

RE-CONCEPTUALIZING CYBER SECURITY LAWS IN NIGERIA TO ACCOMMODATE INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT ON THE INTERNET: ANY SPECIFIC ROLE FOR INTERNATIONAL TREATIES?*

Abstract

This paper appraises cyber security laws in Nigeria. The paper finds that digital works create new forms of cybercrime which were not addressed by earlier legislation. The paper contends that the Budapest Convention and the latest WIPO Treaties ratified in 1996 and 2001 respectively have sufficient provisions for the protection of intellectual property rights on the Internet, and should be domesticated by Nigeria. The paper employs a legal research approach with the doctrinal research method. The necessity of establishing the accuracy of the findings on the unsuitability of the present cyber legislation for the protection of intellectual property rights on the internet in Nigeria is the justification for using the method. The paper recommends the domestication of recent international treaties and advocates the implementation of revised rules to checkmate infringements of intellectual property rights on the internet.

Keywords: Cyber security, Internet, intellectual property, infringement, Nigeria, international treaties

1. Introduction

The internet has grown tremendously in the last couple of years, especially in terms of its ability to make available a completely new array of digital content and interactive services.¹ The astronomical increase in the number of users on the internet meant easy copying of digital content and other cyber-related infringements. Confronting these issues initially raised a lot of challenges in a world where national legislation and early international legal instruments were not sufficiently prepared to address the issues raised by digital works and networks. The invention of new forms of cyber technology meant corresponding new forms of cybercrime. These cybercrimes are not limited to spamming, cyber terrorism, phishing, cyberbullying, and cyberstalking, but also an infringement of intellectual property rights like linking, software piracy, cybersquatting, trademark infringement, metagging, etc.² Unarguably early international as well as national legislation were tailored towards the protection of conventional cybercrimes. New forms of cybercrime have necessitated the formulation of new legal rules to tackle such violations. It is in the context of the foregoing that this paper appraises the existing legal landscape for cybercrimes in Nigeria. The paper finds that these new forms of cybercrimes were not captured in the existing rules, but that the new WIPO Treaties of 1996 and the Budapest Convention of 2001 which have been ratified by Nigeria have substantial provisions for the protection of intellectual property rights on the internet, and recommends the domestication of the Treaties into national law.

2. Nature of Cybercrime and Cyber Security in Nigeria

Cyber security simply refers to a set of rules, technology, practices, and processes that are architected to protect computer networks, programs, and data from attack, damage, or unauthorized access.³ The enormous and incessant cyber-attacks witnessed daily have made cyber security a necessary subject today. The world over, every society is battling with one form of cybercrime or the other. Although Nigeria is not alone in the fight against cybercrime, most jurisdictions of the world have continually revised their laws to accommodate the ever-evolving forms of cybercrime. No serious revision has taken place in Nigeria to accommodate cyber-enabled intellectual property infringements, and this has left intellectual property owners crying for help. An examination of the nature of cybercrime and the existing legal framework for combating cybercrimes in Nigeria is necessary at this stage to expose the inadequacy of such laws in checkmating violations of intellectual property rights on the Internet.

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¹ A Flanagan & SM Maniatis, *Intellectual Property on the Internet: Study Guide Postgraduate Law* (University of London, London 2008) p. 68.

² See AB Abirami, 'Intellectual Property issues in Cyberspace', Legal Services India E-Journal available at <<https://www.legalserviceindia.com/legal/>> (last accessed 4 June 2023).

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³ YA Makeri, 'Cyber Security Issues in Nigeria and Challenges' (2017)7(4) *International Journal of Advanced Research in Computer Science and Software Engineering* 316.

