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BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University

VOLUME 15, NUMBER 3 (2022)

ISSN 2029-0454

Cit.: *Baltic Journal of Law & Politics* 15:3 (2022):1-16

DOI:

A Comparative Analysis Of Copyright Enforcement Regime In Nigeria

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Abstract

Giving the owner the sole right to use the intellectual property and the authority to forbid unauthorized use is the fundamental purpose of intellectual property rights. In comparison to other jurisdictions, Nigeria faces a significant issue in the enforcement of intellectual property rights. Copyright is the most prevalent intellectual property right. With an emphasis on the remedies available to a copyright owner when there has been an infringement, the purpose of this study is to evaluate the enforcement mechanisms and laws now in place in Nigeria. In order to ascertain whether poor law enforcement is, in fact, a key militating element in the fight against the high rate of copyright infringement in the nation, comparisons with other jurisdictions must be done. By investigating the agencies with the authority to enforce intellectual property rights, copyright infringement in Nigeria, the copyright enforcement system in Nigeria, and a comparative analysis of enforcement provisions in some other jurisdictions, the paper places the discourse in its proper context. The study discovered that, in comparison to other jurisdictions, Nigeria's weak copyright enforcement regime is mostly attributable to the absence of adequate enforcement laws. Therefore, the study suggests that in order to establish a more effective enforcement system than other jurisdictions, it is necessary to both optimize the current enforcement mechanisms and alter the Nigeria copyright Act.

Keywords: COPYRIGHT ENFORCEMENT, INFRINGEMENT, INTELLECTUAL PROPERTY, RIGHTS, REGIME

1.1 INTRODUCTION

A product of the human mind, intellectual property grants the creator a proprietary right. Different laws established these rights and safeguard them from any exploitation that would constitute an infringement. The law protects intellectual property against infringement since it has a detrimental effect on inventions and creative works. **(Itanyi N. 2016)**

The prevention of rights infringement or gaining redress for conferred rights infringement are both considered to be aspects of copyright enforcement. **(Onuma M. 2004)** Since the law is useless to those it purports to protect without enforcement, enforcement is crucial. **(Onuma M. 2004)** Owners of rights cannot exercise the privilege granted to them by the law without effective enforcement. The term "copyright enforcement" in the context of this essay refers to the available redress or sanctions in the event of infringement, with a focus on judicial enforcement.

In light of this, this study will present a comparative analysis of Nigeria's copyright enforcement framework. This introduction is the first section of the six that make up the entire essay.

Section two (2) reviews the authorities having the authority to enforce intellectual property rights; it asserts that there are numerous authorities or agencies in Nigeria tasked with the duties of upholding intellectual property rights.

Infractions of copyright in Nigeria are examined in section three (3). It contends that an act of violating a patent, copyright, or trademark owner's exclusive rights constitutes an intellectual property violation.

The Nigerian copyright enforcement system is covered in Section four (4). It asserts that conversion/delivery up, damages, injunctions, and accounting are among the civil remedies available to copyright owners. It further claims that the inspection and seizure order, which is comparable to an Anton Piller order and is available under the copyright Act, is a useful tool for the seizure and preservation of Evidence.

The comparative review of the enforcement provisions in certain other jurisdictions is the main subject of Section 5.5. It contrasts the circumstances in Ghana, the UK, France, and Germany. It contends that even though Nigeria's legal system and available remedies are less developed than those in certain other nations, it may still be possible to find an equivalent remedy there. It's possible that parties didn't make the most of their opportunity to request more powerful remedies.

The paper ends in section six (6) with a suggestion.

1.2 AUTHORITY RESPONSIBLE FOR ENFORCING INTELLECTUAL PROPERTY RIGHTS

Enforcing intellectual property rights is the responsibility of a number of authorities or organizations. Criminal infringement of copyrighted works was only covered by the Copyright Act. The single infraction under the Trademarks Act is Section 60, which deals with falsifying a register. As a result, the owners of intellectual property rights typically pursue their rights through civil litigation. The Nigerian Copyright Commission was founded by the Copyright Act under Section 60, and it was given the mandate to oversee all issues pertaining to copyright in Nigeria as specified by the Copyright Act. Therefore, on behalf of the State, the Nigerian Copyright Commission (NCC) carries out criminal copyright enforcement. The Nigerian Copyright Commission also conducts raids at a variety of marketplaces and other suspected locations, seizes works that have been pirated, and either burns those works or gives them to the copyright owner in accordance with Section 18 of the Copyright Act. The NCC may designate copyright inspectors as it sees fit to assist with the inspection, examination, testing, or analysis of works that are infringing as well as the arrest of those who are thought to be violators. Any accusation, information, complaint, or other process arising under the Copyright Act may also be prosecuted, conducted, or defended before a court by a copyright inspector. **(Section 38 Copyright Act, 2004)** In carrying out his duties, a copyright inspector has all the authority granted to police officers by the Police Act. **(Cap. P19 Laws of the Federation of Nigeria 2004)** For several genres of copyright works, the Nigerian Copyright Commission has the authority to approve collecting societies. The negotiation and granting of licenses, as well as the gathering and distribution of royalties in relation to copyright works, are the main responsibilities of the Collecting Society. **(Section 39(2)(b) Copyright Act 2004)**

The Registrar of Patents and Designs position was created by the Patents and Designs Act, and it is charged with the duty of registering industrial designs and patents. The Registrar does not uphold the intellectual property rights of patent and design owners because the Patents and Designs Act does not provide any provisions for criminal infringement. Owners must protect their rights and take civil action against anyone who violates them. Similarly, under the Trademarks Act, owners of trademarks are responsible for enforcing their rights against infringers through civil litigation rather than the Registrar of Trademarks. The court with jurisdiction to consider civil and criminal cases involving any intellectual property rights is the Federal High Court. **(Section 251(1)(f) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended), Itanyi N. 2016)**

1.3 COPYRIGHT INFRINGEMENT IN NIGERIA

The investigation of copyright infringement must continue. This is the case because responsibility cannot exist without evidence of an infringement. What is a copyright violation?

