ Ibid.

⁶ NF Granados, B French, & Amy Zwagerman 'The Media Report: Media and Entertainment Data in America 2016 to 2022; Past Trends, Covid Sock, and the Future' Institute for Entertainment, Media, Sports, & Culture (IEMSC) Pepperdine University/ Graziadio Business School Working Paper Series No. GCAR-A010. Paper No. 28, December 2021, 3-<<https://digitalcommons.pepperdine.edu/graziadiowps/28>> accessed 12 November, 2023.

invested in the entertainment industry to reap from their investment and also make the work available to the public. It is pertinent to protect copyright in the entertainment industry to keep it viable and contribute meaningfully to the economy of Nigeria.

3. Subject Matter of Copyright and Copyright in the Entertainment Industry

Literary and musical works relevant in the entertainment industry includes novels, plays, lyric of songs, broadcasting scripts, film scripts, stage directions, poetic works and choreographic works. The novels, plays, poetic works can be read in private for private entertainment or read in public in book fair for public entertainment. The broadcasting script is used in broadcasting while lyric of song is used for rendering the song, film script is used to act film, and choreographic works for choreographic works are used for rendering works of choreography. These intellectual works need to be protected by the law to enable the owners reap the fruit of their intellectual creativity and also to encourage creativity. Thus copyright owners and those in the printing and publishing industry benefit from the protection of these categories of works. Works in the artistic category relevant in the entertainment industry include; drawings, paintings, lithographs, woodcuts, work of sculpture, photographs not comprised in an audiovisual work. The work involved in audiovisual work is the film. The investors in this creative output include the producers of the film and any other person or entity that has copyright in the work. Works that comprise sound recording are sound recordings in the form of audio recordings placed on a medium of expression like DVD, VCD and audio recordings on the internet. Broadcast comprises broadcasting of copyright works by broadcasting organizations which takes the form of audio and audiovisual broadcasting including broadcasting on the internet. The creative output protected for performers include the live performances and recorded performances of the work of singers, actors, musicians, dancers etc.⁷ The Act⁸ grants certain rights to authors of these categories of work in respect of their creation. The following rights applies more or less to the categories of works earlier mentioned: reproduce the work, publication the work, perform the work in public, produce, reproduce, perform or publish any translation of the work, make any audiovisual work or a sound record of the work, distribute to the public, for commercial purposes, copies of the work, through sale or other transfer of ownership provided the work has not been subject to distribution authorized by the owner, broadcast / communicate the work to the public, right to make available to the public by wire or wireless means in such a way that the members of the public can access the work from a place or time independently chosen by them, make any adaptation of the work. Section 36(a)-(g) of the Copyright Act prohibits acts which amount to infringement where those acts were done without the authorization of the copyright owner.⁹ The Copyright Act creates offences for infringement of copyright.¹⁰

4. Provisions of the Copyright Act, 2022 Relating to On-line Content

The copyright Act 2022 provided for copyright in audio-visual works¹¹ and listed the rights accruing to a copyright owner therein¹². The copyright Act created a new category of right in relation to copyright works on-line¹³. This is the on- demand services right.¹⁴ The WIPO Copyright Treaty¹⁵ provides for this right of on demand services which relates to accessing on-line contents. The making available right is technology neutral. This means that it covers all formats in which a work may be digitally communicated including downloads,¹⁶ streams,¹⁷ and any other existing or future developed methods of on-line transmission. Section 50 of the copyright Act, 2022 provides for circumvention of technological protection measures¹⁸ the section provides that no person shall knowingly circumvent a technological protection measure¹⁹ that effectively protects access to a work protected under the Act²⁰. To this and the section prohibits the manufacture, import, sell, offer for sale, provide or otherwise traffic in any technology, product, service device or part, that is primarily designed or produced for the purpose of circumventing protection afforded by a technological protection measure that effectively protects a work under the Act; or has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that protects a work or is sold or distributed for use in circumventing a technological protection measure that effectively protects a work under the Act. Section 51 of the Act provides for falsification, alteration or removal of rights management information. The Act provides that a person shall not knowingly and with the intent to induce, enable, facilitate or conceal infringement, provide rights management information that is false. It further provides that a person shall not without the authority of the copyright owner, knowingly remove or alter rights management information²¹ or sell, offer for sale, distribute, import for distribution, broadcast or communicate to the public, works or copies of works, knowing or having reasonable grounds to know that rights management

⁷ Copyright Act, 2022. An Act to repeal the Copyright Act, Cap C28, Laws of the Federation of Nigeria, 2004 and enact the Copyright Act, 2022 to provide for the regulation, protection and administration of Copyright; and for related matters (hereinafter called 'The Act') section 63.

⁸ *ibid*, sections 9-13.

⁹ *ibid*. See section 71 of the Act for acts that constitute infringement of the Performer's right.

