

DEFINING AUTHORSHIP IN NIGERIAN COPYRIGHT LAW: OVERCOMING LEGAL AMBIGUITIES AND CHALLENGES*

Abstract

Nigeria's rich cultural heritage, reflected through its diverse ethnic groups and creative works, positions authorship as a fundamental element of Nigerian copyright law. This paper examines the ambiguities surrounding authorship definitions in Nigerian copyright law. It aims to clarify these issues and provide recommendations for reform to enhance copyright protection and enforcement. The research employs a qualitative methodology, analysing statutory provisions, case law, and comparative legal frameworks from the United States and the United Kingdom. Findings reveal significant challenges due to inconsistent definitions of authorship, particularly in the context of joint authorship, works created under employment or commission, and digital and AI-generated content. These ambiguities lead to legal disputes, hinder collaboration, and impede commercialisation of creative works. Recommendations include legislative reforms to provide clearer definitions of authorship, enhanced guidelines for joint and commissioned works, and updated provisions to address digital and AI-generated content. Strengthening institutional capacity for copyright enforcement, aligning domestic laws with international standards, and promoting public awareness of copyright issues are also advocated. Implementing these measures can create a more efficient and equitable copyright system in Nigeria, fostering innovation and supporting the creative economy.

Keywords: Authorship, Ambiguities, Natural and Juristic Persons, Copyright

1. Introduction

Nigeria, a nation of diverse ethnic groups, boasts a rich cultural heritage expressed through its creative works. This cultural vibrancy has fostered creativity and innovation for generations, making authorship a cornerstone of Nigerian copyright law.¹ Authorship not only determines the initial ownership of copyright in creative works but also underpins the legal protections afforded to these works.² The Copyright Act, 2022 (CA) reveals that copyright protection in Nigeria hinges on the author's citizenship or habitual residence,³ and the term of protection is similarly influenced by authorship.⁴ Despite its centrality, the definition of an author in Nigerian copyright law is fraught with ambiguities and challenges, complicating the enforcement and protection of authors' rights. Over time, Nigerian copyright law has evolved under historical influences and international standards. However, the statutes and regulations governing authorship remain unclear, posing challenges for creators, legal practitioners, and the judiciary. This paper aims to unravel these ambiguities, analysing relevant provisions to pinpoint deficiencies in current definitions. A key area of focus is the distinction between natural and juristic persons as authors. While individual creators are clearly recognised under the law, the practical implications and limitations of this recognition require thorough exploration. Conversely, the recognition of corporations and organisations as authors introduces unique legal challenges and benefits. This paper scrutinises the benefits and limitations of recognising both natural and juristic persons as authors.

The concept of dual recognition, where both individual and corporate entities can be considered authors, especially in collaborative works, adds another layer of complexity. By comparing the Nigerian approach with other jurisdictions like the United States and the United Kingdom, this paper offers a broader perspective on managing dual recognition effectively. The significance of a clear definition of authorship is underscored by its impact on individual creators and the broader creative industry. Indeed, clear definitions of authorship are essential for a fair and efficient copyright system, influencing legal claims, disputes, and the economic dynamics of the creative market. The paper discusses these implications in detail, providing policy recommendations and potential reforms to address identified challenges. A clear definition of an author is crucial for protecting creators' rights and ensuring the efficiency of the legal system. It aids in the enforcement of copyright laws by simplifying ownership determination, reducing litigation, and fostering consistent judicial rulings. The CA grants a bundle of rights to authors of eligible works, making authors the primary beneficiaries of copyright protection. Clear definitions ensure that creators receive due recognition and protection, safeguarding their moral and economic rights. Economic incentives are a primary reason for protecting authors' rights. Copyright law aims to incentivise

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¹ A Adewopo, *Nigerian Copyright System, Principles and Perspective*, (Odade Publishers 2012) believed that having regard to Nigeria's rich cultural heritage 'copyright is part of our traditional concept.'

² Section 28(1) of the Copyright Act, 2022 provides that copyright conferred by the Act shall vest initially in the author.

³ See sections 5 and 8 of the Copyright Act, 2022.

