

Role of Copyright Institutions and Enforcement Agencies in the Digital and Online Dissemination of Copyright Works

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Abstract

Digital and online dissemination of copyright works contributes in meaningful ways to the achievement of social inclusion and cultural diversity. This is because it provides a medium which affords a worldwide audience by projecting cultural heritage, promoting socio-economic development, supporting foreign direct investment and expansion of the Nigeria market. It is the aim of this paper to examine the role and challenges of the copyright institutions and enforcement agencies that prevent them from performing optimally. It is also the aim of the paper to examine: the impact of digital technology on copyrightable work; the adequacy of existing and emerging responses to the phenomenon and to what extent does the existing legal framework in Nigeria cater for the traditional as well as new technology paradigms, which give reason for an examination of existing legal regime under Nigeria's copyright law. The paper situates the discourse in its proper context by undertaking: an examination of the powers, functions and challenges of the various copyright institutions and enforcement agencies in fighting infringement; the Nigeria Copyright Act—substantive provisions and the Nigeria digital and online dissemination of copyright works. The paper found out that digital technology has a strong impact on the attainment of these objectives, both in terms of opportunities for profitable exploitation, and as a challenge which exacerbates the problem of infringement. Therefore, the paper proposes that these issues need to be addressed through law reforms to address issues relevant to the right of copyright owners online by putting in place a suitable legal framework. Also necessary is logistic, technical support and creation of awareness levels of the implication and available options for right holders.

Keywords

Copyright, Online, Digital, Enforcement, Dissemination

1. Introduction

This paper focuses on the role the copyright institutions and enforcement agencies perform in combating copyright infringement. It interrogates how these institutions and agencies have fared in their functions. The paper found that the institutions and agencies are faced with various challenges amongst which are inadequate enlightenment of the public, poor funding of the institutions and agencies, lack of equipment and knowledge in the relevant area particularly in the digital era.

Digital technology refers to the use of equipment, principally computers, which can accept and interpret digital data, and encompasses computers hardware and software, and the internet (Bogsh, 1993).

Digitization involves the reduction of information of all kinds to computer readable binary representation of zeroes and ones, and the resulting digital data thus consist of information of various types, including words, sounds and visual images which have been digitized or reduced to 0s and 1s using equipment (principally computers), that can accept and interpret the data (Lucchi, 2006).

The result of reduction of data to digital code is “digital media”, defined as intellectual product made available in digital electronic form whether operational in computers or other machines capable of “reading” works in digital form (Lucchi, 2006). The term also broadly includes data storage product types such as CDs, DVDs, USB drives, memory sticks and MP3 players, as well as all the other means of disseminating contents through digital technology (Lucchi, 2006). Among other things, digitization makes possible enhanced sampling and synthesizing in the creation of sound recordings, perfect recordings on compact disks (CDs), the distortion—free reproduction of digital recordings, computer generated special effects for motion pictures, and crystal—clear cable distribution or broadcasting of musical works (Lucchi, 2006).

Again, distribution of copyright work in enforcement and other creative works has also undergone radical changes, as these works can now be disseminated through the same distributing channels and copied (legally or illegally) using the same transmission channels¹. Thus, the various tools to obtain copy, use and distribute digital materials continue to grow in popularity, since the same channels can be used to obtain all forms of information investment in MP3 players, I-pods and related tool, have become increasingly popular, particularly among the youths.

Digital technology therefore impacts on copyrightable works in two major ways, first, in the impact on the creation and production of copyright works, and secondly, aspect relating to online dissemination and exploitation of works. The discussion of the emerging impact of digitization on the production, sale and other exploitation of works is best set against the background of the crippling effects of piracy on local artistes, the entrepreneurs who commercialize their works and the economy as a whole. The endemic problem of piracy is a

¹These include banned CDs, DVDs and file sharing through the internet.

long-standing challenge which has been a cankerworm undermining the success of the industry.

It is against this backdrop that this paper will discuss the role of copyright institutions and enforcement agencies in the digital and online dissemination of copyright works by situating the discourse in its proper context. In doing so, after the introduction the article is divided into four sections.

The first section explores the role of copyright institutions and enforcement agencies perform in combating copyright infringement. It interrogates how these institutions and agencies have fared in their functions in the administration of copyrightable works. The institution and enforcement agencies include: the Nigeria Copyright Commission, National Broadcasting Commission which is an enforcement agency for regulation and controlling the Broadcasting industry in Nigeria which is one of the subject of copyright, National Film and Video Censor board; Nigeria Police Force; Nigeria Custom Service and the Courts. Although the Nigeria Copyright Commission and the National Film and Video Censor Board appear to function both as administrative and enforcement agencies. The section considers the challenges faced by these institutions and agencies that have hindered their optimal performance.

The second part focuses on the Nigeria Copyright Act—substantive provisions. It argues that the Nigeria Copyright Act protects copyrightable works falling within the scope of the six categories of works eligible for copyright protection under the Act. It also argues that liability arises where any person, without the licence or authorization of the owner of copyright does or causes any other person to do an act controlled by copyright under *Section 15 of the Copyright Act*² and that the doing of these acts constitutes a criminal offence, punishable by the payment of a fine and/or a term of imprisonment under *Section 20 of the Act*. It is worthy to note, that the Act is supplemented in several important respects by regulations made by the commission, in furtherance of its powers under *Section 45(4) of the Act*³.