¹⁰ *ibid*. Copyright Act, section 44(1)(a) – (c), 44(2), 46, 73 and 76. In *Nigerian Copyright Commission v Christopher Edolo* the accused was charged under the then section 20(1), 20(1)(c) and 20(2)(c) of the Copyright Act, 2004 in relation to infringement of copyright in broadcast for being in possession of contrivances for cloning of smart cards of multi-choice Africa.

¹¹ *ibid*. Copyright Act, 2022, section 2. This apparently for fullfills Nigeria treaty obligation having ratified the Beijing Treaty on Audio visual works.

¹² *ibid*, section 11.

¹³ The Act provides for the right to make the work available to the public by wire or wireless means in such a way that members of the public are able to access the work from a place and a time independently chosen by them.

¹⁴ Copyright Act, 2022, n.8, sections 9(i), 10(f), 11(f), 12(d), and 13©.

¹⁵ Dec 20, 1996, 36 I.L.M 65 (1997 WPPT – Dec 20, 1996, 36 I. L. M 76 (1997)

¹⁶ Download is a transmission of an electronic file containing a digital copy of a work that is sent from online server to a local hard drive resulting in the creation of a copy of the file at a later location. See *United States v American Society of Composers, Authors & Publishers*, 627 F. 30 64, 69 (20 cir 2010).

¹⁷ A stream is an online transmission that renders a work perceptible by the recipient 'as it is received by the client computer's Temporary memory. See *United States v American society of composers, Author & Publisher*) *ibid*, 76

¹⁸ Technological protection measure means a technology, device, product or component incorporated into the work which is designed to effectively prevent or inhibit the infringement of any copyright or related right.

¹⁹ Circumvent a technological protection measure means avoiding, by passing, removing, deactivating, decrypting or otherwise impairing a technological protection measure.

²⁰ A technological protection measure effectively protects a work under this Act, if the measure in the ordinary course of its operation, controls access to a work protected under the Act or prevents or restrict acts in respect of the works, which are not authorized by the authors concerned or permitted by law, provided that this section does not extend to measures which in the normal cause of operation, only controls access to a work for non-infringing purposes

²¹ Copyright Act, n.8 section 51(2)(a)

information²² has been removed or altered without authority and that it will induce, enable, facilitate or conceal an infringement of any right under the Act²³. Section 52 of the Act provides for remedies available to a copyright owner where the provisions of sections 50 and 51 of the Act have been violated. Part VII of the copyright Act, 2022²⁴ provides for measures to be undertaken relating to infringement of on-line content. Section 54 of the Copyright Act, 2022 provides that the owner of copyright in a work, in respect of which copyright has been infringed may issue notice of the infringement to the relevant service provider requesting the service provider to take down or disable access to any infringing content or link to the content, hosted on its system or network.

5. The Impact of the Entertainment Industry to Economic Development in Nigeria

The entertainment industries are industries or media that use protected material or industries that are dependent on copyright and related rights protected works. An effective copyright system is a major economic resource to the government. Sustained protection and harnessing of copyright resources will lead to diversification of the economic base of the nation. The effective protection and enforcement of intellectual property rights in the entertainment industry will further lead to the harnessing of the intellectual capital generated from the industry as Nigeria move to the knowledge - based economy. A knowledge based economy is one in which the generation and exploitation of knowledge play the predominant part in wealth creation. Nations' wealth and economic well being is increasingly relying on the ability to turn technology and information into tangible economic asset.²⁵ This new way of wealth creation is fast replacing the traditional material production as the main basis of economic growth and development and intellectual property systems play a part in converting knowledge into earnings which impact the economic well being of the people.²⁶ The phrase 'knowledge based economy' therefore describes 'the new economic environment propelling the 21st century in which the generation and management of knowledge play a predominant role in the creation of wealth as compared with the traditional factors of production.'²⁷ The new capitalism is about the control of information, knowledge and technology.²⁸ Thus original expressions of creative works protected by copyright law used in the entertainment industry form knowledge based intellectual capital that translates into economic asset. The effect on the economy will include; value added to the Gross Domestic Product (GDP), share of national employment and revenue generated from foreign trade.²⁹ The entertainment industry use the protection of original expression provided by copyright and related rights, and in particular, their protection by actual enforcement or threat of it, as the basis for investment, employment and ultimately generation of income from the sale of a product or service or the sale of the economic rights themselves.³⁰ Protection of investment through copyright law provides a major economic incentive and benefit.³¹ Thus copyright provides a 'continuing incentive to the dissemination of all categories of works, to the benefit of the author, industry and commerce and society as a whole.'³² The entertainment industry for the purposes of this study includes the film and music industries.³³ Entertainment industry includes music, theatrical productions and operas, motion pictures and video (cinematography), radio and television, services and copyright collecting societies.³⁴

