

COPYRIGHT AS AN INSTRUMENT OF TRADE AND DEVELOPMENT

The Nigerian Copyright Act was promulgated in 1998 to ensure protection for authors and discourage piracy and other forms of copyright abuses. Unfortunately, the laws are not self enforcing and it has become imperative that there is a need to educate and enlighten the public on the general principles of copyright law and the specific provisions of the Act.

Copyright as the name suggest is the exclusive right that the owner has to make copies of his work and stop others from unlawful use, reproduction and exploitation of his created works.

This articles takes us through the emergence of copyright protection in Nigeria, the organ of administration of the laws, the challenges faced and suggested reforms.

a) Background.

The first statute law on copyright to be applied in Nigeria was the English Copyright Act of 1911. The law continued to apply in Nigeria until the 1970's when the Copyright Act was enacted. The eighties through the nineties saw a remarkable upsurge of interest in copyright and the development witnessed the birth of the Copyright Act 1988. This improved the 1970 Act by extending significantly the frontiers of copyright protection in Nigeria. The 1988 Act was amended in 1992 by the Copyright (Amendment) Act of 1992.

On the whole, the Act as amended in 1992 essentially governs copyright matters in Nigeria, while the copyright (Reciprocal Extension) Order of 1972 is applicable for reciprocal protection of foreign works, which originate in the countries named in the order.

b) Administration

Before 1988, there was no recognizable machinery for the administration of copyright matters except for the judicial powers of the court to adjudicate on copyright matters brought before it. While copyright is a private property right though intangible in nature, it has also in some essential respects, public interest which requires some form of regulation.

In the absence of any agency responsible for the administration of copyright the different interest groups fought for their respective members, especially those in the music and book industries who were the hardest hit by piracy and other forms of copyright abuses.

In the realisation of the need to institute framework for the effective coordination and administration of all matters or activities relating to copyright and to build up a sustainable regulating system the Nigerian Copyright Commission NCC was established under the 1988 Act(as amended).

The administration of copyright can be viewed from two broad perspectives, namely,

- the institutional framework and
- the private machinery for the collective administration of rights.

The institutional framework can be examined by the establishment and function of the Nigerian Copyright Commission (NCC) under the 1988 Act (as amended).

The NCC satisfies at least four basic imperatives.

- i. the institution of an enduring framework for effective coordination, supervision and monitoring of all matters relating to copyright;
- ii. setting up of a regulatory scheme or system for the carrying out of various copyright transactions. This includes, for instance, the making of regulations for collecting societies, the fixing of tariffs for mechanical rights and other important areas that require regulation;
- iii. an overseeing of the protection of the public interest in copyright and the balancing of the same with competing rights. This covers the provisions on compulsory licenses and the general public interest exceptions to copyright infringement; and
- iv. providing the consultative role for the conclusion of international agreements involving Nigeria in this area.

The collective administration of copyrights, this entails the surrendering of the Owners' right to mutual societies otherwise known as collecting societies. These societies assume responsibility for the monitoring and enforcement of the rights.

The Federal High Court is the court of adjudication for copyright matters.

c) Challenges

The NCC in its discharge of duties to administer copyright in Nigeria is empowered by the Copyright (Amendment) Act 1992 to constitute two subsidiary agencies, namely: (i) the Copyright Licensing Panel and (ii) the

Copyright Inspectors to approve or oversee the setting up of collecting societies for right owners. The nature and extent of these powers is in no doubt capable of raising some interesting legal questions in relation to the powers of the police under the law on the one hand and the fundamental rights of persons entrenched in the Nigerian Constitution on the other.

With the debilitating acts of pirates in recent times and the increasing public awareness towards copyright, it would appear that copyright inspectors with lesser power than these would be completely ineffective and thus undermine the drive against the epidemic of all forms of piracy of copyright works in Nigeria.

d) Reforms

The essential features and framework of the 1988 and the amendment Acts undoubtedly constitute significant landmarks in the developments of copyright law in Nigeria. Although it can be argued that the 1988 Act is a relatively new legislation, which has not been fully tested, its real future lies in the present far reaching changes already taking place in the perception and exploitation of copyrights as an instrument of trade and development.

The pace and pattern of infringement has also increased which is bringing about consistent judicial enforcement of the right. The 1988 Act has incorporated the notable remedies of inspection and seizure, and conversion of the infringement work coupled with other remedies such as damages and account of profits as recognition of the peculiar requirement in the enforcement of intellectual property rights.

Part of the developments taking place in the increasing exploitation of copyright in the market place is that the courts now more than before are expected to give more interpretations to some of the finer aspects of the copyrights law as expressly provided under the Act.

On the whole, the Act both in the substantive rights and framework can be seen as a conscious effort towards the development of copyrights law as a response to the notable changes, which has taken place since the earlier laws in this area were enacted.