⁴ See section 19(1) of the Copyright Act, 2022.

creativity and innovation by providing economic rewards to creators.⁵ A clear definition of authorship ensures that rightful creators receive these benefits, encouraging continued investment in creative endeavors and contributing to the growth of cultural and creative industries in Nigeria. Clarity in the definition of authorship is essential not only for effective rights assignment and licensing, ensuring legally sound and enforceable agreements, but also aligns Nigerian copyright law with international standards, facilitating the protection of Nigerian works abroad and enhancing Nigeria's participation in international copyright negotiations and collaborations. Ambiguities in authorship definitions can lead to legal disputes over copyright ownership. Clear definitions minimise these disputes, saving time and resources for courts and litigants, and fostering a stable legal environment for creators and users of copyrighted works. In collaborative fields, clear definitions ensure appropriate recognition and rights for all contributors, encouraging collaboration and fair treatment.

This article's primary purpose is to examine and clarify the complexities surrounding the definition of authorship within Nigerian copyright law. It aims to provide a comprehensive understanding of how authorship is defined and recognised in Nigeria, highlighting the practical implications for creators, legal practitioners, and the creative industry. Ultimately, it seeks to propose informed recommendations and potential reforms to enhance the clarity and effectiveness of Nigerian copyright law, ensuring it adequately protects and promotes the rights of all creators.

2. Legal Framework of Authorship in Nigeria

The development of copyright law in Nigeria reflects its colonial history, post-independence legislative efforts, and continuous adjustments to align with international standards. As a British colony until October 1, 1960, Nigeria's cultural heritage and intellectual property framework were significantly influenced by English law.⁶ Understanding the evolution of modern copyright law in Nigeria requires acknowledging global developments, particularly those in the UK. The origin of copyright law is closely tied to the industrial revolution, which brought about the printing press and affordable paper.⁷ European countries began regulating printers under church and government control.⁸ In England, increasing competition among printers led to the establishment of centralised control mechanisms to protect native interests, resulting in the granting of monopolies by the Sovereign.⁹ In 1709, the English Statute of Anne marked a significant turning point by granting authors the sole right to print their works for a specified period, laying the groundwork for modern copyright. Subsequent legislation continued to evolve, emphasising authors' rights and the commodification of knowledge.¹⁰

In Nigeria, the English Copyright Act of 1911 was the first significant influence, providing basic protections for literary, musical, and artistic works. Post-independence, Nigeria retained this Act until the Federal Military Government enacted the Copyright Act of 1970¹¹, which modernised the legal framework and expanded the scope of protected works.¹² The Copyright Act, Cap C28 Laws of the Federation of Nigeria 2004, repealed the Copyright Act, 1970. This Act provided a comprehensive overhaul of the copyright system, addressing existing gaps and aligning Nigerian law with international standards. It established the Nigerian Copyright Commission (NCC) as the regulatory body responsible for copyright administration, enforcement, and promotion. For the first time, the Act recognised moral rights, giving authors the right to claim authorship and object to derogatory treatments of their works. The Act also expanded the list of protected works to include computer programs and

⁵ The theoretical basis for protecting authors, have been traced to include the natural right, utilitarian, moral or personality, and the reward theories. Writing on the origin of UK copyright law, C Colston, *Principles of Intellectual Property Law*, (Cavendish Publishing Limited, 1999) stated that 'the demand was an economic one, to stimulate and protect investment in publication' and concluded that 'respect for the author's creativity lay behind European systems of copyright, whereas economic considerations underpinned UK copyright law.'

⁶ See K. Ola, 'Evolution and Future Trends of Copyright in Nigeria' in *Journal of Open Access to Law*, available at <<https://ojs.law.cornell.edu>> last accessed July 28, 2024. He stated that Nigeria 'has a dual mixed culture, one from its traditional background and the other from its British colonial heritage.'

⁷ DK. Mendis, 'The Historical Development of Exceptions to Copyright and its Application to Copyright Law in the Twenty-first Century' ECJL, (2003) (7)(5) also available at <<http://www.ejcl.org/75/art75-8.hotmail>> last accessed December 20, 2023.

⁸ See 'History of Copyright.' Available at https://en.wikipedia.org/wiki/History_of_copyright_Law>. The church and government needed to exercise control over what was printed and circulated in order to check works of dissent and criticisms. It is perhaps, for this reason that JO Asein, in his book, *Nigerian Copyright Law & Practice*, (2nd edn, Books and Gavel Ltd 2012) wrote that, 'copyright evolved as a by-product of political, religious and social conflicts'.