Research has shown that strong intellectual property protection with adequate and modernized copyright legislation with its effective enforcement undoubtedly helps in transfer of technology and consequent technology development. It also helps in developing external trade through identifying new markets while retaining old ones. Furthermore, it helps in attracting foreign direct investment. Attracting such resources in a world of hyper competition will be more difficult if intellectual property rights (IPR) protection is not strong or is inefficient.³⁵ Therefore constant updating of legislation, modernizing of the relevant infrastructures and administrations, making them increasingly market oriented and user-friendly, establishing and/or modernizing collective administrators of copyright are essential prerequisites to strong intellectual property rights protection.³⁶ Effective protection of intellectual property is the need of the hour. Our national creative talent should be protected in order to reap the benefits of their full economic value for society and their enhancement of economic growth.³⁷ Mascus, in his research work noted that IPR can play a positive role in encouraging new business development, rationalization of inefficient industry and inducing technology acquisition and creation. He noted on the other hand that they may harm development prospects by raising the costs of imitation and permitting monopolistic behaviours by IPR owners.³⁸ Evidence is emerging that stronger and more certain IPRS could well increase economic growth and foster beneficial technical change, thereby improving development prospects, if they are structured in a manner that promotes effective and dynamic competition.³⁹ Weak IPRS protection

²² Rights management information means information which identifies a work or other subject matter, the author, owner or any right in it including information about the terms and conditions of its use and any number or code that represents such information, attached, or appearing in connection with the communication to the public of a work or subject matter.

²³ Copyright Act n. 7, section 51(2)(b)

²⁴ *ibid*, section 54-62.

²⁵ JJ Kur, *Intellectual Property Law and Entrepreneurship in Nigeria: Principles and Practice*, (Markurdi: Aboki Publishers, 2015) 56.

²⁶ *ibid*.

²⁷ *ibid*.

²⁸ P Ocheme, 'How Information Technology Propels Intellectual Property Regimes and Human Rights under International Law' (2010) *ABU Human Rights Review Journal* 220.

²⁹ WIPO, *Intellectual Property Reading Material*, n.1, 159, 189; JJ Kur, n. 25, 23

³⁰ M Ouma, 'The Role of Copyright in Economic Development: A Review from Kenya' (2012) *NJIP*, 70 <<http://www.nials.nigeria.org/Journals/Dr%20Marisella%20ouma%20NJIP%20202.pdf>. Accessed 1 Nov 2016.

³¹ The first recorded legislative instrument in this area indicated that protection of the product was considered necessary for the disseminating industries. See the Venetian Privilege of 1469 quoted in JAL Sterling, *World Copyright Law*, (3rd edn, Sweet & Maxwell, 2008) 72 footnote 85.

³² *ibid*.

³³ Copyright Act, 2022, n. 7, sections 2(1)(d) & (e) and 108(1).

³⁴ WIPO, 'Copyright + Creativity = Jobs and Economic Growth' being WIPO Studies on the Economic Contribution of the Copyright Industries, (2012) <www.IP-watch.org/weblog/WP-content/uploads/2012-FINAL-230-2.pdf. Accessed 1 Nov, 2016.

³⁵ S Alikhan, 'The Role of Copyright in the Cultural and Economic Development of Developing Countries' (2002) vol. 7, *Journal of Intellectual Property Rights*, 490.

³⁶ *ibid*.

³⁷ *ibid*, 509.

³⁸ KE Maskus, 'Intellectual Property Rights and Economic Development' (2000) Vol. 32, Issue 3 *CaseW. Res.J. INT'LL*, 471.

³⁹ KE Maskus, 'The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Ttransfer' (1998) 9 *DukeJ. Comp. &INT'LLaw* 109.

damages the economy and causes loss of revenue to both the copyright owners in the entertainment industry and the government. It also causes loss of employment and investment due to pervasive copyright infringement.

In Nigeria, available statistics indicate that the entertainment industry account for a significant contribution to the economic development of Nigeria. Nigeria has a vibrant and growing entertainment industry. The Nigerian film industry alone is estimated at \$250 million.⁴⁰ The advertising industry in Nigeria is also an important component of the revenue raised by broadcasting organizations especially the commercial radio and television stations. In 2008, the totality of copyright based industries operating in Nigeria contributed about ₦1.2 trillion to Nigerian Gross Domestic income.⁴¹ The Director-General of the Nigerian Copyright Commission (NCC) stated that the creative industry in Nigeria generated a cumulative annual output of \$2 billion which accounts for 1.42 percent of the country's Gross Domestic Product (GDP).⁴² The industries include film, music, performing arts, advertising and TV broadcasts amongst others. The entertainment industry contributes to the economic development of Nigeria but this paper is of the view that the industry will contribute more if the copyright system is reformed to provide for stronger copyright laws and institutions that meet international standards. In this way foreign direct investment and licensing contracts can flow into the country that will aid the economic development of Nigeria. The contributions of the entertainment industry to the economic development of Nigeria through rights protection are as follows:

Domestic Revenue

The entertainment industry contributes to the domestic revenue of the country thereby aiding economic development. This is done by the revenue the government earns from the industry through taxes both individuals and corporate entities pay, levies and penalties as the case may be. The entertainment industry in Nigeria is a major revenue earner for the country. The film and music industry in Nigeria is vibrant and is growing. The revenue earned by the film industry through the sale of tapes and CDs are taxable. Further, the individual performers' income is also taxable. This is the same with the music industry. The income generated by the music companies, producers through the sale of the music and live performances is taxable by the government. The income generated by the broadcasting organizations are taxed by the government which add to the economy of the country. In this era of the internet, works protected by copyright are communicated to the public through the internet. The internet service companies also generate revenue for the government by the tax they pay to the government. Thus, the entertainment industry can only continue to grow through the effective protection and enforcement or threat of enforcement of the intellectual property rights namely; copyright subsisting in the works.⁴³ Investments will be made in the entertainment industry with the knowledge that the works will be protected and thus acts as an incentive to creativity. Their creative activities add to the economic development of the country.

Local and Foreign Direct Investment

The entertainment industry in Nigeria attracts both local and foreign direct investment. This is made possible because of the economic viability of the industry in Nigeria. Investors are motivated to invest as they know that they will recoup their investment and also have a good return on the investment. Intellectual property right protection laws that protect works in the entertainment industry play a major role in encouraging investors knowing that these laws work to protect the creative works in the entertainment industry which in turn results to economic benefit to the individual authors, investors and the Nigerian economy. Effective protection of intellectual property benefits the economy through transfer of technology by means of licensing contracts which not only allows exploitation of legal rights protected in respect of IPR including copyright but also provides the necessary technical assistance in the exploitation of those rights. Such legitimate transfer of technology helps to create jobs and stimulate foreign direct investments which will help economic and technology development.⁴⁴

Employment/Personal Income Generation

The protection of intellectual property rights in the entertainment industry will lead to more employment thereby generating personal income which impacts on the country's GDP. A study by the United Nations shows that the entertainment industry in Nigeria employs about 1 million people with the capacity to employ another 1 million people if the industry is well managed.⁴⁵ The Association of Movie Producers' president (AMP) said that Nollywood has contributed much to the growth of Nigeria's economy and is employing over two million people in Nigeria.⁴⁶ These employments generate personal income which boosts economic growth of the country.

Establishment of Industries

The operation of the entertainment sector leads to the establishment of industries. The film and music industries also have supporting industries for instance the film and music industries make use of CDs and DVDs to record the film, music and video music. There are industries in Nigeria that produce these CDs and DVDs. There are also other industries that produce the costumes used in the entertainment industry. There are also makeup artists, video recorders etc that are supporting industries to the entertainment industry. These industries contribute to the economic development of Nigeria.

⁴⁰ M Ouma, n. 31.

⁴¹ HP Faga and N Ole, '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. T Ajerere, 'The Anniversary of the Nigeria Copyright < URL: <http://www.ndunigeria.com>> Accessed 20 October 2016.

⁴² A Nkwocha, 'Creative Industries Generates 1.42% of GDP' <www.authorityngr.com/2016/09/creative-industry-generates-1-42-of-gdp-copyright-commission/> Accessed 20 October, 2016.

⁴³ M Ouma, n.31, 70.

⁴⁴ S Alikhan, n. 36, 502.

⁴⁵ AA Abraham, 'How Entertainment Contributes to Nigeria's GDP,' April 9, 2014 <www.leadership.ng/entertainment/364405/entertainment-contributes-nigeria-s-gdp> Accessed 23 November, 2016,

S Alikhan, n.36, 496.

⁴⁶ Sahara Reporters, 'Nollywood Adds Two Million Jobs to Nigerian Economy in 20 yrs' June 24, 2014<Saharareporters.com/2014/06/24-nollywood-add-two-million-jobs-to-Nigerian-economy-in-20yrs/htm> Accessed 23 November, 2016.

Development of Creativity and Talent

The protection of intellectual property rights, namely: copyright in the entertainment industry encourages the development of creativity and talent. This is as a result of the reward accruing to authors in their creative works as a result of protection and enforcement of their intellectual property rights. This protection and the resultant benefits is an incentive for further creation of creative works. This protection in turn promotes development of creativity and talent as more creative output is achieved. This also encourages local and foreign investment in the sector and brings about more employment, increased revenue for the government, foreign exchange earnings from exported materials and establishment of industries. This contributes to the economic development of Nigeria.

