

G. ELIAS

**Fostering Ingenuity:
Navigating Copyright
Enforcement in Nigeria's
Legal Landscape**

Introduction

In the realm of Nigerian creativity, innovation knows no bounds. From music to art, literature to technology, the nation's creative spirit continues to thrive. However, with the rapid pace of this digital age, ensuring that these imaginative works and efforts remain protected calls for a closer look at copyright enforcement.

Copyright is recognized in Nigeria as an Intellectual Property (“IP”) right. The importance of copyright has grown even more pronounced with the introduction of the new Copyright Act of Nigeria 2022 (the “Act”) which encompasses additional intellectual property rights for the copyright owners. The Act outlined its objectives to include **(a)** protecting the rights of authors and ensuring just rewards and recognition for their intellectual efforts; **(b)** providing appropriate limitations and exceptions to guarantee access to creative works; **(c)** facilitating Nigeria’s compliance with obligations arising from relevant international copyright treaties and conventions; and **(d)** enhancing the capacity of the Nigerian Copyright Commission for effective regulation, administration, and enforcement. These combined objectives will undoubtedly safeguard the interests of copyright owners in Nigeria and cultivate a favourable environment for them to exercise their rights.

Aligned with its title, this article sheds light on the vital interplay between nurturing creative brilliance and understanding the legal mechanisms that uphold it. This article will examine the legal framework in Nigeria within which copyright holders in Nigeria can protect and enforce their rights against infringement.

Copyright in Nigeria

The World Intellectual Property Organization (WIPO) defines Copyright (or author’s right) as the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.¹

Copyright protection in Nigeria is ensured primarily, by the Copyright Act, 2022 and the Nigerian Copyright Commission (the “NCC” or “Commission”) as established under the Act is the regulatory body responsible for the registration and enforcement of copyrights in Nigeria.² Under the Act, the works eligible for copyright protection include: literary, musical, artistic, audiovisual works, sound recordings and broadcasts.³ This eligibility is subject to the condition that some effort has been expended in making such work as to give it an original character and that the work has been fixed in any medium of expression (known or later to be developed), from which it can be perceived, reproduced or otherwise communicated directly or with the aid of any machine or device.⁴

However, the Act stipulates that eligibility for copyright under the Act does not require any formality.⁵ The significance of the non-formality section within the Act lies in its establishment of automatic copyright protection. Under the concept of automatic rights, the instant an original work is materialized, whether through writing, recording, or other mediums, the creator is intrinsically bestowed with exclusive rights. There is no need for formal registration; the mere act of creation activates an innate safeguard. This principle empowers artists, authors, and innovators to boldly navigate their creative domains, with the assurance that their rights are acknowledged and preserved, right from the outset of their work.

¹ [Copyright \(wipo.int\)](https://www.wipo.int) accessed 20th February 2023

² Section 77 of the Act

³ Section 2(1) of the Act

⁴ Section 2(2) of the Act

⁵ Section 4 of the Act

Copyright Infringement in Nigeria

The essence of copyright under the Act is that it translates to the exclusive right to do or to authorize the doing of certain acts over the work produced. This means that the author has the right, subject to the provisions of the Act, to permit or restrict certain acts to be done on his creation.

As such, copyright infringement occurs where a person without the authorization of the owner of the copyright:

- Does or causes any person to do an act which constitutes, a violation of the exclusive rights of the copyright owner;
- Imports or causes to be imported into Nigeria, any copy of a work which if it had been made in Nigeria would be an infringing copy;
- Sells or offers for sale or hire any work in respect of which copyright is infringed;
- Makes or has in his possession, plates, master tapes, machines, equipment, or contrivances used for the sole purpose of making infringing copies of the work;
- Permits a place of public entertainment or of business to be used for a public performance of the work, where the performance constitutes an infringement of copyright in the work;
- Permits within its premises, the reproduction of a copyright work; or
- Performs or causes to be performed for the purposes of trade or business or the promotion of a trade or business, any work in which copyright subsists.⁶

Enforcement of Copyright in Nigeria

Infringement by doing any of the acts listed above is actionable at the instance of the copyright owner, assignee, or an exclusive licensee of the copyright in the court exercising jurisdiction in the place where the infringement occurred.⁷

The Act prescribes both civil and criminal liability for copyright infringement.

