

**SPECIAL ROLES OF LIBRARIES IN COPYRIGHT ENFORCEMENT:
A SURVEY OF THE COPYRIGHT LAWS OF NIGERIA, INDIA AND UNITED
STATES OF AMERICA***

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. The reason for the conferment of these rights is to allow authors to reap economic benefits accruing from their creation, thereby encouraging them to create more works. While conferring these monopoly rights on authors, 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 Libraries play active roles in the dissemination of information in that they make available to the general public, protected works free of charge. 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, to enable users to access these works pursuant to the limitations to the author's rights under the Laws. Most often, breach of Copyright occurs in the exercise of these functions. Again, the use of technological protective devices in Digital Libraries tends to inhibit accesses to protected works. More so, the dichotomy between Public Libraries and Private Libraries as contained in some of these Copyright Laws frustrates the functions of these Private Libraries which is making accessible works either available or scarce, for the advancement of knowledge and information. This work adopted doctrinal and empirical research methods in examining the Copyright Acts of Nigeria, United States of America, India and other Copyright related Instruments in order to discover the efficacy of these Laws and 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.

Keynotes: Libraries, Special Roles, Copyright Enforcement, Nigeria, India, United States of America

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 laboured 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, which ordinarily would have constituted Copyright infringement. This is to promote the advancement of knowledge and information through access to protected works. 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 functions of the Private Libraries which is making accessible works, whether available or scarce, 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 is an automatic right that gives the authors of the 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

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

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 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

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'.

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); *Nigeria Copyright Commission v Edolo* 6 I.P.L.R. 41; *Musical Copyright Society v Adeokin Records & Anor.* 6 I.P.L.R. 55.

¹³ *Ibid.* Section 15(1) (b).

¹⁴ *Ibid.* Paragraph (c).

¹⁵ *Ibid.* Paragraph (d).

¹⁶ *Ibid.* Paragraph (e).

¹⁷ *Ibid.* Paragraph (f).

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

Criminal infringement of copyright occurs when a person, without the authority of the Copyright owner makes or causes to be made for sale, hire, or for the purposes of trade or business any infringing copy of a work; or imports or causes to be imported into Nigeria; or has in his possession, any plate, master tape, machine, equipment or contrivances for the purposes of making any infringing copy of any such work.¹⁹ It will also amount to criminal infringement of copyright for such a person to sell, let for hire or for the purposes of trade or business; exposes or offers for sale or hire any infringing copy of any work in which Copyright subsists; or to distribute, or to have in his possession any such infringing work, or to be in his possession same other than for his private or domestic use.²⁰ The Act further prohibits any person from distributing in public for commercial purposes, copies of work by way of rental, lease, hire, loan or similar arrangement, if such a person does not have the consent of the owner of the Copyright.²¹

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 Copyright control, which allows for fair use of protected works.²² However, in determining whether the use made of a work in any particular case amounts to fair use, the factors to be considered shall include:²³

- (a) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (b) the nature of the copyrighted work;
- (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (d) the effect of the use upon the potential market for, or value of the Copyright work.

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. 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:²⁴

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.

The Copyright Acts of India and the United States of America do not expressly contain such provision. Although these provisions of the Nigerian and Act do not expressly mention the Libraries in relation to use of works by approved Educational Institution, it is crystal clear that use of such works starts and ends in the Libraries of such Educational Institutions. Again, although this exception applies to all categories of works, there is nothing in these Acts that suggests that the approved use must be by the Educational Institution itself. Furthermore, these Acts do mention 'Educational Institutions' without enumerating or prescribing these Institutions contemplated by them. It does not also stipulate who approves such contemplated Institutions. It is submitted that the Educational Establishments contemplated by the Acts must be the ones approved by the appropriate Authorities empowered by Law to approve Educational Institutions. These authorities and Educational Establishments/Institutions may

¹⁸ *Ibid.* Paragraph (g).

¹⁹ *Ibid.* Section 20 (1) (a)-(c); *N. C. C. v Madu* (Unreported Suit No. FHC/L/40/2015, judgment delivered on 14th Feb., 2017, by Oguntoyinbo, J. at Federal High Court, Lagos Division).

²⁰ *Ibid.* Section 20 (2).

²¹ *Ibid.* Subsection (3).

²² *Ibid.* Second Schedule, Copyrights Act of India, 1957, Section 52, hereinafter referred to as 'C.R.A.I.'

²³ Copyrights Act of United States, Section 107, Hereinafter referred to as 'U.S.C'.