⁹ See EP, Skone James, *Copinger and Skone James on Copyright*, (Sweet & Maxwell, 1971) on why the Statute of Richard, which encouraged the printing and importation of books had to be repealed.

¹⁰ See P Jaszi, 'Towards a Theory of Copyright: The Metamorphosis of Authorship', in *Duke University Law Journal* (1991) (455-504). M Woodmansee, 'The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the 'Author' 17 Eighteenth Century Studies. (1984) 425 took the view that 'author' in its modern sense is 'a product of the rise in the eighteenth century of a new group of individuals: writers who sought to earn their livelihood from the sale of their writings to the new and rapidly expanding reading public.'

¹¹ Originally promulgated as Decree No 61 of 1970, hereinafter referred to as the 1970 Act.

¹² See section 1(1) of 1970 Act

other modern forms of expression. The Copyright (Amendment) Decree No. 98 of 1992 was introduced to address emerging issues and further refine the legal framework. This amendment strengthened enforcement mechanisms and addressed digital and technological advancements. In 1999, The Copyright (Amendment) Decree No. 42 of 1999 was enacted, enhancing the powers of the NCC and providing for more robust enforcement measures.

A major milestone in the development of copyright laws in Nigeria is The Copyright Act 2022, passed by the National Assembly and assented to on March 17, 2023. The Act aims to protect the rights of authors, ensure just rewards and recognition for their intellectual efforts, provide appropriate limitations and exceptions to guarantee access to creative works, and facilitate Nigeria's compliance with obligations arising from relevant international copyright treaties and conventions. A notable innovation is Part VII, which focuses on online content and introduces new remedies to aid authors and copyright owners in enforcing their rights in the online environment. Provisions include notice-and-take down procedures, suspension of accounts of repeat infringers, and liability for damages arising from misrepresentation of infringing material. The Copyright Act 2022 provides comprehensive guidelines for authorship in Nigeria, defining authorship across various eligible works except for literary, musical and artistic works. It grants authors exclusive rights, including reproduction, publication, public performance, distribution, adaptation, and broadcasting. Copyright protection is automatic upon creation¹³ and fixation in a tangible medium, with registration serving as *prima facie* evidence of ownership in disputes. The duration of copyright varies by work type, with a minimum of fifty years.¹⁴ At the international space, Nigeria adheres to several international copyright conventions, including the Berne Convention and WIPO treaties, ensuring alignment with global standards. This adherence facilitates cross-border cooperation and enforcement, providing adequate protection for both domestic and international authors. Despite these robust frameworks, challenges persist in adapting to the digital age and addressing emerging issues such as artificial intelligence and online piracy.

3. The Challenges of Defining Authorship

Defining authorship within Nigerian Copyright Law presents significant challenges due to a lack of uniformity and clarity in the definitions provided. The CA's ambiguity particularly affects its application to evolving forms of creative expression. Several aspects contribute to these ambiguities, including multiple definitions of an author, criteria for joint authorship, authorship of commissioned works and works created in employment, authorship of anonymous and pseudonymous works, authorship of works created by artificial intelligence, and authorship determination for works created collaboratively online or through digital means.

Multiplicity of Definitions of an Author

The Copyright Act of 2022 provides different definitions of authorship depending on the type of work, leading to confusion when a work spans multiple categories.¹⁵ For example, Section 108 of the Act defines the author of a photographic work as the person who took the photograph, while for a sound recording, it refers to the person who made arrangements for its creation. For audiovisual works, the author is the person who arranged for its creation, unless otherwise specified by contract. However, the Act does not clarify what constitutes 'arrangements' for creating audiovisual or sound recordings, raising questions about whether authorship is a matter of fact, law, or both.¹⁶ Moreover, the CA fails to explicitly define authorship for literary, musical, and artistic works, posing challenges when the authorship of these works is disputed. This omission contrasts with the repealed Act, which clearly defined authorship for these categories.¹⁷ The lack of uniformity and clarity in defining an author leads to difficulties in determining joint authorship and pinpointing a single author for works encompassing multiple categories.