Criminal Liability

Specifically, the Act in sections 44-46 prescribes various degrees of conviction and/or fines for varying levels of infringement of copyright.

Under the Act, it is an offence if a person:

- a) Makes or causes to be made for sale, hire, trade or business any infringing work in which copyright subsists;
- b) Imports or causes to be imported into Nigeria other than for private or domestic use, a copy of any work which if made in Nigeria would be an infringing copy;
- c) Has in his possession, any plate, master tape, machine, equipment, device or contrivance for the purpose of making any infringing copy of the work;
- d) Sells, lets for hire, exposes or offers for sale any infringing copy of a work;
- e) Distributes for the purposes of trade or business any infringing copy of a work;
- f) Has in his possession other than for private or domestic use any infringing copy of a work;
- g) Has in his possession, sells, lets for hire or distributes for the purposes of trade or business or exposes or offers for sale or hire, any copy which if made in Nigeria would be an infringing copy;
- h) Without the consent of the owner, distributes copies of a work in which copyright subsists to the public for commercial purposes by way of rental, lease, hire, loan or similar arrangement.

⁶ Section 36(1) of the Act

⁷ Section 37(1) of the Act

In the case of (a)-(c), the person is guilty of an offence and is liable on conviction to a fine of at least N10,000.00 (Ten Thousand Naira) for each copy, at least five years imprisonment or both⁸, while in the case of (d-g), the person is guilty of an offence and is liable on conviction to a fine of at least N10,000.00 (Ten Thousand Naira) for each copy, at least three years imprisonment or both,⁹ and for (h) is liable on conviction to a fine of at least N1,000 (One Thousand Naira) for every copy or imprisonment for a term of at least three years or both.¹⁰ Any person who procures or aids another to commit any of the above offences is liable to the same punishment as that person so procured or aided.¹¹

It is a defense to the (a)-(g) above if such person proves that he did not know and had no reason to believe that the copy was an infringing copy of any work or that the plate, master tape, machine, equipment or contrivance was for making infringing copies of a work.¹²

In the case of bodies corporate that commits any of the above offences, both the body corporate and its principal officers are liable to be proceeded against and punished. It is a defense for any principal officer that the offence was committed without his knowledge or consent.¹³

Section 47 makes it permissible for both civil and criminal actions to be taken simultaneously in respect of the same infringement. The Act also gives the Commission the power to compound any of the offences by accepting such amounts it deems fit as long as it does not exceed double the minimum fine to which the offender would have been liable if he had been convicted of the offence.

Punishments for criminal offences in copyright range from fines, terms of imprisonment, destruction of infringing copies, plates, master tapes, machines or equipment,¹⁴ surrender of infringing copies, plates, master tapes, machines or equipment to the copyright owner¹⁵ and in the case of a body corporate, forfeiture of the assets and properties of the body corporate.¹⁶

Civil Liability and Remedies

A person at whose instance a copyright infringement is actionable may either employ (A) **litigation** or (B) **alternative dispute resolution (ADR) mechanisms** to enforce his claim.

A. Litigation

In litigation¹⁷, the Plaintiff, if successful, is entitled to reliefs such as damages, injunction, accounts, or any available remedy in the proceedings in respect of the infringement of any proprietary rights.¹⁸

Particularly, the remedies that may be obtained in a claim for copyright infringement include:

- a) Award of damages: This is a court order to the defendant which is pecuniary in nature for him to pay to the plaintiff, monetary satisfaction to compensate for the financial loss caused by his infringement. The award of damages is a compensatory relief to restore the plaintiff, as much as possible, to the position he was in if the copyright had not been infringed upon. Damages obtainable are general, specific, exemplary damages or additional damages.

⁸ Section 44(1) of the Act

⁹ Section 44(2) of the Act

¹⁰ Section 44(4) of the Act

¹¹ Section 45 of the Act

¹² Section 44(3) of the Act

¹³ Section 46 of the Act

¹⁴ Section 44(5) of the Act

¹⁵ Section 44(5) of the Act

¹⁶ Section 46(4) of the Act

¹⁷ The Court with the jurisdiction in Copyright claims is the Federal High Court of Nigeria. See section 251 of the Nigerian Constitution as amended and Section 103 of the Act

¹⁸ Section 37(2) of the Act

General damages are available upon proof of or admission of infringement. They flow from the infringing act of the defendant and need not be specifically pleaded or proved in law.

