

RESOLVING OWNERSHIP RIGHTS IN THE COPYRIGHT WORKS OF CINEMATOGRAPH FILM AND SOUND RECORDING IN NIGERIA*

Abstract

This work tends to distinguish between ownership and authorship of copyrighted works of cinematograph films and sound recordings in Nigeria. One key issue in this work is whether ownership right in sound recordings and cinematograph films as provided under the Nigeria Copyright Act, 1988 protects entrepreneurs or authors' act of creativity. It will be posited that sound recordings and cinematograph films are derivative works and copyright for derivative works are meant to protect entrepreneurs rather than authors' act of creativity. The paper focuses on the various provisions of the Nigeria Copyright Act, 1988 and compares them with the provisions of Nigeria Copyright Decree 1970, the Ghana Copyright Act, 2005 and The United Kingdom Copyright, Designs and Patent Act, 1988. It adopts a doctrinaire methodology and relies on information in textbooks, Journal articles, internet and other reliable sources. The paper finds that the present position of law in Nigeria vests authorship and ownership of sound recording of musical work in the artiste in whose name the recording was made and therefore tilts to protect the authors' act of creativity rather than the entrepreneurs. The paper makes recommendations for reviews and reforms.

Keywords: Copyright, Cinematograph films, Sound recording, Authorship, Ownership

1. Introduction

Copyright is one of the many rights that encapsulate the term, intellectual property. Copyright has been under serious threat over the years, particularly in Nigeria. This has been responsible for the various laws that have been enacted and the various amendments as well as the various international conventions and resolutions.¹ A contemporary challenge that is confronting copyright is piracy.² In a civil action anchored on alleged infringement of copyright in an existing work, questions of who is actually the owner of the said work are bound to arise. Since registration is not a condition precedent to the recognition and protection of copyright, the question of who is the author and owner of a copyright in an existing work often revolves around issues of evidence and the courts attitude to the facts presented before it.³ Determination of the owner of the copyrighted work is fundamental to the success of the plaintiff suit because under the Act,⁴ it is the owner of the copyrighted work or the assignee or licensee or the beneficiary of transmission of the copyright work that has the locus to institute a civil action for alleged infringement as the Act drew a line of distinction between authorship and ownership of copyright works. The activities of the National Copyright Commission in the protection of the rights of copyright owners in copyright works have also improved in recent times. The news reports are awash with the seizure of pirated copies of copyright works.⁵ There has been a renewed drive towards the arrest and prosecution of persons who pirates copyright works. In criminal prosecution for copyright infringement which is basically vested on the National Copyright Commission, the prosecutor has the burden to prove that the accused person is not the owner of copyright in the work allegedly infringed. In other words that copyright in the work belongs to another person and not the accused person. This work therefore tends to distinguish between ownership and authorship of copyrighted works of cinematograph films and sound recordings. In determining the ownership right in cinematograph films and sound recordings, the work proffered answers to many questions. For instance the production of a film encompasses works of different authors, the director of the film and the producer/financier, etc looking at the complex process of film making and the number involved. This will form the background to the question of who is the author of film and who is supposed to be the owner of copyright considering their

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¹J. A. Agaba, 'Copyright Law: The Right of the Owner vs the Freedom of the User to Copy'[2013] (6)(1) *Ahmadu Bello University Journal of Commercial Law*, 178.

²Piracy refers to the unauthorized and illegal reproduction or distribution of materials protected under intellectual property. Piracy in this context includes sound recording and films that have been reproduced for commercial gain without the authorization of the original right owners. See. Adebambo Adewopo, 'The Gain is More Than Pain: Cost Benefit Perspective of the Regulation and Control of Copyright Based Industries in Nigeria'. Paper presented at the International symposium on economic crime on 31 August – 7 September 2008 at Jesus College University of Cambridge, United Kingdom. Quoted in Adewole Adedeji, 'Combating Piracy Through Optical Disc Plant Regulation in Nigeria: Prospects and Challenges' [2011] *NIALS Journal of Intellectual Property*, 136; see also Isaac Ameh, 'Analysis of Institutional Frameworks for the Enforcement of Copyright Law in Nigeria' [2014] (6) & (7) *Ahmadu Bello University Journal of private and comparative Law*, 197.

