

JOURNAL OF PUBLIC & PRIVATE LAW

**Department of Public & Private Law
Faculty of Law
Nnamdi Azikiwe University
Awka.**

Cited as (2011) JPPL, Volume 4,
August, 2011.

A publication of the Department of Public & Private Law
Faculty of Law, Nnamdi Azikiwe University Awka, Anambra State.

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EDITOR'S COMMENT

In keeping with the vision of sustainable academic advancement and visibility in one of the fastest growing Universities in Black Africa, Department of Public and Private Law of Nnamdi Azikiwe University, Awka is out with yet another fascinating edition of her Journal.

I, as the Editor-in-Chief, sincerely appreciate my colleagues in the department who made this work possible through support and contributions. I appreciate highly the members of the Editorial Board for their suggestions, corrections and comments.

Manuscripts may be submitted for consideration in duplicate hard copies, double-spaced on A4 size paper and in footnotes numbered serially. In addition, a computer disc (CD) copy should be forwarded. Articles must revolve on public and private law.

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We sincerely hope that you find the contributions in this edition illuminating, interesting and scholarly.

Dame Dr. Carol-Arinze Umobi
Editor-in-Chief

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Copyright Law and the Promotion of Film Industry in Nigeria: A Critique

Abstract

Creativity requires ingenuity. Creativity is the art of putting into existence through imagination what has not been in existence. Bryan Garner defines creativity as "the degree to which a work displays imaginativeness beyond what a person of very ordinary talents might create"¹ " The art of creating is very difficult and tasking, but the creator becomes satisfied at the end of the creative process. Every work of creativity gladdens the creator. Artists and dramatists keep creating artistic works on daily bases, and are perpetually robbed of their intellectual products also on daily bases. This act of robbing another of his/her intellectual product or creativity is referred to as piracy. Therefore, there is need for creative artists to be aware of how to safeguard their intellectual products or creative works from being pirated.

Introduction

The film or movie industry is not left out in this strive towards safeguarding creative works because they are immensely affected. This work will look at the importance of intellectual property and copyright law administration towards the promotion of film industry in Nigeria. Hence, this paper is saddled with the problem of identifying how copyright law can be effectively administered for the promotion of the Nigerian film industry. It is also concerned with looking at copyright laws with the view to identifying those laws that are effective or otherwise in the combat of this menace of piracy in film industry in Nigeria. Therefore, the paper poses some questions, which inter-alia are; will the effective application of intellectual property (copyright) law on intellectual products and creative works see to the growth and promotion of the film industry in Nigeria? Are the copyright laws as already provided by the relevant statutes in Nigeria federation effective enough to curb piracy and promote the film industry in Nigeria? With these questions, a study into the nature and implementation of copyright law in Nigeria becomes imperative. This paper therefore queries the Copyright Act, its implementation, effectiveness or otherwise towards the growth of Nigerian film industry.

Intellectual Property and Copyright

Intellectual properties are those rights and laws protecting the original creation 'Of an inventor creator, which he/she (the inventor or creator) must have bonafide rights and claims to in order to avoid unauthorized usage of such invention or creation by another.

Thus, intellectual property can be defined as a product of the intellect that has commercial value, including copyright property such as literacy or artistic works and ideational property, such as patent, appellations or origins, business methods and industrial process.

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¹ Bryan, A; Garner, Blacks Law Dictionary (ed) Thompson West Publishing, U.S.A, 2004 P.395

Furthermore, intellectual property according to Garner could be seen as "a category of intangible rights protecting commercial valuable products of the human intellect"²

Copyright is one of the forms of intellectual property, which provides protection for literary, artistic, dramatic or musical works, performance, sound recording and broadcasting. Copyright allows the artist creator to embark on legal action whenever there is a misuse or unauthorized usage of their intellectual product creativity. Thus, it becomes clear that copyright is the exclusive right conferred by law, which enables the author or owner of a work to control the use and dissemination of that work as well as maximizing profit. In the words of Sola Williams:

In the case of film, the law through copyright grants the film maker property right which he may hold, control and dispense with, as he deems fit. The expectation is that by granting such rights to authors, they are encouraged further to create more works for the benefit of the society³

Piracy and the Film Industry

Piracy is the unauthorized or stealing of another's intellectual product for the sole aim of making commercial gains. According to Hon. Justice T.A. Odunowo, "piracy is the unauthorized commercial reproduction of authors works"⁴. Odunowo also defines bootlegging as "the unauthorized recording and reproduction of recordings of live concerts without the permission of the artist concerned"⁵.