Forms of Cybercrime

Cybercrime can manifest itself in various forms. The most common forms are: The repeated use of electronic communication to send offensive and unsolicited messages to individuals or organizations with the view of harassing or intimidating them; and disruption of businesses through distributed denial of service attacks (DDoS). Under this head, a large number of computers or digital services target businesses and other services.⁴ It can also take the form of Phishing whereby emails that seem to emanate from authentic sources are sent to individuals to steal their sensitive personal information and other personal details. Equally, cybercrime may come in the form of impersonation of professional firms and the creation of bogus websites.⁵ It can also come in the form of a computer virus or malware installed on a system through a fake email attachment or an infected device. Similarly, cybercrime could manifest itself in the form of ransomware whereby files are crippled by criminals and a ransom is demanded for a key to retrieve them. Finally, cybercrime can come in the form of the use of electronic devices to reproduce, copy, or distribute other people's work. This paper is limited to a discussion on these later forms of cybercrime.

Cyber-Enabled Intellectual Property Crime

The ubiquitous nature of cyberspace has made the illegal copying and distribution of copyrighted, patented, and other kindred materials possible. As new technology evolves daily, cyberspace becomes a fertile ground for intellectual property rights infringement. Cyber-enabled intellectual property crime could take any of these forms; digital piracy, framing, linking, met-tagging, etc.

Digital Piracy: This is an online infringement of copyright protection. It involves the downloading, sharing, streaming, or uploading of copyrighted materials like films, music, or books beyond the permission for access, use, and dispensation stipulated by law.⁶ In *A&M Records, Inc. v Napster, Inc.*,⁷ the United States Court of Appeals for the Ninth Circuit affirmed the district court ruling that the defendant's peer-to-peer file-sharing service Napster could be held liable for contributory infringement and vicarious infringement of copyright. The defendant in that suit promoted the use of their platform for the illegal distribution of music through peer-to-peer file sharing. Similarly in *MGM Studios, Inc. v Grokster, Ltd.*,⁸ the United States Supreme Court unanimously held that companies that distributed software, and promoted that software to infringe copyrights, were liable for the resulting acts of infringement. The greatest problem with online intellectual property infringement is that it deprives the authors and publishers of copyrighted materials of economic returns on their creations, property, and labour.⁹

Framing: This is an act of enabling users to gain access to copyrighted materials that are retrieved from a website to a browser the user is accessing such that the provider cannot be held liable for copying, communicating, or distributing the copyrighted material.¹⁰

Meta Tagging: This is a strategy adopted by websites to draw traffic to their sites and increase the number of users accessing their sites by incorporating words in the keyword section which makes it easy for search engines to pick up the words, and then direct the users to the site despite the site having nothing to do with the words.¹¹ The resultant effect of this may be trademark infringement which invariably affects businesses. In *Oppedahl & Larson v Advanced Concepts*,¹² the law firm of Oppedahl & Larson the owner of the domain name filed a trademark infringement action against three companies and the corresponding ISPs when it discovered that the companies inserted the phrase Oppedahl and Larson in the keywords fields of their web sites to draw traffic to their sites. The court held the acts of the defendants to be trademark infringement.

⁴ Cyber Security, available at <<https://ipreg.org.uk/pro/>> (last accessed 15 April 2023).

⁵ *ibid.*

⁶ United Nations Agency on Drugs and Crime, 'Types of Intellectual Property' *EFJ University Module Series*, available at <<https://www.unodc.org/>> (last accessed 12 June 2023).

⁷ 239 F.3d 1004 (2001).

⁸ 545 U.S. 913 (2005).

⁹ United Nations Agency on Drugs and Crime above (above at note 6).

¹⁰ A Dixit 'Role of Intellectual Property in Cyber Law', at <<https://enhelion.com/>> (last accessed 12 June 2023).

¹¹ *ibid.*

¹² Civ. No. 97-Z-1592 [D.C. Colo., July 23, 1997].

Linking: This is an act of directing a user of a website to another webpage to click on a text or image without leaving the current page.¹³ This creates the wrong impression that the two websites are linked and are under the same domain name and ownership. This trend portends grave danger and threat to the rights and interests of the website owner as such an owner can lose the income he would have realized from the number of visitors to the website.¹⁴ This manifested itself in *Shetland Times, LTD v Jonathan Wills and another*¹⁵ where the British Court held the Shetland News deep link embedded pages of the Shetland Times' website through the use of Times web sites' news headlines to be an act of copyright infringement under British Law and an injunction was issued by the court.

