

DIGITAL MEDIA AND COPYRIGHT PROTECTION LAWS IN NIGERIA: A COMPLEMENTARY APPROACH

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ABSTRACT

Digital media has, by its inherent nature, exacerbated the problem of piracy of Intellectual Property (IP). Studies have shown that the creative industries contribute a high percentage to the Gross Domestic Product (GDP) of several countries). Governments, especially in the Global West have responded with new and increasingly stringent legislations to protect rights holders and punish violators. It is noteworthy, however, that effective enforcements of these legislations have been largely futile in the face of digital realities. Furthermore, the responses have not satisfied the need for an equitable balance between the interests of rights holders against that of IP users. This paper addresses this problem by proposing an alternative remunerative system for rights holders, as a complementary framework for the existing but largely ineffectual legislations. This approach will foster the formulation of effective templates for an equitable balance between the interest of Intellectual Property Rights (IPR) holders and the public within the digital space.

Keywords: Digital media, Copyright, Intellectual Property, Intellectual Property Rights, Complementary Frameworks

INTRODUCTION

The use of digital media in today's world has enabled significant levels of human communication, social interaction and community building across boundaries of time, place and social context. This has impacted on all aspects of human life, including economics, healthcare, politics, education, law and governance. Digital media, in this paper, refers to any data that can be represented and stored electronically, encoded in a binary format, and is suitable for interpretation by modern computers. This includes texts, images, music, and videos (Das 2020, Dahlstrom et al, 2006). As digital media allows for the exchange of information in a wide range of forms, copyright is one major framework that it has profoundly impacted.

Copyright is part of a bundle of rights (known as Intellectual Property Rights or IPR), conferred by law, which protect properties that are not tangible but are products of the human intellect. In Nigeria, IPR consists of Patent, Trademarks and Copyright. Patent is the conferment to an inventor the sole right to use the invention for a particular number of years, while Trademark is the right granted to a manufacturer to make sole use of any adopted / used name, symbol, figure, letter, word, or mark, to distinguish its goods from those manufactured and sold by others. Copyright, on the other hand, is a right given by law to creators of literary, dramatic, musical and other artistic works as well as producers of cinematograph films, broadcasts and sound recordings to produce all parts of their work, distribute copies, prepare new (derivative) versions of the work, and to perform and display the work to the public, to the exclusion of all others. Conferment of the rights is based on the principle that the primary way of encouraging

intellectual productivity is by giving people the right to be rewarded for their creativity (Oyewo, 2015). It is believed that copyright protection encourages creative efforts and invariably enriches the society (Adewopo, 2012).

There have however, been concerns that conferment of these rights works directly against the intended purpose: that is, the stimulation of intellectual productivity (Sun 2019, Terra 2016, Nwogu 2015). The apprehension is that the restriction of the use of intellectual property to the creator, to the exclusion of all other people, will make knowledge inaccessible to the public; hence, creativity will be significantly eroded as knowledge is its building block. Proponents of this position cite examples of widespread piracy of intellectual property in both developed and less developed countries to justify their position that IPR is restrictive and disadvantageous as it creates the necessity for piracy of intellectual property (Harbaughw and Khemkaz, 2010). They further contend that the various opportunities which the law affords the public to use copyright protected content (e.g. fair use and fair dealing, the grant of licenses, etc.) are too negligible to address the existing problem. Other scholars are of the opinion that the protection of IPR essentially borders on the need to achieve an equitable balance between the interests of IP rights holders and that of the public (Bryant, 2018). The argument is that too much or too little protection will frustrate the purpose of IPR as the fostering of creativity and knowledge generation (Resnik 2003, Bryant 2018). According to them, too much protection will make information inaccessible and will adversely affect knowledge creation as existing knowledge is the foundation or pedestal for new knowledge. They argue that too little protection, conversely, will prevent rights holders from getting adequately rewarded for their intellectual creations, thereby, also resulting in loss of incentives to create new knowledge.

This problem is foregrounded with the advent of digital media and its overarching knowledge creation, modification, dissemination and storage capacities. Digital media affords IPR violators almost limitless opportunities for information sharing, modification and storage. Copyright, arguably, is the aspect of IPR that is the most directly affected by the aforementioned problem. This is because copyrights concern intellectual properties that are arguably more susceptible to digital manipulations than other intellectual properties like patents and trademarks. The focus, in this discourse, is therefore on copyrights within the wider context of IPR with attention on the Nigerian copyright management while looking at examples from other countries, especially those in the Global West.

