

COPYRIGHT ENFORCEMENT AND ACCESS TO WORKS IN NIGERIA AND ENGLAND: THE ROLE OF THE LIBRARY*

Abstract

Copyright Laws confer a bundle of rights on authors of rights such as the rights of production, publication, performance, adaptation, broadcasting, etc, in relation to their works. This is to allow authors to reap economic benefits accruing from their creation, thereby encouraging them to create more works. However, the Laws create certain exceptions to these rights to enable the general public gain access to copyrightable works, use them fairly to create more works and thereby promote the dissemination of information and knowledge. The Copyright Laws also mandate the Libraries to carry out some functions such as lending, borrowing, production, publication, translation, etc, in relation to protected works for public use. Most often, breach of Copyright occurs in the exercise of these functions. Again, the dichotomy between Public Libraries and Private Libraries as contained in some of these Laws frustrates these Private Libraries in the discharge of their duties. Furthermore, the use of technological protective devices in Digital Libraries tends to inhibit accesses to protected works.. This work adopted doctrinal and empirical research methods in examining the Copyright Acts of Nigeria and England; and other Copyright related Instruments in order to discover the efficacy of these Laws and the performance of these Libraries in the enforcement of Copyright vis a viz public access to protected works. Recommendations were made on repositioning the Libraries to effectively carry out their function of disseminating information to the general public without any infraction of the Law.

Keywords: Copyright enforcement, Access to works, Role of the Library, Nigeria, England

1. Introduction

Copyright Laws confer monopoly rights on authors to do or restrain others from doing certain acts in relation to their protected works, so that these authors who have labored to produce copyrightable works should have a sole enjoyment of the benefits accruing from such works. In doing so, Copyright Laws encourage the production and distribution of new works for public use. The Laws however create exceptions to the monopoly rights enjoyed by authors by authorizing other persons to do some acts on grounds of fair use, in order to promote the advancement of knowledge and information. The Libraries play active roles in the dissemination of information by providing to copyrighted works to the general public, free of charge. The Libraries are also allowed to carry out some functions such as lending, borrowing, production, publication, translation, etc, in relation to protected works, to enable users access these works. During these processes, breaches of Copyright often occur as a result of the archaic provisions of the Laws which do not adequately provide for the proper procedural steps for Copyright enforcement in relation to works used in Libraries. More so, the dichotomy between Public Libraries and Private Libraries by the Copyright Laws tend to frustrate the role of the Private Libraries which is making accessible works for the advancement of knowledge and information. Again, the use of technological protective devices in Digital Libraries tends to inhibit accesses to protected works as such devices do admit of fair use of such works. This work shall examine the meaning and nature of Copyright, rights conferred on authors, copyright infringement, Copyright protection and access to works, the role of Library in Copyright enforcement, the concept of digitization and the Libraries, as well as the effects of the use of technological protective devices on protected works *vis a viz* public access to these works. Recommendations shall be made on repositioning the Libraries to effectively carry out their basic functions of dissemination of information to the general public and at the same time, enforce Copyright protection in relation to protected works.

2. Meaning and Nature of Copyright

Copyright an automatic right that gives the authors of works the right to control the ways in which their materials may be used.¹ It is a *specie* of intellectual property, with its own unique character, a property right that at the same time exhibits features of a personal right.² Copyright ensures that a person who has laboured or worked to produce copyrightable material ought to have a sole enjoyment of the benefits accruing from his work, thereby encouraging him to create more works.

However, it is not every work that is accorded Copyright protection. The Copyright Act of Nigeria enumerated works that are qualified to attract Copyright protection as: Literary works; Musical works; Artistic works; Cinematograph films; Sound recordings, and Broadcasts.³ These works shall not be eligible for Copyright

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¹ G Okeke & K Uzor, 'Journal of Law and Conflict Resolution' Journal of Law and Conflict Resolution ALCR., Vol. 6. April, 2014, 1.

² J Asein, *Nigerian Copyright Law & Practice* (2nd edn, Abuja: Books and Gravel Ltd. 2012) p.6.