A breach of an exclusive right held by the owner of a patent, copyright, or trademark is known as an intellectual property infringement. **(Garner B. A., 2004)** A copyright violation is the unauthoritative use of a work protected by a copyright. **(Yerima T.F. 2003)** Additionally, a copyright is violated when someone carries out, or induces another person to carry out, any of the restricted or banned acts in respect to a copyright work without the license or authorization of the copyright owner. **(Olueze I.M, 1998)** Since an infringement can only take place in the framework of legal provisions, recourse to the existing copyright law should be made in order to ascertain, prove, or establish if an infringement has happened. **(Ogwo B., 2008)** In other words, whether there has been infringement is a legal issue that should be resolved based on the information that is currently accessible. The implication here is that, subject to the statutory exceptions, the exclusive rights of the copyright owner granted and protected by the law are a subject of infringement or violations and, when that occurs, remedies are grantable by the courts of law under civil proceedings, whereas punishment is imposed in some specific situations when criminal proceedings are launched.

It is important to remember that the same person whose rights are allegedly being violated can seek both civil remedies and criminal penalties at the same time. **(Section 24 of the Copyright Act, 2004)** For the purpose of clarity and to avoid ambiguity, it should be emphasized that the Act **(Section 15(1) & (2), Copyright Act, 2004)** defines what constitutes an infringement as follows: "Copyright is infringed by any person who without the license or authorization of the owner of the copyright:

- a. does an act that is subject to copyright restrictions, or inspires another person to do such an act;
- b. imports any item whose copyright has been violated under this subsection's paragraph (a) into Nigeria other than for his personal or household use;
- c. any article that violates copyright according to this subsection's paragraph (a) is displayed in public.
- d. distributes any material whose copyright has been violated in accordance with paragraph (a) of this subsection through trade, offers for sale, hire, or in any other way, or for any purpose that is detrimental to the owner of the copyright;
- e. creates or possesses machines, tools, equipment, or devices that are utilized to make unauthorized copies of the work, including plates, master tapes, etc.;
- f. permits the use of a venue for public entertainment or business for a public performance of the work when such performance constitutes a copyright violation of the work, unless the person authorizing the use of the venue did not know and had no reasonable basis for suspecting that such a violation would occur; and
- g. Any work in which there is a copyright that is performed or caused to be performed for commercial or business reasons, or as a facility supporting a commercial or business.

The aforementioned clauses deal with civil infringement. To put it another way, the copyright owner must prove the circumstances that could give birth to any of the aforementioned sections when he plans to file civil lawsuits to stop infringement. Although there are several exceptions to the above-mentioned reasons for civil infringements, these include:

In the event that a copy of a work with copyright or a reproduction of such a work is included in something, notwithstanding the provisions of this Act's subsection (1) or any other requirement,

- a. the records kept in the National Archives, which was created in accordance with the Public Archives Act; or
- b. The copyright in the work is not violated by making or providing to anyone any replica of the work in accordance with that Act or law because public records of a state are records for which storage or custody requirements are made by law.

The defendant cannot escape accountability for copyright infringement in a civil case against infringement by just demonstrating that he was not aware his actions violated a work's copyright,

according to the law. In the case of *Francis Day & Hunter & Anor v. Bron & Anor (1963)* Lord Justice Diplock, posited:

It is not a defense that the defendant was not aware that what he was doing violated the copyright in the plaintiff's work once the two conditions of adequate objective resemblance and causal link are proven.

When civil infringement is shown in a legal manner, the plaintiff (the assignee of the copyright owner or an exclusive licensee of the copyright) is entitled to relief like as monetary compensation, an injunction, or accounts. (**Section 16(1) of the Copyright Act, 2004, Ogwo B., 2008**) Other civil relief includes interruption of transit, orders for inspection and seizure, conversion, right, moral right, just recompense, and other relief resulting from an Anton Piller injunction.

1.4 COPYRIGHT ENFORCEMENT REGIME IN NIGERIA

Civil Remedies

The English Copyright Act of 1911, which was applicable to Nigeria as a result of an Order in Council issued under Section 25 of the Act, controlled copyright in that nation. (**Babafemi F. O., 2007**) This Act was still in effect after the country attained independence in 1960 until Decree No. 61 of 1970, which replaced it. The 1988 passage of a new copyright law was followed by amendments in 1992 and 1999. (**Amended by the Copyright (Amendment) Decree No. 98 of 1992 and Copyright (Amendment) Decree No. 62 of 1999.**) The Copyright Act 1998 (as modified), Cap. C28, Laws of Federation of Nigeria (LFN), 2004, is the current law that serves as the foundation for copyright protection. The judicial remedies offered by the Act to an alleged infringer are discussed below.

Copyright owners have access to conversion/delivery up, (**Section 18, Copyright Act 1988**) damages, injunctions, and accounts as legal remedies. (**Section 6(1) Copyright Act, Section 16(5) Copyright Act, Section 51 Copyright Act, 2004**) Similar to an Anton Piller order, the inspection and seizure order made possible by the Copyright Act is a useful instrument for the seizure and preservation of evidence. (**Section 25, Copyright Act 1988, Anton Piller K.G v. Manufacturing Processes Ltd. 1976**) Damages refer to monetary compensation paid to a copyright owner for infringement of his rights. There are different types of damages. (**Asein J. O., 2012**) Actual harm need not be demonstrated in a copyright infringement lawsuit because the potential damages are high. (**Emirates Airline v. Ngonadi No. 1 2014**), **Oladipo Yemiltan v. The Daily Times (Nigeria) Ltd & Anor 1980, Exchange Telegraph Co. v. Gregory & Co. 1981**) Copyright infringement alone results in harm to which the claimant is legally entitled. In *Claydon Architectural Metalwork Ltd v. D J Higgins & Sonsb, (1997)* According to the court, the amount by which the copyright's value as a "chose in action" has deteriorated is the typical assessment of damages for copyright. (**Fabunmi J. O. 2006, Julius Berger (Nig) Plc v. T.R.C Bank Ltd 2010**)

Although general and special damages are the most typical types of compensatory damages, (**M.M.A. Inc. v. N.M.A 1913, Akingbola v. Chairman, E.F.C.C, 2012, British Airways v. Atoyebi, 2014**)

the court in copyright matters may also award punitive or exemplary damages, which are known as additional damages under the Act and are meant to penalize the defendant and act as a deterrent. (**Section 16(4) Copyright Act 1988, Zenith Bank Plc v. Ekereuwem 2012, F.C.D.A v. Unique Future Leaders Int's Ltd 2014**) If the court determines that the claimant would not otherwise be able to get effective remedies, it may award further damages as it may find necessary under Section 16(4) of the Copyright Act. Aside from all other factors, the court must take into account the flagrancy of the violation and any profit that can be proven to have accrued to the defendant as a result of the violation.