Education

The entertainment industry educates the society by the dissemination of new information. People are informed and this brings about national development which impacts on the economic development of the country.⁴⁷

6. Challenges to Copyright Protection in the Entertainment Industry in Nigeria

Piracy

Piracy is one of the greatest challenges to intellectual property rights protection and enforcement in the entertainment industry in Nigeria. Piracy is the activity of manufacturing unauthorized copies of protected materials and dealing with such copies by way of sale and other ways inconsistent with the interest of the right owner.⁴⁸ In order to address the issue of piracy, the Nigerian Copyright Commission made a number of regulations aimed at keeping the menace in check.⁴⁹ Despite these legislative measures piracy still remains a major challenge in the protection and enforcement of the rights of copyright owners in the entertainment industry in Nigeria. This adversely affects the economic development of the country as inputs that would boost the economic development is hindered through piracy with the attendant adverse effect on the revenue accruable both to the individual rights owners and the government, negatively affects employment and incentive to create. There is a preponderance of opinion amongst experts that a modern and well managed copyright system could be a catalyst for economic reform. With a huge population of over 150 million people, Nigeria is likely to generate more revenue in the exploitation of its intellectual property.⁵⁰

Weak Enforcement Mechanism

The observance and enforcement of a law is what determines the success and efficacy of the law in achieving the intention of such law. Thus the observance and efficacy of the copyright laws applicable in the entertainment industry largely depends on the enforcement mechanism of the law. One of the federal government agencies charged with the administration of the Copyright Act and its enforcement is the Nigerian Copyright Commission (NCC).⁵¹ The Commission has myriad challenges that limit or hinder intellectual property rights protection in the entertainment industry in Nigeria. The Commission lacks the requisite personnel knowledgeable and trained to address the issue of internet infringement of copyright in the entertainment industry. The rights in films and music of authors are constantly infringed on the internet and the Commission is adequately equipped to address the menace. The Commission it appears is under staffed particularly the copyright inspectors and prosecutors. This is because little impact of the activities of the Commission is felt as infringement in the music and film industries are rampant. Even with the establishment of a fund for the Commission under section 91 of the Copyright Act, 2022, there appear to be under funding of the Commission in view of fact that the activities of the Commission is not adequately felt and that accounts for the rampant incidence of piracy and copyright infringement across Nigeria particularly in the music, film and printing sectors of the entertainment industry in Nigeria. The work of the Commission is also hampered due to the failure of government to align intellectual property including copyright into economic development agenda of government. This failure has resulted in the downplaying of the role of the creative industry in the economic development of the country.⁵² The Commission also faces the challenge of inadequate infrastructure especially in the Information and Communication Technology (ICT) area to enable them cope with the challenges of the digital era.

Emergence of the Internet Technology

The internet has brought about a wide range of new models for the enjoyment of copyrighted works with some enjoying widespread consumer acceptance. One development occasioned by the internet is the ability of individual authors, musicians, videographers and other artists to publish directly to a global audience, regardless of their intention-whether they are seeking to make money or have their creations seen or heard.⁵³ However, despite the advantages, the internet brings formidable challenges. These challenges constitute impediments to intellectual property rights protection and development in the entertainment industry in Nigeria. The rampant

⁴⁷ Capnd 143, 'Role of Arts in National Development' (2016) <www.nairaland.com/2923599/role-arts-national-development> Accessed 28 November, 2016.

⁴⁸ 'Boot legging' is related to Piracy and it means the illegal recording and sale of records derived from live performances. Counterfeiting is the use of distinctive label, mark, to goods without the authorization of the rights owners and which makes people believe they are purchasing the goods produced or issued by the right owners.

⁴⁹ The Regulations made include the following: Copyright (Video Rental) Regulations, 1999, Government Notice No.144 Gazette No.63 vol 86 of 10th September, 1979. Copyright (Security Devices) Regulations 1999, with commencement date of 7th September 1999, Government Notice 145, Gazette No.63, vol 86 of 10th September, 1999. Copyright (Optical Disc Plates) Regulations, 2006, with commencement date of 15th December 2006. Copyright (Collective Management Organizations) Regulations, 2007 with commencement date of 28th September, 2007.

⁵⁰ K M Waziri, 'Intellectual Property Piracy and Counterfeiting in Nigeria: The Impending Economic and Social Conundrum', *Journal of Politics and Law*, vol.4 No.2 p.199www.ccsnet.com Accessed 20th march 2017.

⁵¹ Hereafter referred as 'The Commission'.

⁵² Nigerian Copyright Commission, (2006) 'Second Quarter Report' <www.copyright.gov.ng/index.php/reports-services/item/347-making-creativitywork-for-you-second-quarter-report> Accessed 15 November, 2016.