Joint Authorship Criteria

The CA acknowledges joint authorship but does not define a joint author.¹⁸ A 'work of joint authorship' is defined in Section 108 of the CA to mean a work produced by the collaboration of two or more authors where contributions are merged into an inseparable or interdependent whole.¹⁹ However, the Act does not specify the

¹³ See Section 4 and 18 of the CA

¹⁴ Section 19 of the CA

¹⁵ Section 2(1) of the CA states that the works eligible for copyright are literary work, musical work, artistic work, audiovisual works, sound recording and broadcasts.

¹⁶ The failure to clarify what constitutes 'arrangement' requires making an enquiry as to what arrangement is necessary for making an audiovisual work or sound recording before the author can be determined. Such a person could also be an organisation that provided the requisite fund for the making of the work.

¹⁷ Section 51 of the repealed Copyright Act 1988 expressly defined an author in the case of literary, musical and artistic works as the creator of the work. It is suggested that the meaning under the CA should be the same.

¹⁸ See sections 5(1) and 8(1)(a) of CA.

¹⁹ The meaning of work of joint authorship in the CA is similar to section 101 of the U.S. Copyright Act, which defines a 'joint work' as 'a work prepared by two or more authors with the intention that their contributions be merged into inseparable or independent parts of a unitary whole.' Section 10(1) of the English CDPA is more apt. It defines a 'work of joint authorship'

degree or nature of collaboration²⁰ and contribution required, leaving room for disputes over authorship rights and ownership shares. The absence of clear guidelines for joint authorship can lead to legal battles, inadequate protection of co-authors' rights, and exploitation by individuals claiming exclusive rights over jointly created works. Disputes over ownership and use can be complex and time-consuming to resolve, highlighting the need for clear contractual arrangements and legal guidelines.

Works Created under Employment or Commission

The CA is ambiguous regarding the authorship of works created under employment or commission. Section 28(1) provides that, unless otherwise agreed, copyright initially vests in the author, while Section 28(2) specifies that for commissioned works or works created by an employee in the course of employment, copyright initially vests in the employer or commissioner unless otherwise agreed. This implies that ownership, not authorship, of the copyright is vested in the employer or commissioner. However, the CA is silent on the issue of authorship, suggesting that authorship for such works may vest in the employer or commissioning body unless otherwise agreed. This ambiguity is problematic, as the notion of authorship typically pertains to the individual who creates the work. For example, the author of a photograph is defined as the person who took the photograph. However, this raises questions about what constitutes 'taking' a photograph, considering the creative processes involved in composing the shot, lighting, framing, and using developing techniques or software.²¹ The case of *Joseph Ikhuria v. Campaign Services Limited*²² provides insight into the judicial stance on authorship of photographs, even in commissioned work. In this case, the plaintiff created a sketch that was used to compose photographs. The court ruled that the plaintiff, who arranged and orchestrated the shot, was the author, despite the work being commissioned. The court emphasised that ownership of copyright is not automatically conferred based on financial transactions but hinges on substantive creative contribution and authorship. The ambiguity regarding the authorship of works created under commission complicates enforcement actions for both commissioners and creators. In cases without explicit agreements, determining who holds the copyright can become contentious, leading to enforcement challenges and potential loss of rights for the rightful owner. This underscores the need for clearer definitions and guidelines within the CA to address evolving forms of creative expressions and ensure adequate protection of authors' rights.

Anonymous and Pseudonymous Works

The Copyright Act recognises the rights of authors who choose to remain anonymous or use pseudonyms.²³ However, there is a lack of clarity regarding the mechanisms for asserting these rights, which presents another area of ambiguity. Generally, an author is the first owner of copyright in a work, subject to any agreement, and he is entitled to enforce the rights outlined in Sections 9 to 13 of the CA unless he authorises another party, assigns, transfers such rights, or the act is statutorily permitted. Section 14 of the CA recognises the author's moral rights, which are non-transmissible during the author's lifetime. This raises questions about who asserts these rights in the case of anonymous or pseudonymous works. Additionally, the duration of protection for anonymous and pseudonymous works is not clearly defined. Section 19(2) states that the duration of copyright for anonymous or pseudonymous literary, musical, or artistic works shall be seventy years after the year in which the work was first made available to the public with the consent of the author, or seventy years after the work was created if it was not made available to the public within that time. If the author becomes known, the duration shall be seventy years after the end of the year in which the author dies. This subsection, however, does not reference the duration of copyright for other categories of works where the author chooses to remain anonymous, thereby creating the problem of enforcement.