The third part deals with the Nigeria digital and online dissemination of copyright works. It argues that the emerging input of digitization on the production, sale and other exploitation of copyrightable works is best set against the background of the crippling effects of piracy on local artistes, the entrepreneurs who commercialize their works and the economy as a whole. It also argues that the endemic problem of piracy is a long-standing challenge which has been a cankerworm undermining the success of copyrightable works. It further argues that copy technology had indeed become pervasive, but the poor quality of pirated products offered at least some deterrence to members of the public, and likely encouraged some to invest in genuine copies of legitimate works. However, this deterrence factor is no longer that potent, as the development of digital technology has introduced a new dimension to the problem of piracy. It finally argues that in the light of some of the emerging realities and issues of digital exploita-

²Cap C28 Laws of the Federation of Nigeria 2004.

³Ibid.

tion, the question is, to what extent does the existing legal framework in Nigeria cater for the traditional as well as new technological paradigms? This gives reason for an examination of existing legal regime in Nigeria which will point out areas of reform to better deal with the issues.

The fourth part concludes the article by proposing that these issues need to be addressed through law reforms to address issues relevant to the right of copyright owners online by putting in place a suitable legal framework.

2. The Role of Copyright Institutions and Enforcement Agencies

Nigerian Copyright Commission

The Copyright Decree of 1970 did not create any government agency responsible for the administration of copyright in Nigeria. However, the various powers to make prescriptive regulations⁴, reciprocal extension orders⁵ and the appointment of the competent authority for the purposes of regulating the activities of collecting societies⁶ were conferred on the Federal Commissioner for Trade.

Thus it could be said that the administration of copyright was under the responsibility of the Federal Ministry of Trade. However other aspects of copyright were under the control of other government departments (Asein, 2012). The Nigerian Copyright Commission (hereafter called “the Commission”) was established by Section 34 of the Copyright Act⁷ and is charged with the following functions:

- 1) Responsibility for all matters affecting copyright in Nigeria and monitoring Nigeria’s position in relation to international conventions and advise Government thereon;
- 2) Advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country and inform the public on matters relating to copyright;
- 3) Maintain an effective data bank on authors and their works and responsible for such other matters as pertaining to copyright as the minister direct (Section 34(3), Copyright Act).

The Commission also has the following responsibilities:

- 1) The certification of countries that are parties to treaty obligations for the purpose of determining whether a copyright work may enjoy copyright by virtue of such international obligations (Section 5, Copyright Act);
- 2) The regulation of the conditions for the exercise of the right of an author of graphic works, three-dimensional works and manuscripts to share in the proceeds of any sale of that work or manuscript by public auction or through a dealer (Section 13, Copyright Act);
- 3) The issuance of exemption certificate for the purpose of enabling an other-

⁴Copyright Act 1970, Section 17, Copyright Act 1970.

⁵Section 14, Copyright Act, Ibid.

⁶Section 13, Copyright Act, Ibid.

⁷Copyright Act, 1988, Cap C28 Laws of the Federation of Nigeria (LFN) 2004.

wise unapproved collecting society to commence action for the infringement of copyright or any right under the Copyright Act (Section 17, Copyright Act);

4) The prescription of anti-piracy devices for use on, in, or in connection with any work in which copyright subsists (Section 21, Copyright Act);

5) The authorization of the reproduction, communication to the public and adaptation of expressions of folklore for commercial purposes outside their traditional or customary contexts (Section 31, Copyright Act);

6) The granting of compulsory licenses in accordance with the provisions of the fourth schedule to the Act as well as the establishment and regulation of the copyright licensing panel (Section 37, Copyright Act);

7) The appointment of copyright inspectors as it may deem fit (Section 38, Copyright Act);

8) The approval and regulation of collecting societies for the purposes of the Copyright Act (Section 39, Copyright Act);

9) The receipt and disbursement of funds arising from the imposition of compulsory levy on copyright materials (Section 40, Copyright Act);

10) The regulation of the conditions necessary for the operation of a business involving the production, public exhibition, hiring or rental of any work in which copyright subsists under the Act (Section 45(4), Copyright Act);

11) The carrying out of such directives of a general or special character with respect to its functions as the minister may give (Section 50, Copyright Act);

12) The right to authorize the exploitation of folklore and to bring action for infringement of such rights (Section 31 and 32, Copyright Act).

The Commission is a body corporate capable of suing and being sued in its names (Section 34(2), Copyright Act). In *Performing and Musical Right v Nigerian Copyright Commission & 3 Ors* (2008-2011), it was held that Section 148 of the Constitution gives the President executive powers to determine who should supervise any Federal Government Department or Agency. The Minister of Justice can give directives to any department or agency under his ministry particularly 1st Respondent (Nigerian Copyright Commission) by virtue of Section 50 of the Copyright Act. The Commission is supervised by a Governing Board established under the Act (Section 35, Copyright Act). The administrative system of the Commission can be seen from two perspectives namely; institutional framework and private machinery for the collective administration of rights; the former being regulatory and the later being private individuals constituting themselves into collecting societies for the administration, management and enforcement of their rights (Adewopo, 1995).

Copyright Inspectors

In exercise of the enforcement role of the Commission, the Copyright Act provided for copyright inspectors⁸. A copyright inspector may be appointed by the Commission as it deems fit. A copyright inspector shall have the power to:

1) Enter, inspect, examine and arrest any person, at any reasonable time any

⁸Section 38(1), Copyright Act, Ibid.

building or premises which he reasonably suspects is being used for any activity which is an infringement of copyright under the Act;

2) Make such examination and inquiry as may be necessary to ascertain and require the production of the register required to be kept under Section 13 of the Act.

3) Require any person who, he finds in such building or premises to give such information as it is in his power to give in relation to any purposes specified in the Act and to carry out such examination, test or analysis within or outside the premises as is required to give effect to any provision of the Act and to take instant photographs where such examination, test, analysis or photograph is carried out within the premises. Such examination, test, analysis or photograph shall be required to be endorsed by the occupier of the premises or his agent. A refusal by an occupier to endorse any document containing the result of an examination, test, analysis, or photograph shall not invalidate the result or finding of the examination, test, analysis or photograph; and

4) Exercise such other powers at the Commission may delegate to him to give effect to the provisions of the Act⁹.