³J.O. Odion, 'Contending Issues Relating to Copyright Ownership in Commission Works in Nigeria: A Case of Robbing Peter to Pay Paul' [2017] (5)(1) *Intel Prop Rights*, 2.

⁴Copyright Act, 1988, cap. C28 LFN, 2004.

⁵ *Supra* (n. 3).

multiple authorship as far as creation is concerned? Is it the script writer, the director, the performers, the producer or the editor?. Similarly in sound recording there is the financier/the producer, the sound engineer, the performer artist, the composer of the music, the person who wrote the lyrics.⁶ The question again is, who among these persons is the author and who among them is the owner of the sound recording?. It is fundamental to identify the author of cinematograph films and sound recordings as distinct from the owner in the light of the provisions of the Act, as the rights attached to them differs under the Act. There are rights that are exclusive to the owner of copyright work which the author does not enjoy. However, in resolving issues relating to authorship and ownership of copyright in cinematograph films and sound recordings, there is the contending issue as to whether the author of a work is automatically the owner of copyright therein. Whereas, it is the policy to reward the author of a work with copyright therein, it is now possible for a non-author to lay claim to ownership of copyright therein. This could be possible where such a person is granted license to use the work in accordance with the law or is a beneficiary of an assignment or transmission of interest in the copyright work.⁷ This paper is structured into six parts including this introduction. The second examines the meaning and nature of copyright. The third examines the meaning of cinematograph films and sound recordings. The fourth discusses originality in cinematograph films and sound recordings. The fifth part distinguishes between authorship and ownership of copyright works of cinematograph films and sound recordings. The sixth is recommendations and conclusion.

2. The Meaning and Nature of Copyright

The Copyright Act did not expressly define the term ‘copyright’ but on a broader perspective, the meaning of the term can be appreciated in the provisions of section 6(1) of the Copyright Act which provides that copyright in a work shall be the exclusive right to control, to do or authorize the doing in Nigeria of any of the acts restricted to the copyright owner under the Act.⁸ According to the Black’s Law Dictionary,⁹ copyright is defined as: ‘The right of literary property as recognized and sanctioned by positive law. An intangible incorporeal right granted by statute to the author or originator of certain literary or artistic productions whereby he is vested for a limited period with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them’. Copyright is also defined as the right to prepare and distribute copies of an intellectual work without let or hindrance from others.¹⁰ Copyright is best appreciated when one ponders the confusion that would have been the order of the day if the law in this field did not introduce orderliness by seeking to protect the fruit of people’s intellectual sweat from undue exploitation by other people.¹¹ The philosophy behind copyright work is the reward of industry and talent; coupled with the discouragement of laziness manifested in copying and reproduction of existing works unlawfully.¹² Copyright protects only the author’s expression of ideas and not ideas themselves.¹³ Once a work is created, copyright is automatically conferred and its enjoyment and exercise is not subject to any formality. In other words, once a work has been created, it ought to enjoy the protections conferred by copyright without the need to comply with formality such as registration. Nigeria has a recordation system called the NOTIFICATION SCHEME. It is not a mandatory registration scheme but rather a platform to enable authors give notice of the existence of their work in which copyright subsist. Failure by a copyright owner to notify the Nigerian Copyright Commission through the notification scheme on the existence of a work does not affect the right of copyright owner to commence an action in respect of an infringement suit requiring enforcement¹⁴

⁶The producer is responsible for the artistic direction of the project, the sound engineer has to make appropriate sound choices by taking into consideration the musician request. See Joe Collins, ‘Music Production,’ <<http://www.researchgate.net/.../2570684>> accessed 10 December 2019.

⁷*Supra* (n. 3).

⁸Hemen Philip Faga, ‘Limits of Copyright Protection in Contemporary Nigeria: Re-Examining the Relevance of the Nigerian Copyright Act in Today’s Digital and Computer Age.’ <www.ajol.info/.../article/download/82405/72560> accessed 2 December 2019.

⁹Bryan Gardner, *Black’s Law Dictionary*, 8th ed.

¹⁰J.O. Odion and N.E.O. Ogba, *Essay on Intellectual Property Law: Copyright, Trademarks, Patents, Industrial Designs*, (Benin: Ambik Press,2010) p.2.

¹¹*Ibid*

¹²*Ibid*

¹³*Ibid*.