Digital and Collaborative Works

The rise of digital media and online platforms has introduced new forms of collaboration and content creation, and this makes the traditional definitions of authorship increasingly inadequate. Determining authorship in collaborative works can be complicated, especially when contributions are made by multiple parties. The current legal framework, which lacks specific provisions for digital authorship, makes it difficult to enforce copyright

to mean 'a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.'

²⁰ Generally, collaboration requires working together and, for the purpose of joint authorship under the English law, and it has been interpreted to mean that, 'when setting out to do the work, there must have been some common design, cooperation or plan that united the authors, even if only on a very loose sense.' See L Bently, and L Biron, 'Discontinuities Between Legal Conceptions of Authorship and Social Practices' in MV Euhead (ed) *The Works of Authorship*, (Amsterdam University Press) p238; See also *Cala Homes v Alfred McAlpine Homes*, (1995) FSR 623 (Joint authorship occurs when collaborators worked to produce copyright work of a single kind 'in prosecution of a concerted joint design')

²¹ *Burrow-Giles Lithographic Co. v Sarony*, 111 U.S. 53 (1884) at 60. See also SV Gompel, 'Creativity, Autonomy, and Personal Touch: A Critical Appraisal of the CJEU's Originality Test for Copyright' in M V.Eechoud, (ed.), *The Work of Authorship* (Amsterdam University Press), p. 95 at 99.

²² [1986] FHCLR 308

²³ See Section 19(2) of the CA which provides for the duration of copyright in such works. There is the presumption in Section 43(b) that the name appearing on the work purporting to be the name of the author, is the name of such author.

for works created in these environments.²⁴ This gap allows for potential exploitation and unauthorized use of digital works, undermining the rights of digital content creators.

4. Natural and Juristic Persons as Authors

The CA recognises both natural and juristic persons as authors. Specifically, Section 5 confers copyright on any work that is eligible if, at the time of making the work or a substantial part thereof, the author or any of the authors is either an individual who is a citizen of Nigeria or habitually resident in Nigeria, or a body corporate incorporated by or under Nigerian laws. Section 108 in defining authors of audiovisual works, collective works, sound recordings, photographic works, and broadcasts uses the term ‘person’, which encompasses natural and juristic persons. This dual recognition is crucial in determining the ownership, rights, and responsibilities associated with creative works.

Natural Persons as Authors

Natural persons, or individuals, who create original works are generally recognised as authors under the CA. Although the Act does not explicitly define ‘author’ in relation to literary, musical, or artistic works, it grants natural authors exclusive rights to their creations. These rights include reproduction, publication, distribution, performance, communication, and adaptation of their works.²⁵ Additionally, natural authors possess moral rights, which protect their personal connection to the work, ensuring proper attribution and the right to object to derogatory treatment of the work.²⁶ For literary, musical, and artistic works (excluding photographs), the duration of copyright protection for natural authors is the lifetime of the author plus 70 years after their death, ensuring extended benefits for the author and their heirs. For other categories of work, the protection lasts for fifty years after the work is first made available to the public or created.²⁷ Recognising natural persons as authors under the CA offers several benefits, which include incentivising individuals to create original works, knowing their intellectual property is safeguarded and they will receive economic benefits; ensuring appropriate credit and protection against alterations that could damage an author’s reputation; and clarity of definition of authorship, thereby facilitating enforcement of rights and ease of entering licensing agreements, thus aiding the commercialisation of creative works. There are, however, some limitations, such as defining authorship in collaborative works, which can be contentious, potentially leading to legal disputes and delays in exploitation; enforcing authorship rights, especially in cases of infringement, which can be difficult, requiring substantial evidence and legal resources; and the fact that not all authors have equal access to legal and financial resources to enforce their rights, leading to disparities in protection and commercialisation.