3. Legal Framework for Cybercrime in Nigeria

The major legislation regulating cybercrimes in Nigeria is Cybercrime (Prohibition, Prevention, etc.) Act.¹⁶ The Act came into force in 2015. Before that year there was no specific legislation for fighting cybercrime in Nigeria which invariably made it a herculean task to fight cybercriminals. Cybercrimes were then treated as common fraudulent activities and the existing legal rules for combating criminal activities like Criminal Code Act,¹⁷ Penal Code Act,¹⁸ Advance Fee Fraud and Other Related Offences Act,¹⁹ Economic and Financial Crimes Commission Act,²⁰ Money Laundering Act,²¹ Terrorism (Prevention) (Amendment) Act²² were applied to them. Although most of those laws predated cybercrime, and that explained the absence of a definition of cybercrime in those laws, the fact that the constitution made it clear that a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law made it impossible for cybercriminals to be prosecuted under those laws.²³ The enactment of the Act, therefore ushered in a new phase in the effort at fighting cybercrimes in the country.

Cybercrimes (Prohibition, Prevention, Etc) Act²⁴

This Act was enacted in 2015 and it became the first legislation in the country to deal specifically with cybercrime. The objectives of the Act are the prohibition, prevention, detection, and prosecution of cybercrime and other allied matters in Nigeria.²⁵ The explanatory memorandum to the Act captures the main objectives of the Act as follows:

The Act provides an effective, unified, and comprehensive legal, regulatory, and institutional framework for the prohibition, prevention, detection, prosecution, and punishment of cybercrimes in Nigeria. This Act also ensures the protection of critical national information infrastructure and promotes cyber security.²⁶

The following acts are prohibited and penalized under the Act; the interception of electronic messages, emails, and electronic money transfers,²⁷ willful misdirection of electronic messages,²⁸ computer-related forgery, fraud,²⁹ and theft of electronic devices,³⁰ unauthorized modification of computer systems, network data, and interference.³¹ An analysis of the provisions of this Act reveals that the Act is a good initiative at combating cybercrime in Nigeria. It is however not impeccable. Its major flaw is the inability of the Act to designate the particular agency that will be responsible for the enforcement of the provisions of the Act. The Act merely appointed the office of the National Security Adviser as the coordinating body for all the security and enforcement agencies without more. The implication of this is that no agency can take up action against

¹³ A Dixit (n 10).

¹⁴ *ibid*.

¹⁵ [1996] Scot CS -6.

¹⁶ Cybercrime (Prohibition, Prevention, etc.) Act 2015.

¹⁷ Criminal Code Act, cap. C38 Laws of the Federation of Nigeria 2004.

¹⁸ Penal Code Act, cap P3 Laws of the Federation of Nigeria 2004.

¹⁹ Advance Fee Fraud and Other Related Offences Act, cap A6 Laws of the Federation of Nigeria 2004.

²⁰ Economic and Financial Crimes Commission Act 2004.

²¹ Money Laundering Prohibition Act 2011.

²² Terrorism (Prevention) (Amendment) Act 2013.

²³ See section 36(12) Constitution of the Federal Republic of Nigeria 1999 as amended.

²⁴ Cybercrimes (Prohibition, Prevention Etc.) Act 2015.

²⁵ *ibid* s 1.

²⁶ Cybercrimes (Prohibition, Prevention Etc.) Act, 2015; Explanatory Memorandum.

²⁷ Cybercrimes Act 2015 s 9.

²⁸ *ibid* s 11.

²⁹ *ibid* s 13 and 14.

³⁰ *ibid* s 15.

³¹ *ibid* s 16.

cybercriminals unless and until the office of the National Security Adviser makes an appointment. This is not a welcome development for fighting cybercrime in Nigeria and the chances are that it may rob the Act of its objective of combating cybercrimes in Nigeria.³² Furthermore, online infringement of intellectual property rights is not captured as cybercrimes under the Act, and hence our contention that cybercrimes are not limited to the ones enumerated by the Act, that cyber security laws in Nigeria should be redesigned to accommodate online intellectual property infringements.