¹⁴Kunle Ola, ‘Evolution and Future Trends of Copyright in Nigeria.’ <Ojs.law.comell.edu/.../article/download/26/36> accessed 2 December 2019.

Eligible works simply put means works of copyright which the law will protect.¹⁵ However, it is not all works that enjoy statutory protection. Accordingly, the Act¹⁶ has laid down specifically the types of work which are recognized and enjoy statutory protection.¹⁷ The works are as follows:

- a. Literary works;
- b. Musical works;
- c. Artistic works;
- d. Cinematograph films;
- e. Sound recording;
- f. Broadcasts.

The first three works [literary works, musical works and artistic works] are creative works. They form the core of copyright while the last three [cinematograph films, sound recordings and broadcasts] are derivative works. They are by products of the first three. They are the economic and commercial end of the first three.¹⁸ According to Oyewunmi¹⁹ 'creative works falling within the first three categories – literary, musical and artistic works are subjected to dual requirements of originality and fixation.'²⁰ They also need to have connection to Nigeria. On their part, works falling within the last three categories- cinematograph films, sound recordings and broadcasts better fit the description of entrepreneurial works. These latter categories often consist of derivative works whose existence largely depends on, and almost inevitably involves the commercial or other exploitation of creative works.²¹ The creation of the derivative work could be an infringement of the copyright in the source work unless the use was authorized. Subsequent use of the derivative work could also infringe that copyright. The owner of the copyright in the source work is thus likely to be entitled to a share in the royalties from the derivative work, in proportion to what has been taken, and permission from the owner of the source work will be required when the derivative work is used. An important point to appreciate about copyright is that there can be several different copyrights underlying a single work, and often anyone who wishes to exploit the last copyright to be created needs to own or have authority (commonly called license) to use, not just the last copyright but all of the earlier ones as well.²²

3. Meaning of Cinematograph Film and Sound Recording

Cinematograph film: The Act²³ defines 'cinematograph film' to include the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and includes the recording of a sound track associated with the cinematograph film. This definition is sufficiently flexible to accommodate a wide scope of visual images fixed in different media such as video tapes, as well as the more modern CD's, DVD's and other media (digital, analogue or otherwise), provided such visual images are capable of being shown as moving pictures, and of being reproduced.²⁴ The definition is thus broad enough to cover both old and modern techniques of fixation and fixation in different media. It further provides a possible platform for the protection of modern forms of interest works (such as video games), as these games also involve a fixation of images created or fixed by way of appropriately written computer programmes.²⁵ Although, sound recording are protected as a separate category of works, where the recording of a sound track is associated with a cinematograph film, it is protected as part of and under the category of cinematograph films and not sound recording.²⁶ Arowolo:²⁷opined that the definition of cinematograph film under the Act covers a wide range of mediums in which films can be shown, such as the home videos or at the cinemas.

¹⁵F. O. Babafemi, *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patents and Industrial Designs in Nigeria* (Ibadan: Justinian Books Limited, 2007) p.7.

¹⁶ CRA 1988, s1(1).

¹⁷ *Supra* (n. 14).

¹⁸ *Supra* (n. 14).

¹⁹ A.O. Oyewunmi, *Nigerian Law of Intellectual Property*, (Lagos: University of Lagos Press, 2015) p.27.

²⁰ CRA 1988, s1(2).

²¹ *Supra* (n. 19).

²² Tim Papfield, *Copyright for Archivists and Records Managers*, (4th.ed, London: Facet Publishing, 2010) p.21.

²³ CRA 1988, s51.

²⁴ A.O. Oyewunmi (n. 19) p.30.

²⁵ *Ibid*.

²⁶ *Ibid*.

²⁷ Ayoyemi Lawal Arowolo, 'Copyright Exploitation: The Nollywood (Nigeria) Film Market,' <papers.sss.com,>accessed 5 December 2019.