Juristic Persons as Authors

Juristic persons, including corporations, organisations, and institutions, can also be recognised as authors under certain circumstances. For instance, when an employee creates work in the course of employment, the employer is typically recognised as the author, based on the principle that the employer provides the necessary resources and environment. Similarly, in commissioned works, the commissioning party may be recognised as the author if there is an agreement to that effect. Recognising juristic persons as authors under the CA presents a balanced mix of benefits and limitations. It encourages investments in the creative industry leading to increased production of works such as software, films, and publications. Juristic persons have more resources to support extensive projects, thus enabling the creation of high-quality and innovative works. In collaborative works, recognising juristic persons as authors can simplify ownership issues, by ensuring that the entity funding the work holds the rights, thereby reducing disputes. Again, corporations as enduring entities provide continuity in ownership and management of creative works, which can be beneficial for the long-term exploitation and maintenance of the work. In relation to licensing and distribution, corporations are in a better position to efficiently manage licensing and distribution of author’s works, negotiate deals, enforce rights, and ensure broad dissemination of works.²⁸ Notwithstanding the benefits of attributing authorship to corporations, there are some limitations. Recognition of juristic persons as authors raises concern about the author’s moral rights since juristic persons cannot possess moral rights the same way natural persons do, potentially undermining the recognition of individual creators’ contribution and the protection of the work’s integrity. Besides, corporate interests, which could prioritise commercial considerations over artistic integrity may overshadow the individual creator’s vision.²⁹ Employees may lose recognition and control over their creative works with the recognition of juristic persons as authors, which can impact motivation and creativity. Determining authorship in a corporate context can be complex.

²⁴ Digital authorship is a term that is used to refer to the creation and dissemination of content through digital platforms. It encompasses a wide range of activities including writing, multimedia production, and other forms of digital communication..

²⁵ Sections 9, 10, 11, 12 and 13 of the CA

²⁶ Section 14 of the CA

²⁷ Section 19 of the CA

²⁸ It is as a result of the inability of authors to efficiently manage the licensing and distribution of their works that they assign their rights to Collective Management Organisations (CMO)

²⁹ The personality theory of authorship perceives the author as more than just a creator of works; it recognises the author as a person with distinct personality, moral rights, and creativity autonomy

Contributions from multiple employees make it challenging to attribute specific elements of the work to individuals.

Granting authorship to juristic persons can reinforce monopolistic practices, where a few entities dominate the market and stifle competition and innovation. Additionally, corporations might take advantage of the recognition to exert excessive control over intellectual property, thereby limiting access. The inclusion of juristic persons as potential authors leads to debates on whether a corporate body can genuinely be considered an author, given that creativity traditionally involves human input. While the CA allows corporations to be authors, arguments suggest that while corporations may own copyright, the creative process inherently requires a personal connection between the artist and the art.³⁰ The dual recognition of natural and juristic persons as authors necessitates a balance between individual creators' rights and organisational interests. For natural persons, the emphasis is on personal recognition and moral rights. For juristic persons, the focus is on the economic exploitation of the work and the return on investment. This balance is critical to fostering innovation and ensuring that both creators and organisations benefit from their contributions.

5. Emerging Issues with Artificial Intelligence

The emergence of artificial intelligence (AI) further complicates the notion of authorship in the Nigerian Copyright Act, as there is no provision regarding authorship of works created by artificial intelligent entities. As technology advances, machines gain the ability to create independently, prompting questions about whether machines can be authors and if their works are eligible for protection.³¹ The Act's interpretation section defines an author in terms of the 'person' responsible for making arrangements for certain works, encompassing both natural and juridical persons. However, the term 'person' might be contested in the context of machines, considering the nationality or 'habitual residence' requirement.³²

6. A Comparative Analysis of Authorship under the United States and English Laws

Comparatively, the United States Copyright Law delineates the definition of an author and the criteria for copyright protection. While the law primarily recognises human creators as authors, it also introduces the work-for-hire doctrine, attributing authorship status to employers or commissioners in specific circumstances. Under Section 306 of the U.S. Compendium of Copyright Office Practices³³, a human creator is unequivocally identified as the author of an original work. The law protects creations that result from intellectual labour rooted in the creative powers of the mind. Works created by nature, animals, plants, divine beings, or mechanical processes lacking human creative input are explicitly excluded from copyright registration. The U.S. Copyright Law explicitly states that a work produced by a machine does not qualify for copyright protection unless it involves creative input or intervention from a human author. This underscores the significance of human creativity in the authorship process. In alignment with this perspective, Ginsburg contends that an author, within the context of U.S. Copyright Law, is a human creator who exercises minimal personal autonomy in crafting the work.³⁴ Section 201(b) of the 1976 Act introduces the work-for-hire doctrine, conferring authorship status to employers or commissioners unless a written agreement specifies otherwise. The work is deemed 'for hire' if created by an employee within the scope of employment or commissioned for specified uses with a signed written agreement.³⁵ The emphasis is on the explicit agreement between parties for authorship to vest in the employer.³⁶