In *Oladipo Yemiltan v. The Daily Times (Nigeria) Ltd & Anor, (1980)*

the claimant's copyright in an article titled "The Day the Lagoon Caught Fire" published in the Nigerian Magazine was flagrantly violated by the defendants when they copied it verbatim and without permission in "Headlines" No. 52 of 1977. When the defendants were written to inform them of the infringement, they merely responded that they would look into the claim and took no more action despite further letters. The accused acknowledged the infringement following the trial. The defendants, according to the court, had the claimant at a disadvantage because few people in Nigeria were aware of their rights under copyright law and because they believed that the profit they would make from the infringement would be greater than any nominal damages the claimant might be entitled to. The court was persuaded that the defendants should be ordered to pay additional damages as a result of the flagrant infringement, the careless handling of the written letters, the defendants' casual demeanor, and the way the defense was organized by denying obvious facts, asserting unsupported claims, and only admitting the infringement after a thorough trial. As a result of the defendants' demeaning treatment of the claimant, the court awarded the claimant extra damages.

Similarly in *Peter Obe v. Grapevine Communication Limited*, (1997) the claimant's Civil War photo was published in his book, "Nigeria: A Decade of Crises in Pictures," and the defendants were found to have violated the claimant's copyright. The claimant had previously denied the defendants' request for authorization to use some of the images in the first issue of Grapevine Magazine. However, the defendant still went ahead and included these images in its publication. Five Hundred Thousand Naira (N500,000.00) was given to the claimant as general damages. It was determined that the defendants flagrantly violated the claimant's copyright when it came to further damages. The defendants impolitely responded to the claimant and then published the images in another issue of the same magazine, making it clear that the publication was designed to be profitable. Furthermore, the defendants requested an out-of-court settlement with an apology from the claimant instead of expressing regret. As a result, the court granted extra damages in the amount of Ten Million Naira (N10,000,000.00).

Another significant remedy for copyright infringement is an injunction. It essentially functions as an equitable remedy that the court may award in order to compel a party to perform or refrain from performing an action. (**Jimoh v. Aleshinloye II 2014**) A copyright infringement lawsuit is particularly successful when an interlocutory injunction is issued while the case is still being decided on the merits. (**Asein J. O., 2012**) This guarantees that the parties continue as they are while the case is being decided. In order to avoid irreparable harm, the copyright owner uses it to stop the suspected infringer from committing additional acts of infringement.

Even if an interim injunction only lasts a short while—typically, until the occurrence of an event like the hearing and resolution of a motion on notice or until a specific date—it is nonetheless very helpful for copyright enforcement. (**Odutola v. Lawal 2002, Unibiz Nig Ltd v. C.B.C.L Ltd (2003)**)

Gov. Lagos State v. Ojukwu 1986, S.C.B (Nig.) Ltd. v. Braithwaite 2014) It is typically made ex-parte and only granted in circumstances of extreme urgency demanding an urgent remedy, albeit most of the time a move on notice to the opposing party must be filed in addition. (**Order 9 Rule 7, Federal High Court Civil Procedure Rules CPR, 2012**) By doing this, it is made sure that the opposing party is aware of the order and has a chance to be heard during the motion on notice's decision-making process. The petitioner did not need to start an action by filing or serving a writ because of the urgency. (**Babalola A., 2007**) According to *American Cynamid Co. v. Ethicon Ltd.*, the requirements for the issuance of an injunction are as follows. (**1975**) The plaintiff must persuade the court that he has a strong case. This does not imply that a strong case is necessary; a strong initial case would do. An injunction would not be granted if damages were sufficient; damages must not be a sufficient remedy. The balance of convenience would also be considered by the court. Additionally taken into account are one's financial situation and capacity for recouping losses. Due to the nature of equitable relief, the court gives careful regard to the parties' behavior. (**Saraki v. Kotoye 1989**) The claimant must file the lawsuit as soon as possible because postponing it could be interpreted as consent. (**Foseco Int. Ltd v. Fsoldath Ltd 1975**) In most cases, the claimant is also obliged to provide an assurance

of damages in the event that it is shown that the injunction should not have been issued to safeguard the defendant's interests. **(order 34 Rule 2(3) Federal High Court CPR)**

In cases where a copyright infringement has occurred but the defendant at the time of the violation was not aware or had no cause to suspect that copyright existed in the work to which the action pertains, the Copyright Act also provides for account of profits to be awarded. **(Section 16(1) & (3), Copyright Act 1988)**

In these circumstances, the claimant is not entitled to damages but is instead entitled to a report of the defendant's earnings from using the copyright work for commercial purposes. The burden of proof for unintentional infringement rests with the defendant. In order to avoid receiving duplicate compensation, a claimant cannot have both accounts of losses and damages combined. **(Caxton Publishing Co. Ltd v. Sutherland Publishing Co. Ltd 1939)**

However, in accordance with the Act, the claimant no longer has a choice when it comes to innocent infringement; he is only entitled to an account of profits. **(Section 16(3) Copyright Act 1988)**

Therefore, it is crucial for copyright owners to include the copyright notice on their works in order to prevent this from happening. This means that the copyright symbol, the name of the copyright holder, and the year of first publication must all be present on the author's work in a way and place that would reasonably alert the public to the copyright holder's claim. **(Universal Copyright Convention 1952, Entry into force in 1955)** Account of profit was initially intended as an equitable remedy to stop the defendant from unfairly enriching himself. **(Potton Ltd v. Yorkdose Ltd 1990)** It is only given out in cases where the defendant actually made money off the copyrighted work. It is not given out when this is not the case. **(Asein J. O., 2012).**

The profit given is the net profit (gross profit excluding all expenses in the production of the work). **(Garnett K. M., Rayner J.E. & Davies G., 1999)** The court must also evaluate the profit that was directly generated from business transactions involving the infringed work, not necessarily the defendant's entire line of work.

