

ALL YOU NEED TO KNOW ABOUT COPYRIGHT INFRINGEMENT

Copyright is a form of intellectual property that gives ownership to the author of tangible intellectual property works. It grants the author an exclusive right to reproduce, publish, sell, or distribute literary, musical, or artistic work and protects such work from unauthorized use. Copyright does not protect an abstract idea. The idea needs to be put down either in writing or on tape, even if it is not published. This is because publication of a work is not required for it to have copyright protection. The ease with which content may be shared and distributed in the digital era has resulted in a rise in copyright violations. Copyright laws support innovation and serve to protect intellectual property, and since it is so simple to come up with an idea, all creators ought to be aware of copyright enforcement measures.

Copyright Protection in Nigeria

In Nigeria, copyright is granted when an author who is an individual citizen, corporate body, or resident in Nigeria or any member country of an international treaty or agreement publishes a work first in Nigeria or another member country. The creator of a copyrighted work is an "author," and copyright grants exclusive rights to original works, protecting the author's rights over their work. An author can transfer rights to a third party, such as heirs or successors, through an assignment, testamentary deposition, or by operation of law, who then becomes the "owner" of the copyright. Copyright can also be granted on a work made by multiple people, although the person who initiated or directed the idea for creation has the copyright while the other owners are granted the right to exploit

the work independently. An author's rights under copyright are categorized into two: moral rights and economic rights. Moral rights enable an author to claim authorship for a work and object to any distortion of the work. Moral rights are sub-categorized into the right of integrity and the right of attribution. The author's moral right gives the author the entitlement to claim ownership of the work and acknowledge authorship, object and seek relief where there are alterations or other derogatory actions concerning the work, determine the condition for the commercial use of the work to a third party, and share in proceeds of the sale of the work.

Moral rights can only be transferred by testamentary disposition or operation of law. An author's moral rights are preserved even after death and may be enforced by the owners of the copyright, provided the copyright has not expired. Economic rights protect the profits generated from the use of an author's work by others. Economic rights can be transferred for free, for a price, or for royalties and it includes the right to reproduction, the right to authorize distribution, the right to rental, the right to public performance and broadcasting, the right to communication with the public and the right to transactions and adaptation. Copyright protection is territorial and it is subject to the law of the country in which the use or infringement occurs. To acquire copyright protection in a particular country, an author will have to register the work in that country, so if an author seeks protection in multiple countries, an application will be made to each country in which the author seeks protection. Copyright protects the owners of an original work and restricts unlicensed persons from reproducing, performing, or publishing the work in any form, making or including the work in any cinematography, making copies or adaptations of the work, and distributing

the work to the public for commercial purposes. It does not however restrict the use of copyrighted work for research, private use, criticism, or review of current events provided the work and authorship is acknowledged, the making of any work into parody or caricature, the inclusion of artistic work in a film, reproduction, and distribution of copies of the artistic work to the public or the incidental inclusion of the artistic work in a film or broadcast. Copyright protection continues for 70 years after the author's death year for literary and artistic works and 50 years for other works.

Copyright Infringement

Copyright infringement occurs when an unauthorized person infringes the rights of an owner. It is the statutory breach of duty owed to the owner arising from the unauthorized use, reproduction, distribution, or display of copyrighted material. Common types of copyright infringement include digital piracy, plagiarism, and unauthorized distribution. By virtue of section 36(a) – (g) of the Copyright Act, 2022, an infringement of copyright occurs when a person without authorization from the copyright owner executes an act that violates the rights of an author; imports a copy of a work to Nigeria, which would be an infringing copy if it was made in Nigeria; Sell, offer to sell or hire that violates copyright; makes or possesses machines for the sole purpose of making infringing copies; produces or has in possession equipment to produce infringed copies of a copyrighted work; permits a public place of entertainment to be used to perform an infringed work; performs for trade purposes any work in which copyright subsists.

Overview of copyright Laws and International Copyright Treaties Governing Copyright in Nigeria:

Before a work can be registered as copyright, it must be an original work and must not contravene any law regulating copyright in Nigeria or the international treaties to which Nigeria is a contracting party. Works eligible for Copyright in Nigeria are literary works, musical works, artistic works, audiovisual works, sound recordings, and broadcasts.

The primary law protecting copyright in Nigeria is the Copyright Act of 2022 (“The Act”). The Act establishes the Nigerian Copyright Commission (“The Commission”). The Commission handles copyright applications and approves copyright registration. To register a work, an application is made to the Commission, usually through its website. There is also a voluntary copyright registration scheme that enables authors and copyright owners to notify the Commission when a work is created or that it exists, enabling the Commission to maintain its records. The Commission allows for one work per application for registration; if an author intends to register multiple works, they will be registered as a collection in one application and have one title. For example, a music album containing multiple songs should be in one application, and upon registration, it will be registered as a collection with one title. Although the Copyright Act is the main legislation governing copyright in Nigeria, there are other regulations issued to regulate other activities relating to the different aspects of copyrighted works. These regulations include: The Copyright (Optical Discs Plants) Regulations, 2006, Copyright (Collective Management Organizations) Regulations, 2007 and the Copyright (Levy on Materials) Order, 2012.

Upon registration, a copyrighted work is published by the commission, making all information provided during copyright registration public and available on the internet. A copyright inspector is also appointed by the Commission to monitor, report, or enforce the copyright Act.