³⁰ RR. Kwall, in 'Authors in Disguise: Why the Visual Artists Rights Act Got It Wrong', available at <<http://ssrn.com/abstract=982964>> last accessed July 4 2024 She argued that rights of paternity and integrity, being recognition of the author's personality, are designed, to safeguard the personal meaning and intended externalised message of an author's creative work, and therefore can only inure for the benefit of the human creator.

³¹ Artificial intelligence is leading to new ways of doing things; computers are performing some tasks hitherto executed by humans. For instance, the development of the world's first robot lawyer is causing a stir in the legal world. See B Biodun, 'Robot Lawyer Sued for Practising Without Licence in US' available at <<https://www.vanguardngr.com>> accessed July 10, 2024; See also T Adekunle, 'Copyright in the World of Emerging Technologies'. C Ruiperez, E Gutierrez, C Puente, and J A Olivas, 'New Challenges of Copyright Authorship in AI' available at <www.semanticscholar.org/paper> last accessed July 10, 2024, cited the example of the Sony CSL Research Laboratory that created intelligent software able to compose pop music and several enterprises like ING Bank and Microsoft that launched a project called 'The Next Rembrandt,' which bore all the hallmarks of Rembrandt. It was generated by a computer that had analysed thousands of works by Rembrandt.

³² Section 18, Interpretation Act, Cap 123, Laws of the Federation of Nigeria, 2004 defines the word 'persons' to include 'anybody of persons corporate or incorporate.' It is not in doubt that 'person' as used in relation to an author in the Copyright Act includes a natural and juridical person, but not machines.

³³ Available at <<https://law.resource.org/pub/us/compendium/ch>>

³⁴ JC Ginsburg, 'The Concept of Authorship in Contemporary Copyright Law'. <http://via.library.depaul.edu/law-review/vol52iss4/3>. Last accessed July 10 2024

³⁵ In *Community for Creative Non-Violence v Read*, 490 US 730, (1989) the court opined that in determining whether an individual was an employee or an independent contractor the overall consideration is whether the hiring party has the 'right to control the manner and means by which the product is accomplished.'

³⁶ It seems that by the provision greater attention is given to economic considerations than the relationship between the work and the creator

Kwall³⁷ challenges the work-for-hire doctrine, arguing that it does not adequately address the personal rights of authors. She advocates for differentiating between ownership and authorship, suggesting that copyright ownership be vested in employers while retaining the authorship status for the employee, safeguarding attribution and integrity interests. Indeed, authorship involves the exercise of creative intellect and therefore remains distinct from ownership. Moral rights, perpetual and inalienable, further underscore the continued role of the human creator as the ‘author.’

In the English Copyright, Designs, and Patents Act, 1988 (‘CDPA’), an author is broadly defined as the individual responsible for creating a work.³⁸ The term ‘person’ within this definition implies that an ‘author’ could be either a natural person or a corporate entity, depending on the circumstances. To eliminate ambiguity, Section 9(2) further specifies the individual considered the author for various categories of eligible works. For instance, in the case of a sound recording, the ‘producer’ is identified as the author, while for a film, it is both the ‘producer’ and the ‘principal director.’³⁹ In the context of a broadcast, the author is the person making the broadcast, and for the typographical arrangement of a published edition, it is the ‘publisher.’⁴⁰ The clarification ensures that there are no disputes on the authorship of these collaborative works.

