

THE NIGERIA LEGAL SYSTEM AND PROTECTION OF MUSICAL WORKS: AN OVERVIEW

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Abstract

Copyright law is aimed at protecting intellectual product of any individual. It is needful that such works must be tangible in its form and not otherwise. In Nigeria, several laws exist that are meant to protect works recognised to be capable of enjoying copyrights. The Copy Right Act, Cap. 68, Laws of the Federation of Nigeria, 1990 as amended by the Copyright Amendment Decree No. 98 of 1992 and the Copyright (Amendment) Decree 1999, is the primary source for protection of Copy Righted works in the country. However, for an average Nigerian, it is no longer news that the nation has well-articulated laws, but very weak enforcement of such laws. This, no doubt is causing untold hardship to the citizenry, particularly as it relates to the entertainment industry. This paper examines the Copy Right Act in Nigeria as it relates to musical works. It examines musical works that are eligible for copy rights, basis for registration and challenges to the enforcement of the law. It concludes with recommendations on how rights of individuals can be protected.

Introduction

Literally copyright seeks to protect the right of an artist in his mental resource.¹ However, for a work to enjoy copy right it must have been reduced to a tangible form.² It ensures that the economic benefit inherent in such works are not illegally tapped into and

enjoyed by anyone who has not been part of such mental productivity. In Nigeria, copyright in a work means that its author has the exclusive right to control certain rights and benefits in respect of the whole or a substantial part of a work, either in its original form or in any form recognisably derived from the original.³ Works that are eligible for protection includes, literary works; musical works; artistic works; cinematograph films; *sound* recordings; and broadcasts.⁴ In the same vein certain works are not eligible to enjoy copy right protection especially in the following circumstances; sufficient effort has been expended on making the work to give it an original character; the work has been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.⁵

Protection of copyrights is not only a municipal law concern as it has some international flavours. Nigeria by virtue of its international law obligation has signed and ratified several international law treatise that protect the copy right of works both within Nigeria and outside of Nigeria. Among these treaties are: the Paris Convention for the Protection of Industrial Property (ratified September 1963), the Berne Convention for the Protection of Literary and Artistic Works (ratified September 1963), the Rome Convention (Performers, Producers of Phonograms and Broadcasting Organizations) (ratified October 1993), the Patent Law Treaty (ratified April 2005), and the Patent Cooperation Treaty (ratified May 2005). Nigeria has also assumed additional responsibilities by virtue of its membership in the World Intellectual Property Organization (May 1993) and the World Trade Organization (January 1995).⁶

Consequently, to be able to enjoy copy right over a work in Nigeria, the following criteria must be met, including but not limited to; persons who are either Nigerian citizens or domiciled in Nigeria; Persons whose works are first published in Nigeria or where it is a sound recording made in Nigeria; Persons who are employed to make a work in the course of their employment; Persons who are commissioned to make a work.⁷

The object of Intellectual Property is to protect a work that has only an abstract existence and therefore cannot be perceived by the senses, unlike a building or a car.⁸ However, like material goods, intellectual creations may be subject to a proprietary right. The Principal object of intellectual property is to ensure consumers a variety of products at the lowest possible price. Intellectual Property law ensures private property rights enabling individual and business outfits to appropriate to themselves the value of the information they produce and encourage them to produce more.

There are two main concepts of intellectual property. These include the moral and economic right of a work. However it is important to note that Copyright is the main aspect of an intellectual property that is the right to protect the work of an author in any circumstance from invasion.⁹

The modern usage of the term *intellectual property* goes back at least as far as 1888 with the founding in Bern of the Swiss Federal Office for Intellectual Property (the *Bureau fédéral de la propriété intellectuelle*). When the administrative secretariats established by the Paris Convention (1883) and the Berne Convention

(1886) merged in 1893, and adopted the term intellectual property in their new combined title.¹⁰

Musical Works in Nigeria

Historically, in Nigeria, the institution of praise- singing and historical chant and the role of the praise - singer have normative values but the rise of economic flavour to musical works in the country call for greater protection.¹¹The Nigeria music industry over the years has grown in leaps and bounds. Afro Juju, Highlife, Hip Pop, R & B, Folk music's are few examples of various works that grace the Nigerian society. Human beings everywhere demand the realization of diverse values or capabilities to ensure their individual and collective well-being.¹²

That musical works are a bundle of intellectual activity is not in doubt. The factors that shape the tradition include variations, which spring from the creative impulse of the individual or the group.¹³ Consequently, it is deducible that musical works enjoy copy right protection in Nigeria. In addition, it is noteworthy that the quality of a music work does not form a condition precedent to such works enjoying copyright.