⁵³ US Department of Commerce, 'Copyright Policy, Creativity, and Innovation in the Digital Economy' (2013) <http://www.uspto.gov/sites/default/files/news/.../copyright_green_paper.pdf> Accessed 21 October, 2016.

infringement over the internet is taking place through technologies like peer to peer networks⁵⁴ and cyber lockers,⁵⁵ which have a range of legitimate but also have become major sources of illegal contents.⁵⁶ Another challenge to copyright protection and development in Nigeria is the transnational nature of the internet. On-line infringement today is beyond the borders of Nigeria. Thus websites that provide pirated content can be located anywhere in the world and this poses enforcement problems as such infringers outside Nigeria poses jurisdictional, procedural and logistical difficulties. There is evidence that the bulk files available on P2P file sharing networks are infringing.⁵⁷

Illiteracy

This is a major challenge to intellectual property protection and development in Nigeria. So many copyright owners particularly in the music industry are illiterate and as a result are not even aware that they have any right in their intellectual creations. Many musicians some decades back were not aware of their rights and the music were exploited for economic benefits especially by the media without taking any step to address the infringement. Many of the artistes who have died did not know that their intellectual property rights in their creations can be passed on by testamentary disposition. Some of these works become orphan works⁵⁸ because even those entitled to inherit them are not aware of their rights in those intellectual creations. This makes their infringement easier and on a large scale.

Inadequate Enlightenment

Inadequate enlightenment is a challenge to rights protection and enforcement in Nigeria. There is largely lack of awareness on the part of copyright owners and the public on the need to respect copyright owners' copyright in the entertainment industry in Nigeria. On the part of copyright owners, they are not adequately enlightened, even when educated on the proper steps and procedures to take to enforce their copyright to deter or prevent infringement. The public on their own part are not enlightened to know that copyright is a property right that ought to be respected. Many often do not know that it is illegal to appropriate a person's work in which copyright subsists without the copyright owner's authorization. Another challenge in this area is the public perception about infringement of copyright online. People do not realize or are not aware that unauthorized file-sharing and downloading of works in which copyright subsist online is an infringement. They believe at best that it is less harmful than the unauthorized taking of the physical work in which copyright subsists.⁵⁹

Cumbersome Litigation Process

The litigation processes in Nigeria pose a major challenge to the protection, enforcement and development of copyright in the entertainment industry in Nigeria. The length of time that it takes to complete a case in Nigeria is a setback to copyright protection. Most cases are abandoned because of the length of time it takes and the attendant high cost occasioned by such delay in the litigation process. The NCC has listed as one of its challenges the high cost of prosecuting cases in the law court.⁶⁰

Lack of skill and Knowledgeable Personnel

The requisite skill and knowledge is essential to combat copyright infringement in the entertainment industry. The personnel and operatives of the various agencies of government with the required knowledge and skill charged with the administration and enforcement of intellectual property rights particularly in the entertainment industry is barely available. The *modus operandi* of those engaged in piracy should be studied and known by the personnel of the agencies including any change in their tactics should be tracked and known. However it appears that this is not the case as infringement is still rampant in the entertainment industry in Nigeria. Inadequate skill and knowledgeable personnel as a challenge to intellectual property right protection and development is more highlighted in this internet era as copyright infringement on the internet has become more complex and challenging with new and different technological tools for infringement being developed and used daily by on-line infringers. The methods and technologies used by on-line infringers must be known by enforcement agencies to be able to checkmate the activities of on-line piracy. The skill and knowledge required to enforce copyright protection is unfortunately lacking among the agencies charged with the administration and enforcement of copyright in the entertainment industry in Nigeria.

Lack of Information and Communication Technology (ICT) Infrastructure

Nigeria is grossly deficit in Information and Communication Technology (ICT) infrastructure.⁶¹ Internet infrastructure in the country is only available to a small percentage of the population and where in existence, it is expensive. The infrastructure is therefore not adequate

⁵⁴ Peer to Peer (P2P) technology allows individual consumers to exchange digital files of music, videos and games. The most widely used current P2P file sharing protocol is Bit Torrent. See Federal Trade Commission, 'Peer to Peer File sharing: A Guide for Business' <<http://business.ftc.gov/documents/bus46-Peer-to-Peer-file-sharing-guide-business>> Accessed 10 January, 2017.

⁵⁵ Cyberlockers, such as Hotfile and Mediafire allows users to both store and share large files, often operating as cloud-based services. Users can post the URLs for the files that they have uploaded onto blogs or 'link farms' that aggregate such links, which can be found using a search engine; US Department of Commerce, *op.cit* p.38; R. Parloff, 'Mega Upload and the Twilight of Copyright', (2012) *Fortune* <<http://iitech.fortune.cnn.com/2012/07/11/megaupload-cyberlocker-copyright>> Accessed 10 January, 2017.

⁵⁶ *A & M Records Inc v Napster Inc* (The Napster case) where the plaintiff sued the Defendant for copyright infringement in relation to the Defendant's file sharing system; But see, A Bridy, "Is Online Copyright Enforcement Scalable?" (2011) 13 *Vand J. Entm't & Tech. Law*, 695 – 737, 709.