7. Implications of Ambiguities and Challenges in Authorship Definition in Nigeria

Ambiguities in authorship definitions can lead to significant confusion regarding true authorship, often resulting in legal disputes over ownership and credit for creative contributions. This confusion can deprive creators of deserved recognition, affecting their professional reputation and future opportunities. When multiple individuals contribute to a work, unclear criteria for joint authorship can lead to prolonged legal battles, complicating copyright enforcement and delaying commercialization or distribution. Authorship is closely tied to rights and royalties. Unclear definitions can affect entitlement to financial benefits, potentially depriving rightful authors of their earnings. This uncertainty can discourage creators from producing new works due to fears of inadequate protection of their rights or insufficient recognition and compensation, ultimately stifling innovation and creativity. Without clear definitions, individual creators may struggle to legally protect their works. Ambiguities in the law can complicate legal proceedings, making it difficult for courts to determine the rightful owner of the copyright. This leads to inconsistent judgments and a lack of legal predictability, enabling the exploitation of creations without permission or proper compensation, thereby decreasing the incentive to produce original work. Ambiguous definitions also hinder the effective enforcement of copyright laws. Without clear ownership, enforcing intellectual property rights becomes challenging, leading to increased unauthorised use and distribution of creative works. Issues of piracy and intellectual property theft result in financial losses for the author. Ambiguities in authorship can impede collaboration within the creative industry. Unclear expectations about credit and ownership can foster mistrust and conflicts among collaborators, making it difficult to form productive partnerships. Furthermore, unclear authorship definitions create uncertainties in the licensing and commercialisation of creative works. Potential licensees may hesitate to engage in transactions involving works with disputed authorship, fearing future legal challenges. This can affect the market value of creative works and reduce potential income for creators. Similarly, potential buyers or investors may be reluctant to engage with works whose ownership is disputed or unclear, leading to decreased market transactions and investment in the creative sector.

8. Conclusion and Recommendations

The complexities surrounding the definition of authorship in Nigerian copyright law present significant challenges for creators, legal practitioners, and the judiciary. Influenced by colonial history and international standards, the current framework often lacks clarity and consistency. This ambiguity complicates the enforcement and protection of authors' rights, particularly in defining authorship for different types of works, joint authorship criteria, and works created under employment or commission. Additionally, the rise of digital media and artificial intelligence introduces new challenges not adequately addressed by the current legal framework. A comparative analysis of the United States and the United Kingdom underscores the need for clear and specific definitions of authorship to ensure effective copyright protection. Recognizing both natural and juristic persons as authors has its benefits and limitations, necessitating a balanced approach to safeguard the interests of individual creators and organizations.

To address these challenges and adapt the legal framework to the evolving landscape of creativity and technology, several recommendations are proposed. Legislative reforms should provide clearer and more precise definitions of authorship, resolving ambiguities regarding joint authorship and works created under employment

³⁷ Ibid, note 33. For her, a work can reflect a ‘meaning’ and ‘message’ personal to the author, such that irrespective of whether an author transfers any or all of her copyrights, the creative work continually manifests the ‘colloquial’ author’s subjective meaning and intended message

³⁸ See Section 9(1) of the CDPA, 1988.

³⁹ See section 9(2) CDPA, 1988.

⁴⁰ Ibid, (b) and (d)

or commission to better guide courts, creators, and legal practitioners. The legal framework should also be updated to account for the collaborative nature of many modern works and to provide clear guidelines on the ownership and authorship of digital content. This includes considering contributions from multiple creators and establishing frameworks for attributing authorship in collaborative projects. Additionally, the realities of AI-generated content must be addressed, with clear definitions within copyright law on whether such content should be attributed to developers, users, or new categories of authorship. Strengthening institutional capacity through adequate resources and training for copyright enforcement agencies is essential. Enhanced capabilities will improve the enforcement of copyright laws and support authors in protecting their rights. Harmonizing domestic laws with international treaties and agreements will facilitate better protection of Nigerian works abroad and encourage foreign investment in Nigeria's creative industries. Public awareness and education on copyright issues should be prioritized. Educational programs and awareness campaigns can help creators understand their legal rights and responsibilities, empowering them to utilize copyright protections effectively. Promoting mediation and arbitration for copyright disputes can offer quicker resolutions and reduce the burden on the judicial system, providing more accessible avenues for authors to enforce their rights. Implementing these recommendations requires collaborative efforts from lawmakers and stakeholders in the creative industries. By addressing current deficiencies and adapting the law to contemporary challenges, Nigeria can create a more efficient and equitable copyright system that supports and protects its authors, fostering a vibrant and dynamic creative economy.