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INTELLECTUAL PROPERTY PROTECTION IN NIGERIA

THE POSITION OF THE LAW ON COPYRIGHT INFRINGEMENT AND PROTECTION

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INTELLECTUAL PROPERTY PROTECTION IN NIGERIA: The Position Of The Law On Copyright Infringement And Protection

1. Introduction:

1.1. Nigeria is an emerging country and slowly taking its place in the comity of Nations. From Oil and Gas to Information and Communications Technology, the country is gradually carving a niche for itself as the next emerging destination after China for foreign direct investments. However the country still suffers from years of neglect in protection of investors rights partly because for many years it was a pariah.

1.2. This paper therefore is part of a series aimed at outlining the various intellectual property laws in place at the moment. The focus at this juncture is Copyright law and practice and a question and answer format has been adopted to make it as reader friendly as possible.

2. What are the specific laws Governing Copyright law and practice in Nigeria?

2.1. Copyright law and practice is governed in Nigeria by the Copyright Acts of 1970 & 1988, there have also been amendments introduced to the act in 1992 & 1999.

2.2. There are also several treaties and international agreements on Copyright to which Nigeria is a party or signatory such as: **THE BERNE CONVENTION 1886; THE UNIVERSAL COPYRIGHT CONVENTION 1952; ROME CONVENTION; TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS [TRIPS]; & THE WORLD INTELLECTUAL PROPERTY ORGANISATION [WIPO].**

3. Is there a regulatory agency empowered to oversee Copyright issues in Nigeria?

3.1. There is and it is known as Nigerian Copyright Commission.

4. Does this agency register copyrights as is done in other jurisdictions?

4.1. No. Nigeria does not operate a centralised system of registration for copyright.

4.2. What the law requires however is that publishers, printers, producers and manufacturers of works keep a register of all works produced by them showing the following

4.2.1. The name of the author;

4.2.2. The title;

4.2.3. The year of production;

4.2.4. The quantity of the work produced.

4.3. The Nigerian Copyright Commission however is empowered to maintain an effective data bank on authors and their works.

5. What will be entitled to copyright protection in Nigeria?

5.1. Section 1 of the Copyright Act states very categorically that the following will be eligible for copyright protection in Nigeria:

5.1.1. Literary works irrespective of literary quality which fall under the under listed categories:

5.1.1.1. Novels, Stories and poetic works;

5.1.1.2. Plays, stage directions, film scenarios and broadcasting scripts;

5.1.1.3. Choreographic works;

5.1.1.4. Computer programmes;

5.1.1.5. Text-Books, treatises, histories, biographies, essays and articles;

5.1.1.6. encyclopedias, dictionaries, directories and anthologies;

5.1.1.7. letters, reports and memoranda;

5.1.1.8. lectures, addresses and sermons;

5.1.1.9. Law reports, excluding decisions of courts;

5.1.1.10. Written tables or compilations.

5.1.2. Any musical work irrespective of musical quality and includes works composed for musical accompaniment.

5.1.3. Artistic works which irrespective of quality fall under any of the following categories:

5.1.3.1. Paintings, drawings, etchings, lithographs, woodcuts, engraving and prints;

5.1.3.2. Maps, plans and diagram's;

5.1.3.3. Works of sculpture;

5.1.3.4. Photographs not comprised in a cinematograph film;

5.1.3.5. Works of architecture in the form of buildings and models;

5.1.3.6. Works of artistic craftsmanship and also pictorial woven tissues and articles of applied handicraft and industrial art.

3.1.4 Cinematograph Film: This includes the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction and includes the recording of a sound track associated with the cinematograph film.

3.1.5 Sound Recordings: This is defined as the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced but does not include a sound track associated with a cinematograph film.

3.1.6 Broadcast: This is a sound or television broadcast by wireless telegraphy or wire or both or by satellite or cable programmes and includes re-broadcast.