To pirate is to steal and stealing is a crime punishable by the law. The act of pirating may instigate criminal or civil actions against the pirate depending on the nature of the piracy. Piracy in the creative industry is seen as any infringement of copyright and performer's rights as stipulated in the copyright act. According to the Act copyright is violated by any person who without the licence or authorization of the owner of copyright.

- (a) Does, or causes any other person to do an act, the doing of which is controlled by copyright;
- (b) Imports or causes to be imported into Nigeria any copy of a work which, if it had been made in Nigeria, would be an infringing copy under this section of this Act;
- (c) Exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this subsection;
- (d) Distributes by way of trade, offers for sale, hire or otherwise for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a) of this subsection;
- (e) Makes or has in his possession plates, master tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work;

² Bryan A. Garner, *Ibid*

³ S. Williams, *Copyright in Cine Film in Transition from video to Celuloid* (ed) H. Ekwuazi, et al, National Film Institute Jos, 2001, pp. 286

⁴ T.A Odunawo, "Nigeria Copyright Law, A Judicial Overview", *A Decade of Copyright Law in Nigeria* (ed) J. Asien & E. Nwauche, Nigerian Copyright Commission, 2002, pp 54 65.

⁵ *Ibid*.

- (f) Permits a place of public entertainment or of business to be used for a performance in the public of the Work, where the performance constitutes an infringement of the copyright in the Work, unless the person permitting the place to be so used Was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;
- (g) Performs or causes to be performed, for the purposes of trade or business or as supporting facility to trade or business, any work in which copyright subsists⁶

The Copyright Act also provides the performer's rights, which infringement is also, an act of piracy. In line with the provisions of the Act, a performer's right is infringed upon by a person who, without the performer's consent or authorization in writing does any of the following

- (a) Makes a recording of the whole or substantial part of a live performance, provided that, where the consent sought is to make a recording of 'the work for research, private or domestic use, such consent shall not be unreasonably refused;
- (b) Broadcast live, Or includes live in a cable programme, the whole or a substantial part of live performance;
- (c) Performs in the public the whole or a substantial part of the performance;
- (d) Shows or plays in public the whole or a substantial part of the performance for commercial purposes;
- (e) Broadcasts, or includes in a cable programme, a substantial part of the performance by means of recording which is, and which that persons knows or has reason to believe Was made, without the performers consent.
- (f) Imports into the country otherwise than for his private or domestic use, a recording of a performance which is an infringing recording; or
- (g) In the course of trade or business, sells or lets for hire, offers, distributes or displays for sale or hire, a recording of a performer's work, which is an infringing recording.⁷

Effects of Piracy on the Nigerian Film Industry

Piracy is an illegal act, which has eaten deep into the Nigerian film industry. Its effect has resulted in the frequent production of films that are not of the expected standard,

This has occasioned the fact that the investors who put in their finance into this industry have no other option than to invest lowly, or not much as expected because piracy does not create for them (investors) the enabling commercial ground to recover even their invested capital, how much more of making profits.

⁶ Copyright Act, Cap C-28, Laws of the Federation of Nigeria, p.9 2004

⁷

Piracy greatly affects the artists in such a way that their products sell widely in and out of the country, but the artists are left with nothing to feed 'on, while 'pirates make huge amount of money from these artists' creativity. The effect of piracy on the Nigerian film industry has led to the frequent and massive production of film on weekly or daily basis. The more films these marketers, producers and artists produce, the more money they make before pirates intervene. Thus, quality is overlooked. This is unlike their Western counterparts where creative works are subjected to all the needed professional attention before they become' commercially worthy, such as enough time for editing, visual appreciation, costumes and make-ups, lighting and sound effect and many other professional factors, and where marketers, producers and artists still collect their remuneration even after their death.