Protecting Musical Works in Nigeria- Challenges

A musical work is defined as any musical composition irrespective of musical quality and includes work composed for musical accompaniment.¹⁴ The Copyright Act does not necessarily; require

writing or other graphic presentation, so the above definition would have to be fixed in a definite medium of expression. A song will have two copyrights: one in the music and one in the words of the song, the latter being a literary work. The work must be reduced in writing or otherwise, the Copyright, Designs and Patents Act 1988, the UK version of the Act gives no guidance as to what a musical work is.¹⁵ As already stated, a work must be complete before it can enjoy protection. Thus, where it is incomplete it may not enjoy copy right. For instance it has been held that a defendant who had completed the writing of the song in his head and put the song into a permanent form when the group made the first 'demo' tape of the song in the recording studio owns the copyright even though the songs was not completed yet.¹⁶

Musical works also enjoy copyright before it could be publicly performed. Public performance means that a musician or group who is not the copyright holder is performing a piece of music live, as opposed to the playback of a pre-recorded song. Performances are considered "public" if they take place in a public place and the audience is outside of a normal circle of friends and family, including concerts, nightclubs, restaurants etc. Public performance also includes broadcast and cable television, radio, and any other transmitted performance of a live song. Permission to publicly perform a song must be obtained from the copyright holder or a collective rights organization.¹⁷

Copyright protection in Nigeria is regulated by the Nigerian Copyright Commission (NCC). However, the Copyright Society of Nigeria remains the only government approved copyright management organisation for musical works and sound recordings.¹⁸ COSON among severally statutory obligations has an obligation to undertake

collective management of rights in musical works and sound recordings by issuing licences for public performance of musical works geared towards economic gains. In addition, the commission handles issues of royalties for public use of works and sound recordings by both organisations and individuals.¹⁹ As already mentioned in the paper, the policy position of Nigeria is highly appreciated especially in terms its excellence. However, the implementations remain a grey area and major concern to both the players in the music industry and the country at large.

Challenges to Production of Musical Works

Several factors indeed are major challenges affecting the effective implementation of the copyright regime under the Nigerian Legal System. Prime among the factors is non-consultation and lack of awareness by the public. The Nigerian Copyright Act was adopted in 1988 at the height of military rule in Nigeria without any debate or discussion. Essentially, the Copyright Act, the primary legislative tool for copyright protection in Nigeria today, was adopted without broad-based public discussion on the necessity for copyright protection or the scope of protection that was desirable contrary to paragraph 9 of the Adelphi Charter on Creativity, Innovation and Intellectual Property which states that in making decisions about intellectual property laws, "there should be wide public consultation."²⁰

Inadequate cost-benefit analysis is the second factor identified as militating against copyrights law. An effective intellectual property regime must strike an appropriate balance between the monopoly powers of creators and the interest of the consuming public. In developed countries, the adoption of intellectual

property laws is usually preceded by a detailed analysis of the cost and benefits of protection. Indeed, paragraph 2 of the Adelphi Charter states that "the public interest requires a balance between the public domain and private rights.

It also requires a balance between the free competition that is essential for economic vitality and the monopoly rights granted by intellectual property laws. "Sadly, laws in Nigeria are frequently passed without serious attention to the direct and indirect cost of a proposed legislation. There is need for serious economic assessment of the costs and benefits of copyright protection in Nigeria.²¹ Majority of Music work producers never benefit economically from their works due to the activities of piracy by the general public who do not appreciate the pace of copy right. Importantly, economic benefit between the consuming public and performing musician is still not yet well conceptualised under the Nigeria Legal System. The third factor is lack of public awareness. There is little public awareness or understanding of the intellectual property laws in the country. Existing laws are not readily accessible even to the educated class. The average man on the street is also ignorant of touted benefits of intellectual property protection. The Nigerian copyright commission admits that lack of awareness about the laws and administration of copyright constitutes "a major inhibition to the development of a sound copyright system in Nigeria." Meaningful public education at the grassroots level must form a critical component of intellectual property enforcement in Nigeria.²²

Another factor is corruption and weak custom enforcement. Attention must also be paid to the effect of corruption on intellectual property enforcement in Nigeria. Responsible agencies are rarely, if ever, audited or probed. There is need for accountability on the part of agencies challenged with the task of enforcing the country's

intellectual property laws. For example, Nigerian ports are the principal gateways through which pirated imports come into the country and pirated exports leave.²³ What has been the record of the Nigerian Custom Services in terms of interdiction? How does bribery and corruption undermine the enforcement capacity of the Nigerian Custom Service or the police?²⁴ An analysis of the performance of these agencies is important though beyond the scope of the paper

Generally, the slow pace of the judicial mechanism under the Nigeria Legal System remains a major concern in the quest of the judiciary attaining both independence and efficient statutes.²⁵ Consequently, delays occasioned by numerous adjournments of cases on every flimsy excuse kills the quests for justice by Musicians whose copy right are infringed upon. Premised on the above is the impact of poverty and economic hardship. In most situations the violators are large corporations with strong economic base and subjecting the artiste to economic loss. In most circumstances other major players blacklist sponsorship and production of any out spoken individual bold to challenge the violation of his rights.