Sound recording: 'sound recording' means the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced but does not include a sound track associated with a cinematograph film.²⁸ Although sound recordings often bring to mind recordings of musical works, however, to the extent that the definition makes reference to 'sound' and not specifically music, the fixation of any kind of sound falls within the scope of the provision. Thus, for example, fixation of recitations of the contents of a book, as well as a poem or any other kind of sound is capable of being heard. Furthermore, like cinematograph films, the provision is not technology restricted, thus sound recording in any analogue, digital, or other yet to be developed media fall within the scope of the provision.²⁹ The copyright in a sound recording is explicitly in the recording itself, and not in the work (if any) recorded. In order to infringe the copyright in a sound recording (by copying for instance), the actual sound must be copied. A transcription of words spoken in the recording might infringe copyright in a literary work, but would not infringe the copyright in the sound recording.³⁰

4. Originality in Cinematograph Films and Sound Recording

A sound recording or film does not have to be original as such, but any part of a recording or film that is a copy of a previous recording or film does not attract copyright. In this context, copy means a *direct copy* from the earlier work; so a new film can be a re-make of an earlier one and be protected by copyright.³¹ Catherine Colston³² stated that no standard of originality is expressly applied to the derivative works. What this presupposes is that Film A can be remade by another author by calling different actors and it will not constitute infringement of copyright in Film A. In the same vein sound recording of a trending music that was recorded by D can be remade by E using a different artist and it will not constitute an infringement. Now let us examine the above position in the light of the Nigeria Copyright Act. The Act did not make originality a precondition for copyright in cinematograph films and sound recording. It is therefore submitted that if the scenario painted above occurs in Nigeria, the owner of copyright in the cinematograph film or sound recording cannot succeed in a copyright infringement action against the person who remade his work. More so, section 6(1)(c) of the Act provides that copyright in a work shall be the exclusive right to control the doing in Nigeria of any of the following acts: In the case of cinematograph film, to do or authorize the doing of any of the following acts, that is-

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

Section 7 on the other hand provides that Copyright in a sound recording shall be the exclusive right to control in Nigeria –

- (a) The recording and re-broadcasting of the whole or a substantial part of the broadcast;
- (b) The distribution to the public for commercial purposes of copies of the work by way of rental, lease, hire, loan or similar arrangement.

There is nothing in the above two sections that suggests that re-making a cinematograph film or sound recording constitute an infringement of copyright in the cinematograph film and sound recording respectively. It is also submitted that in such circumstance, in the case of the cinematograph film, the owner's remedy may lie in an action for infringement of copyright in the literary work (film script) and in the case of sound recording, the owner's remedy may lie in an action for infringement of copyright in the musical work and not action for infringement of copyright in cinematograph film and sound recording respectively.

5. Distinction between Authorship and Ownership of Copyright Works (Cinematograph Films and Sound Recording).

Authorship and ownership in relation to copyright work are two distinct concepts, each of which attracts its own peculiar rights, the author having moral rights and the owners of the copyright possessing economic rights. Ownership flows from authorship. [In other words, there cannot be an owner without an author.] Sometimes the author of a work will also be the owner of the copyright in the work [as in the case of cinematograph film and

²⁸ CRA 1988, s51.

²⁹ *Supra* (n. 19).

³⁰ Catherine Colston and Jonathan Gallway, *Modern Intellectual Property Law*, (3rd.ed, London: Routledge, 2010)p. 312.

³¹ *Supra* (n.22).

³² *Supra* (n.30).

sound recording].³³ The copyright Act drew a line of distinction between authorship and ownership of copyright works. The Act defines the subsistence³⁴ and duration³⁵ of copyright by reference to the author although the right of action in the event of an infringement is given to the owner of the copyright who may not always be the author.³⁶ The distinction is important because of the following rights vested on the ownership of copyright works against the authorship.

- i. Assignment of copyright³⁷
- ii. Licensing of copyright³⁸
- iii. Enforcement of copyright infringement³⁹
- iv. Conversion right⁴⁰
- v. The exclusive right to control, to do or authorize the doing in Nigeria of any of the acts restricted to the copyright owner under the Act.⁴¹

As we shall soon see, the author of cinematograph film and sound recording doubles as the first owner and in order to find out the first owner, the author must be first ascertained.