The copyright inspector is empowered to prosecute, conduct or defend before a court any charge, information, complaint or other proceedings arising under the Act¹⁰. Any person who obstructs the function of a copyright inspector is guilty of an offence¹¹, and the copyright inspector have all the powers, rights and privileges of a police officer as defined under the Police Act and under any other relevant enactment pertaining to the investigation, prosecution or defense of a civil or criminal matter under the Act¹². This later provision has been described in *Musical Copyright Society of Nigeria Ltd./ Gte v Nigerian Copyright Commission* “as a peculiar power that should be exercised with circumspection” *Musical Copyright Society of Nigeria Ltd./ Gte v Nigerian Copyright Commission*. It has been held in *Federal Republic of Nigeria v Osahon* (2006) that the power of police officers under Section 23 of the Police Act to prosecute in superior courts is lawful as long as they had right of audience in such a court, e.g. as legal practitioners by virtue of being called to the Bar. The same principle has been suggested would be applicable to the copyright inspector (Asein, 2012).

The Commission has embarked on proactive enforcement interventions by carrying out surveillance and enforcement interventions across the nation (NCC, 2017)¹³.

In January 2017, the Commission took delivery of three (3) shipping contain-

⁹Section 38(2)(a)-(g), Copyright Act, Ibid.

¹⁰Section 38(3), Copyright Act, Ibid.

¹¹Section 38(4), Copyright Act, Ibid.

¹²Section 38(5), Copyright Act, Ibid.

¹³NCC (2017) First Quarter Report

<https://www.copyright.gov.ng/index.php/reports-services/item/393-2017first-quarter-report> Accessed 12 February 2022. In summary, the first quarter report is as follows: number of anti-piracy surveillance: 25, anti-piracy operations: 8, Quantity of seizures 129 contrivances, Books 738, 335 and 458, 305 CDs, VCDs and DVDs, No. of arrests 3 seizures of shipping containers of pirated works 3. Estimated value N879,835,000.00.

ers of pirated works, which were seized under the joint inspection initiative between the Nigerian Customs and the Commission at Apapa port in Lagos which contained 458, 305 CDs, VCDS AND DVDs with estimated market value of N275 million. The Commission also carried out anti-piracy raid (Broadcast) in Makurdi, Benue state and seized 34 contrivances valued at N1.5 million¹⁴.

The Commission now has enhanced prosecutorial activities by convictions it secured in courts. The Commission has made attempt to strengthen her human and institutional capacity for better service delivery and embarked on copyright and awareness education and participates in Nigeria-US Bi-National Commission¹⁵.

National Broadcasting Commission

The National Broadcasting Commission is a parastatal of the Federal Government of Nigeria established by *Section 1 of the National Broadcasting Commission Act*¹⁶, and vested with the responsibilities of amongst other things, regulating and controlling the broadcasting industry in Nigeria.

Broadcast is one of the subject matters of copyright¹⁷. A broadcast is defined under the Act to mean sound or television broadcast made by wireless telegraphy or wire or both or by satellite or cable programmes. The definition includes a rebroadcast¹⁸; i.e. a simultaneous or subsequent broadcast by one broadcasting authority of the broadcast of another broadcasting authority. The author of a broadcast transmitted within the country, is the person by whom the arrangements for the making or the transmission of the broadcast, from within the country, were undertaken. *Asein (2012)* suggests that the person 'who made the arrangements' in this case would mean the person taking the financial risk rather than the one responsible for the artistic execution of the project.

The subject matter of protection in these cases is not the artistic content but the final package as put together by the entity behind the production of the work. Thus broadcast among the "entrepreneurial copyright" (*Cornish, 1996*) is treated differently as rights involving minimal original intellectual effort and more of entrepreneurial skill (*Cornish, 1996*), hence the emphasis on the person making arrangements for the production. Thus the National Broadcasting Commission is charged with the function of regulating this important part of copyright in Nigeria.

The National Broadcasting Commission Act (*Cornish, 1996*) established the National Broadcasting Commission in Section 1 of the Act. The Commission shall have the responsibility of among other things:

1) Receiving, processing and considering applications for the ownership of radio and television stations, including cable television services, direct satellite broadcast and any other medium of broadcasting and regulating the broadcast industry;

¹⁴Ibid.

¹⁵Ibid.

¹⁶Cap N11, laws of the Federation of Nigeria (LFN), 2010 hereinafter called "the NBC".

¹⁷Section 1(1), Copyright Act, Ibid.

¹⁸Section 51, Copyright Act, Ibid.

2) Receiving, considering and investigating complaints from individuals and bodies corporate regarding the content of a broadcast and the conduct of a broadcasting station and promoting Nigerian indigenous cultures, moral and community life through broadcasting by determining and applying sanctions, including revocation of license of defaulting stations which do not operate in accordance with the broadcast code and in the public interest¹⁹.

The Commission thus has a big role to play in ensuring that copyright works broadcast are not offensive, against public morality and public order. It also promotes the Nigerian indigenous culture thus promoting and broadcast of folklores and sets standards with respect to the standard and quality of materials broadcast and investigates complaints regarding the content of broadcast and conduct of broadcasting organizations. The National Broadcasting Commission enacted a broadcasting code for Nigeria which is regularly updated to meet the broadcasting objectives. The objectives include the social, cultural, economic, political, technological, professional objectives and profit motives (Owuamalam, 2006). The broadcasting code specifies the overall regulation approaches (NBC, 2009). Sanctions apply for broadcasting stations that violate either the Act or the National Broadcasting Code. These include, revocation of license, shutting down or sealing up of a station or transmitter, seizure or forfeiture of equipment or suspension of license. Others are written warning to remedy the breach within a given time failing which a fine is imposed (Ihechu and Okugo, 2013). Thus the regulation approach of the Commission include, licensing, monitoring, sanctioning defaulters, intervening and arbitrating in conflicts (Ihechu and Okugo, 2013).