³ (Cap C28), Laws of the Federation of Nigeria, 2004, Section 1, hereinafter referred to as 'C.R.A.N.' or the 'Act'.

protection unless sufficient efforts have been expended in making them to give them original character.⁴ Such works must also be fixed in any definite medium of expression now known or later to be developed from which they can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.⁵

3. Rights Conferred on Authors

The Nigerian Copyright Act confers on authors some exploitative rights such as the right to reproduce, distribute, display, perform the protected work, or make derivative work therefrom, subject to the exceptions specified in the Second Schedule to the Act.⁶ These rights conferred on Copyright Owners extend to the whole or a substantial part of the work either in its original form, or in any form recognizably derived from the original.⁷ Furthermore, Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form, or in any form recognizable derived from the original, but not the right to control the re-construction in the same style as the original of a building to which the Copyright relates.⁸ According to the Act, Copyright in a sound recording shall be the exclusive right to control in Nigeria, the direct or indirect reproduction, broadcasting or communication to the public of the whole or a substantial part of the recording either in its original form or in any form recognizably derived from the original; the distribution to the public for commercial purposes of copies of the work by way of rental, lease, hire, loan or similar arrangement.⁹ Copyright in broadcast are similar to the rights enjoyed by authors of other works considered and includes the recording and the re-broadcasting of the whole or a substantial part of the broadcast.¹⁰ Copyright in television broadcast shall be the exclusive right to control the taking of still photographs from the broadcast.¹¹

4. Copyright Infringement

Copyright infringement occurs when any person who without the license or authorization of the Copyright owner, does or causes any other person to do any of the acts enumerated above.¹² This class of infringement is usually referred to as primary infringement. On the other hand, secondary infringement of Copyright occurs when a person without the license or authorization of the owner of Copyright imports or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria, would be an infringing copy.¹³ Another form of secondary infringement is the unauthorized exhibition of work in the public;¹⁴ unauthorized distribution of works by way of trade, offering for sale, hire or otherwise or for any purpose prejudicial to the owner of the Copyright;¹⁵ making or being in possession of plates, master tapes, machines, equipment or contrivances used for the purpose of making infringing copies of a work;¹⁶ and permitting a place of public entertainment or of business to be used for a performance to the public of the work, where the performance constitutes an infringement in the work unless the person permitting the place to be used was not aware and has no reasonable ground for suspecting that the performance would be an infringement of the Copyright in such work.¹⁷ It will also amount to Secondary infringement of Copyright for any person, who without the license or authorization of the owner of the Copyright to perform or causes 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.¹⁸ On the other hand, Criminal infringement of copyright occurs when a person, without the authority of the Copyright owner does any of the acts discussed above in relation to secondary infringement.¹⁹

5. Copyright Protection and Access to Works: The Role of Library

In order to promote the dissemination of knowledge and information, the Copyright Laws guarantee the public right of access to copyrightable works through the introduction of the various limitations and exceptions to

⁴ *Ibid.* Subsection (2).

⁵ *Ibid.* Section 6.

⁶ *Ibid.*

⁷ *Ibid.* Subsection (2).

⁸ *Ibid.* Subsection (3).

⁹ *Ibid.* Section 7.

¹⁰ *Ibid.* Section 8.

¹¹ *Ibid.* Subsection (2).

¹² *Ibid.* Section 15 (1) (a).

¹³ *Ibid.* Section 15(1) (b).

¹⁴ *Ibid.* Paragraph (c).

¹⁵ *Ibid.* Paragraph (d).

¹⁶ *Ibid.* Paragraph (e).

¹⁷ *Ibid.* Paragraph (f).

¹⁸ *Ibid.* Paragraph (g).

¹⁹ *Ibid.* Section 20 (1) (a)-(c).

copyright control, which allows for fair use of protected works.²⁰ The English Act also contains similar provision.²¹ It must be stated that the role played by the Libraries in the dissemination of information pursuant to the exceptions to various Copyright controls cannot be over emphasized. Anyaegbu stated that records were kept in various materials such as clay, stones, papyrus, vellum rolls, scrolls, etc., in the third millennium BC as evidenced in the ancient Babylon, Assyria, Egypt, Greek Empire, etc.²² Nowadays, there are many types of Libraries *viz*: National Libraries, Public Libraries, Academic Libraries, School Libraries, Research Libraries, Special Libraries and Private Libraries.²³ There are also Analogue and Digital Libraries. These Libraries make available works in their collection to Students, Researchers and the general public, either by making these works available for reading in the Libraries free of charge or by lending same to Users. By doing this, Libraries balance the Authors' and Users' rights, thereby ensuring the growth of knowledge and information. Apart from this traditional role played by Libraries, the Copyright Laws squarely placed certain responsibilities relating to access to copyrightable works on the Libraries, Librarians and Archivists as shall be discussed hereunder.