6. Is this list exhaustive? What if I have an idea?

6.1. Yes it is, unless it falls under any of the above headings no other kind of work will be eligible for copyright. As a rule ideas are not protected only works.

7. Are there any eligibility requirements? When will a “Work” be deemed eligible for copyright?

7.1. Yes there are. The Copyright act states that for a literary, musical or artistic work to become eligible for copyright it must fulfill two basic criteria:-

7.1.1. Sufficient effort has been expended on making the work to give it an original character;

7.1.2. The work has been in any definite medium of expression now known or later to be developed from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.

8. Is one expected to meet both criteria or just one of them will suffice to support a claim for copyright infringement?

8.1. Both are mutually exclusive, you will have to meet both criteria to be eligible.

9. How are these determined? For example, when will sufficient effort be deemed to have been expended on the work to give it “original character”?

9.1. The reality is that there are no determining criteria espoused by the Act. Most of the literature on the subject is obtained from case law [court decisions] and the views of various writers on the subject.

9.2. Generally sufficient effort will be deemed to have been expended on the work to give it original character where there is evidence to show that some industry and knowledge has been applied and the work was not copied from another persons work.

9.3. The second requirement has even less literature on the subject, and till date there is no recorded court pronouncement on the issue.

10. Are there any works that will be deemed non-eligible for copyright protection?

10.1. Although not specifically listed in the Act, yes there are. For example, Artistic works which at the time they were made were intended by the Author to be used as a model or pattern to be multiplied by any industrial process will not be eligible.

11. Who are those entitled to claim Copyright in Nigeria?

11.1. Persons who are either Nigerian citizens or domiciled in Nigeria.

11.2. Persons whose works are first published in Nigeria or where it is a sound recording made in Nigeria.

11.3. Persons who are employed to make a work in the course of their employment.

11.4. Persons who are commissioned to make a work

11.5. Persons to whom the copyright has been transferred either by assignment, by testamentary disposition or by operation of law.

11.6. Persons to whom a licence of the work has been granted.

11.7. The Federal Government or State Government where it has commissioned someone to make a work.

11.8. Companies which are registered under Nigerian laws and which produce works of Copyright.

11.9. Non-Nigerians who are also not domiciled in Nigeria but who are citizens of or domiciled in a country that is a party to an obligation or treaty or other international agreement to which Nigeria is a party, including companies registered in those countries. Such persons/companies can claim copyright over their works provided the work is first published :

11.9.1. In a country which is a party to an obligation in a treaty or other international agreement to which Nigeria is a party;

11.9.2. By the United Nations or any of its specialised agencies;

11.9.3. By the African Union;

11.9.4. By the Economic Community of West African States.

12. How long does copyright last in Nigeria?

- 12.1. This depends on the nature of work involved.
- 12.2. For Literary, musical or artistic works other than photographs, copyright in the work will expire seventy years after the end of the year in which the author dies. If the Author is a corporate body or Government copyright will expire seventy years after the end of the year in which the work was first published.
- 12.3. For Cinematograph films and photographs the copyright will expire fifty years after the end of the year in which the recording was first made.
- 12.4. With respect to broadcast, copyright will expire 50 years after the end of the year in which the broadcast first took place.

13. What rights are conferred on the Copyright owner?

- 13.1. This also depends on the nature of the work involved.
- 13.2. Copyright in Literary and Musical works for example guarantee the exclusive right to do any of the following acts in Nigeria:
 - 13.2.1. Reproduction of the work in any material form;
 - 13.2.2. Publication of the work;
 - 13.2.3. Performance in public;
 - 13.2.4. Production, reproduction, performance or publication of any translation of the work;
 - 13.2.5. Making of any cinematograph film or record in respect of the work;
 - 13.2.6. Distribution to the public, for commercial purposes, of copies of the work, by way of rental, lease, hire, loan or similar arrangement.