⁵⁷ *ibid*. An anti-piracy firm had 'detected 5.4 billion instances of pirated content online' in 2009 and 14 billion in 2012; CS Stewart, 'As Pirates Run Rampant, TV Studios Dial up Pursuit', *WallStreetJournal*, March 4, 2013 cited in the Department of Commerce Internet Policy Task Force, n. 294, 38.

⁵⁸ Orphan works are works whose authors are unknown.

⁵⁹ Intellectual Property Awareness Foundation, 'Australian Attitudes and Activities in Relation to Illegally Accessing Online Movies and Television Shows' (March 2012) <<http://www.IPawarness.com.au/LiteratureRetrieve.aspx?ID=120375>> Accessed 12 January, 2017; T Wingrove, AL Korpas et al, 'Why Were Millions of People not Obeying the Law? Motivational Influences on Non-Compliance with the Law in the Case of Music Piracy', (2011) 17 *PSYCHOL., CRIME & L.* 261.

⁶⁰ Nigerian Copyright Commission, (2016) 'Second Quarter Report' <www.copyright.gov.ng/index.php/reports-services/item/347-making-creativity-work-for-you-second-quarter-report> Accessed 15 November, 2016.

⁶¹ Information and Communication technology refers to all the technology used to handle telecommunications, broadcast media, intelligent building management systems, audiovisual processing and transmission systems and network-based control and monitoring functions. Converging technologies that exemplify ICT include the merging of audio-visual, telephone and computer networks through a common cabling system. Internet Service Providers (ISP) commonly provide internet, phone and television services to homes and businesses through a single optical cable. The elimination of the telephone

for the number of enforcement agency personnel who require this infrastructure to combat piracy on the internet. Consequently right owners are not opportune to fully access the different ICT platforms where their works can be maximally exploited to their advantage and at the same time placing at their disposal technologies that are available for the protection of their works against infringement especially in the on-line environment.

Corruption

Corruption has permeated every aspect of Nigeria's national life.⁶² Government agencies are not left out. The agencies of government charged with the protection, administration and enforcement of copyright are not left out. Thus corruption affects the protection and development of the entertainment industry in Nigeria. Government agencies concerned with the entertainment industry from NCC, the Police, Customs Service, and the Judiciary are all affected by corruption in the execution of their mandates as it affects the entertainment industry.⁶³

7. Conclusion and Recommendations

Copyright is the main intellectual property right pertinent to the operation of the entertainment industry. Copyright protects the various creative outputs in the entertainment industry by ensuring that copyright owners reap the benefit accruing to them from their creative output. The entertainment industry is not left out of the transformations the world has experienced as a result of digital technology. Copyrighted works in the digital era are new and varied and many more innovations are being developed which impacts on how the copyrighted works are used and protected. Therefore, in order to maximize the huge potentials in the entertainment industry in Nigeria, the standard of rights protection must be improved and to achieve this, the government, administrative and enforcement agencies and the legislature have critical roles to play. These key actors must complement each other to ensure that the role of the entertainment industry in the economic development of Nigeria is achieved. The economic development will definitely impact national development. The following measures may be helpful:

Government Actions

The government should integrate intellectual property particularly copyright into her economic policy. This will ensure that the economy is diversified and benefit from knowledge based and intellectual capital that drives developed economies. It is also recommended that government create the enabling environment for foreign and local investment in the entertainment industry. This can be done by providing tax relief to investors in the entertainment industry. Tax reliefs have been a powerful tool in attracting foreign investment in the UK creative industry.⁶⁴ Government should also encourage the private sector to provide financing for the entertainment industry through the banks. The government may encourage this through its monetary policy by lowering interest rates and relaxing the burdensome requirements for securing credit facilities from the banks. Government should also provide the critical infrastructure such as a national film institute and film village needed in the entertainment industry to compete with the global entertainment industry. Government should also invest in Information and Communication Technology (ICT) infrastructure to enhance the creation and exploitation of copyright in the entertainment industry in order to harness and reap the huge economic potentials in the entertainment industry in Nigeria.⁶⁵

Legislative Action:

The Copyright Act which protects rights in the entertainment industry have tried to cover the protection of rights in the digital environment. However more still needs to be done to cover the whole subject matter. Such area yet to be covered is in the area of satellite broadcasting. Nigeria is yet to sign the Satellite Convention, 1974. Nigeria needs to sign this convention and domesticate it to be able to benefit from the protection afforded by the convention. Nigeria also needs to timeously sign international treaties affecting copyright that will be developed in the future to be able to timeously harness the benefits afforded by those conventions. A continuous review of the copyright law is recommended to continue to cover new challenges to copyright protection that may arise from new ways of exploiting copyright works arising from the continuous development of digital technology.