Other than the national laws, the two main international conventions for copyright protection in Nigeria are the Berne Convention for the Protection of Literary and Artistic Works (1886) and the Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 (TRIPs). The Berne Convention eases international copyright protection by eliminating the need for additional formalities amongst member countries to qualify for mutual protection. Once a work is registered in a contracting country, it is automatically protected in other contracting countries. However, some countries require further formalities to protect copyright of works registered internationally by their citizens only. TRIPs is a recent agreement that addresses copyrights relating to new technologies. It is for the trade aspect of intellectual property. Although it references the Berne Convention, it only provides for economic rights because moral rights are not regarded as a trade aspect of intellectual property. TRIPs agreement contains additional protection for new types of creations that are protected as works of computer programs, original databases and new forms of exploitation. Apart from these two major treaties, Nigeria is also a signatory to other international copyright treaties such as: World Intellectual Property Organization Copyright Treaty for the Protection of Literary and Artistic Works, 1995, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled 2013, Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations 1961,

Beijing Treaty on Audiovisual Performance, 2012, and World Intellectual Property Organization Performances and Phonograms Treaty, 1996.

Enforcement of Copyright in Nigeria

Once an infringement occurs, copyright owners can enforce their rights by tackling the infringement. An author is entitled to an award of damages, an injunction, or other remedies, depending on the situation. Although enforcement actions are usually brought as civil cases, copyright infringement is also a criminal offence, and an infringer may be subject to criminal liability. Notwithstanding, an enforcement may be brought through civil and criminal proceedings simultaneously. An infringement action can be brought only by specific people; lawsuits against copyright offenders can only be brought by the copyright owner or an authorized person. Where the copyright is jointly owned, one person may file a lawsuit with permission from the court or include the co-owner as a co - Plaintiff. However, a person who negotiates, grants licenses, collects and distributes royalties of copyrighted works, or represents more than fifty copyright owners in any category of works cannot commence an infringement action, except such a person operates as a collecting society or is exempted by the Commission. Where a lawsuit is brought by the copyright owner or an exclusive licensee regarding an infringement action of which they both have concurrent rights, the instituting party may proceed with the action alone if the court permits or join others as a party. The infringer must be aware that the work was protected by copyright at the time of the infringement before the owner brings an infringement claim. If the infringer proves to be unaware during the trial, the plaintiff will be entitled to an account of profits from the infringement. Pursuant

to section 44 of the Copyright Act, a person can be subject to criminal liability for infringement of copyright where he does any of the following:

- a. makes an infringing copy of a copyrighted work for business purposes.
- b. importing into Nigeria a copy of any work that, if made in Nigeria, would be an infringing copy.
- c. possesses equipment used for producing infringing copies of any work.
- d. possesses, exposes, distributes or offers for sale an infringing copy of a work which is copyrighted for business purposes and, if made in Nigeria, would be an infringing copy.
- e. distributes copies of a work in which copyright subsists, by way of rental, lease, or hire without the consent of the owner for commercial purposes. The court can also make an order directing that all copies of the work or machines in the possession of the alleged offender for creating the infringing copies of the work be destroyed, or delivered to the owner of the copyright, or both. Conversion rights allow all infringing copies or equipment used or intended for use in the production to be transformed into the owner's property. Copyright may be enforced through any of the following means:

- a. **Conservatory or Provisional Measures:** These are measures to prevent the entry of infringing goods into commercial channels and preserve the imported infringed goods as evidence of infringement. Judicial authorities may hinder the alleged infringer from relocating such evidence by issuing an order without notice to the alleged infringer. This is a provisional order that restricts the alleged infringer from destroying any evidence.

b. Civil and Administrative Remedies: In instances where infringement has already occurred, the owner can be compensated. This remedy compensates the copyright author or owner for any economic injury due to infringement. Civil remedies also prevent further infringement on the owner. For example, a Court order to destroy infringed goods or injunction against infringing acts or a fine.

c. Criminal Sanctions: Copyright infringers are given criminal punishment such as prison sentences or fines for piracy, related rights on commercial sale and civil acts. These punishments are usually consistent with the level of crime committed and are usually for repeated offence. An order of seizure, forfeiture of goods, or destruction of goods can also be given with a criminal sanction to discourage infringement.

d. Measures to be taken at the border: This measure does not use the judicial authorities but involves customs authorities. An owner can request that the circulation of the suspected infringed goods be halted by customs upon importation. This method gives the owner the right to commence judicial proceedings against the infringer, while customs doesn't clear the infringed goods. This can work due to the owner's right to give customs prima- facie evidence of infringement, provide a detailed description of goods and provide security to indemnify the importer, the owner of the goods, in case the goods are not infringing.

e. Measures, Remedies, and Sanctions against Abuses in terms of technical means: This method prevents technical devices from receiving encrypted T.V programmes except through decoders. The manufacture, importation, and distribution are considered infringements of copyright and sanctioned in a similar

way to other violations. Contracting countries are to provide adequate legal protection and remedies against technical

Conclusion

Enforcing copyright is essential for creating a fair and supportive environment for creators in a society where creativity and innovation are highly valued. Individuals and organizations must understand the consequences of infringement to avoid legal issues and foster a culture of intellectual property protection.

Author Information Author Name(s): Blessing Ajunwo – Choko, Anastasia Edward

Website: <https://alliancelawfirm.ng/> LinkedIn: <https://shorturl.at/qtHR5>