Piracy has greatly enthroned detraction of foreign investors from either partnering or investing into the movie industry, knowing fully that there is nothing to gain, Thus, this business image does not speak well of Nigeria. Pirating movies has led to the colossal loss of government revenues (tax). Pirates now earn these revenues, which ordinarily 'would have gone into the purse of the government. It has greatly affected the quality of what is being given out to the public. Pirates often offer fake copies of motion pictures to the public. Pirated copies do not last long because of their inferior quality,

Copyright Law and the Nigerian Film Industry

Copyright is a right statutorily endowed on the author or creator of a work eligible for protection. One who writes a new song or story, creates motion pictures or sound recordings that are original in content is creative and thus, he is protected by the law of copyright. Copyright in the words of

Obatosun Ogunkeye;

Is the exclusive right given under the law to the owner of copyright to control the production of the work which is subject of copyright⁸.

According to Mozley and Whiteley's Law Dictionary as cited by Olueze:

Copyright in relation to an original literary, dramatic or musical or work is the exclusive right to do, or to authorize other persons to do, certain acts in relation to that work. Such acts include, reproducing the work in any material form, publishing it, or making any adaptation of it...⁹

These copyright laws and rights exist in Nigeria today, under the Copyright Acts of 1912, 1970, 1988, 1990, 2004. Under the law, protection of copyright is limited to literary works, musical works, artistic works, cinematograph films, sound recording and broadcasts.

⁸ O. Ogunkeye, "Legal Remedies for Infringement of Copyright", *Essays on Copyright Law and Administration in Nigeria*. Ed. E. Uvieghara. Ibadan: Y-Books, 1992, p.1 02

⁹ M. I. Olueze, "Nigerian Copyright Law", Lagos: Magna Press Ltd. 1998.

The Nigerian Copyright Acts 2004, stipulates clearly, works that are eligible for copyright, the general nature of copyright, first ownership of copyright, right to claim of authorship, infringement and actions for infringement of copyright. By these provisions, the Nigerian film industry would be said to be properly safeguarded under the law. But the necessitating question would be, to what extent are these copyright laws enforced in Nigeria? Despite the fact that the Copyright Act protects the Nigerian film industry, the industry still languishes in financial ruin as a result of piracy.

Infringement of Copyright viewed through Cases

A copyright owner has the legal right to institute civil actions against any form of infringement. This he/she does by making sure that section 43 of the Copyright Act is complied with.

The said section provides that in any action for an infringement of copyright in a work, the following shall be presumed, in the absence of any evidence to the contrary:-

- (a) that copyright subsists in a work which is the subject matter of an alleged infringement;
- (b) That the plaintiff is the owner of copyright in the work;
- (c) That the name appearing on a work purporting to be the name of the author, is the name of such author;
- (d) That the name appearing on a work purporting to be the publisher or producer of a work is the name of such publisher or producer;
- (e) where the author is dead, that the work is an original work; (f) That it was published or produced at the place;
- (f) And on the date appearing on the work;

In the Masterpiece Investments Ltd & Anor vs. Worldwide Business Media Limited & Ors¹⁰ the evidence before the court was that sometime in 1989 one of the plaintiff's clients commissioned them to do a write-up on the image of companies known as the Edison Group of Companies. The Plaintiffs published the article in the Business Magazine owned by the defendants. A few months later, however, another article on the image of the third defendant, Ugochukwu & Sons Ltd. appeared in the same Business Magazine. The two articles contained a lot of similarities and it was quite obvious that the contents of the second write-up were copied mainly from the write-up on the image of the plaintiffs client company. When efforts by the plaintiff to seek redress from the defendants yielded no positive results the plaintiffs took this action against the defendants. The court held that the write-up by the plaintiffs in the business magazine was a literary work. *Odunowo J.*, said:

Before dealing with the question of liability, it is desirable to determine if the article in question is entitled to copyright protection. There is no doubt in my own mind that the said article is a literary work which is eligible for copyright under section 1 of the Copyright Act 1988, as amended in 1992.

¹⁰ (1997) FHCL, 496

The uncontradicted evidence adduced before me is that the original article which is in permanent form ... shows that sufficient effort has been put into the work to give it its original character. Consequently within the purview of the Copyright Laws, Exhibit D clearly enjoys , copyright protection and ownership in this work rests in the plaintiff...”