A case in which this remedy was extensively considered is *Plateau Publishing Co. Ltd & Ors v. Chief Chuks Adophy*. **(1986)** Following Tarka, What Next?, the respondents had filed a lawsuit against the appellants seeking special and general damages of two hundred and fifty thousand naira (N250,000.00). Special Tribute, significantly of which was copied without permission. The respondent was only entitled to an account of profits, according to the appellant, who had brought up the issue of innocent infringement in its appeal against the damages judgment. The law published in Halsbury's Laws of England, which stated the following, served as the court's guide in making its decision: This defense does not apply to someone who, while being aware of the existence of copyright or suspecting its existence, misidentifies the copyright's owner and, as a result, obtains permission to publish from that person. A defendant cannot invoke this defense by demonstrating that he had an accurate but mistaken understanding of the law or by demonstrating that he had no reason to suppose that a work was protected by copyright if he made no attempt to find out where the work originated. **(Halsbury's Laws of England)** The court further concluded that when it orders an account of profits, it does so by taking from the party who committed the wrong all the money he made from his piracy and giving it to the party who was harmed as a close approximation of justice. The inspection and seizure order is a crucial remedy that gives a copyright owner a powerful weapon in the fight against infringement. **(Section 25, Copyright Act 1988)** This ruling essentially codifies the Anton Piller order, which is its comparable equitable remedy, into law. It allows the applicant to enter the defendant's property to search for counterfeit goods and any other evidence necessary to support the applicant's claim. It also gives the applicant the option to seize and retain such evidence. The main purpose of this order is to find and keep evidence that the defendant is likely to remove or destroy if notified, which would be harmful to the applicant's case. Therefore, it is made ex parte in order to take advantage of the defendant's surprise. **(Asein J.O. 2012)**

In *Anton Piller KG v. Manufacturing Processes Ltd*, (1976) The requirements for the issuance of this order were established by the court. It must be a unique situation, and the claimant must have a compelling initial argument. The claimant should suffer significant potential or actual harm, and it should be obvious that the defendant is in possession of key information crucial to the claimant's case. Additionally, there must be a genuine chance that the defendant may dispose of this evidence in order to thwart the course of justice. The defendant may be required to "let" the claimant to enter his property in order to view and/or remove evidence if certain conditions are met. Because it is an injunction, the prerequisites for granting one must also be met. This order cannot be used as a substitute for a search warrant, according to the court in the Anton Piller KG case. The order instead imposes pressure on the defendant or commands him to allow the claimant to enter by threatening contempt of court if the order is disregarded.

However, it appears that the defendant is not only required to "grant" the claimant's access under Section 25. The court directly grants the claimant permission to enter. It has been contended that the nature of this order renders the right to a fair hearing unconstitutional. (*Solignum Ltd v. Adetola 1992, Rokana Industries Ltd v. Maun, 1993*) However, the court has approved its use, justifying it by the fact that the order is only granted in extraordinary circumstances, and taking into account the urgency of the situation, it must be granted where it is possible that no appreciable harm will be done if the parties are given time to argue their case's merit. (*Akuma Industries Ltd v. Ayman Enterprises Ltd 1999, Section 25, Copyright Act 1988*) In *Akuma Ind. Ltd v Ayman Ent. Ltd, (1999)* The court determined that while initially seeming like a monstrosity, the Anton Pillar order has been incorporated into our legal concepts and jurisprudence. According to the law, the applicant must be accompanied by a police officer with at least the rank of assistant superintendent (ASP). (**Section 25(1), Copyright Act 1988**) The meager fine of 1,000 Naira is the only punishment for giving inaccurate information (N1,000.00). (**Section 25(2), Copyright Act 1988**) If the defendant provides incorrect information, such a sum is in no way useful to the petitioner and in no way serves as a deterrence.

Anton Piller order was first granted in Nigeria in *Ferodo Limited v. Unibros Stores (1980)* by Anyaegbunam C.J in reliance upon the decision in *Anton Piller KG v. Manufacturing Processes Ltd (supra)*. How this order is carried out in Nigeria is demonstrated by the case of *Akuma Ind. Ltd*. The claimant/applicant had asked for an Anton Piller order instructing the defendant to allow the applicant's solicitor, a staff member from the applicant's solicitor's firm, a police officer not lower than an assistant superintendent of police, accompanied by the bailiff and four other persons authorized by the applicant to enter the defendant's premises (named in the order) for the purpose of searching, photographing, taking into possession and returning certain items. Any day of the week from Monday through Saturday between the hours of 8 am and 6 pm was designated for the execution of this instruction.

In response to the defendants' appeal, the court stressed the need to exercise caution when issuing an Anton Piller order that has the potential to invade the privacy of the other party without their consent. The appellate court criticized the broadness with which the injunction in this case was issued, which had the result of paralyzing all operations at the factory of the defendant. The petitioner had requested a court order requiring the removal of all (and not just a sample of) the allegedly unlawful goods, materials, and records as proof of the violation. Furthermore, it demanded that the defendants give up any other similar materials in their possession within 48 hours of receiving notice of the order from the defendant. However, unless the petitioner has received a 48-hour notice, the defendant cannot request to have the order revoked. The Anton Piller order had been issued as asked by the trial court without any modifications. The trial judge had thrown all caution to the wind by issuing such an order, oblivious to the fact that it solely relied on the affidavit of one party. The appellate court further criticized the order's full and complete tone and application. The ruling, in the judgment of the court, should not have been issued in such a broad manner because it was all-inclusive and appeared to have resolved the subject with a sense of finality.

This stance of the court is backed by the fact that the Anton Piller Order is a unique type of interim injunction and is not meant to resolve a dispute definitively in favor of the applicant who

was successful. In such a case, there would be nothing left to try. In *N.W.L Limited v. Woods*, (1979) the English court ruled that the judge should consider this factor when weighing the risk of injustice that his decision on the application may cause because it will have the effect of concluding the case if the injunction is granted or refused because the harm caused to the losing party by its grant or refusal is complete and of a kind for which money does not constitute a worthwhile recompense.