Use of Work in Approved Educational Institutions

The Nigerian Act exempts 'any use of a work in an approved Educational Institution for the educational purposes of that Institution, subject to the condition that if a reproduction is made for any such purpose it shall be destroyed before the end of the prescribed period, or if there is no prescribed period, before the end of the period of twelve months after it was made'²⁴. According to the English Act, a recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an Educational Establishment for the educational purposes of that Establishment without infringing Copyright in the broadcast, or in any work included in it, provided that: ²⁵ (a) the educational purposes are non-commercial; and (b) The recording or copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise). Such a copy can then be communicated by or on behalf of the Educational Establishment to its pupils or staff for non-commercial educational purposes of that Establishment.²⁶ This applies to a communication received outside the premises of the Educational Establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.²⁷ However, such use will not be permitted if or to the extent that, licenses are available authorizing the acts in question and the educational establishment responsible for the acts knew or ought to have been aware of that fact.²⁸ If a copy made under this section is subsequently dealt with, it is to be treated as an infringing copy for the purpose of that dealing and if that dealing infringes Copyright, it is to be treated as infringing copy for all subsequent purposes.²⁹ It must be noted that the phrase "dealt with" as used herein means sold or let for hire, offered or exposed for sale or hire, or communicated otherwise than as permitted by the Act.³⁰ Similarly, the Act allows the copying and using of extracts of works by Educational Establishments or on their behalves for purposes of instruction for a non commercial purpose.³¹ The conditions required for the enforcement of Copyright under this section are similar to those in section 35 already discussed except that it provides that not more than five percent of the work may be copied by or on behalf of an Educational Establishment in any period of 12 months; and for these purposes, a work which incorporates another work is to be treated as a single work.³² Where licenses are available, the terms of a license granted to an Educational Establishment authorizing acts permitted by this section are of no effect so far as they purported to restrict the proportion of a work which may be copied, whether on payment or free of charge, to less than that which would be permitted by this section.³³

It is obvious that the provisions of the English Act on this exemption are far more elaborated and vastly explicit than those of the Nigerian Act discussed above. For instance, the Nigerian Act fails to name the Educational Institution and the Institutions that are to approve such Educational Institution that are entitled to enjoy this exception. This omission will breed confusion in infringement cases. It is submitted that in interpreting the meaning of the Educational Institutions and the Institutions that approve them, recourse should be had to the

²⁰ *Ibid*. Second Schedule.

²¹ Copyrights, Designs and Patent Act of England, 1988, Section 30, herein after referred to as 'C.D.P.A.'

²² M Anyaegbu, *Use of Library And Information Literacy For Higher Education*, (Awka, Potential Book, (2016) p.10.

²³ *Ibid*

²⁴ C.R.A.N. Paragraph (h) of the Second Schedule.

²⁵ C.D.P.A. Section 35.

²⁶ *Ibid*. Subsection (2).

²⁷ *Ibid*. Subsection (3).

²⁸ *Ibid*. Subsection (4).

²⁹ *Ibid*. Subsection (5).

³⁰ *Ibid*. Section 36 (1).

³¹ *Ibid*. Subsection (6).

³² *Ibid*. Subsection (5).

³³ *Ibid*. Subsection (7).

English Act which defines the Educational Establishment as ‘School and any other Educational Establishment approved specified by order of the Secretary of State.’³⁴ It is suggested that the Nigerian Act be amended to incorporate the afore-discussed Copyright friendly provisions of the English Act.