National Film and Video Censor board

The National Film and Video Censor Board were established by the National Film and Video Censor Board Act²⁰. The Act makes the Board a body corporate with perpetual succession and can be sued in its corporate name²¹. The Board was established to regulate film and videos in Nigeria and the functions of the Board are as follows²²

- 1) To license:
 - a) a person to exhibit films²³ and video works²⁴;
 - b) a premises for the purposes of exhibiting films and video works;
- 2) To censor films and video works;
- 3) To regulate and prescribe safety precautions to be observed in licensed

¹⁹Section 2(1)(a)-(p), National Broadcasting Commission Act, Ibid.

²⁰Cap N, Laws of the Federation of Nigeria (LFN) 2010 (“the Board” and “the Act” is hereafter called “NFVCB” and “the NFVCB Act”).

²¹Section 1, National Film and Video Censor Board Act.

²²Section 2(1)(a)-(e), National Film and Video Censor Board Act.

²³Section 66, National Film and Video Censor Board Act, “film” includes any record, however made, of a sequence of visual images, which is a record capable of being used as a means of showing that sequence as a moving picture.

²⁴Section 64, National Film and Video Censor Board Act, “Video Work” means any series of visual (with or without sound) (a) produced electronically by the use of information contained on any disc or magnetic tape; and (b) shown as a moving picture.

premises;

4) To regulate and control cinematograph exhibitions; and

5) To perform such other functions as are necessary or expedient for the full discharge of all or any of the functions conferred on it by the Act.

The Copyright Act provided for film and video exhibition license²⁵. The Act provides that no person shall exhibit a film or video work unless he is the holder of a license granted by the Board under the Act. Further, no premises shall be used for a film or video exhibition except under and in accordance with a license granted in respect of the premises under the Act. However, the above provision shall not apply to a film or video exhibition in a premises to which the public is not admitted; it shall not also apply to persons employed by the Government of the Federation, State or Local government for cinematographic purposes, premises owned by the Government of the Federation, State or Local government, premises which is a private dwelling house where the exhibition is not promoted for private gains and a film or video exhibition aimed at educating, instructing, or promoting any business²⁶.

A person who uses premises for exhibition of a film without license is guilty of an offence under the Act²⁷. The Act empowers a police officer or any officer appointed for that purpose by the Board to enter into any premises at any reasonable time whether licensed or not, in which he had reason to believe that a film exhibition is being or is about to be exhibited with a view to seeing whether the provisions of the Act or any regulation made under it and the condition of any license granted under the Act is or have been complied with. An officer of the federal or state fire service may also inspect premises after giving a notice of not less than 24 hours²⁸.

Censorship of Films

The Act provides that no person shall exhibit, cause or allow to be exhibited a film without a censorship certificate issued by the Board for such exhibition²⁹. This is one of the important provisions of the Act aimed at regulating content of films to ensure that films introduced into public is morally acceptable and not contrary to public policy. What is morally acceptable depends on the moral value of the society. The film censors committee has the function of censoring films³⁰. The film censors committee in reaching a decision on a film shall ensure that³¹:

1) Such film has an educational or entertainment value, apart from promoting the Nigerian culture, unity and interest; and

2) That such a film is not likely:

a) To undermine national security; induce or reinforce the corruption of private or public morality; or

²⁵Section 17(1), Copyright Act, Ibid.

²⁶Section 17(2), (3)(a)-(e), Copyright Act, Ibid.

²⁷Section 19, Copyright Act, Ibid.

²⁸Section 24, Copyright Act, Ibid.

²⁹Section 33, Copyright Act, Ibid.

³⁰Section 36, Copyright Act, Ibid (hereinafter referred to as the Committee).

³¹Section 36, Copyright Act, Ibid.

b) To encourage the use of violence; or exposé the people of African heritage to ridicule or to encourage illegal or criminal acts; or to encourage racial, religious or ethnic discrimination or conflict; or by its contents to be blasphemous or obscene.

The Film Censors Committee shall not approve a film which in its opinion depicts any matter which is indecent, obscene or likely to be injurious to morality, or likely to incite or encourage public disorder or crime, or undesirable in the public interest³². The Committee has the discretion to approve a film unconditionally or subject to such conditions as it may impose³³ and not later than 30 days after its decision notify an applicant of its decision³⁴.

The work of the Commission is essentially to protect public morality and public order. Sometime ago the novel “Half of a Yellow Sun” written by award winning novelist Chimamanda Adichie which was adapted as a film was barred from being exhibited in Nigeria because of its content that is likely to incite the public and bring public disorder as the film dealt with the Nigerian Civil War. However, it appears that the Committee is either not doing its work or it has relaxed the moral standard of Nigeria as many films entering the market are morally offensive and ought not to be allowed by the film censors committee.

Nigerian Police Force

The role of the Nigerian Police as a regulatory institution of copyright is in the area of enforcement of laws. The investigative power of the police is brought to bear in the investigation of crimes in the country. The role is particularly relevant as it relates to the provision of the Copyright Act to criminal liability for copyright infringement. The Copyright Act provides for criminal offences in respect of copyright³⁵. It also provides for criminal liability in respect of performers’ rights³⁶. The Police have the power to investigate any complaint of infringement that is criminal in nature and institute a criminal proceeding against such infringer.