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

include: National Universities Commission- for University, Board of Technical Education- for Polytechnics, National Commission for Colleges of Education- for Colleges of Education, Primary and Secondary Education Boards- for Primary and Secondary Schools respectively. Again, the provisions of the Nigerian Act regarding the destruction of the works used for aforementioned purposes within twelve months may breed Copyright infringement in that the Act does not mandate any Body or Institution to oversee such destruction. This means that if such work eventually survives the prescribed destruction, it might be subjected to Copyright infringement. Again, apart from the fact that such destruction may be cumbersome and difficult to enforce, it may work hardship in enforcement cases.

It is therefore suggested that in order to eliminate any confusion that may arise from the interpretation of the above provisions of the Acts under consideration, the relevant provisions of Acts should be urgently amended to name the Educational Institutions and the Approving Institutions so contemplated therein. In the proposed amendment, it is also necessary to either eliminate the requirement of destruction of the aforementioned work or set up a Body or Institution that will oversee/monitor such destruction. This will make for clarity, precision, improved enforcement of Copyright and at the same time, facilitate access to works. It is also suggested that the Indian and U.S. Acts be urgently amended to incorporate the aforementioned suggested amendment into these Acts.

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

The Nigerian Act further exempts:²⁵

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.

Similarly, the U.S. Act allows the reproduction by Libraries and Archives of works made without any direct or indirect commercial advantages, so long as such Institution is open to researchers.²⁶ However, the Indian Act does not provide for this exception. It is observed that this exception applies to both Public and Private Libraries. It is also noteworthy that since the promulgation of the Nigerian Act, no Public Libraries Documentation Centers or any other Institutions of such nature have so far been prescribed pursuant to the relevant provisions of the Nigerian Act. This obviously renders this exemption dormant and useless. In order to make such prescription feasible and real, it is therefore suggested that the Nigeria Act be amendment to name the authority contemplated to prescribe such bodies. It is also suggested that the Indian and U.S. Acts be urgently amended along the line of the aforementioned suggested amendment.

Archival use/ Library Copying

The Nigerian Act exempts from Copyright control:²⁷

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.

The Indian Act provides for this exception in the same manner the Nigerian Act do but states that such use must be made by Public 'Non-Commercial Library',²⁸ without defining this term. It is submitted that this exception is put in place to safeguard public interest by making available copies of works unavailable by the reproduction of not more than three copies of such works by or under the direction of the person in charge of a Public Library for the use of the Library and not for commercial purposes. In all cases, the thing done in relation must be in the course of statutory function of such Public Libraries. It seems this exception is reserved for Public Libraries, for the exclusive use of these Libraries; without making any monetary gain. However, it is Copyright friendly to interpret these sections of the Acts to mean that such Public Libraries can supply any such work to anybody that needs it. The Nigeria Act lends credence to this when it provides that²⁹ notwithstanding the provisions of subsection (1) of the Act, or any other provision of the Act, where any work in which Copyright subsists or a reproduction of any such works is comprised in –

²⁵ C.R.A.N. Paragraph (k) of the Second Schedule.

²⁶ U.S.C. Section 108 (a).

²⁷ C.R.A.N. Paragraph (q) of the Second Schedule.

²⁸ C.R.A.I. Section 52 (1) (o).

²⁹ C.R.A.N. Section 15 (2).

- a.) the archives stored in the National Archives established under the national archives act;
or
- b.) the public records of a State, being records for the storage or custody of which provision is made by law, the Copyright in the work is not infringed by the making or the supplying to any person of any reproduction of the work in pursuance of that act or law.

Although this provision is broader in scope than the exception itself, the use is restricted to works in the archives stored in the National Archives established under the national archives act or the public records of a State. In all cases, this exemption does not apply to any other type of infringement outside making reproductions. Asein rightly suggested that since ‘supplying’ as used by the Act, is not one of the rights conferred by Copyright; it is most likely that the Court will interpret this to mean ‘publishing’ or ‘distribution’.³⁰ Unfortunately, the highly sophisticated Copyrights Act of United States where lessons on the interpretation and enhanced protection of Copyright in Nigeria should have been drawn does not contain this exemption.

It is submitted that the non inclusion of Private Libraries in the category of Libraries contemplated by the Act will constitute a clog on access to information, especially now that private Schools have taken over the Educational Sector in Nigeria. It is therefore suggested that the Acts under consideration be urgently amended to include Private Libraries in the list of Libraries contemplated.