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- 13.2.7. Broadcasting or communication of the work to the public by loudspeaker or any other similar device;
- 13.2.8. Making any adaptation of the work;
- 13.3. Copyright in Artistic works guarantees the exclusive right to authorize the:
 - 13.3.1. Reproduction of the artistic work in any material form;
 - 13.3.2. Publication of the artistic work;
 - 13.3.3. Inclusion of the artistic work in any cinematograph film;
 - 13.3.4. Making of any adaptation of the artistic work;
- 13.4. Copyright in Cinematograph films guarantees the exclusive right to:
 - 13.4.1. Make a copy of the film;
 - 13.4.2. causing the film, in so far as it consists of visual images to be seen in public and in so far as it consists of sounds to be heard in public;
 - 13.4.3. Make any record embodying the recording in any part of the sound track associated with the film by utilizing such sound tracks;
 - 13.4.4. Distribute to the public for commercial purposed copies of the work by way of rental, lease, hire, loan or similar arrangement.
- 13.5. Copyright in sound recordings guarantees the exclusive right to control in Nigeria:
 - 13.5.1. The direct or indirect reproduction, broadcasting or communication to the public of the whole or substantial part of the sound recording either in its original form or in any form recognisably derived from the original;

13.5.2. The distribution to the public for commercial purposes of copies of the work by way of rental, lease, hire, loan or similar arrangement;

13.6. Lastly, Copyright in Broadcast guarantees the exclusive right to control:

13.6.1. Recording and re-broadcasting of the whole or substantial part of the broadcast;

13.6.2. Communication to the public of the whole or a substantial part of a television broadcast either in its original form or in any form recognizably derived from the original.

13.6.3. Distribution to the public for commercial purposes of copies of the work, by way of rental, lease, hire, loan or similar arrangement. In relation to a television broadcast, copyright shall include the right to control the taking of still photographs from the broadcast.

14. From the above, is it safe to assume that in Nigeria exclusive ownership of Copyright is absolute?

14.1. Not really, the Nigerian copyright commission is empowered by law to grant what is known as a compulsory licence. This simply is an approval given to a qualified person other than the author of the work to produce and publish a translation of a literary or dramatic.

14.2. The grantee shall however be expected to pay royalties to the owner of the copyright in the work of copies of the translation sold to the public.

15. When will an infringement of Copyright be said to have technically occurred?

15.1. The rights of a copyright owner will be deemed to have been infringed upon where a person without the licence or authorization of the owner of the copyright does any of the following:

- 15.1.1. Does or causes any other person to do an act, the doing of which is controlled by copyright;
- 15.1.2. Imports into Nigeria, otherwise than for his private or domestic use, any article in respect of which copyright is infringed;
- 15.1.3. Exhibits in public any article in respect of which copyright is infringed;
- 15.1.4. Distributes by way of trade, offers for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed;
- 15.1.5. Makes or has in his possession, plates, master-tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work;
- 15.1.6. Permits a place of public entertainment or a business to be used for a performance in the public of the work where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be used was not aware and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;
- 15.1.7. Performs or causes to be performed for the purposes of trade or business or as supporting facility to trade or business any work in which copyright subsists;

**16. So my copyright has been infringed upon what are my options?
Where do I go for redress?**

- 16.1. The law allows for both civil and criminal redress in cases of copyright infringement. There are however distinctions in the way and manner this can be done.
- 16.2. The copyright owner may enforce his rights directly through civil proceedings; however criminal proceedings can only be initiated by the Nigerian Copyright Commission.

17. Conclusion

17.1. It will be an understatement to say Copyright law and practice is still a developing aspect of Nigeria's legal system. This is summed up in the simple fact that there is still no central registration for works in Nigeria in 2006!

17.2. However as stated in the introduction, this is an emerging economy, competition and the growth of the economy will lead to a corresponding amendment of all investment related laws to position the country to meet the challenges that will arise in the near future.

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