Use of Work by Government Public Libraries and Non-Documentation Centres

The Nigerian Act further exempts ‘any use made of a work under the direction or control of the Government, or by such Public Libraries, Non-Commercial Documentation Centres and Scientific or other Institutions as may be prescribed, where the use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work so used’³⁵. On the other hand, the English Act provides that Copyright in a work of any description is not infringed by the lending, by a Public Library in relation to a book within the Public Lending Right Scheme, that is, the lending of books, audio-books and e-books.³⁶ Again, the lending of copies of such work by a Library or Archives other than Public Library which is not conducted for profit is allowed.³⁷ The Act further allows Libraries, Achieve, Museums, and Educational Establishments to communicate such works to the public or to make it available to the public by means of dedicated terminals on their premises, upon the fulfillment of the conditions that the work or a copy of the work:³⁸ (a) has been lawfully acquired by the Institution; (b) is communicated or made available to individual members of the public for the purpose of research or private study; and (c) is communicated or made available in compliance with any purchase or licensing terms to which the work is subject. Thus, the English Act wider in scope than the Nigerian Act in that use of works exempted by the former Act is not restricted to the Library or the Institution. Such Library or other Institutions can communicate and even lend same to similar Institutions and even the general public. It is also worthy to note that since the promulgation of this Nigerian Act, no Public Libraries Documentation Centers or any other institutions of such nature have so far been prescribed as required under this paragraph. This obviously renders this provision dormant and useless. In order to make such prescription feasible and real, it is suggested that the Act be amendment along the line of the aforementioned Copyright friendly provisions of the English Act.

Archival Use/ Library Copying

The Nigerian Act exempts from Copyright control ‘the making of not more than three copies of a book (including a pamphlet, sheet music, map, chart or plan) by or under the direction of the person in charge of a Public Library for the use of the Library if such a book is not available for sale in Nigeria’³⁹. Even though it seems this exception is reserved for Public Libraries only, it is Copyright friendly to extend the use to others/public. This is so because the Act authorizes the supplying to any person of any reproduction of any work comprised in the archives stored in the National Archives established under the national archives act; or the public records of a State, being records for the storage or custody of which provision is made by law.⁴⁰ The English Act provides that a Librarian of any of the Institutions mentioned in the Act⁴¹ may make a single copy of the whole or part of a published work and supply it to another Library without infringing Copyright in the work; if such copy is supplied in response to a request from a Library which is not conducted for profit, and at the time of making the copy, the Librarian does not know or could not reasonably find out the name and address of a person entitled to authorize the making of a copy of the work.⁴² Similarly, a Librarian, Archivist, or Curator of a literary, Archive or Museum may make a copy of an item of the Institution’s permanent collection in order to preserve or replace the item in that collection; or, where an item in the permanent collection of another library, archive or museum has been lost, destroyed or damaged, in order to replace the item in the collection of that other Library, Archive or Museum;⁴³ so long as such item is included in the part of the collection kept wholly or mainly for the purpose of reference on the institution’s premises; or included in a part of the collection not accessible to the public; or the item is available on loan only to other Libraries, Archives or Museum.⁴⁴ For the exception to avail, it must be shown that it is not reasonably practicable to purchase a copy of the item to achieve either of the purposes mentioned in the Act.⁴⁵ The Act further empowers a Librarian of a Library which is not conducted for profit, to supply a single copy of one article in any one issue of a periodical; or a reasonable proportion of any other published work, without infringing

³⁴ *Ibid.* Section 174 (1).

³⁵ C.R.A.N. Paragraph (k) of the Second Schedule.

³⁶ C.D.P.A. Section 40A (1) & (A1).

³⁷ *Ibid.* Subsection (2).

³⁸ *Ibid.* Section 40B (1)(3).

³⁹ C.R.A.N. Paragraph (q) of the Second Schedule.

⁴⁰ *Ibid.* Section 15 (2).

⁴¹ C.D.P.A. Section 40B (1).

⁴² *Ibid.* Section 41 (1) & (2); section (2).

⁴³ *Ibid.* Section 42 (1) (a) & (b).

⁴⁴ *Ibid.* Subsection (2) (a) - (c)

⁴⁵ *Ibid.* Subsection (3).

Copyright in the work.⁴⁶ This must be in response to a request from a person who has provided the Librarian with a declaration in writing, the information set out in the Act.⁴⁷ The English Act also empowers Librarians or Archivists to make and supply a single copy of the whole or part of a work to the same class of person and under the same conditions stipulated under the Act.⁴⁸

Another striking difference between the English and Nigerian Acts is that while the Nigerian Act requires for the making of the work by a person in charge of a Public Library for the use of that Library, the English Act empowers not only a Librarian, whether of a Public or Private Library, but an Archivist or Museum to make copies of such work not only for the use of that particular library but for other libraries or for individuals. It must be pointed out that the English Act has novel provisions which are not contained in Nigerian Act to the effect that Copyright is not infringed by the copying of a work from the internet by a deposit Library or person acting on its behalf if:⁴⁹ (a) the work is of a description prescribed by regulations under section 10 (5) of the 2003 Act; (b) its publication on the internet, or a person publishing it there, is connected with the United Kingdom in a manner so prescribed; and (c) the copying is done in accordance with any conditions so prescribed. The above mentioned regulations are as made by the Secretary of State pursuant to the Legal Deposit Libraries Act.⁵⁰ The Act further provides that if an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom unless a copy of it is made and deposited in an appropriate Library or Archive, it is not an infringement of Copyright to make that copy. These provisions, together with other provision relating to this exception are public interest friendly and should be incorporated into the Nigerian Act through immediate amendment.