Specific damages on the other hand must be specifically pleaded and proved. The court does not and will not presume that amount to be awarded in this case.¹⁹ As such, the plaintiff must prove the infringement and then show to the Court the exact quantifiable injury that he has suffered because of the infringement. In a copyright case, a plaintiff may prove specific damages by showing profits lost or royalties lost.

Exemplary damages are additional damages awarded by the Court in order to punish or deter the defendant from such acts in the future. The Act gives the Court power to award additional damages having regard to the flagrancy of the infringement and any benefit shown to have accrued to the defendant by reason of the infringement.²⁰

- b) Order for injunction: An injunction is a type of remedy available to a plaintiff in a claim for copyright infringement. It may be obtained after proof of infringement at trial or pending the determination of the substantive trial in which case it may be obtained in interlocutory form whether as a *mareva* injunction or an Anton Pillar injunction. This makes the available injunctions available to a Plaintiff to range from perpetual, final to interlocutory injunctions.

The most popular injunction granted for copyright infringement claim is the Anton Pillar Injunction or order. This order is available to the Plaintiff pending trial in order to ensure that evidence of infringement is not destroyed before the matter is heard and concluded. It allows the Plaintiff to essentially enter the defendant's premises, with officials of the Court, and seize and detain all suspected infringing materials that will be relevant in the determination of the copyright infringement claim.

This injunction was developed in the case of *Anton Piller K.G. v. Manufacturing Processes Ltd* [1976] 1 All E.R. 779 wherein a plaintiff brought an ex parte application supported by an affidavit showing reasonable cause for suspecting the presence in any premises of items used or intends to be used for making infringing copies of his work. Granting the order, the plaintiff was allowed to conduct a form of civil search in the premises of the suspected person committing the infringement.

This order is statutorily backed by Section 38 of the Act wherein it provides thus:

“(1) In any action for infringement of any right under this Act, where an ex parte application is made to the court, supported with an affidavit, that there is reasonable cause to suspect that there is in any house or premises an infringing copy or any plate, film, device, or contrivance used, intended to be used or capable of being used for the purpose of making infringing copies, the court may issue an order as it deems just, authorising the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer or a Copyright Officer, to —

(a) seize, detain, and preserve the infringing copy or contrivance; and

¹⁹ *Dumes (Nig.) Ltd. v. Ogboli* (1973) 3 U.I.L.R. 306

²⁰ Section 37(5) of the Act. See also *Masterpiece Investments v Worldwide Business Media Ltd. & Ors* (1997) F.H.C.L.R 496

(b) inspect any document, relating to the action, in the custody or under the control of the defendant.

- c) Order for the account of profits: The court may also order that the defendant account to the Plaintiff any profits he may have accumulated because of his infringement. The purport of this order is to ensure that there is no undue enrichment on the part of the Defendant.

This remedy is an alternative to damages. A plaintiff cannot claim both damages and account for damages.²¹ The proper claim is for damages or an account of damages.²² An account of profits entitles the Plaintiff to the profit the defendant has made from the infringement. In some cases, this may exceed the damage suffered by the Plaintiff.²³

This remedy is not available where there were no profits made.

- d) Order for Delivery up or Forfeiture: This is a court order against the defendant to hand over all infringement articles to the plaintiff. This is statutorily backed by Section 40 of the Act which provides for the forfeiture of infringing copies. In this case, the plaintiff may apply to the court for an order against the defendant that the infringing works be forfeited to him or any other person, destroyed or otherwise dealt with as the court may see fit.

B. Alternative Dispute Resolution (“ADR”):

Another option to a copyright owner whose rights have been infringed upon is to employ ADR mechanisms such as arbitration, mediation, or negotiation to enforce his/her rights.

- a) Arbitration: By Section 37(7) of the Act, any dispute arising from the exercise of a right under the Act may be subject to arbitration and may be resolved by any means agreed to by the parties to the dispute. Arbitration is a process wherein parties submit their grievance to a formal third party called the arbitrator/arbitral tribunal for resolution. The decision of the third party is called an arbitral award which is binding and enforceable by the Court.