The Akuma case demonstrates that the court must also attempt to balance the interests of the defendant/respondent, despite the fact that there is no judicial statement or practice directive to govern the execution of the Anton Piller Order in Nigeria. The order must be concise and limited to what is necessary to search for, find, seize, and preserve evidence for the trial. Such an order would be overturned on appeal or challenge if it is so broad and all-encompassing as to destroy the defendant's business or resolve the case without a trial.

The Mareva injunction may also be used by attorneys handling copyright infringement lawsuits to satisfy judgment debts against alleged violators. This would guarantee that the owner of a copyright whose rights have been violated receives adequate and valuable compensation for the wrongdoing committed by the infringer. An ex parte Mareva injunction is used to seize the defendant's assets, including his property, goods, and bank accounts. (**Mareva Compania Naviera SA v. International Bulkcarriers SA 1980**) It is given where there is substantial prima facie evidence against the defendant and a genuine risk that assets will be removed or spent in an effort to evade payment of any awarded judgment money. In most cases, it needs proof of the defendant's dishonesty. Despite not being included in the Copyright Act, this is commonly permitted under Nigerian civil procedure law. (**Order 17, The Federal High Court Civil Procedure Rules**) The illegal materials and/or the tools used in their production can also be converted over to the copyright owner. The court may also mandate the destruction of such goods or their delivery to the copyright owner. (**Asein J. O. 2012, Section 20(4) 7 (5), Copyright Act 1988**) According to the Act, unauthorized works and the supplies and machinery used to create them are considered the property of the copyright holder, who may then take legal action to have these transferred to him. (**Section 18, Copyright Act 1988**) A copyright owner in this situation would no longer be eligible for damages, nevertheless, to avoid double compensation. (**Asein J.O. 2012**)

Criminal Remedies

Infringing on someone else's intellectual property is likewise illegal and subject to fines and prison sentences. The Nigerian Copyright Commission typically pursues criminal charges for copyright violations (NCC). A violator may be the target of both civil and criminal proceedings. Therefore, even though NCC has started criminal procedures, the copyright owner is not prohibited from starting civil proceedings to seek damages. (**Section 24, Copyright Act 1988**) There is no uniform fine for all violations; rather, the Act seems to represent some violations as more egregious than others, and as a result, the fines for various violations vary. (**Sections 20 & 22, Copyright Act 1988**) For each copy of an infringing work, master tape plate, or piece of equipment that the offender created or caused to be created, the offender is subject to a fine of up to N1,000.00, up to five years in jail, or both. (**Section 20(1), Copyright Act 1988**) A violator who rents, leases, distributes, or has illegal copies in his possession for these purposes is subject to a fine of N100 (one hundred naira) each copy, a 2-year prison sentence, or both. (**Section 20(2), Copyright Act 1988**) A violation is punishable by a N100 (one hundred naira) fine, a 2-year prison sentence, or both if it involves renting, leasing, distributing, or having unlawful copies in one's possession for these purposes. (**Section 20(3), Copyright Act 1988**) A legislation similar to the one mentioned above that does not specify a maximum fine as a punishment would imply that the violator would be required to pay a sizable sum of money in cases where he deals in significant quantities of the infringing material. However, in instances where he sells in small quantities, such as a rental club with just two copies of an infringing work or a production facility with just one machine or plate, the size of the penalties would be insufficient to act as a deterrence. Therefore, in these situations, the imposition of prison terms is a better punishment to discourage such infringers and other potential infringers. For instance, in *NCC v. Ali A. Bala*, (2013) the accused was sentenced to pay One Hundred Naira (₦100.00) fine or 3 months imprisonment. Similarly in *NCC v. Nwali Sunday*, (2013) the defendant was

ordered to pay a fine of 300 Naira (N300). However, there are still some situations where a greater fine is enforced. One Hundred and Fifty Thousand Naira (N150,000.00) was the largest award in recent memory in *NCC v. Ibrahim Dan Almajiri*. **(2009, 2012)**

It should be noted that the offender would not be held accountable if he can demonstrate to the court's satisfaction that he had no knowledge that any such copy was an infringement of a copyright work and had no reason to suspect it, or that the plate/master tape or equipment was not intended to be used to make infringing copies. **(Section 20, Copyright Act 1988)**

The way this part is written makes it seem as though the accused has already been found guilty and must now prove his innocence. In contrast, an accused individual is deemed innocent until and unless proven guilty in criminal proceedings. **(Section 36, Constitution of the Federal Republic of Nigeria 1999)** Typically, it is the responsibility of the prosecution to establish the accused's guilt beyond a reasonable doubt. However, pursuant to Section 20 of the Copyright Act, the burden of proof is with the accused.

1.5 ANALYSIS OF COMPARED ENFORCEMENT PROVISIONS IN OTHER JURISDICTIONS

At this stage, it is important to think about the legal options provided by the Ghanaian Copyright Act. In accordance with Section 42 of the Ghanaian Act, it must be established that the alleged offender knew—or had a good faith belief that he knew—that his behavior encouraged, enabled, facilitated, or concealed a violation of copyright or related rights protected by the Act without the consent of the copyright owner and his agents. Therefore, it is the prosecution's responsibility to demonstrate guilty knowledge. The great prevalence of piracy, bootlegging, and other types of copyright infringement in Nigeria may have made the country's position, which presumes criminal knowledge on the part of the alleged infringer, necessary. The court must take into account the reality that many Nigerians are unaware of copyright ownership and infringement, nevertheless. Most people believe that copyright only applies to music and books. Many people are unaware of the necessity for consent, as well as what actions are acceptable and not. Therefore, it is crucial for the court to strike a balance between the need to reduce the incidence of egregious copyright infringement in the nation and the need to safeguard the public's interests.