5.1. Author of Cinematograph film

Copyright Act⁴² defines who is the author of a cinematograph film; It provides: An ‘author’ in the case of cinematograph film means the person by whom the arrangements for the making of the film were made, unless the parties of the making of the film provide otherwise; by contract between themselves. Defining authorship in relation to the making of arrangements for the making of the film gives rise to the question about what constitute ‘arrangements’ for the purpose of the provisions. Is it financial, creative or some other arrangement or consideration that is accorded primacy? In the normal course of things, both the producer and the director of a film are largely responsible for making arrangements for making of the film. However, while the role of the producer is usually in the area of undertaking financial responsibility, the director on his part, is often the creative bedrock matching actors with roles, overseeing the creative dimensions and generally undertaking responsibility for the professional and successful outcome of the film. The question is, as between these two, who better fits into the role of author as contemplates under the Act.⁴³ Odion⁴⁴ posited that the copyright in a cinematograph is vested in the person who is responsible for its production. This could be the producer, the director, the financier or any other person the contractual condition may fix with the copyright. *In RE F.G (Films)Ltd*⁴⁵ where the court interpreted an almost identical provision of the Cinematograph Film Act, 1938, it was held that the author was the person responsible for the financial arrangements for the making of the work. In other words, ‘arrangement’ was interpreted to refer to financial arrangements, and the author was therefore the producer. It is pertinent to note that the Copyright Act also gave parties to the making of the film liberty to decide by an agreement who will be the author of the film.⁴⁶ The rationale for vesting authorship on the person who made the arrangement for the making of the film is that a cinematograph works are collective projects that often involve the contribution of several individual authors. In film making, the controlling sensibility is most often and most recognizably that of the director. In a nutshell, the creative activities of the director include the dictation of what images and sounds are recorded during the vital shooting stage. The script writer may describe and others may add suggestion, but it is the director who fixes the meaning and feeling, the exact mood and nuance. It is the director’s view of the world which is brought to life in front of and through the camera and microphone. The script writer also may exert an identifiable kind of control over a body of work. He is the originator of the idea and the script he writes is creative blue print of the film. In some cases, the script writer is not the originator of the idea. He may be a hired hand to put the script together or he may even be a screen- wright in which case his job is to adapt a book or novel (someone’s creation) into a screen play. Though undervalued, there are distinguished craftsmen among the cameramen and editors who usually work under the close supervision of directors. Some cameramen bring

³³C.O. Nwabachili and C.C. Nwabachili, ‘Authorship and Ownership of Copyright: A Critical Review,’ [2015](34), *Journal of law, Policy and Globalization*__, <www.iiste.org/.../article/download/20321/20745> accessed 3 December 2019.

³⁴ CRA 1988, s2(1).

³⁵ CRA 1988, 1st sch.

³⁶ CRA 1988, s16(1).

³⁷ CRA 1988, s11.

³⁸ *Ibid.*

³⁹ CRA 1988, s16(1).

⁴⁰ CRA 1988, s18.

⁴¹ CRA 1988, ss 6, 7 and 8.

⁴² CRA 1988, s51.

⁴³ A.O. Oyewunmi (n. 19) p.70-71.

⁴⁴ J.O. Odion and N.E.O. Ogba, (n. 10) p.15.

⁴⁵ (1953) 1 WLR 383.

⁴⁶ CRA 1988, s51.

skill, artistic integrity, and individual style of work. A good cameraman may transform a dull script into lively shots. The editor is usually the translator of visual action into logical sequences to form a story-line. Sometimes his sequence may be in line with the script, other time, they are dictated by his artistic vision. The performers exert a no less degree of influence in the production of films. The star of the show, the actor or actress is skilled in the artistic performance as directed by the script through the director. Performers gives soul to an otherwise lifeless script. We now speak of the likes of Nkem Owoh, Pete Edochie, Patience Ozokwor, Ramsey Noah, Okey Bakassi.etc. All the above mentioned categories of people play vital roles in the process of film making. Each contributes a part to make a whole and this makes the film a collective art.⁴⁷ Given the large number of people that are involved in their creation, treating each contributor as a joint author of the work would give rise to practical problems. For instance, each contributor would be free to license use of the work to anyone they chose, potentially resulting in use of the work in a manner that other contributors found objectionable. The Act vests authorship of these works in a single person or organization⁴⁸ (whom we shall soon see is also the owner of copyright work). The Act⁴⁹ obliged him to conclude, prior to making of the work, contract in writing with all those whose works are to be used in the making of the work. Another rationale for vesting authorship on the person who made the arrangement for the making of the film (whom we shall soon see doubles as the owner) is that he invested his money, materials and resources in the production of the work therefore he should enjoy the copyright in the works. This was because copyright in that context was seen as a business venture in which the author was an entrepreneur who ought to be allowed to reap the fruits of his investment. Also it was equally necessary to encourage such entrepreneurial investment, as to do otherwise would have meant fewer people investing their money and materials in cinematograph film. The above position has been the law from time immemorial under the common law and the Nigeria Copyright Decree 1970.