4. International Legal Instruments Relevant to the Protection of Intellectual Property Rights in Nigeria

Individual intellectual property rights are created by national laws within their territories and accorded protection. However, national laws cannot afford protection for cross-border violations of intellectual property rights and that necessitated the formulation of international treaties to provide for cross-border protection of intellectual property. Flanagan and Maniatis, captured the necessity of international legal instruments to protect cross-border intellectual property rights when they said that ‘the development of steam engines as an aftermath of the industrial revolution which facilitated cross-border travel by ships and trains, and the advent of mechanized publishing necessitated the formulation of international treaties to provide for cross-border protection of intellectual property’.³³ In furtherance of her economic growth in the area of intellectual property, Nigeria entered into bilateral and multilateral agreements at regional and global levels to protect intellectual property in all its ramifications. A cursory look at the nature of the protection afforded by the early international treaties will form the subject of next discussion to understand the necessity of the domestication of the most recent treaties.

WIPO Convention

The World Intellectual Property Organization Convention established the World Intellectual Property Organization (WIPO). WIPO is an agency of the United Nations formed as part of a multilateral treaty between 188 UN members.³⁴ The convention was signed in 1967 and entered into force in 1970. Nigeria adopted the convention on April 9, 1995. The major responsibility of the convention is the advancement of economic development through the support of intellectual property realization and protection among member countries.³⁵ Various international agreements between member countries are therefore administered by WIPO.

Paris Convention for the Protection of Industrial Property (Paris Convention)

This is one of the oldest treaties administered by the World Trade Organization. Paris Convention was adopted in 1883 as the first major step to ensure that the intellectual property works of creators were protected in member nations.³⁶ The convention applies to patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications.³⁷ The convention was adopted in Nigeria on September 2, 1963.

Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)

This is also one of the oldest conventions adopted in 1886 to protect literary and artistic works of any form or expression if they are intellectual creations. The convention protects the rights of authors in determining the use to which their work will be subjected, the manner of such usage, and those entitled to use such works. The specific rights protected by the convention include the right to translate, to make adaptations and arrangements of the work, to perform in public dramatic, dramatico-musical, and musical works, to recite literary works in public, to communicate to the public the performance of such works, right to broadcast, to make reproductions in any manner or form, right to use the work as a basis for an audiovisual work, right to reproduce, distribute, perform in public or communicate to the public the audiovisual work.³⁸ This convention was adopted in Nigeria on September 14, 1993.

³² See OJ Olujobi, ‘Analysis of the Legal Frameworks for Combating Cybercrimes: A Tool for Economic Development in Nigeria’ [2021] 2(1) *KWASU Law Journal*, 129.

³³ A Flanagan & SM Maniatis (above at note 1) 70.

³⁴ J Gordon, ‘International Protection of Intellectual Property Explained’, at <https://thebusinessprofessor.com/en_> (last accessed 12 April 2023).

³⁵ *ibid.*

³⁶ WIPO, ‘Paris Convention for the Protection of Industrial Property’, available at <https://www.wipo.net/> (last accessed 4 June 2023).

³⁷ *ibid.*

³⁸ Berne Convention for the Protection of Literary and Artistic Works 1886, Art 2.

Rome Convention for the Protection of Performers, Producers of Phonogram, and Broadcasting Organizations (Rome Convention)

This convention was adopted in 1961 and is jointly administered by WIPO, International Labour Organization (ILO), and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Nigeria adopted the Rome Convention on October 29, 1993. The Convention protects performers who are its nationals from unauthorized broadcasting and communication of their performance to the public, the fixation, without their consent, of their unfixed performance, and the reproduction, without their consent, of a fixation of their performance.³⁹ The nature of the protection offered to producers of phonograms includes the right to authorize or prohibit the direct or indirect reproduction of their phonograms.⁴⁰ Broadcasting organizations shall enjoy the right to authorize or prohibit the rebroadcasting, fixation, reproduction, and communication to the public of their broadcasts.⁴¹

Agreement on Trade-Related Aspects of Intellectual Property Rights (Trips Agreement)