Administrative and Enforcement Action

Government should adequately fund and equip the Nigerian Copyright Commission and other enforcement agencies including the Nigerian Police Force, Customs Service, National Film and Video Censors Board.⁶⁶ The government should also employ adequate personnel to enforce the mandate of the various agencies in view of the vast territories that these agencies have to cover for them to achieve meaningful results. The various organs of government for the administration and enforcement of copyright should train and

networks has provided huge economic incentives to implement this convergence, which eliminates many of the costs associated with cabling, signal distribution, user installation, servicing and maintenance costs. See Technopedia, 'What is Information Communication Technology' (2017) <http://www.technopedia.com/definition/24152/Information-communication-technology-ICT?> Accessed 13 January 2017.

⁶² According to the Nigerian Bureau of Statistics, N400 bn bribery was paid in Nigeria between April 2015 and May 2016. The prevalence of corruption in Nigeria is as follows: Police 46%, Prosecutors 33.6%, Judges and Magistrates 31.5%, Immigration 30.7%, Car Registration and Driving license Agency 28.5%, Customs 27.5%, Public Utilities 22.4%, Land registry 20.9%. See H Boro, 'Corruption: Which is Worse: N400bn Bribery or \$15bn Plus Theft' Vanguard Newspaper, 28 August, 2017 [www.vanguardngr.com/2017/08/corruption-worse-N400bn-bribery-\\$15bn-plus-theft/](http://www.vanguardngr.com/2017/08/corruption-worse-N400bn-bribery-$15bn-plus-theft/) Accessed 29 August, 2017.

⁶³ Transparency International defined corruption as 'the misuse of public power for private benefit such as bribing of public officials, kickbacks on public procurement or embezzlement of public funds'. FAR Adeleke & B Lawal *et al.* 'The Role of the Judiciary in Combating Corruption; Aiding and Inhibiting Factors in Nigeria' in IA Abdulkadir, *et al.* (eds.) *Corruption and National Development*, (Ilorin: Unillorin Press, 2013) 293 being Proceedings of the 46th Annual Conference of NALT, 22 – 26 April, 2013 at University of Ilorin.

⁶⁴ M Kamen 'Creative Industries add £77bn to UK Economy' (2015) <www.wired.co.uk/article/UK-creative-money> Accessed 24 August 2017.

⁶⁵ Nigeria has the potential to be a world power by leveraging its creative industry. There are over 800 million people on Facebook and more than 3.5bn pieces of content shared on facebook each week and Nigeria has about 3.3 million facebook users. There are 2 billion views on YouTube each day with over 150 million views of Nigerian music in the last 12 months. ICT has huge potential for the entertainment industry and Nigerian economy. Research has shown that to reach 50 million users, it took: radio 38 years, TV 13 years, internet 4 years, IPOD 3 years and facebook 9 months. See E Idah, 'Nigeria's Creative Industries: Optimizing the Economic Potentials of the Creative Industries through Global Partnerships' Being a paper presented at the National Economic Summit Group, 12 November, 2011 16.

⁶⁶ NCC, 'Making Creativity Work for You' (2016) First Quarter Report <www.copyright.gov.ng/index.PhP/reports-items/338-making-creativity-work-of-you> Accessed 10 November 2016, 8.

retrain their personnel on strategies and new means of fighting copyright infringement. It is therefore imperative that these administrative and enforcement agencies are trained to be abreast of these developments and ways of combating copyright infringement at this time. More importantly the government should acquire modern gadgets, equipment and other applications and devices that are used to fight the menace of copyright infringement particularly on-line. The Nigerian Copyright Commission should embark on international collaboration and partnership with other international copyright offices and non-governmental organizations on intellectual property to share ideas, information and strategies on the fight of copyright infringement. It is also recommended that the Commission should have an inter-agency collaboration on the fight of Copyright infringement in Nigeria.⁶⁷ The Nigerian Copyright Commission (NCC) should embark on aggressive enlightenment campaign on issues of copyright and its infringement. The campaign should particularly be intensive in the secondary schools and Universities where we have people in the age bracket that mostly use digital devices and access protected content on the internet. The campaign should also be carried to the markets where the pirated copies of products are sold. The actors in the entertainment industry should not be left out of the enlightenment campaign. Regular enlightenment in the form of lectures, seminars, talks etc will help educate them on the rights they have in respect of their works. The issue of corruption in Nigerian Copyright Commission and other enforcement agencies must be seriously tackled as this cankerworm undermines the effort to fight copyright infringement in Nigeria. Corruption may take the form of compromising the operatives of the Commission and other security agencies involved in copyright enforcement with monetary inducement. Such inducement may result in informing the suspects about proposed search of the business premises, shops or workshops of the suspects. It may also result in compromising cases filed against the suspects in the law court thereby undermining the fight against copyright infringement. The government agencies charged with fighting corruption must as a matter of urgency beam their search light on corruption in these agencies of government. The agencies themselves must set up or strengthen internal administrative measures as the case may be, to fight corruption among their personnel. Strict administrative action must be taken against persons found liable in this regard. This will help check personnel who compromise the drive against copyright infringement.

⁶⁷ M Ouma, n. 31, 33.