Author of Cinematograph film in other jurisdictions

Ghana⁵⁰

Ghana Copyright Act 2005 has an identical provision with Nigeria. Section 76 provides: 'Author' means a person who creates a work and in the case of cinematographic work or sound recording means the person by whom the arrangement for the making of the work or recording is undertaken.

United Kingdom⁵¹

The extant United Kingdom Copyright, Designs and Patents Act, 1988 provides that an author in the case of a film means the producer and the principal director. The Act provides as follows:

Section 9(1) in this part author in relation to a work means the person who creates it.

Section 9(2)(ab) in the case of a film, the producer and the principal director.

It is submitted that the present state of the law in Nigeria and Ghana which going by the interpretation in *In RE F.G(Films)Ltd*⁵² contemplates the person who made 'arrangement' for the production of the work to mean the financier/producer excluding the director is preferred to the current position in the United Kingdom because copyright for derivative works protects entrepreneurship.

5.2. Author of Sound recording

To appreciate authorship of sound recording under the extant law, it is imperative to examine the old position of the law in order to compare it with the extant law and see whether the amendment in the extant law is a good law.

Position under the Nigeria Copyright Decree, 1970

Section 19 of the Decree simply provides that: 'author' in the case of a cinematograph film or sound recording means the person by whom the arrangements for the making of the film or recording were undertaken.

⁴⁷Bredan Shehu, 'The Process of Film Making,' in *Essays on Copyright Law and Administration in Nigeria*, ed .EE. Uvieghara (Ibadan: Y – Books publishers,1987) p. 212.

⁴⁸*Supra* (n. 14).

⁴⁹ CRA 1988, s10(4).

⁵⁰ Ghana was chosen because it is a common law country with Nigeria and its African neighbor.

⁵¹ United Kingdom was chosen because most of the laws in Nigeria are borrowed from United Kingdom with little or no modification.

⁵² (1953) 1 WLR 383.

Position under the Act

The Act,⁵³ defines the author of sound recording. It provides: An ‘author’ in the case of sound recording, means the person by whom the arrangements for the making of the sound recording were made, except that in the case of a sound recording of a musical work, ‘author’ means the artist in whose name the recording was made unless in either case the parties to the making of the sound recording provide otherwise by contract. It is clear from the above that the Act made provision for two classes of authors in respect to sound recording⁵⁴ which are:

- (i) Author in respect to sound recording of non- musical work. (which means the person by whom the arrangements for the making of the sound recording were made).
- (ii) Author in respect to sound recording of musical work. (which means the artist in whose name the recording was made).

It is pertinent to note that the Act also gave parties to the making of the sound recording liberty to decide by an agreement who will be the author of the sound recording.⁵⁵ The above distinction leads to the question of what is musical work?. The Act⁵⁶ provides that musical work means any musical composition, irrespective of musical quality and includes works composed for musical accompaniment. The definition broadly encompasses the combination of sound that make up the music as well as the works, such as lyrics of a song, which accompany the musical composition. Thus, what appears as a mere unpleasant noise with little more than nuisance value to some may nevertheless qualify for protection as musical work.⁵⁷ Although the Act in defining authorship of sound recording made a distinction between authorship with respect to sound recording of non- musical work and authorship with respect to sound recording of musical work. However, in practice mere mention of sound recordings often brings to mind recordings of musical works. There is hardly any sound recording in Nigeria that is not a product of musical work. It therefore follows that by vesting authorship of sound recording of musical work in the artiste in whose name the recording was made, the Act moved away from this notion of entrepreneur copyright to an acknowledgment of the efforts of the performer/author of the musical work in question. In practice, the rule has little effect as most recording contracts will continue to vest authorship of sound recording in the record company. Flowing from the above, it is necessary to take a look at the position in other jurisdictions.

Author of sound recording in other jurisdictions

Ghana⁵⁸

Ghana Copyright Act 2005 has an identical provision with the repealed Nigeria Copyright Decree 1970. Section 76 simply provides:

‘Author’ means a person who creates a work and in the case of cinematographic work or sound recording means the person by whom the arrangement for the making of the work or recording is undertaken.