The learned Judge then went on to consider if there has been an infringement of the literary work. He said:

The next issue to be determined is whether there was an infringement. ... Detailed analysis of both publications reveals the following facts. Apart from the fact that the subtitles in Exhibit E are written in small letters as opposed to capital letters used in Exhibit D, twenty-seven (27) of the words used in the defendant's introduction are the exact words used by the plaintiffs in their own introduction containing thirty (30) words in all, which gives a result of 90% copying And so far as the conclusion is concerned, the wordings in both exhibits are exactly the same, the only minor difference being the use of pronouns. Consequently, the suggestion by Mr. Idige that the similarities in the words adopted are mere coincidence does not sound credible or convincing. Hence I am fully satisfied that the plaintiffs work has been infringed.

The court awarded general, special and exemplary damages totaling N600,000.00 (six hundred thousand Naira) in favour of the plaintiffs.

Also in **Adenuga vs. Ilesanmi Press**¹¹ the court held that where the respondent publishes a book and sells copies to the members of the public he will be held to have infringed the copyright of the appellant unless he can show that he has the appellant's licence to do so. Also where the infringement of the copyright revolved on cinematography the court made pronouncement in the case of **American Motion Picture Export Co (Nigeria Ltd) v. Minnesota (Nigeria) Limited**¹².

Here the main issue was not whether the defendant was liable for the infringement of copyright in the cinematograph film but whether he could be held so liable if the infringement had been committed by his employee in the course of his employment. The learned judge, Ekikunarn-Basse, J. referred with approval to Halsbury and held that a master will be held liable for any infringement of copyright committed by his employee in the course of his employment and it is not a defence that he must have given a general warning 'or prohibition against the doing of the acts which might amount to an infringement.

In **Island Records Ltd & Ors vs, Pandum Technical Sales & Services Ltd & Anor**¹³, infringement of copyright of a sound recording was in issue.

¹¹ (1991) 5NWLR. 82

¹² (1981) FHCL 64

¹³ (1993) FHCL 318

The court held that for an infringement of copyright to take place, there must be a copy amounting to a theft of the work created by an author or of one who records or owns the record at the time of recording as chronicled by Babafemi¹⁴ Justice Belgore J. (as he then was) stated *inta-alia*:

In the instant case the failure of the plaintiffs to show any evidence of any photograph or other artistic works involved as claimed and to give evidence of when any of the sound tapes were first made to determine whether they are within infringement period limit and also failure to lead evidence of registration of any of the rights in Nigeria is fatal to the plaintiff's case.

It is also important to note that section 16 (3) of the Copyright Act maintains that "*where in action for infringement of copyright it is proved or admitted that an infringement was committed but that at the time of the infringement the defendant was not aware and had no reasonable grounds/or suspecting that the plaintiff will not be entitled to any damages against the defendant in respect of the infringement, but will be entitled to an account of profits in respect of the infringement whether or not any other reliefs is granted under the section*".

To the Nigerian film industry, there is a complete copyright violation unmindful of the provisions of the copyright Act. This means that the Nigerian environment is permissible to piracy. Copyright laws are loosely enforced in Nigeria and this has paved way for its continuation and sustenance. Amaka Igwe in affirmative posits that:

Similarly, the practitioner has to operate in an environment where copyright violation is tacitly overlooked, even condoned. It has come to be that making and selling video films in Nigeria presents the same difficult as carrying water in a basket full of hole! Everyone looses.¹⁵

A typical example of copyright violation in Nigeria is the incessant reproduction, selling and renting of motion picture (films) on every nooks and crannies of Nigeria and yet, almost every Nigerian glorifies these acts, while copyright owners wall.

Even though the Nigerian Copyright Act establishes a Nigerian copyright commission whose responsibility is to see to all matters affecting copyright in Nigeria as provided for in copyright Act, it is still imagination beaten as these rights are perpetually violated and not enforced effectively. The Nigerian Copyright Act posits that the Nigerian Copyright Commission is charged with the responsibility of monitoring and supervising, advising and regulating, enlightening and informing the public on matters relating to copyright. In fact, the commission is charged with the responsibility of seeing to all matters, affecting copyright in Nigeria. But the question is, how effective is the Nigerian Copyright Commission in discharging their duties to the film industry?