Reproduction of Unpublished Works

The Nigerian Act permits the reproduction for the purpose of research or private study of an unpublished literary or musical work kept in a Library, Museum or other Institutions to which the public has access.⁵¹ It acknowledged that the use contemplated is not restricted to Libraries, but extends to Museum and such other Institutions, for purpose of research or private use. It submitted that the phrase ‘private study’ as used in the Nigerian Act has restrictive meaning in that it may be understood use by the student. Thus, it does not in any way include the circulation of the same materials to other students. However, since the Act left everyone in doubt as to the exact meaning of the phrase ‘private study’, such omission will likely occasion miscarriage of justice in infringement cases. It is quite unfortunate that the English Act which is supposed to guide the Nigerian Courts in the interpretation of the Act does not expressly discuss unpublished works in the relevant section of the Act, although it is boldly captioned ‘copying by Librarians or Archivists: single copies of unpublished works’ in the Act.⁵² It is therefore suggested that both Acts be amended to accommodate the reproduction of such works for the purpose of both private and public study/research and along the line of the suggestions proffered above.

Reproduction on Braille

The Nigerian Act allows the reproduction of published works in Braille for the exclusive use of the blind and sound recordings made by Institutions or other Establishments approved by the Government for the promotion of the welfare of other disabled persons for the exclusive use of such blind persons.⁵³ The Nigerian Act allows the reproduction of published works in Braille for the exclusive use of the blind and sound recordings made by the institutions or other establishments approved by the Government for the promotion of the welfare of other disabled persons for the exclusive use of such blind persons.⁵⁴ Similarly, the English Act allows this exception if a disabled person has lawful possession or lawful use of a copy or part of a work; and the person’s disability prevents the person from enjoying the work to the same degree as a person who does not have that disability.⁵⁵ Again, the making of an accessible copy of the work by the disabled person or by a person acting on his behalf; or the copy is made for the disabled person’s personal use do not infringe copyright; if the same kind of accessible copies of the work are not commercially available on reasonable terms by or with the authority of the Copyright owner.⁵⁶ Copyright is also not infringed by the transfer of an accessible copy of a work made under the section by any person other than a person by whom an accessible copy of the work may be under this section; or a person who

⁴⁶ *Ibid.* Section 42A (1).

⁴⁷ *Ibid.* Section 42 A (3).

⁴⁸ *Ibid.* Section 43 (4).

⁴⁹ *Ibid.* Section 44A (1) (a) –(c).

⁵⁰ *Ibid.* Subsection (3).

⁵¹ C.R.A.N. Paragraph (r) of the Second Schedule.

⁵² C.D.P.A. Section 43;

⁵³ C.R.A.N. Paragraph (s) of the Second Schedule.

⁵⁴ C.D.P.A. Section 31A (1).

⁵⁵ *Ibid.* Section 31A (1).

⁵⁶ *Ibid.*

intends to transfer a copy to a person falling within the contemplation of the Act.⁵⁷ Such transfer will also not amount to infringement of Copyright in the work where the transfer is authorized by the Copyright owner.⁵⁸ The term 'deal with' as used under the Act means 'sold or let for hire or offered or exposed for sale or hire'.⁵⁹