United Kingdom⁵⁹

Under the United Kingdom Copyright, Designs and Patents Act, 1988, ‘author’ of sound recording was simply defined to mean the producer. The Act provides as follows: Section 9(1) in this part author in relation to a work means the person who creates it. Section 9(2) (aa) in the case of a sound recording, the producer. It is worthy to note that the Ghana and United Kingdom Acts did not distinguish between ‘author’ in respect to sound recording of non-musical work (which means the person by whom the arrangements for the making of the sound recording were made) and ‘author’ in respect to sound recording of musical work (which means the artist in whose name the recording was made) as was done in the Nigeria Copyright 1988. It may be argued in favor of the current position of the law in Nigeria that although entrepreneurs need to be encouraged to invest their time and money in the sponsorship of the creation of copyright works, this must be balanced with the primary aim of copyright law, which is to protect the original creator and author of the work. It is submitted that the above argument is faulted because sound recording is a derivative work and copyright for derivative works protects entrepreneurs, rather than authors’ act of creativity.

⁵³ CRA 1988, s51.

⁵⁴ Contrary to the position under the Nigeria Copyright Decree, 1970.

⁵⁵ CRA 1988, s51.

⁵⁶ *Ibid.*

⁵⁷ A.O. Oyewunmi (n. 19)p.29.

⁵⁸ *Supra* (n. 50).

⁵⁹ *Supra* (n. 51).

5.3. Ownership of copyright in cinematograph film and sound recording

The Act vests ownership of copyright in cinematograph film and sound recording on the author.⁶⁰ Where the cinematograph film or sound recording is made by or under the direction or control of the government, a state authority, state or a prescribed international body, the ownership in the cinematograph film or sound recording shall be vested in the Government on behalf of the Federal Republic of Nigeria, in the State authority on behalf of the State in question, or in the international body in question, as the case may be and not in the author). The Act⁶¹ oblige the owner of copyright in cinematograph film or sound recording to conclude, prior to making of the work, contract in writing with all those whose works are to be used in the making of the work. A question that already agitates the mind is, what is the implication of the failure of the owner of cinematograph film or sound recording to conclude, prior to making of the work, contract in writing with all those whose works are to be used in the making of the work. It is submitted that the cinematograph film or sound recording will constitute an infringement on the copyright in the literary work (script)⁶² and musical work respectively. From the above analysis, it is obvious that in a quest to resolve ownership rights in the copyright works of sound recording and cinematograph film, the most important task is to determine authorship of the works. When an author of cinematograph film and sound recording are identified, identifying the copyright owners will definitely not pose any challenge as the author doubles as the first owner.

6. Conclusion and Recommendations

The paper has examined the nature of copyright, authorship of copyright in cinematograph film and sound recording in order to resolve the ownership right in cinematograph film and sound recording in Nigeria. This writer does not pretend to have covered all grounds as it relates to resolving ownership rights in the copyright works of sound recordings and cinematograph films but it is believed that this work will contribute immensely to the existing literatures on this topic. The paper makes the following recommendations. The definition of author of cinematograph film in the Act remains somewhat ambiguous. It is therefore suggested that the position should be clarified to provide for certainty in the issue of authorship of cinematograph film. Whatever clarification that would be made should lean in favor of the financier/producer. It should be amended to read as follows: 'Author' in the case of a cinematograph film means the producer. Furthermore, there is no need of dichotomy between author in respect of sound recording of musical work and author in respect of sound recording of non-musical work as it is presently done in the Act. This is because copyright for derivative works is meant to protect entrepreneurs rather than authors' act of creativity. The Act should be amended to read 'Author' in respect to sound recording means the Producer. The producer invested his money, materials and resources in the production of the work therefore he should enjoy the copyright in the works. Also it is equally necessary to encourage such entrepreneurial investment, as to do otherwise would have meant fewer people investing their money and materials in sound recording. Lastly, the word 'Cinematograph film' which is better suited to the old technological era should be amended to now read 'film' as was done in United Kingdom Copyright, Designs and Patents Act, 1988⁶³.

⁶⁰ CRA 1988, s10(1).

⁶¹ CRA 1988 s10(4).

⁶² Assuming it was only the script writer that the owner of the cinematograph film was unable to conclude, prior to making of the work, contract in writing assigning ownership of copyright in the literary work on him.

⁶³ CDPA 1988, s1(b).