The Police Act³⁷ established the Nigerian Police Force³⁸. The general duty of the police includes, prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged amongst others³⁹. The Police Act further provides that subject to Sections 174⁴⁰ and 211⁴¹ of the Constitution of Federal Republic of Nigeria, 1999 (as

³²Section 36(2) (a)-(c), Copyright Act, Ibid.

³³Section 37, Copyright Act, Ibid.

³⁴Section 37(2), Copyright Act, Ibid.

³⁵Section 20(1) & (2), Copyright Act, Ibid.

³⁶Section 28(1), Copyright Act, Ibid.

³⁷Cap P19, Laws of the Federation of Nigeria (LFN), 2010.

³⁸Section 3, Police Act, Ibid (hereinafter called the Police).

³⁹Section 4, Police Act, Ibid.

⁴⁰This Section relates to the power of the Attorney-General of the Federation to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of Law in Nigeria.

⁴¹This is respect of the Power of the State Attorney-General to take over proceeding.

amended)⁴² any Police officer may conduct in person all prosecution before any court, whether or not the information or complaint is laid in his name.

The Police Act further provides that it shall be lawful for any police officer and any person he may call to assist him, to arrest without warrant in the following cases:

1) Any person whom he finds committing any felony, misdemeanor or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanor or breach of the Peace;

2) Any person whom any other person charges with having committed a felony or misdemeanor;

3) Any person whom any other person:

a) Suspects of having committed a felony or misdemeanor;

b) Charges with having committed a simple offence, if such person is willing to accompany the police officer to the Police station and to enter into a recognizance to prosecute such charge⁴³.

The above provision is not applicable where the law provides that the offender must be arrested with a warrant⁴⁴.

The power of the Police to prosecute is derived from *Section 23 of the Police Act* and has been upheld by the courts. In *Federal Republic of Nigeria v Osahon (2006)* the Supreme Court upheld the power of police officers under *Section 23 of the Police Act* to prosecute in superior courts so long as they have right of audience in such a court as legal practitioners by virtue of being called to the bar. In *Olusemo v Commissioner of Police (1998)*, it was held that the Police had powers to institute criminal proceedings notwithstanding the powers of the Federal and States Attorneys General under the Constitution.

It thus can be seen that the Police have an important role to play in enforcing copyright in the entertainment industry in Nigeria. This is as a result of their investigative and prospective powers. This could be brought to bear in investigating copyright infringement in the entertainment industry and instituting criminal proceedings as appropriate.

Nigerian Custom Service

The Nigerian Custom Service can act to prevent the importation of infringing copies of Copyright works into Nigeria. One of the pre-emptive measures a copyright owner may take to forestall the entry of infringing materials into the market is to have such infringing copies stopped at the point of entry into the country. Regulations were made towards giving of notice to the comptroller of customs and excise that such infringing copies are about entering Nigeria through the ports. The last Regulation made was the Customs and Excise (Copyright) Regulation 1973⁴⁵ which was omitted in the 1990 and 2004 editions of the Laws of the Federation. The regulations are saved as a subsidiary legislation.

⁴²Cap C23, Laws of the Federation of Nigeria (LFN), 2010.

⁴³Section 24(1), Police Act, Ibid.

⁴⁴Section 24(2), Police Act, Ibid.

⁴⁵The Regulations were made pursuant to Section 15(5) of the 1970 Copyright Act.

Asein (2012) argues that since the 1973 Regulations have not been repealed, the forms prescribed therein should suffice for the purpose of giving effect to the provisions of Section 44 of the present Act. Since the minister has not made any Regulations pursuant to *Section 44 (5) of the Copyright Act*.

Section 44 of the Copyright Act provides that the owner of the copyright in any published literary, artistic or musical work or sound recording, may give notice in writing to the Department of Customs and Excise (a) that he has the power of the copyright in the work and (b) that he requests the department during the period specified in the notice, to treat as prohibited goods, copies of the work to which the section applies. The period specified in the notice, shall not exceed five years and shall not extend beyond the end of the period for which the copyright is to subsist.

It should be noted that cinematograph film is not included in the list of copyright works referred to in *Section 44 of the Copyright Act* and this is a serious omission. The section applies in case of a work, to any printed copy made outside Nigeria which if it had been made in Nigeria, would be an infringing copy of the work. If the notice is not withdrawn before the end of the period specified in the notice, any importation of the work so specified shall be prohibited. However, it does not apply to importation of any article by a person for his private and domestic use⁴⁶.

The Copyright Act absolves its members, officers, servants or agents of any liability arising from any act or omission in relation to the notice⁴⁷. The Minister of Internal Affairs is empowered to make regulations prescribing the notice to be given and when the notice is to be given and to furnish the customs service with such evidence and other conditions as may be prescribed in the Regulations⁴⁸. It is unfortunate that the regulations required by Section 44 (5) of the Act have not been made and it is a shortcoming which affects copyright enforcement in Nigeria.

The Courts

The courts play a vital role in the enforcement of copyright in Nigeria. Copyright is an item in the exclusive legislative list in the Constitution. By virtue of *Sections 251 (1)(f) and 251(3) of the 1999 Constitution*⁴⁹ and *Section 46 of the Copyright Act*⁵⁰, the Federal High Court has exclusive and original jurisdiction in copyright cases whether civil or criminal in nature. In *Achebe v Drum Publications (Nig) Ltd*⁵¹ the court affirmed the exclusive jurisdiction of the Federal Revenue Court now Federal High Court exclusive jurisdiction in copyright cases.

⁴⁶Section 44(3), Copyright Act, Ibid.

⁴⁷Section 44(4), Copyright Act, Ibid.