This is a model law enacted by the World Trade Organization (WTO). It was signed in 1994 and entered into force in 1995. TRIPS is the most recognized international agreement among nations regarding the recognition and protection of intellectual property rights.⁴² The major hallmark of TRIPS is that it was the first to usher in intellectual property law into multilateral international trade agreements at the same time initiating the lowest ethos for the administration of various forms of intellectual property rights by the WTO member states. This convention was adopted in Nigeria in January 1995. TRIPS recognizes the following types of intellectual property: copyrights, trademarks, patents, designs, trade dresses, confidential trade information, geographical identification, and new plant varieties. TRIPS creates an acceptable minimum level of substantive rights, enforcement mechanisms, dispute resolution mechanisms, and remedies for violations each member nation must provide under its national law. It is to be noted that concerning copyright law, TRIPS uses the Berne Convention as the foundation of its protection and then improves on it. Judging from the forms of intellectual property rights covered by TRIPS, it may be said that it covers the field concerning intellectual property rights. However, with increasing sophistication in information communications technology, one can safely say that national laws based on TRIPS may not stand the test of time, and hence the need to adopt the most recent treaties.

Patent Law Treaty

This treaty was adopted in 2000 to streamline and harmonize formal procedures with respect to national and regional patent applications to make such procedures more user-friendly.⁴³ The convention was adopted in Nigeria on April 28, 2005. A careful analysis of the foregoing international treaties will reveal that they were enacted for the protection of intellectual property in the physical sphere. An exception may be made in respect of the Berne Convention which though did not mention the protection of works in the digital environment in the original text referred to reproduction in any form in the subsequent revisions.⁴⁴ The Convention vests the right of authorizing copying of works on authors irrespective of the way and form such copying is to be made.⁴⁵ The implication of this is that the reproduction could be made traditionally for example on paper or it could be made with the use of digital technology.⁴⁶ The amendment of Art 9 of the Convention in 1971 lends credence to this assertion when a new section 3 was added which defined reproduction as any sound and visual recording. Therefore, the Berne convention laid the foundation upon which the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty built the protection for the rights of authors and kindred rights in the digital environment. These two recent treaties will be examined in detail under the role they will play in redesigning cyber security and intellectual property laws in Nigeria.

³⁹ *ibid* Art 7.

⁴⁰ *ibid* Art 10.

⁴¹ *ibid* Art 13.

⁴² WIPO, 'Summary of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)', available at <<https://www.wto.org/>> (last accessed 4 June 2023).

⁴³ WIPO, 'Summary of the Patent Law Treaty (2000)', at <<https://www.wipo.int/treaties>> (last accessed 4 June 2023).

⁴⁴ See B Szczepańska, "'Digital is not different' - copyright in digital environment." [2004] Proceedings of the IATUL Conferences, Paper 54, at <<https://docs.lib.purdue.edu/>> (last accessed 2 April 2023).

⁴⁵ *ibid*.

⁴⁶ *ibid*.

5. Necessity for the Domestication of Internet Treaties to Protect Online Intellectual Property Rights in Nigeria

The exponential growth of the internet brought a lot of changes to the business environment making available a whole new range of digital content, services, and high-quality reproduction of digital media cheap, fast, global, and easy to make and distribute.⁴⁷ This became a serious concern for content producers as to the safety of their works on the internet. To tackle these issues, they have sought embellished and more internationally synchronized protection in the form of new right-encompassing digital works and legal protection of the use of digital rights management instruments with sanction for their diversion.⁴⁸ Most copyright experts were of the view that the protection provided by the current international instrument on copyright; the Berne Convention might not sufficiently provide for the protection of Internet works.⁴⁹ This gave birth to the internet treaties.