Life Span of Copy Right Works in Nigeria

In countries party to the *Berne Convention*, and in many other countries, the duration of copyright provided for by national law is as a general rule the life of the author plus not less than 50 years after his death. The *Berne Convention* also establishes periods of protection for works such as anonymous, posthumous and cinematographic works, where it is not possible to base duration on the life of an individual author. There is a trend in a number of countries toward lengthening the duration of copyright. The European Union, the United States of

America and several others have extended the term of copyright to 70 years after the death of the author.²⁶ The rules for determining the duration of copyright depends on the nature of the work in question, but as a rule of thumb, copyright lasts for the life of the author plus 70 years for literary, dramatic, musical and artistic work, at least 50 years for sound recording, 50 years for broadcast. The owner of the copyright in a work may decide to exploit the work by the use of one or more contractual methods. He may however grant a license to allow another person to carry out certain acts in relation to the work, such as making copies. This notwithstanding, he still retains the ownership of the work. He could also transfer the ownership of the work to another by relinquishing the economic right in the work.

Remedies

When a copyright in a work is breached in Nigeria, the musician has certain remedies available to restore parity in his economic loss. Some of the rights include the *autonpillerorder*,²⁷ *marievain junctions*- this remedy finds expression in the case of *Mareva Compania Naviera SA v. International Bulk Carriers SA*,²⁸ *Interim Injunctions*,²⁹ and accounts of profits.³⁰ Section 15 (3) of the Copyrights Act, 1990 provides for claims of damages. Other discretionary remedies also exist³¹ and may avail the copyright owner depending on the circumstance of each case.

Conclusions

It is concluded that under the Nigeria Legal System, the copyright dispensation finds a firm footing. The challenges are not in the law

rather in implementation. Nigeria has ratified several international treaties aimed at protecting copyright of music works in Nigeria. It is to be noted that making a new performing edition of an incomplete old work of music out of copyright may itself be worthy of copyright protection even if few or no new notes are added.³² To effectively protect creative works generated by the entertainment industry, the government must address the widely held belief that intellectual property protection is a Western concept irrelevant in Africa. Debate about whether and to what extent Nigerian artists and musicians deserve copyright protection must be divorced from the broader debate about the merits and demerits of global strengthening of IP rights. The government must also seriously address the numerous factors that undermine effective enforcement of laws in the country including corruption, lack of coordination among the responsible agencies, lack of accountability, and lack of resources. However, for enforcement to make sense and be effective, the underlying law must be appropriate, balanced, understood by the general public, and a product of broad-based debate and participation.³³

Conclusively, musical works despite its quality but meeting the standards already enumerated by the Nigerian Copy Right Act has an inherent copy right protection. In addition, performing rights are the rights to perform music in Nigeria. Where this performance belongs to a different individual other the performer royalties are payable to such artiste in whom the copyright resides. Nigeria's largest copyright owner, the Musical Copyright Society Nigeria (MCSN) is determined to partner with producers and distributors at the popular Alaba international market to get rid of the notorious 'haven of counterfeiting and pirates' tag it had endured over the years.

Hopefully, by educating and licensing producers and distributors with genuine interest in the protection of copyright.³⁴

Recommendations

Nigeria can be a better a place only and only if the authorities concerned could take responsibility as to effectively enforce the already existing laws. When this is done, the country will be a safe haven for people who have been endowed with high intellect to display their wisdom in moving the country forward.

A synergy between music producers and the Nigeria Bar Association should be encouraged. It remains disappointing that Intellectual Property remains a grey area in the study of law in Nigeria at all levels. It would therefore be a welcomed development if specific continuing legal education is put in place for Legal practitioners, students and stakeholders in music and entertainment industry. The role of the enforcement agencies must also be reviewed to ensure greater efficiency. Cooperation between the Nigerian customs and the Nigeria Police must find a high thrust to ensure the restoration of dignity and integrity for better performance. Finally, the Nigeria populace must embrace the realities of the importance of protecting the economic interest of copyrighted music works by ensuring they do not encourage piracy and also reporting suspected activities to the relevant authorities.

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