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.³¹ Thus, this exception is limited to those unpublished works that are kept in Library, Museum or such other Institutions, for purpose of research or private use. The provisions of the Indian Act on this exemption are similar to the abovementioned provisions of the Nigerian Act except that it will only have effect in India if the identity of the author is known, the reproduction of work is made at a time more than sixty years from the death of the author, or the last author in the case of joint authorship; and such Library or Institution must be open to the public.³² However, the U.S. Act does not expressly provide for this exception except that the Act exempts the use of works for teaching, scholarship and research;³³ which provisions are though in tandem both in meaning and otherwise with the provisions of the other Acts regarding this exception. 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 and or limit the scope of the right to access to protected works for the advancement of knowledge and information. It is therefore suggested that Acts be amended to accommodate the reproduction of such works for the purpose of research for private or public study. It is further submitted that the reproduction of work more than sixty years from the death of the author, or the last author in the case of joint authorship as required by the Indian Act is so baseless that it will work hardship on Copyright enforcement. Therefore, while suggesting that the Indian Act be urgently amended to delete this requirement, it is also suggested that the Indian and United States Acts be amended to incorporate the provisions of the suggested Amended Nigerian Act.

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.³⁴ The Indian Act does not expressly provide for this exception, although it is implied in the Act’s fair use provisions.³⁵ However, the provisions of the U.S. Act relating to this exception are similar to those of the Nigerian Act.³⁶ This exception obviously relates to published works in two categories, that is, the reproduction in Braille for the blind; and reproduction of sound recordings for other disabled persons. 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

³⁰ J Asein, *Nigerian Copyright Law & Practice* (2nd edn, Abuja: Books and Gravel Ltd. 2012) p. 271.

³¹ C.R.A.N. Paragraph (r) of the Second Schedule.

³² C.R.A.I. Section 52 (o).

³³ U.S.C. Section 123.

³⁴ C.R.A.N. Paragraph (s) of the Second Schedule.

³⁵ C.R.A.I. Section 52 (a).

³⁶ U.S.C. Section 121.

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 U.S. 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. It is also suggested that the Indian Act be amended to incorporate the suggested amendment.

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.³⁷ It is basically the ability to record works in a binary format in which they are stored and transmitted. Digitization has impacted not only on the format of works, but also on their use and distribution. In the analogue world for instance, works are created and distributed in material forms, such as books or paintings. These works are scriptable to the human senses. In contrast, digital works have been dematerialized into electric or digital format which are no longer contained in the traditional material formats. Again, although the digital format of works can be read or understood only by technologies such as computers, it can be readily translated into impulses susceptible by human eyes, ear and mind.³⁸ 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. As a result of digitization, protected, works such as literary, musical, artistic, sound recordings, cinematographs and broadcasts are now made available online in Digital Libraries for public use. They are downloaded and transferred nationally, regionally and internationally without the knowledge and consent of the authors of such works; without detection.

Thus, digitization brought about enhanced modes of easy Copyright violation as it threw off balance the traditional Copyright Enforcement Mechanisms Enforcement such as Nigeria Copyright Commission,³⁹ Copyrights Inspectors,⁴⁰ Collecting Societies,⁴¹ Department of Customs and Excise,⁴² Police,⁴³ and the Courts,⁴⁴ formally used to compel compliance with the Copyright Laws in the analogue world. This development gave rise to the use of technological protective devices such as Encryption and Digital Watermarking which now provide Authors with the rights to control the use of their Copyright works in the Digital Libraries.⁴⁵ However, although fair use of protected is guaranteed in the analogue world, such could not be said of the digital works as a result of the technological protective devices used on these digital works which most times, do not admit of fair use of such works. For instance, while the Nigerian Copyright 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 on, in, or in connection with any work in which Copyright subsists; ⁴⁶ and barring the importation into Nigeria, or being in possession of any anti-piracy device, or any machine, instrument or other contrivance intended for use in the production of the anti-piracy device,⁴⁷ the Act does not provide for the circumvention of such devices on grounds of fair use.

In India, the use of technological protective devices and the possible circumvention of such measures were not addressed by any legislation until the Indian Copyright Act was amended in 2012 which introduced a new section that provides that:⁴⁸

any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by the Indian Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years, and shall be liable to fine.

³⁷ B Iftikhar, 'Technological Protection Measures Under Copyright Law', *International Journal of Emerging Trends & Technology in Computer Science (ITETICS)*, Volume 2, Issue 2, March-April 2013, p.319.

³⁸ *Ibid.*

³⁹ C.R.A.N. Section 34.

⁴⁰ *Ibid.* Subsection (3).

⁴¹ *Ibid.* Section 39 (1).

⁴² *Ibid.* Section 44 (1).

⁴³ *Ibid.* Section 20 (5).

⁴⁴ *Ibid.* Section 46, Sections 251 (1) (f) & 251 (3) 1999 Constitution of Nigeria (as amended).

⁴⁵ *Ibid.*

⁴⁶ *Ibid.* 12 (1).