The response of several governments has been to enact more stringent laws for the protection of IPR. Apart from the fact that this spells an imbalance in the management of the interest between rights holders and the public, examples from countries which have countered the problem of piracy within the digital space with stringent IPR protection laws show that these latter laws have done little in preventing digital piracy. Instead, as technology continues to develop, IPR violators have been able to devise innovative methods to pirate IP products, evade detection and skirt the boundaries of the law. It is argued therefore that merely enacting more stringent laws to protect IPR is not necessarily the solution to the problem of piracy; neither does it ensure a balance between rights holders' interests and that of the public.

In another vein, Nigeria's copyright laws (i.e. Copyrights Act, Cap C28 Laws of the Federation of Nigeria (LFN) 2004), have been severally faulted as inadequate in addressing the emerging problems of digital media usage and the attendant copyright violations (Smith & Carleton 2011, Chuma-Okoro 2018, Owushi 2020). This is because the laws were enacted before the advent of digital media and the Internet. Indeed, there have been two attempts in 2004 and 2015, (Oyesanya, 2013) to amend the laws to address digital infractions, both of which have been futile. The resulting documents have been dismissed as defective. Some of the identified defects include their failure to: (i) harmonize global and local administrative/procedural laws and law enforcement practices; (ii) address key privacy infringement issues; (iii) provide clear legal definitions of the terms used; (iv) provide, define or make mandatory requirements regarding technical measures to mitigate data protection breaches, breach of data protection rules by organizations as opposed to individuals, etc. (Oyesanya, 2013). Nigeria's existing copyright laws are thus unable to meet the digital challenges to copyright protection (Ladan, 2001).

The aim of this paper is not just the interrogation of the existing copyright laws in Nigeria, but preferment of an alternative compensatory framework for rights holders, with the hope that such framework will proffer a complementary approach to address identified causes of digital piracy and also the question of maintaining an equitable balance between the interest of rights holders and the public.

DIGITAL MEDIA AND THE PROBLEM OF COPYRIGHT PROTECTION

Copyright laws have always been compelled to adapt to changes in technology. Examples include the printing press, sound recordings, radio and television broadcasts, photocopiers, and now digital technology (Liu 2001, Nolasco 2016). However, digital technology presents a dimension of change that has not been previously encountered by copyright laws. Accordingly, the laws are left floundering. For instance, copyright laws had always focused primarily – though not exclusively – on the physical, tangible copy as the basic unit of consumption and infringement. However, digital technology significantly challenges the idea of a physical copy. Hence, copyrighted works can now be distributed in digital forms without the exchange of any physical object and without any title in physical property changing hands. This is projected to increase over time as computer network capacities increase and compression technologies improve (Liu 2001, Adetunji and Okuonghae 2022).

Another problem that digital media constitutes for copyright laws is its ease of reproduction and storage (Shettar 2008, Shrayberga, Ya. and Volkovaa, 2021)). Digital works can be reproduced rapidly, at little cost, and without any loss of quality. Each copy, in turn, can be further reproduced, again without any loss of quality, such that a single copy of a work in digital form can supply the needs of millions of users. This ease of reproduction, when combined with transmission through high-speed transmission lines like coaxial cable networks or even fiber optic lines, makes the process even faster. In this regard, the capacity for the transmission of works grows such that a single digital copy of a work can be multiplied several thousands of times around the world within a few hours (US Institute for Policy Innovation (IPI) report 2019, Adetunji and Okuonghae 2022). Secondly, digital storage is dense. It continues to get denser with each passing year. Ever-increasing quantities of a material can be stored in ever-smaller amounts of space. In the early 1990s, for instance, compact discs (CDs) which could store up to

600 megabytes of data were the predominant form of digital storage used by commercial pirates for storing entire libraries of computer programs or sound recordings with aggregate retail values in millions of dollars. Today's popular iPod portable music players can store nearly 70 times that amount (around 10,000 songs) in a device the size of a cigarette pack (Adetunji and Okuonghae 2022).

Another problem is that digital media facilitates infringers' anonymity. Digital media and the Internet provides a variety of software and computer applications that techno-savvy pirates exploit to disguise their identities while modifying and/or distributing copyrighted products. For instance, there are online sites that enable free downloads of books and other materials protected by copyright. The only recourse available to rights holders is usually to have the sites shut down – an effort that has not been effective as infringers merely move to other countries, which are not parties to international treaties that facilitate such shut-down measures, to re-open their sites (Douglas, 2010).

There is also a lack of awareness on the part of the public of what exactly constitutes copyright violations within the digital space. Advances in information technology are forcing a reassessment of how copyright laws define the rights of copyright owners while recognizing the interests of consumers. The use of digital media has re-delineated fundamental concepts of copyright ownership including the range of information resources that are copyright-protected. This has direct implications for what now constitutes fair use, plagiarism and other copyright violations vis-a-vis user-access to copyright products (Oyewo, 2017). Today, copyright applies to all kinds of media, including computer software, music, movies and video games. It also protects creative works that are communicated to the public via the Internet by way of emails, blogs and web pages. Furthermore, there is the problem of ascertaining who owns what. For instance, a webpage may contain videos, pictures, music and texts, copyright of which are owned by different individuals. The question of who to take permission from is, a lot of times, confusing/onerous to the ordinary member of the public who wishes to use the contents of the website.