Arbitration proceedings in Nigeria are guided by the Arbitration and Mediation Act, 2023. In a copyright infringement matter, an arbitral clause may exist in the contract between the parties (as in the cases of licensees) in which case the dispute must first be referred to arbitration before litigation can be explored. Where a party resorts to litigation first, the other party can apply for a stay of proceedings until the determination of the arbitration proceedings.²⁴

- b) Mediation: Mediation is a process where parties request a third person (the mediator) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or legal relationship, but the mediator does not have the authority to impose upon parties a solution to the dispute.²⁵ This definition covers “conciliation or an expression of similar import.” Mediation as an ADR mechanism is regulated by the AMA 2023. The decision of a mediator is called a settlement agreement which is binding on the parties and enforceable in Court as a contract, consent judgement or consent award.²⁶

²¹ Colburn v Simms (1843) 2 Ha. 543

²² Adenuga v Ilesanmi Press (1991) 5 NWLR 82

²³ *Intellectual property law in Nigeria*, Folarin Shyllon; Vol 21, pp. 109-110

²⁴ Section 5 of the AMA 2023

²⁵ Section 91(1) paragraph 11 of the AMA 2023

²⁶ Section 82 of the AMA 2023

- c) **Negotiation:** Negotiation is an ADR mechanism where the parties voluntarily come together (personally or through representatives) to discuss their differences and attempt to reach a mutual resolution of the conflict without the involvement of a third party.

Parties to a copyright infringement matter may decide to explore ADR in place of litigation due to its advantages over litigation. This is because ADR is relatively cheaper in the long run, it is faster, less formal, parties-driven, preserves relationships, promotes privacy and friendliness.

However, a disadvantage of this method is that immediate reliefs like injunctions cannot be obtained. Given that injunction is a major and important relief in copyright enforcement claims, a copyright owner may be reluctant to adopt ADR in place of litigation notwithstanding its benefits.

Conclusion

The legal framework for copyright in Nigeria is designed to safeguard the intellectual property of creative individuals and prevent unauthorized exploitation of their work. While the provisions within the Copyright Act are commendable and forward-thinking, the key to their success lies in the effective implementation of the provisions.

Given the backlog of cases in Nigerian courts, it is evident that plaintiffs may face prolonged waits to obtain the redress they deserve for copyright infringements. Therefore, the option of alternative dispute resolution becomes crucial. Additionally, it is imperative that the Copyright Commission operates efficiently, ensuring that copyright offenses, actionable on behalf of the state, are vigorously prosecuted to deliver justice to creators.

Despite the challenges, the copyright legal system in Nigeria creates an enabling environment for creators to assert their rights and seek remedies for any infringement. With a commitment to efficient enforcement of copyrights and dispute resolution, the Nigerian copyright legal framework can foster ingenuity and further empower its creative community to thrive and contribute to the nation's cultural and economic growth.

Authors



Chioma Egboh-Nwachukwu
Associate
chioma.egboh-nwachukwu@gelias.com



Shukurat Oladejo
Associate
shukurat.oladejo@gelias.com

LOCATIONS

LAGOS OFFICE
6 Broad Street
Lagos, Nigeria

ABUJA OFFICE
2nd Floor, Abia House,
Plot 979, First Avenue,
Central Business District
F.C.T, Abuja.

T: +234 (1) 460 7890
E: gelias@gelias.com

T: +234 (1) 888 8881

Practices • Arbitration • Banking • Capital Markets • Competition • Compliance • Corporate • Data Protection • Derivatives • Employment • Fintech • Foreign Investment • Intellectual Property • Litigation • Mergers and Acquisitions • Tax • “White Collar” Sanctions •

Sectors • Agribusiness • Commercial Banks • Commodities • Construction • Distributors • Development Finance • Electric Power • Entertainment • External Trade • Fintech • Healthcare • Infrastructure • Insurance • Investment Banks • Manufacturing • Media • Mining • Oil and Gas • Pension Managers • Private Equity • Real Estate • Services • Technology • Telecommunications • Transport •

www.gelias.com