⁴⁷ *Ibid.* Subsection (3).

⁴⁸ C.R.A.I. Section 65.

The Act allows a person facilitating protective measure for purposes of infringing the Copyright;⁴⁹ a person who does anything necessary to conduct encryption research; or if he is conducting any lawful investigation; or he is doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorization of its owner or operator; or he is doing anything necessary to circumvent technological measures intended for identification or surveillance of a user, or taking measures necessary in the interest of national security.⁵⁰ Thus, circumvention of anti-piracy devices is allowed in India for purposes of fair use.

On the other hand, the United States of America have given effects to International Treaties such as WIPO Treaties, by the passing into law of an Act which amended the United States Copyright Act by adding section 512 thereto.⁵¹ The D.M.C.A. prohibits the acts of circumvention of technological measures almost in the same manner as the above discussed provisions of the Indian Copyright Act.⁵² However, the D.M.C.A. creates a lot of exceptions in relation to circumvention of anti-piracy devices and affords a person accused of circumventing such device, the defence of fair dealings. For instance, it allows Nonprofit Libraries, archives and Educational Institutions to circumvent a technological protective measure solely for the purpose of gaining access to the work in order to determine whether the relevant Institution wishes to use it.⁵³ It also exempts Law Enforcement, Intelligence and other Government Agencies;⁵⁴ a person engaged in reverse engineering of a computer program who lawfully obtained a copy of that program;⁵⁵ a person who embarks on encryption research;⁵⁶ or a person carrying out some acts for the protection of minors are excepted from the prohibition on circumvention.⁵⁷ The act of circumvention is also permitted where the technological protective measure collects or disseminates personally identifying information generated in the course of activities if certain criteria set by the Act are met.⁵⁸

While admitting that the D.M.C.A. is the best articulated Legal Instrument for the protection and enforcement of copyright through technological devices in that it adequately protects the public interest right of fair use of technologically protected work; it is submitted that the failure by the Nigerian Copyright Act to provide for fair use of such renders this Act archaic and obsolete. There is no way this Act will aid the enforcement of Copyright and or, access to digitized works in the Nigerian Libraries under this condition. This is worsened by the fact that most staff of these Libraries are either unqualified or non professional, who do not understand the uses of Libraries and technological protective devices. Most often, some of these staff engage in Copyright infringement by illegally producing and distributing protected works for valuable considerations as a result of non-payment or under payment of staff salaries. Most times, these salaries are not paid as and when due. Again, poor funding of the Libraries tend to limit the performance of these Libraries, thereby promoting Copyright infringement. For instance, some works in the Libraries are so scarce and so sought after that the Libraries staff illegally produce and distribute such works for valuable considerations. Some of these Libraries cannot employ the use technological devices to protect works. Above all, there are no network connections or at best, epileptic network connections in these Libraries. If nothing serious is done to reposition these Libraries through adequate funding, Libraries will go extinct.

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. For instance, the Copyright Act of Nigeria allows the use of technical measures on works which do not admit of fair use in of protected works. Again, the Copyright Act of Nigeria most often empowers Public Libraries and Public Librarians to enforce the protection of Copyright and granting 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 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. It is also concluded that other factors that hamper the Libraries in relation to Copyright protection and enforcement *vis a viz* access to information are: use of unqualified staff in running the

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Digital Millennium Copyright Act, 1998, hereinafter referred to as 'D.M.C.A.'

⁵² *Ibid.* Section 1201(a) (1).

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

Libraries; non-payment or under payment of staff, and or non-payment of these salaries as and when due, poor funding of the Libraries; and lack of network connections, or epileptic network connections in these Libraries.

There are a good number of steps that could be taken to reposition the Libraries to effectively the protection of Copyright in Nigeria without restricting public access to copyrighted works. A strict adherence to the recommendations discussed below will help a lot in achieving this noble goal of upgrading our Libraries to international standards.

Amendment of the Act

It is recommended that the Nigerian Copyrights Act urgently amended to delete the discriminatory provisions empowering Public Libraries and Public Librarians to enforce the protection of Copyright and granting 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.

Adequate Funding of the Libraries

Most Libraries in Nigeria today are not performing optimally as a result of poor funding. If these Libraries are 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, among other things, tremendous improvement will be recorded on the part of these Libraries.

Employment of Qualified Library Staff

Seasoned professional and qualified staff who are very conversant with the nitty-gritty of Libraries as well as the use of the relevant technological protective devices should be employed in the Libraries. These staff must be subjected to regular training and refresher courses to keep them updated with the current trends in Library operations in accordance with international standards. These staff should also be subjected to International and Local Conferences in line with this objective.

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.