⁴⁸Section 44(5), Copyright Act, Ibid.

⁴⁹(As amended).

⁵⁰Ibid.

⁵¹(1917-1976) 1, I.P.L.R, 366. In *Ali v Central Bank of Nigeria* (1997) 4 N.W.L.R. p. 192, the court held that there is nothing confusing in Section 251(1)(f) Constitution of the Federal Republic of Nigeria 1999 (as amended) to suggest that both the Federal High court and State High Court have concurrent jurisdiction to entertain matters specified in that section.

The proper venue for the institution of a copyright suit is provided for in the Federal High Court (Civil Procedure) Rules, 2000.

Order II Rule 1(8) of the Federal High Court Civil Procedure Rules provides that all suits and actions relating to copyright are to be commenced in any judicial divisions in which the defendant resides. Where there are multiple defendants, the suit may be instituted in any of the judicial divisions subject to any Order of court as to convenience. Asein (2012) has noted that the provision of *Section 16(1) of the Copyright Act* is at variance with the Federal High Court rules as to proper venue in institute an action. The Copyright Act provides for institution of an action where the infringement took place. He submitted that since the Federal High Court Rules is a subsidiary legislation that it is inferior to a statute (in this case the Copyright Act). Therefore the provisions of the Copyright Act prevail over the Federal High Court Rules as it affects venue for institution of copyright cases. Thus where there is a difference between where the defendant resides and where the infringement took place, the suit will be instituted where the infringement occurred. The Copyright Act provides that both civil and criminal actions may be undertaken simultaneously in respect of the same infringement under the Act⁵², the provisions are cumulative.

Copyright institutions and enforcement agencies are faced with enormous challenges in the administration and enforcement of copyright. The paper found out that the institutions are not equipped to combat online infringement of copyright. The institutions lacked trained personnel, adequate knowledge, the necessary tools and government support to tackle the menace of online infringement of copyright in copyrightable work. This accounts for the prevalence of online infringement of copyright in Nigeria.

The institution is contending with challenges which include mainstreaming copyright into economic development agenda of the government, low level of funding by the government, inadequate personnel, inadequate infrastructure. Other challenges are inadequate development of effective regional, inter-regional and international collaboration with relevant agencies/organizations to effectively check the incident of piracy across national boundaries, the inexperience of prosecuting personnel in copyright that leads to non-prosecution or loss of cases. Corruption is also a major challenge facing the institution. From the foregoing the paper concludes that the institutions are not equipped to tackle copyright infringement of copyrightable work especially in the face of challenges posed by the internet technology (Uchechukwu and Onwuka, 2019).

3. The Nigeria Copyright Act—Substantive Provisions

The Nigerian Copyright Act protects copyrightable works falling within the scope of the six categories of works eligible for copyright protection under the Act. The first three categories comprise of creative works, namely literary works, musical works and artistic works⁵³. Beyond these three categories of creative

⁵²Section 24, Copyright Act, Ibid.

⁵³See Section 1(1), Copyright Act, Ibid.

works, the Act also extends protection to entrepreneurial rights arising from activities connected with primary exploitation of the creative works, namely sound recording, cinematograph films and broadcasts⁵⁴. The law confers on the owner of a qualified work the exclusive right to control the doing in Nigeria of certain acts in relation to the work. These include the rights of reproduction, publication, performance, adaptation and translation of the work⁵⁵. Also, the making of cinematograph films or records in respect of the work, its distribution to the public, for commercial purposes by way of rentals, leases, hire, loan or similar arrangement, as well as the broadcasting or communication of the work to the public by a loudspeaker or any other similar device are all within the scope of the exclusive rights conferred on the author⁵⁶.

With a view to dealing with the issue of piracy, the Act provides that liability arises where any person, without the licence or authorization of the owner of copyright does, or causes any other person to do an act controlled by public, or distributes an infringing copy of a work⁵⁷. Also, making or having in one's possession, plates, master tapes, machines, equipment or contrivances used for the purpose of making infringing copies of a work, as well as permitting a place of public entertainment or of business to be used for a performance in the public of an infringing work are all actionable⁵⁸. The doing of these acts for the purpose of sale, hire, trade or business constitutes a criminal offence, punishable by the payment of a fine, and/or a term of imprisonment⁵⁹. The Act further criminalizes the sale, hire, renting, and importation of works which contravene the anti-piracy devices prescribed by the Commission, as well as the importation or possession of machines or equipment for their production⁶⁰. In this regard, the Act is supplemented in several important respects by regulations made by the Commission, in furtherance of its powers under *Section 45(4) of the Act* (Oyewunmi, 2011).

4. Nigeria Digital and Online Dissemination of Copyright Works

1) Endemic Problem of Piracy and Emerging Realities of Digital Exploitation.

The discussion of the emerging impact of digitization on the production, sale and other exploitation of works is best set against the background of the crippling effects of piracy on local artistes, the entrepreneurs who commercialize their works and the economy as a whole. The endemic problem of piracy is a long-standing challenge which has been a cankerworm undermining the success

⁵⁴Ibid. The types of works which fall under each category are further defined in Section 39 of the Act, Copyright Act, Ibid.

⁵⁵See generally, Sections 6 - 8, Copyright Act, Ibid.

⁵⁶Ibid.

⁵⁷Section 15, Copyright Act, Ibid.

⁵⁸Ibid.

⁵⁹See Section 20, Copyright Act, Ibid.

⁶⁰Section 21, Copyright Act, Ibid.

of the industry. Thus, in the early nineties, it was noted that “the majority of the sound recordings sold in Nigeria is pirated and the entire video industry is based on the sale and rental of pirated tapes. Satellite signal piracy is common...”⁶¹. Unfortunately however, as this happened, the musical industry suffered, as a result of massive illegal reproduction and copying of sound recording, film and publishing works.