Additionally, in accordance with the Ghanaian Act, **(Section 43, Copyright Act, 1998)** the offender is subject to a fine of no more than 1,000 penalty units and no less than 500 penalty units, a term of imprisonment of no more than 3 years, or both upon summary conviction. If the offense is persistent, an additional fee of at least 25 penalty units and at most 100 penalty units may be issued for each day the offense persists. It should be noted that 12 Ghanaian Cedis equal 1 punishment unit (GHC12.00). **(Copyright Office, 'Frequently Asked Questions' 2016)** Therefore, the maximum punishment in cases where there is not a continuing violation is GHC 12,000.00. The infringement may be ordered to forfeit the infringing items and pay the fine for the offense to the right owner, according to a court ruling. **(Section 46, Ghanaian Copyright Act 1998; Section 20(4) & (5), Nigerian Copyright Act 1988)** The Ghanaian Act's penalties are more deterrent than the meager fines stated in the Nigerian Copyright Act. Therefore, it is necessary to revise the Nigerian Act to include greater deterrent fines.

Although the Inspection and Seizure (Anton Piller) Order under Section 25 of the Nigerian Copyright Act is a crucial tool for gathering evidence, no provisions are made to make the grant of this order subject to the protection of the defendant's confidential information, as is possible in some other jurisdictions where the law explicitly provides for this. **(Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights, Article 7(1))**. Nothing, however, prevents a defendant in Nigeria from defending his private information by objecting to such a request and outlining his justifications in his counter-affidavit. **(Order 9 Rule 14 Federal High Court Civil Procedure Rule, CPR)**

Normally, the court would weigh the arguments of the parties and decide whether or not such a document might be admitted/used as evidence in the case. Under civil procedure law, there are additional means to get evidence that is under the opposing party's control, such as through the

discovery process, which may take the form of questioning or inspection. (**Order 33, Federal High Court Civil Procedure Rule, CPR**) Litigants must consider this option since an applicant can seek the court for a remedy by submitting an application to the court that is accompanied by an affidavit outlining the facts and attaching all supporting documentation. (**Order 9 Rule 1, Federal High Court Civil Procedure Rule, CPR**) Based on legal requirements and in the court's discretion, such remedy may be granted.

Although Nigeria doesn't have a practice guide for the Anton Piller Order, it can nevertheless learn from the UK, from whence it acquired this legal remedy. As shown in *Akuma Ind. Ltd.*, the lack of a clear practice instruction leads to litigants abusing the order (*supra*). In the UK, this order is currently known as the Search and Seize order. (**Tritton G. et al, 2008**) *Chappell v United Kingdom (1990)* explains the content of the order in the UK:

An Anton Piller order typically contains mandatory or restrictive injunctions that prohibit the defendant from handling the materials that are the subject of the action, require the defendant to deliver up the materials to the claimant, disclose the location of all such materials and information about suppliers and customers, and require the defendant to make an affidavit containing all the information that must be disclosed by him under the order. *The court will limit the things named in this final injunction to papers and information that directly relate to the lawsuit. It will also limit the time of admission and the amount of people that are allowed to enter (very rarely more than four or five). The latter will include the claimant's attorney, who is a court-appointed representative.*

Before granting the order, the court must be satisfied that the claimant has made out an extremely strong *prima facie* case that his claim will succeed on the merits; the actual or potential damage is very serious for him; there is clear evidence that the defendant has in his possession incriminating documents or things, and that there is a real possibility that if he is forewarned, he may destroy such material. (**Harms L., 2012**) Both the claimant and the solicitor are required to provide undertakings as the court may deem appropriate. (**Harms L., 2012**) This could be an assurance that the defendant will get the ruling, along with other pertinent documents (affidavits of fact, writs instituting the proceedings, and notices of the next hearing), as well as an assurance of damages. (**Harms L., 2012**) The solicitors' agreement states that they will: keep in their possession any items taken by them or delivered to them in accordance with the order; respond to any queries from the defendant regarding whether an item is covered by the order; and explain the meaning and effect of the order to the person served fairly and in plain language. They will also let the person know that he has the right to seek legal counsel before complying with the order as long as such counsel is sought immediately. (**Harms L., 2012**)

Upon giving the claimant notice, usually within 24 hours, the defendant may submit an application for the change or discharge of the order. (**Chappell v. United Kingdom, 1990**) The court will not allow this request unless it was made quickly and it will be useful in some way. Additionally, the defendant may seek damages under the claimant's cross-undertaking on the grounds that the order was illegally obtained or executed as a substitute for this or as an additional remedy. (**Chappell v. United Kingdom, 1990**) The defendants may take action against the claimant or his attorneys for contempt of court if they violate their obligations under the order or if the latter did something illegal in carrying it out. (**Chappell v. United Kingdom, 1990**)

Therefore, it is evident that the Search and Seize Order's conditions and implementation in the UK are such that both the rightful owner and the alleged infringer receive justice. It is the copyright owner's direct responsibility to demonstrate that this order is indeed necessary, that there is an undertaking about damages, and that the suspected infringer has been served with the appropriate court papers. The claimant's attorney is also required to provide the alleged infringer with an explanation of the order and collect a list of all the evidence that was gathered. It is likely that the court bailiff in Nigeria will be responsible for this.

In contrast to how things are done in the UK, Section 25 is written in a way that makes it challenging to defend the rights of the alleged infringer when the inspection and seizure order is

being carried out. During the implementation of the order, a police officer with at least the rank of Assistant Superintendent of Police must be present. This really is unsettling. The author is aware that in some cases raids on alleged infringers have been met with hostility and lynchings by the alleged infringers, (**Ariaria Market Raid' 2016**) but this does not mean that the alleged infringers' rights should not be protected. Nothing in Section 25 also affords the alleged infringer the chance to contact his attorney or seek legal advice. The Act is also silent regarding the defendant's ability to request the revocation of this order. Therefore, the Act must be changed to ensure that both the copyright owners and the alleged infringers receive justice. The legislation shouldn't favor copyright owners too heavily.