Similarly, an Authorized body who has lawful possession of a such copy may make and supply accessible copies of the work for the personal use of disabled persons⁶⁰ if the same kind of accessible copies are not commercially available on reasonable terms by or with the authority of the Copyright owner.⁶¹ Again, if an authorized body has lawful possession of the whole or part of a broadcast or a copy of it, he can make a recording of the broadcast, and make and supply accessible copies of the recording or any work included in the broadcast; and exercise similar acts in relation to a broadcast,⁶² upon similar conditions stated in subsection (3).⁶³ However, any accessible copy made must be used only for its educational purposes of the Body.⁶⁴ Such Body may supply such copy to another authorized body which is entitled to make accessible copies of the work under this section for the purposes of enabling that other body to make accessible copies of the work.⁶⁵ However, if an accessible copy made under this section is subsequently dealt with, it is to be treated as an infringing copy for the purposes of that dealing; and if that dealing infringes Copyright, it is to be treated as an infringing copy for all subsequent purposes.⁶⁶ Furthermore, if an accessible copy is made of a work which is in copy-protected electronic form, the accessible copy must, so far as it is reasonably practicable, incorporate the same or equally effective copy protection, unless the Copyright owner agrees otherwise.⁶⁷ The Act further permits an Authorized body entitled to make accessible copy of the work under the Act,⁶⁸ to without infringing copyright, make a copy of the work, i.e., 'an intermediate copy', if it is necessary in order to make the accessible copy.⁶⁹ Such authorized body that has made such intermediate copy of a work under this section may supply it to another authorized body qualified to make such work under the Act for purposes of enabling the latter to make accessible copies of the work⁷⁰

It is noted that the term 'disabled person' as used in the English Act is broader in scope than that contemplated under the Nigerian Act as it means 'a person who has a physical or mental impairment'.⁷¹ Again, while the latter Act provides for protection of the reproduction on Braille for the exclusive use of the blind; or the sound recordings made by Institutions or other establishments approved by the Government for the promotion of the welfare of other disabled persons for the exclusive use of such blind or disabled persons, the English Act makes an all encompassing provision for the protection of all disabled persons and for the production of copies of accessible copies for that purpose by the Authorized Bodies.

It is submitted that there ought to have been some nexus between the particular disability and the use of the sound recording as a means of gaining access to such works. This is because a handicap in the limb for example, would not justify the use of a sound recording of a literary work. Moreover, the Acts do not consider whether these works are available in the market before allowing this exemption. It is further submitted that these provision may lead to confusion and conflict of interest. It is suggested that the Nigerian and English Acts be amended to stipulate the disabled persons contemplated in relation to specific works, and to state that this exemption is only allowed if the original work is out of stock. This will widen the horizon of access to copyrightable works by adequately addressing/redressing the predicament faced by all disabled persons, not only the blind, but the deaf, dumb, mentally deranged, paralyzed persons, etc.

6. Digitization and Copyright Enforcement in the Libraries

Digitization connotes the conversion of works to a format in which they can be read by a machine.⁷² It is basically the ability to record works in a binary format in which they are stored and transmitted. Digitization has impacted

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* Proviso Subsection (4).

⁵⁹ *Ibid.* Proviso to subsection (7).

⁶⁰ *Ibid.* Section 31B (1).

⁶¹ *Ibid.* subsection (2).

⁶² *Ibid.* subsection (3).

⁶³ *Ibid.* Subsection (4).

⁶⁴ *Ibid.* Subsection (6).

⁶⁵ *Ibid.* Subsection (9).

⁶⁶ *Ibid.* Subsection (11).

⁶⁷ *Ibid.* Subsection (8).

⁶⁸ *Ibid.* Section 31BA (1).

⁶⁹ *Ibid.*

⁷⁰ *Ibid.* Subsection (2).

⁷¹ *Ibid.* Section 31F (2).

⁷² B Iftikhar, 'Technological Protection Measures Under Copyright Law', *International Journal of Emerging & Technology in Computer Science (IJETICS)*, Volume 2, Issue 2, March-April 2013, p.319.

not only on the format of works, but also on their use and distribution; for while analogue works are created and distributed in material forms, such as books or paintings, digital works are dematerialized into electric or digital format which are no longer contained in the traditional material formats. Moreover, an existing analogue work can be converted into a digital data object. It is also very common to conveniently create new works in the digital format with ease, at a cheaper rate and made available online for public use. They can be downloaded and transferred nationally, regionally and internationally without the knowledge and consent of the authors of such works; without detection. This development threw off balance the traditional Copyright Enforcement Mechanisms Enforcement such as Nigeria Copyright Commission,⁷³ Copyrights Inspectors,⁷⁴ Collecting Societies,⁷⁵ Department of Customs and Excise,⁷⁶ Police,⁷⁷ and the Courts.⁷⁸

Nowadays, technological protective devices such as Encryption and Digital Watermarking are used to protect digital works. The Nigerian Act authorizes the use of technological protective devices by conferring on the Nigerian Copyright Commission, the authority to prescribe any design, label, mark, impression or any other anti-piracy device for use in connection with any work.⁷⁹ It bars the importation into Nigeria, or being in possession of any anti-piracy device, or any machine, instrument or other contrivance intended for use in the production of the anti-piracy device.⁸⁰ Similarly, the English Act prohibits the circumvention of technological devices as well as the circumvention of any effective technology, or any facility that circumvents any such protective technological device.⁸¹ However, the two Acts under consideration do not provide for fair use works of protected work with technological devices. This omission will obviously put an end to creativity if nothing serious is done to remedy this anomaly.