Enforcement of rights is also difficult because the Internet is not subject to geographical boundary delineations. The digital market is global; thus, infringers in Japan, for instance, are able to access copyrighted products domiciled in the United States. It would hardly be possible to prosecute such infringers especially as strict law enforcements are not universal. Accordingly, strict enforcement of rights in one country will not prevent the exploitation of pirated material in other jurisdictions (Hall, 2015). Furthermore, as earlier stated, the increasing proliferation of different ways to achieve anonymity online makes the monitoring of digital activities a difficult task for rights holders.

Several governments have responded with more stringent legislations to protect rights holders and punish violators. According to Lee (2006), one such major response is that of the United States (US) with the promulgation of the Digital Millennium Copyrights Act (DMCA) of 1998 (which implemented the World Intellectual Property Organization (WIPO) Copyright Treaty of 1996). This is in addition to the Country's other existing copyright laws that grant extensive rights to rights holders, (e.g. the Copyright Act of 1976, the Copyright Term Extension

Act of 1998). The DMCA criminalizes the act of circumventing, and/or production and dissemination of technological devices and services intended to circumvent DRMs, (DRMs - Digital Rights Management are technologies used by copyright owners to prevent the unauthorized use of their digital products) whether or not there is an actual infringement of copyright itself. In spite of the enactment of the DMCA and other anti-infringement laws, (e.g. the No Electronic Theft (NET) Act 1997, the Computer Fraud and Abuse Act 1986 and the Pro-IP Act of 2008 among others). however, the US continues to lose billions of dollars yearly to pirates within and outside the Country. Reports show that the US economy loses up to US\$12.5 billion annually as a consequence of digital music piracy alone (the US Institute for Policy Innovation (IPI) Report, 2019).

The United Kingdom (UK) is another example. Its major piece of legislation governing copyrights, the Copyright, Designs and Patent Act (CDPA) of 1988, contains stringent provisions that are considered to swing the balance in favour of rights holders as it allows them an extraordinary broad range of rights and powers and makes little or no mention of the rights of the society or the importance of public benefit (Hall, 2015). In spite of this, the CPDA has not been able to curb access to pirated materials distributed online or through digital means. To remedy this, two major pieces of European Union (EU) legislation: the E-Commerce Directive and the Information Society Directive of 2000 and 2001 respectively were incorporated into UK law. However, by the time these Directives were implemented, they were already out of date as they had been overtaken by technological developments. In China, copyright in digital media is protected by the Copyright Law of the PRC 1990, the Implementing Rules for the Copyright Law of the PRC 1991 (as amended) and the more recent Regulations on Protection of the Right to Network Dissemination of Information of 2013. In spite of the legislations, illegal sharing of digital media is pervasive in China as numerous hosting websites and search engines (including the state-owned Baidu) provide users with unauthorized access to storage, sharing and means to locate the work of others (Priest, 2006). Many other governments beside those of the aforementioned countries are parties to several international treaties for the protection of IPR. Some of these treaties include the Berne Convention 1886 (modified in 1971), the Universal Copyright Convention 1951, the Rome Convention 1961, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the WIPO Copyright Treaty (1996) and the WIPO Performances and Copyright Treaty (1996).

As this paper has argued, Nigeria's copyright laws are anachronistic in addressing the problem of digital media and copyright infringement, (Oyesanya, 2013). While there is an obvious need for the amendment of these laws, lessons must be learnt from the given examples of other countries' legislations that have not been able to curb piracy and other copyright infractions. Thus, the mere enactments of stronger laws or legislations do not necessarily solve the problem of piracy nor ensure an equitable balance between the rights of users and that of rights holders. The key problem is that legislation, in trying to keep pace with technological advances, is always reacting to changes rather than anticipating them. It is therefore unable to adequately legislate for the constantly unforeseen changes and new developmental directions occasioned by technological/digital advancement.

COMPLEMENTARY REMUNERATIVE FRAMEWORKS

In attempting to provide more effective solutions to digital media piracy, several surveys have been conducted to ascertain the reasons why people engage in infringement acts. The main reasons given are cost, ease of access, availability, speed, and quality of the product. Users are accustomed to instant and free access to high-quality digital content from the internet at any time. As such, consumption is so common that it has become the norm. Hence, some users see it as acceptable use while others do not even realize that such an activity may be illegal.