WIPO Copyright Treaty

This Treaty was adopted in 1996 as a special agreement under the Berne Convention. The objective of the treaty is to accord protection to copyright owners concerning the usage of their works in the digital environment. The convention mandates all contracting parties even if not bound by the Berne Convention to comply with the substantive provisions of the Berne Convention for the Protection of Literary and Artistic Works.⁵⁰ In other words, this Treaty incorporates the Berne Convention by reference.⁵¹ The Treaty offers protection to computer programs, whatever the mode or form of their expression; and compilations of data or other material in any form, which because of the selection or arrangement of their contents, constitute intellectual creations.⁵² Regarding authors, the Treaty adopts the rights granted authors by the Berne Convention and in addition grants the right of distribution, rental, and right of communication to the public.⁵³ The right of distribution enables authors of literary and artistic works to enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.⁵⁴ Rental right enables authors of computer programs, cinematographic works, and works embodied in phonograms as determined in the national law of Contracting Parties to enjoy the exclusive right of authorizing commercial rental to the public of the originals or copies of their works.⁵⁵ However, these rights are not exercisable in the case of computer programs where the program itself is not the essential object of the rental, and in the case of cinematographic works, unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of reproduction.⁵⁶ The right of communication enables authors of literary and artistic works to enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.⁵⁷ To ensure that its protection is not thwarted the Treaty encourages the use of effective technological measures by authors to safeguard their rights and mandates Contracting Parties to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under the Treaty or the Berne Convention.⁵⁸ The duration of the protection offered by the treaty is 50 years for any kind of work.

WIPO Performances and Phonograms Treaty (WPPT)

Adopted in 1996, the WPPT deals with the rights of performers and producers of phonograms in the online environment who are nationals of other Contracting States.⁵⁹ The objective of this treaty is to grant protection to performers and producers of phonograms concerning the usage of their works in the digital environment. Most of the rights granted to performers are connected to their fixed performances and that accounts for the treatment

⁴⁷ Flanagan and Manatias (above at note 1).

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ WIPO, 'Summary of the WIPO Copyright Treaty (WCT) (1996)', available at <<https://www.wipo.int/>> (last accessed 4 June 2023).

⁵¹ WIPO Copyright Treaty 1996, Art 3.

⁵² *ibid* Arts 4 and 5.

⁵³ WIPO (above n 51); WIPO Copyright Treaty 1996, Arts 6, 7 and 8.

⁵⁴ *ibid.* Art 6 (1).

⁵⁵ *ibid* Art 7 (1).

⁵⁶ *ibid* Art 7 (2).

⁵⁷ *ibid* Art 8.

⁵⁸ *ibid* Art 11 & 12.

⁵⁹ WIPO, 'Summary of the WIPO Performances and Phonograms Treaty (WPPT) (1996)', available at <https://www.wipo.int/> > (last accessed 4 June 2023).

of the two together in one instrument.⁶⁰ For performances fixed in phonograms, the Treaty grants four major types of economic rights to performers namely: reproduction right, distribution right, rental right, and right of making available. Reproduction right entitles performers to enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in phonograms, in any manner or form.⁶¹ Right of distribution entitles performers to enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership.⁶² Rental right entitles performers to enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in phonograms as determined in the national law of Contracting Parties, even after distribution of them by, or according to, authorization by the performer.⁶³ Finally, the right of making available entitles performers to enjoy the exclusive right of authorizing the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.⁶⁴ Regarding unfixed performances, the Treaty provides that performers shall enjoy the exclusive right of authorizing, as regards their performances: (i) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and (ii) the fixation of their unfixed performances.⁶⁵ Equally, under the Treaty performers have the moral right to be identified as performers as well as the right to object to any distortion, mutilation, or other modification that would prejudice the reputation of the performers.⁶⁶ The treaty grants the same economic rights granted to performers to producers of phonograms.⁶⁷ Furthermore, the Treaty grants performers and producers of phonograms the right to a single equitable remuneration for the direct or indirect use of phonograms, published for commercial purposes, broadcasting, or communication to the public.⁶⁸ This is however subject to the right of the Contracting Party to restrict or deny this right if a reservation is made to the Treaty which entitles the other Contracting Party's right to deny the Contracting Party reciprocal national treatment.⁶⁹

One of the measures adopted by the Treaty in ensuring that the technological measures adopted by performers and producers of phonograms in connection with the exercise of their rights, and against the removal of information that identifies the performer or the producer of the phonogram are not thwarted is the mandate to Contracting Parties to provide for legal remedies against such circumvention.⁷⁰ The protection granted by the Treaty lasts for 50 years. A careful analysis of the WCT and the WPPT reveals that these two Treaties have substantial provisions for the protection of intellectual property rights on the Internet. Nigeria recently ratified the Treaties in 2017 and is yet to domesticate them into national law. It is submitted that the extent to which cybercrime is ravaging the world has necessitated the revision of all national legislation to help checkmate such crimes. There is an urgent need therefore for Nigeria to domesticate these Treaties without further delay.