The *saisie-contrefaçon* (**Tritton G. et al 2008**) order is used in France to preserve evidence. Usually, it is granted by showing evidence of the infringing copies and the Intellectual Property Right (IPR) cited. The police typically assist in carrying out this directive. The kortgeding, which does not require the petitioner to initiate proceedings on the merits before its grant, is a comparable order in the Netherlands. (**Dutch Code of Civil Proceedings, Article 1019 (b), (c), (d) and (e). Dutch Civil law, 'Code of Civil Proceedings' 2017**) However, the applicant cannot continuously rely on this provisional measure and must initiate actions on the merits within a reasonable amount of time. (**Hermes International v. FHT Marketing Choice (1998)**) An impartial technical expert may be present to assist the bailiff in carrying out the order if necessary. In the Netherlands, seizing evidence does not automatically grant access to it. Before the evidence is released to the applicant or used in the proceedings, the applicant must submit an application to examine the evidence that has been confiscated. (**Dutch Code of Civil Proceedings, Article 843a**)

An inspection order in Germany enables the applicant to consult a court-appointed expert on the issue of infringement while the expert examines the allegedly infringing works on the defendant's property. §809 of the German Civil Code (Bürgerliches Gesetzbuch (BGB)) independent proceedings for the preservation of evidence and also §935 ZPO permits a preliminary court order. The claimant's attorney is the one who gathers the evidence during such proceedings and keeps all information private, even from the claimant. At the defendant's request, the inspection can be postponed for at least two hours so he can consult a lawyer. Prior to granting such preliminary injunctions, the applicant must demonstrate urgency. (**Hans M., 2000**)

Additionally, some foreign countries grant the right to information, but only in cases where it has been determined that an actual violation has occurred. (**Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights, Articles 7(1) & 8.**) The claimant may make a reasonable and proportionate request that the court direct the infringer and/or any other person who was discovered in possession of the infringing goods or using the infringing services on a large scale, discovered to be producing commercial services used in infringing activities, or who was suggested by any of the aforementioned individuals as being involved in the infringing activities to provide information on the origin and distribution networks of the infringing goods or services. It also applies to intermediaries or third parties who might not be breaking any laws. This clause is effective because it enables the IPR owner to learn in-depth details about the violators' identities and actions.

This is accomplished in the UK through the Norwich Pharmacal Order. (**Tritton G., 2003**)

This tool is designed to help you get the names and addresses of infringers from other people. It was first used in *Norwich Pharmacal v. Commissioners of Customs and Excise*. (**1973**) The order is helpful when the applicant has a claim against the respondent for the same wrong or when that party's services are being utilized to enable wrongdoing and the claimant is unable to launch an action against the wrongdoer because he does not know who he is without disclosure. The fundamental idea behind the Norwich Pharmacal relief is that a third party who is both interested and innocent should support the applicant in their pursuit of a claim against a wrongdoer. The granting of this form of order in the Netherlands depends on the court's discretion and the relative weight of the parties' interests. (**Dutch Code of Civil Procedure,**

Article 1019.) This can be acquired in Germany using the *Auskunftsanspruch* process. **(Hans M, 2000)**

In *Golden Eye (International) Ltd and Others v Telefonica UK Ltd*, **(2012)** Golden Eye (International) Ltd and 13 others brought a claim for Norwich Pharmacal orders against Telefonica UK Ltd (trading under the name O2). The main goal was to get the identities and addresses of O2 users who were claimed to have violated copyright by utilizing the Bit Torrent protocol for peer-to-peer (P2P) file sharing. On the condition that their communication to the alleged infringers be in a form allowed by the judge and that any proceedings that might be taken would take place in the Patents County Court, the court granted the order to just Golden Eye and Ben Dover (PCC). The court issued the decision after concluding that a disclosure was required to give the aforementioned claimants the opportunity to seek remedy for the wrongs committed. It came to the conclusion that the intended defendant's interest in preserving their right to privacy and data protection is outweighed by the claimant's interest in enforcing their copyright.

There is currently no provision in the Nigerian Copyright Act that permits a successful copyright owner to have access to information held by the infringement or pertinent third parties. To include such an order, the Act must be changed. In order to successfully reduce infringement, this is required. A copyright owner can use such an order to stop a group of infringers from working together to commit crimes. Until such a change is made, a copyright owner may want to take advantage of the civil procedure law's processes by asking a court to order a violator to divulge any relevant information under his control that another violator could utilize. It's unclear if the courts would be prepared to issue such an order, especially when it's being requested against a third party or intermediary who is not a party to the lawsuit. The author is not aware of any instance in which a court has been presented with a request for such an order. A court hearing would be required to determine whether such an application would be granted. However, such an usage must not conflict with the laws governing how such information is used in commercial or civil procedures. Additionally, the applicant is accountable for any violations of the right to information. If providing information will force the affected individual to disclose their involvement—or that of their immediate relatives—in an IPR violation, the respondent must be given the chance to decline. In such an application, provisions governing the processing of personal data or the confidentiality of information sources must also be taken into account.

The reimbursement of the legal fees and other costs incurred by the successful party by the failed party is another legal remedy that is significant for Nigeria's copyright enforcement framework, unless equity forbids it. Infringers and potential infringers are strongly discouraged by this. In the UK, this would equate to a recovery of roughly 75%–80% of the successful party's legal expenses. **(2012)** It should be understood that this does not necessarily refer to all expenses incurred by the victorious party. In many nations, there is typically a table that is used to calculate the court-determined expenses. **(Hans M, 2000)** Although not as strongly as in Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004, on the Enforcement of Intellectual Property Rights, Nigeria's civil procedure rule provides for remedies in the form of costs. **(Order 52 Federal High Court CPR)** The cost of the entire case, a particular proceeding, or each proceeding individually can be decided by the court. **(Rule 3, Federal High Court CPR)** However, the court lacks the authority to require the winning party to cover the losing side's whole lawsuit's costs. **(Rule 4, Federal High Court CPR)** In contrast, it means that the court has the authority to require the losing party to foot the bill for the entire case. The court has the power to decide how much in fees must be paid, and if it's possible, the court may make a quick decision. **(Rule 6, Federal High Court CPR)** It is standard procedure to list this as exceptional damages in a party's statement of claims. If the court is to award a significant amount, the prevailing party must insist on it during the final/written address and give proof of the legal fees.