¹⁴ F.O. Babafemi, Intellectual Property, the Law and Practice, Justinian Books Ltd, Ibadan: 2006, p. 71

¹⁵ Amaka, Igwe "Copyright and the Movie Industry", A Decade of Copyright Law in Nigeria. (ed) J. Asien and E. Nwauche. Abuja: Nigerian Copyright Commission, 2002, p 37

Is it that the commission's personnel is not enough?, or, is it that there is not adequate funding from government for the effective discharge of the commission's duty? These questions arise because the Nigerian Copyright Commission seems to be passive and is in a state of comatose in piracy combat.

It is obvious that the law has provided for the interest of movie tight owners in Nigeria, but of what use are these laws when they are not implemented. Thus, A.F. Faeji is of the view that;

No matter how perfect a piece of legislation is, if its provisions are not positively obeyed, and the affected beneficiaries of the legislation do not seek to redress their rights, whenever violated, the situation will not be any different from that of a lawless society. ¹⁶

Conclusions

In summary, this study has found out that if copyright laws are effectively and strictly adhered to with all citizens of this country being properly intimated on the economic and legal implications of copyright violation, and with every measure against copyright violations put in place, then, the film industry will blossom and creators and inventors will be satisfied.

Administration of copyright laws will see to the eradication of works that portend mediocrity. This is because the investors will be willing to invest a huge sum of money into the industry knowing fully that their profits are assured. The administration of copyright law will also see to the alleviation of poverty amongst the artists.

If the Nigerian film industry is devoid of all act of piracy, foreign investors would be glad to either: invest or partner with already existing investors in the industry, thereby creating a friendly and enabling business ground and at the same time promoting the Nigerian film industry. Adherence to aid effective implementation of Copy Right Laws in Nigeria is sine-qua-non.

Recommendations

Future Directions in Copyright Administration

A look at the 2004 Copyright Act of the Laws of the Federation of Nigeria shows that there is an attempt on the legislative part to provide adequate piece of legislation. This Copyright Act stipulates clearly the general nature of copyright, assignment and licence, action for infringement, criminal liability, anti piracy measures, order for inspection and seizure, establishment of Nigeria Copyright Commission, copyright inspectors, collecting society and so on. Nevertheless, there are few inadequacies in these stipulations. .

¹⁶ A. F. Faeji, "Copyright and the Music Industry", A Decade of Copyright Law in Nigeria (ed). Up.cit, p. 42

In the area of punishment to be meted out on copyright violators, heavier imposition of fine and longer jail terms should be adequate. The Copyright Act stipulates that any who sells, rents, hires or offers for sale any work which by the approval of Copyright Commission has copyright subsisting on, shall on conviction pay a fine not exceeding N 100,000 or imprisonment for a term not exceeding twelve months or to both such fine and imprisonment. By this, copyright violators will keep on with their acts since they can make millions of money from another's intellectual product and when caught they will only pay a fine not even up to N100,000 (one hundred thousand Naira) and a jail term that is not up to twelve months. There should a review that can deter violators.

The review should make the fines heavier and the jail term longer, or else violators will keep perpetuating this act. Measures to be taken in order to enforce copyright laws should include strict adherence to the anti piracy measures as stipulated in the Copyright Act of Nigeria. Copyright owners should always embark on legal action once a violation of their copyright is perpetuated. The court should also handle copyright cases expeditiously, giving it the necessary legal seriousness it requires.

A radical step should be taken by declaring a total war against piracy through the rampaging and clamping down of all pirates by the police in all nooks and crannies of Nigeria. The Nigerian Copyright Commission should be more effective in their strive for eradication of piracy. There should be proper funding of the commission by both government and stakeholders in the film industry since they are affected. The commission should also set up many collecting societies that will aid them in their job.

There should be an intense and continuous sensitization of the masses on all issues concerning copyright in order to create awareness on dangers involved. The sensitization should be done through seminars, print, electronic media etc. The price of films should be minimal in such a way that everybody can afford to buy a copy. This will partly see to the eradication of unauthorized film renting and hiring. Artist, dramatist and movie practitioners should always register their works under the Nigerian Copyright Commission to enable them embark on legal action once there is an infringement of their copyright.