The reality is that whether piracy is committed at the individual or large-scale level, the ultimate target is always the individual end-user. An effective method of tackling the piracy problem will be to make legal copies of digital products more attractive than illegal copies. This may be tackled from the angle of cost. Quality, speed, availability, and access to legal copies are determined by cost. By reducing the cost of legal products significantly, end-users will have access to them. However, this will only be effective if other means are devised to adequately compensate rights holders for their intellectual output. Alternative compensatory systems will be useful in this regard.

Some of the systems that are proposed to be included in revised/amended IP laws include the tax-levy system, micropayments, advertisements, subscription-based business models, lock-ins and technical content protection, and live performances:

1. Tax-Levy system

This entails an upfront imposition of tax on goods and services used for file sharing in return for permitting unhindered, non-commercial, peer to peer file sharing. Germany is an example of a country that uses this model (Netanel, 2003). The German Copyright Act of 1965 provides that personal copying is non-infringing, provided that the user pays a levy on the sale of audio and video recording equipment, as well as recording media such as blank tapes and cassettes and copying equipment. This may also be extended to data bundles; that is, a small tax to be placed on data bundles solely for the benefit of copyright owners. This will serve to effectively distribute the burden of cost among those most likely to facilitate file sharing and other infringing activities. Thus, rights holders are duly compensated and many current problems with enforcement are eased (Hall, 2015). The success of this system in reducing online piracy would, among others, hinge on the willingness of copyright holders to reduce costs and improve access to materials as well as address the key factors for infringement (Hall, 2015).

2. Micropayments

Micropayments are small payments made by users for nominal monetary transactions on digital products without the inconvenience of entering payment details on a regular basis (Kuchera, 2008). Micropayments are already being successfully used by the internet gaming system by virtue of Turbine, a technology that enables micro transactions to be made within the downloaded games. Game players can purchase weapons, items of clothing, extra lives, unlock new game levels, etc., for nominal amounts. An important advantage of this model is that it is rid of piracy as the game is provided for free. Users only make voluntary contributions for non-essential extras; yet, the gaming industry has often reported huge

turnovers through micropayments and advertising combined. For example, the online game, Candy Crush reported an annual turnover of \$300 million (Day, 2014). It is suggested that other copyright products like films and music can effectively utilize this model. For example, a film may be provided for free, funded by advertisements, whereupon micropayments are used for extras like cast interviews, deleted scenes, directors' cuts, etc., for extra revenue (Hall, 2015).

3. Advertisements

Advertisements are already being used by different copyright industries like the film, music and gaming industries. Examples of online sites that exist solely on advertisement include Google, YouTube, Facebook, online newspaper sites (e.g. the Guardian online) etc. When used in conjunction with the revenue models already mentioned above, they can constitute a tangible source of remuneration for copyright owners. In order for this model to be successful, there is the need to deter companies from advertising on illegal websites. Imposition of heavy fines on such companies is one deterrent measure that is suggested.

4. Subscription-based revenue models

By this model goods and services are provided to users for a monthly or annual nominal fee. They are thereafter given unlimited access to high-quality digital content. Several copyright industries already use this model, examples of which are the film industry, music and gaming industries. Sites that offer these services include Netflix, Spotify, and Amazon Prime. Spotify for instance provides a free service (subsidized by advertisements) initially for six months. Users are thereafter required to pay £4.99 per month to receive advertisement-free and unlimited access up to 20 million songs. Users who do not wish to pay, continue to experience advertisements, and are restricted to 10 hours of streaming per month (Hall, 2015).

5. Live performances

This is particularly applicable to the music and film industries. According to Hall (2015), "the revenue opportunities being afforded to touring, live performances and merchandising outstrip record sales by some distance". Live concerts continue to grow and have become more popular, as concert lovers often continue to pay to see their favorite artists live, even when they are performing songs not owned by them (Hall, 2015). Live performances thus constitute an important avenue for copyright owners to continue to obtain substantial revenue and, hence, subsidize a cheaper retail value for their recorded material. Live performances also provide good opportunity for advertisement, either on websites selling tickets or at the concert venue.

CONCLUSION

The various revenue models discussed above are proffered as a complementary system to the existing legal framework in Nigeria. It is noted that some of these models are already being utilized in the Nigerian copyright industry. For example, that live concerts are periodically organized by popular Nigerian musicians like WizKidd, Olamide, Davido, Tiwa Savage, etc. Initial viewings of newly released films are now shown in cinema houses before being generally released to the public. However, as shown above, much more than these need to be done to establish a viable complementary/alternative remuneration system for copyright owners. These

systems should be compelled/enabled by law. There is also the need to raise the awareness of content users to the availability of low-cost, good quality digital content and educate them about implications of copyright infringements.

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