For instance, the court provided clarification on the award of costs in *A.C.B Ltd v. Ajugwu* **(2012)**. The decision to award expenses is at the court's discretion, which must be used carefully and legally. Costs follow events, and a successful party is entitled to them unless there are unique circumstances that prevent him from receiving them, which the judge must demonstrate. Costs, however, are neither awarded nor withheld as a reward to the party that prevailed or was

penalized for losing. A party who has won shall only be reimbursed for his out-of-pocket costs and paid for the actual, reasonable costs of the case. Costs cannot fully compensate for the financial loss; they only assist to buffer or palliate the financial liabilities of the successful party. It is given according to the common premise of genuine and reasonable out-of-pocket expenses and standard legal fees, and is typically given to a leader and one or two juniors. As costs follow events, the court stated in this case that there is no set formula for determining costs. As a result, the court must analyze the unique facts of each case when forming its judgment. The trial court first took up the case in this lawsuit on April 12, 2000, and the verdict was given on March 6, 2004. 22 appearances were made overall throughout the time under study. The court ruled that the judgement of N25,000.00 in favor of the respondent did not appear to be unreasonable or done in bad faith for a case handled by a Senior Advocate of Nigeria.

In comparison to other jurisdictions, Nigeria does not have this remedy as developed or as frequently employed. Despite the claimant's adequate documentation, the court often has a negative attitude towards a solicitor's expenses claim. In the few cases in which the court has approved such a claim, it has only been for a pitiful sum between N2,000.00 and N10,000.00. (**Shukka v. Abubakar, 2012**) For example, in *Emirates Airline v. Tochukwu Aforka & Anor (2014)* the Court of Appeal held that:

In a case involving a breach of contract, claims for both special and general damages as well as attorney costs are inappropriate unless the parties have specifically agreed otherwise. Because there was no agreement to that effect and because it was not a loss that could have been reasonably anticipated as a result of the breach of contract, the claim for a refund of the sum of N2.5m (Two Million, Five Hundred Thousand Naira) paid by the Plaintiffs to their solicitors is not admissible. (**2014**)

In the case of *Guinness (Nig) Plc v. Nwoke, (2000)* the Court of Appeal made the following ruling, which is another judgement that demonstrates how most judges in Nigeria feel about a request for reimbursement of legal expenses:

It is also unethical and an affront to public policy to pass on the burden of Solicitor's fees to the other party, in this case the cross-respondent... I am of the strong view that this type of claim is outlandish to the operation of the principle of special damages and it should not be allowed. It is absolutely improper to allow the cross-appellant to pass his financial responsibility couched as 'special damages' to the cross-respondent. (**2000, Joseph Nduka Igbo v. Gabriel Kalu Agwu 2013**)

This position was not different at the apex court as the Supreme Court in (**Christopher Nwanji v. Coastal Services (Nig.) Ltd (2004)**) adopted the decision of the Court of Appeal in *Simon U. Ihekwoaba & Ano. V. Nigerian Continental Bank Ltd. & Ors (1998)* and held that 'The issue of damages as an aspect of solicitor's fees is not one that lends itself to support in this country.' (**Christopher Nwanji v. Coastal Services (Nig.) Ltd (2004)**) Therefore, it is obvious that the court must be willing to shift its perspective by awarding fees with larger monetary values in order for the payment of legal expenses to be effective as a deterrent. When a defendant has flagrantly violated the plaintiff's copyright and has refused to cease despite receiving warning letters from the plaintiff, the award of solicitor's fees becomes a powerful instrument.

As evidenced by its recent ruling in *Union Bank of Nigeria Plc v. Mr. N.M. Okpara Chimaeze, (2014)* which has become a precedent that a victorious plaintiff may rely on to claim solicitor's costs, the supreme court appears to have overturned itself in this regard. In this lawsuit, the plaintiff sought N250,000.00 in special damages for his legal expenses. The Supreme Court upheld the lower courts' rulings on the grounds that a claimant is entitled to the award of special damages if they can demonstrate that they have experienced such damages and the court can plainly perceive and understand the nature of the loss or harm.

The publication of court judgments at the request of the copyright owner and at the expense of the infringer is another remedy that would help with copyright enforcement in Nigeria. Such redress is necessary to demonstrate to clients and other parties to a lawsuit that a party is not infringing, or to act as a warning to future intending infringers that the copyright owner would

not let an infringement of his rights. Although the Copyright Act does not include this remedy, it may not be difficult for a copyright owner to ask the court for one if he can show that it is essential, as is done in defamation cases, and produce supporting documentation. Otherwise, he wouldn't naturally have access to such a treatment.

Copyright owners can make the most of the flexibility of the law to secure effective remedies in the absence of specific remedies in Nigeria. A non-exhaustive list of civil remedies is provided by the Nigerian Copyright Act: '... The claimant shall be eligible for all applicable reliefs, including damages, injunctions, accounts, and other remedies, in any procedures related to the violation of other proprietary rights. **(Section 16(1), Copyright Act 1988)** Although Nigeria's legal system and available remedies are not as developed as those in some other nations, it is possible to get an equivalent remedy here. It's possible that parties didn't make the most of their opportunity to request more powerful remedies.

Although only of persuasive impact, the ability to cite examples from other common law jurisdictions like the UK may aid in persuading the courts to award unique remedies that are not expressly provided for in Nigerian law. In addition, the courts have a history of filling in any legal gaps, and some laws have grown out of court precedent. When Nigerian law does not offer a suitable remedy, this may be used to address the problem. **(Olubiye I. A., 2014)**

1.6 CONCLUSION

In Nigeria, it is difficult to enforce intellectual property rights. Prior to the Agreement on the Trade Related Aspects of Intellectual Property Rights, many developing nations lacked intellectual property laws, and those that did either had flimsy rules or simply imitated those of their colonial overlords. The most prevalent intellectual property right is copyright. The rich cultural and creative industries in this area may be to blame for the popularity of copyright.

Owners of rights cannot exercise the privilege granted to them by the law without effective enforcement. The inadequate copyright enforcement regime in Nigeria has been attributed in large part to the absence of adequate enforcement laws. The paper suggests that in order to have a more effective enforcement system, it is necessary to both make the most of the current enforcement mechanisms and change the Copyright Act.

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