Decades afterwards, the problem of piracy remains endemic on copyrightable works. However, there is now a new dimension stemming from the fact that in the analogue era, pirated works could more easily be distinguished from genuine products, due to the poor quality of the former, which was often reproduced from a copy of the genuine. Copy technology had indeed become pervasive, but the poor quality of pirated products offered at least some deterrence to members of the public, and likely encouraged some to invest in genuine copies of legitimate works. However, this deterrence factor is no longer that potent, as the development of digital technology has introduced a new dimension to the problem of piracy.

In this regard, the main challenge consists in the activities of optical disc replicating plants, which employ digital technology to produce optical discs in hitherto unprecedented quantities. Beyond the high capacities of the machines to churn out thousands of copies in a few hours, the perfect quality of the output is also unprecedented. At the present time, there is available in the market CDs, DVDs and other devices which have an enhanced capacity to store music, film and other digitized content which is unauthorized circumstances, as it is in many cases, is causing unprecedented and extremely serious damage to creators, who are thus denied the fruits of their creative endeavours⁶². The copyrightable industries, including recording companies and film producers, who invest in the commercialization and marketing of these works also stand to be affected.

Again, unlike in the past, when most discs were imported into the country, notably from Asia, increasingly, the facilities for production are now to be found within the country. Statistics obtained from the Nigerian Copyright Commission indicates that there are fourteen registered replicating plants in the country (Liu and Zha, 2018). Beyond the fourteen others operating underground, while the distribution network for these illegal discs extends outside the borders of Nigeria to other countries in the region. Thus, the impact of piracy is felt more than ever before by artistes, producers and other stakeholders in the industry.

The situation, whereby pirated discs are produced internally within the country, rather than outside, has also somewhat changed the dynamics of enforcement. Thus, unlike in the past, when emphasis on border control was central to

⁶¹See US Department of State’s 1993 Country Reports on Economic Practice and Trade Reports, dated February 1994, online as http://www.dofan.lib.uic.edu/ERC/economics/trade_reports/1993?Nigeria.html, accessed 5th February, 2022.

⁶²The recent hunger strike embarked upon recently by Nigerian artistes is evidence of their frustration and helplessness at the high rates of piracy in the music sector, and bears eloquent testimony to their desperation.

enforcement, the focus must now shift inwards, to monitor and hold accountable replicating disc manufacturers who are operating within the country⁶³.

The other aspect of digital technology and its impact on the entertainment industry has to do with exploitation of works in the online digital environment, as the industry is not immune from some of the challenges of online piracy affecting the entertainment industry at the global level. In the film industry, digitization has taken the challenge of piracy afflicting the sector to a different level. Thus, beyond piracy of CDs and DVDs, Nigerian films are now digitized and distributed online to the global market for these works. Even as the number of Nigerians in the Diaspora continues to increase, so is the market for these films in their various locations around the world. The global reach of the Internet also means the works are readily accessible to a world-wide audience.

An online search carried out in respect of the Nigerian music industry reveals that the works of a number of Nigerian artistes are prominently displayed on websites all over the Internet. These websites, including some very well known ones like the dissemination channels of YouTube⁶⁴, can be seen promoting and offering for sale, works of Nigerian musicians like 2Face Idibia, D'Banj, Onyeka Onwenu, King Sunny Ade, etc.⁶⁵. Others however, make the works freely available for downloading, and it thus becomes possible to enjoy these works without furnishing any consideration⁶⁶. Even for those offering the works for sale, it is unclear whether this is being done with the consent of right holders, and whether royalties and other proceeds from the commercial exploitation is remitted to the right holders concerned⁶⁷.

2) Impact of online Dissemination of copyright work

This development deprives copyrightable works industry of foreign exchange earnings from this potential market. Accordingly, while digital technology has enhanced the widespread popularity of Nigeria's copyrightable works by providing easy means of diffusing the works, unauthorized online access means that this popularity may not translate to economic returns to those who invest their

⁶³However, border control is still relevant to prevent the exportation of pirated works to the external markets for Nigerian entertainment works that exists in other parts of Africa.

⁶⁴<http://www.youtube.com/>.

⁶⁵At <<http://www.izognmovies.com/>>, movies are offered for sale starting from 99 cents per download, or a \$19.99 monthly subscription. Others were Nigerian works may be downloaded for a fee include <http://www.nigeriamovies.net/>, <http://www.africamoviesdirect.com/index.php>, <http://www.hausamovies.com/movies.htm/> and <http://www.screen77.com/> Some of these sites also offer a wide variety of promotional, e.g. three months unlimited access for \$20, or as in the case of <http://www.screen77.com/>, one month subscription for \$15. In addition, most offer information and news clips on Nigerian artistes, in addition to updates on Nigerian news.

⁶⁶Websites showing wide variety of Nigerian entertainment works, including movies, secular and religious music and comedies free of charge include <http://www.video.onlinenigeria.com/>; <http://www.nigeriascreen.com/>; <http://www.bestbollyvideos.com/>; <http://www.naijapals.com/> and <http://www.nigerianentertainment.com/>.

⁶⁷An interview with representative of a copyright collective association in Nigeria revealed that no revenue had accrued to Nigerian right holders under their watch, from online exploitation. This is notwithstanding tangible evidence of the existence of websites fully displaying and marketing these works in the online environment.

time and effort in the production of these works. This is perhaps, one of the reasons why Nigeria's Nollywood, despite being widely acknowledged as one of the leading producers of films, is not on the list as commanding any significant market share in the UNCTAD statistics⁶⁸. On its part, the music industry, perhaps more than the film industry, has relatively more opportunities to profitably trade on its creativity through performances in concerts and shows, rather than reliance primarily on sale of records. For those so privileged, this may yet provide some relief for right holders from the crippling effects of piracy of Nigerian music works.