Budapest Convention on Cybercrime

Although the Nigerian legislature enacted the cybercrime law in 2015 to guarantee the safety of cyberspace and critical national infrastructure, the territorial reach of the Act remains Nigeria. In a bid to enhance international cooperation in addressing the menace of cybercrime, Nigeria ratified the Budapest Convention on July 6, 2022. This ratification was long overdue considering the cross-border character of cyber security threats and the imminent need for collaboration as well as an effective alliance with the international community to address the ever-increasing surge in cybercrime.⁷¹ It is expected that the ratification will in addition to enhancing international cooperation between Nigeria and the international community, provide a universal forum and established law tools for effective investigations of crime as well as the protection and transfer of electronic

⁶⁰ *ibid.*

⁶¹ WIPO Performances and Phonograms Treaty 1996, Art 7.

⁶² *Ibid* Art 8 (1).

⁶³ *ibid* Art 9 (1).

⁶⁴ *ibid* Art 10.

⁶⁵ *ibid* Art 6.

⁶⁶ *ibid* Art 5.

⁶⁷ *ibid* Arts 11-14.

⁶⁸ *ibid* Art 15 (1).

⁶⁹ *ibid* Art 15 (2).

⁷⁰ See Art 18.

⁷¹ See T David, 'Nigeria Joins Budapest Convention on Cybercrime' at <<https://leadership.ng/>> (last accessed 2 May 2023).

evidence as applicable to any crime.⁷² An important feature of the Budapest Convention is the recognition of violations of intellectual property rights on the internet as cybercrime. Article 10 mandates State Parties to adopt such legislative and other measures that may be necessary to establish as criminal offences under its domestic law the infringement of copyright and other related rights. This ratification has put Nigeria on the roadmap of enacting domestic legislation that will checkmate all forms of cybercrime. It is expected that in line with the model put forward by the convention, Nigeria will amend the cybercrime law and incorporate the provisions of the Budapest Convention.

6. Conclusion

Through a review of Nigeria's cyber security laws and international treaties related to the protection of intellectual property rights, this article discussed the role international treaties will play in the redesigning of cyber security laws in Nigeria to accommodate intellectual property rights infringement on the internet. It illustrated that the growth of the Internet and cyberspace technology has expanded the nature of copyright and trademark beyond the conventional intellectual property, and made the application of laws agreed upon in a time before the Internet inapplicable to these new forms of cybercrime. Almost all the laws on the protection of intellectual property rights in Nigeria were enacted before the era of sophisticated technological advancements, and as such did not capture copying and distribution of digital content as rights worthy of protection. Even the cyber legislation enacted in 2015 did not also provide for cyber-enabled violations of intellectual property rights. Unarguably early international treaties recognized and offered protection for intellectual property violations in the physical sphere. Digital works and networks create new forms of cybercrimes that were not addressed by earlier legislation. The quest by content producers to protect their intellectual property in the face of exponential growth in cyberspace technology led to the adoption of international legal instruments with enhanced protection. The Berne Convention laid the foundation upon which the latest treaties leveraged in offering protection to authors of literary and artistic works, performers, and producers of phonograms. Similarly, the Budapest Convention on Cybercrime provides for cyber-enabled intellectual property crimes. The recognition of the need to enhance international cooperation in the fight against cybercrime and violations of intellectual property rights led to the adoption of these instruments by member nations. The time is ripe for a developing economy like Nigeria to take advantage of the benefits derivable from the treaties and redesign its cyber security laws in line with the model put forward by the treaties.

⁷² *ibid.*