There are other plagues militating against the Libraries in this millennium. For instance, most staff of these Libraries are either unqualified or non professionals, who do not understand the uses of Libraries and technological protective devices and who aid copyright infringement either as a result of non-payment or under payment of staff salaries; or that these salaries are not paid as and when due. Again, these Libraries are poorly funded. This accounts for the scarcity of works in the Libraries as well as the poor structures and lack of network connections witnessed in these Libraries.

7. Conclusion and Recommendations

It is concluded that the Copyright Act of Nigeria and other related Instruments operating in Nigeria have not done enough to enhance Copyright protection and enforcement in the Libraries. This is as a result of the archaic and obsolete nature of these Instruments which allow the use of technological protective which do not admit of fair use of protected works. Again, the Copyright Act of Nigeria most often empowers Public Libraries and Public Librarians to grant access to copyrightable works to the public through the reproduction of scarce works in such Libraries on the condition that such works should be destroyed within the period specified by the Act. Not only that the relevant provisions of the Act on this are discriminatory nature in that they do not make mention of Private Libraries and Private Librarians, the Act does not mandate any Body or Institution that will carry out such destruction. This will in turn, breed Copyright infringement. Again, the use of unqualified staff in the Libraries and poor funding of the Libraries will soon push these Libraries into oblivion. There are a good number of steps that will help in repositioning the Libraries to compete with Western Libraries. The recommendation made to this effect is as discussed hereunder.

Amendment of the Acts

The Nigerian Copyrights Act urgently amended to delete the discriminatory provisions empowering Public Libraries and Public Librarians to grant access to copyrightable works to the public through the reproduction of scarce works in such Libraries, without entrusting such powers on Private Libraries and Private Librarians. The Amended Act should also appoint/mandate a Bodies or Institutions that will carry out the destruction of such works so produces, after the specified period. The amended Acts should also authorize fair use of technologically protected works.

⁷³ C.R.A.N. Section 34.

⁷⁴ *Ibid.* Subsection (3).

⁷⁵ *Ibid.* Section 39 (1).

⁷⁶ *Ibid.* Section 44 (1).

⁷⁷ *Ibid.* Section 20 (5).

⁷⁸ *Ibid.*

⁷⁹ *Ibid.* 21 (1).

⁸⁰ *Ibid.* Subsection (3).

⁸¹ *Ibid.* Subsection (3).

Adequate Funding of the Libraries

Libraries should be optimally equipped with relevant Library materials such as computers, study materials, magnificent structures, furniture, constant power supply, constant network connection by at least three Service Providers at the same time, and the use of Copyright friendly technological protective devices. This could be achieved through adequate funding of these Libraries.

Employment of Qualified Library Staff

Only seasoned professional and qualified staff who are very conversant with the nitty-gritty of Libraries should be employed in the Libraries. These staff must be subjected to regular training, refresher courses and Conferences to keep them updated with the current trends in Library operations in accordance with international standards.

Improved Staff Welfare

The salaries of Libraries staff should be guaranteed and paid as and when due so that these staff will no longer be lured into aiding and abating Copyright infringement due to poverty. Other incentives in the form of allowances and bonuses should be made available to staff to boost the performances. Above all, staff should be guaranteed of their pensions and gratuities upon retirement.

Creation of Awareness on Copyright Matters and the Use of Library

Adequate awareness on Copyright matters and the use of Library should be created to carry the Nigerian populace along on Copyright protection and the public interest right of access to works in the Libraries. The measures to be adopted include the enlightenment and awareness campaigns to the grass root level. There should also be an improved public education of on the concept, nature and protection of Copyright, and the right of access to works in the Libraries through seminars, workshops, conferences, radio and television broadcasts, and by the introduction of Copyright as a course in the curricula of Primary, Secondary and Tertiary Institutions.