Music, film and other entertainment sites, blog sites and other online for a also help to update fans on developments in Nigeria, including those relevant to the music and film sector. Furthermore, Nigerian musicians are also keying in to Facebook and other social media like MySpace, where they keep their fans up to date on their travels, tours and music.

As these works and their creators/performers are being projected worldwide, taking advantage of the limitless opportunities of the digital online environment, opportunities of utilizing their popularity to build brands, attract endorsements and otherwise enhance their merchandizing value are increased. Thus, uploading, dissemination or sharing of works online have the possible advantage of promoting the artistes and popularizing their works, whether in terms of enhanced fan or audience support or in endorsement of products.

While this may be true for some, the reality however, is that not all artistes benefit from the opportunities of concerts, locally or abroad, nor are they all sought after for commercial endorsements. Awareness should therefore be created about innovative means afforded by the internet for the sale of entertainment work, and taking a cue from developments like *i-tunes*, players in the entertainment industry need to take charge of the packaging and sale of their works for online sales, especially to the foreign market.

Even within Nigeria, attention needs to be paid to this issue, particularly with improvements in internet service and increasing ease of accessing entertainment works online within the country⁶⁹. The use, particularly among the youth population, of I-pods, MP3 players, and other devices used for downloading, sharing and exchanging entertainment and other works is critical to the viability of online market of the products. Thus, the initial slowness of the use of these new technologies for sharing music and other entertainment works in Nigeria should not lead to complacency. As this happens, online exploitation within Nigeria will soon become an issue to contend with in the protection of copyright. The legal and regulatory environment thus needs to be adequately prepared to address this

⁶⁸See UNCTAD, *Creative Economy: A Feasible Development Option*, Creative Economy Report 2010, UNCTAD/DITC/TAB/2010/3, online at http://www.unctad.org/en/docs/ditctab20103_en.pdf, accessed 5th February, 2022.

⁶⁹Within Africa, Nigeria reportedly had, as at 2009, close to 24 million internet users, representing 16.1% of the population. See Internet World Stats, World Internet Usage Statistics news and World Population Stats, available online at <http://www.internetworldstats.com/stats.htm>, accessed 5th February, 2022.

development through the putting in place of a suitable legal framework. Also necessary is logistic and technical support and creation of awareness levels of the implications and available options for right holders. This would also cover the exploitation of music through mobile telephones via ringtones and music downloads.

Beyond ring tones, mobile telecommunication service have become a source of music dissemination, as subscribers are usually invited via SMS to access their choice of music through their mobile phones at prescribed rates. Considering the huge market for mobile phones in Nigeria, and the love of the average Nigerian for music, the potential market for this mode of entertainment delivery cannot be overestimated. To fully tap into the income generating possibilities this presents for the music industry, however, right holders and their collective associations need to be proactive to ensure they are not short-changed by content delivery companies. Thus, there is a need to work out logistics for licenses and remuneration for musicians for this new media particularly, through the relevant collecting societies.

In the light of some of these emerging realities and issues of digital exploitation, the question is, to what extent does the existing legal framework in Nigeria cater for the traditional as well as new technological paradigms? This has given reasons for an examination of existing legal regime in Nigeria. Which point out areas of reform to better deal with the issues. The paper found out that digital technology has a strong impact on the attainment of these objectives, both in terms of opportunities for profitable exploitation, and as a challenge which exacerbates the problem of infringement.

5. Conclusion

The impact of digital technology on the creation and dissemination of copyrightable works contributes in meaningful ways to the achievement of the goals of social inclusion and cultural diversity. This is because it provides a medium which affords a worldwide audience, the e-commerce opportunities for copyrightable works would also help to project cultural heritage, promote socio-economic development, support foreign direct investment, and expand the Nigerian market, among other benefits. On the other hand, however, is the necessary problem of piracy, which is not compounded by the impact of digital technology on the production and profitable distribution of copyrightable works which exacerbates the problem of infringement. These issues need to be addressed through law reform to address issues relevant to the rights of copyright owners online. Also necessary is logistic, technical support and creation of awareness levels of the implication and available options for right holders.

Beyond law reform however, institutional support to combat online piracy needs to be put in place through training and other forms of capacity building for those charged with administration and enforcement of copyright including copyright inspectors of the Nigeria Copyright Commission, Police Officers to

assist in investigation and detecting internet piracy⁷⁰. The role of the judiciary is also important in the enforcement in relation to online activities in terms of a deeper appreciation and expeditious dispensation of the issues. On their parts, right holders, and especially collective associations representing them requires co-operation to achieve the development and progress of the industry through a more focused and organized approach to management and enforcement of copyright in both the digital and online as well as offline environment.

The paper found out that digital technology has a strong impact on the attainment of these objectives, both in terms of opportunities for profitable exploitation, and as a challenge which exacerbates the problem of infringement. Therefore, the paper proposes that these issues need to be addressed through law reforms to address issues relevant to the right of copyright owners online by putting in place a suitable legal framework. Also necessary is logistic, technical support and creation of awareness levels of the implication and available options for right holders.

The putting in place of some of these measures will go a long way in providing the needed environment for the dissemination of copyrightable works, thereby positioning it to better contribute to socio-cultural and economic development and growth in Nigeria.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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- Musical Copyright Society of Nigeria Ltd./Gte v Nigerian Copyright Commission, Suit ⁷⁰The role of internet service providers and the nature and extent of their liability, if any, for online infringement also needs to be addressed.

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