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A Review of the Nigerian Copyright Act, 2022



Introduction

On March 17, 2023, President Muhammadu Buhari signed the Copyright Act, 2022 (the “**Copyright Act**” or the “**Act**”) into law. The Act repeals the Copyright Act, Cap C28, Laws of the Federation of Nigeria, 2004 (the “**Old Act**”) and provides for the regulation, protection, and administration of copyright in Nigeria.

The enactment of a new legislation for copyright protection became necessary primarily since the Old Act failed to address the challenges introduced by digital technology as it pertains to copyright protection. Among others, there was a significant lacuna in the Old Act on the regulation of copyrightable works in the digital environment and the enforcement of rights in these digital spaces. Interestingly, the Copyright Act, in addition to other landmark provisions now contain new provisions that address the protection of copyrightable works in the digital space.

The objectives of the Copyright Act are to **(a)** protect the rights of authors and ensure just rewards and recognition for their intellectual efforts; **(b)** provide appropriate limitations and exceptions to guarantee access to creative works; **(c)** facilitate Nigeria’s compliance with obligations arising from relevant international copyright treaties and conventions; and **(d)** enhance the capacity of the Nigerian Copyright Commission for effective regulation, administration, and enforcement.

This Article seeks to review the Copyright Act and identify the key changes and innovative provisions introduced by the Act.

Key Changes and Innovative Provisions

1. Works Eligible for Copyright¹

- a. Audiovisual works have been added as one of the eligible works for copyright protection in Nigeria. Audiovisual works are defined by the Act to mean:

“The aggregate of a series of related visual images with or without sound, which is capable of being shown as a moving picture by means of a mechanical, electronic or other device and irrespective of the nature of the material on which the visual images and sounds are carried and includes the soundtrack but does not include a broadcast.”²

This definition encompasses pictures, videos, sound recordings and other productions, a lot of which can be found online. This provision thus captures media contents with the effect that such contents should not be dealt with in any way without the consent or license from the author. The nature of copyright in audiovisual works is more properly laid out in Section 11 of the Act.

- b. Cinematograph works have been removed from the list of works eligible for copyright.
- c. Eligibility of Literary, Musical and Artistic Works: By the provisions of the Act, literary, musical or artistic works shall not be eligible for copyright unless “*some effort has been expended on making the work, to give it an original character...*”.³ As opposed to the Old Act, the word “some” has replaced the word “sufficient.” The Act however failed to give a specific definition to the term “some” and as such its literal meaning will apply, with the effect that if any amount of effort has been put into a work giving it an original character, and it is in a fixed medium, such work is copyrightable. The effort put into the creation does not have to be sufficient so long as some effort was put into the creation of the work.

¹ Section 2 of the Act.

² Section 108 of the Act.

³ Section 2(a) of the Act.

- d. **Quality and Purpose of the Work Created:** The Act specifically provides that the quality of, or purpose for which a work is created will not hinder the eligibility of that work for copyright protection so long as it meets the requirements of the Act as set out in section 2(2)(a) and (b) namely that: (i) some effort was expended into the work to give it an original character and (ii) the work has been fixed in any medium of expression known or later developed from which it can be perceived, reproduced or otherwise communicated directly or with the aid of any machine or device. The Act merely requires compliance with the eligibility conditions and nothing more.
- e. **Copyright in a Compilation:** The copyright granted over a compilation⁴ will not confer any exclusive right in the pre-existing material or data.⁵ The import of this is that where an author applies for, and is granted copyright over his work which is a compilation of other works (including pre-existing materials), he does not get the copyright nor the exclusive right in the pre-existing materials which comprise of his compilation.
2. **Automatic Copyright Protection:** Section 4 of the Act provides that the conferment on copyright protection is automatic and requires no formality.⁶ Although this was inferred in the Old Act, this express provision is a commendable inclusion.
3. **Copyright by Reference to Country of Origin:** Under the Act, copyright conferred by reference to country of origin has been extended to include broadcast transmitted from Nigeria or by a broadcasting organization that has its headquarters situate in Nigeria as well as audiovisuals first published in Nigeria.⁷
4. **Exclusive Rights Conferred by Copyright:**⁸ Copyright in eligible works translates to the exclusive right to do or to authorize the doing of certain acts over the work produced. A notable addition to the exclusive rights granted by copyright is that of the right to “*make the work available to the public by wire or wireless means in such a way that the members of the public are able to access the work from a place and at a time independently chosen by them*”. The import of this provision is that there is now an additional right of communication to the public which is applicable to all rights conferred pursuant to the Act. Copyright owners are now vested with the right to publish their work both offline and online via the digital space for the public to consume.
- In the case of a broadcast, the Act grants additional exclusive rights to the fixation, reproduction of the fixation, adaptation of the fixation and distribution of a fixation of the broadcast or its copies for commercial purposes.⁹ These exclusive rights are not available to cable operators who merely retransmit the broadcasts of broadcasting organizations.¹⁰
5. **Moral/Autorship Rights:** The Act qualifies the transmission of authorship rights with the effect that it is not transmissible during the life of the author.¹¹ In other words, during the life of the author, only the author has the legal rights of authorship as conferred by the Act. The means of transmission of authorship rights upon the author’s death is only by testamentary disposition (*i.e.*, a will or codicil) or by operation of law.

⁴ The US Copyright Law in section 101 defines a compilation to mean a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. See <https://www.copyright.gov/title17/> accessed on April 11, 2023.

⁵ Section 2(5) of the Act.

⁶ Section 4 of the Act.

⁷ Section 6 of the Act.

⁸ Sections 9-13 of the Act.

⁹ Section 13(1) (d-g) of the Act.

¹⁰ Section 13(3) of the Act.

¹¹ Section 14 (3)(a) of the Act.

6. **Assignment of Copyright:** By section 17 of the Act, the assignment of an original work whether literary, musical or artistic does not deprive the author of the inalienable right to share in the proceeds from the sale of that work through a public auction or dealer subsequent to the first transfer by the author. The exercise of this right is however made subject to conditions to be stipulated by the Nigerian Copyright Commission (the “NCC”) in its regulations. Also, this right conferred does not apply to architectural works or works of applied art.
7. **Fair Dealing:** The Act, in setting out the acts that amounts to fair dealing precedes the list with the words “*such as*” with the import that the purposes so listed are not exhaustive and as such, other purposes may be permissible if it is shown that there is the element of fairness in dealing with the work.

The Act qualifies non-commercial research and private study as one of the purposes where fair dealing may be inferred. The Act also sets out the factors to be considered in determining fair dealing when seeking to apply the exceptions to copyright. These are that the (a) purpose and character of usage; (b) nature of the work; (c) amount and substantiality of the purpose used in relation to the work as a whole and (d) effect of the use upon the potential market or value of the work be considered.¹²

8. **Special Exceptions:** The Act introduces special exceptions to the use of copyrighted works. It permits protected works being used by the blind, visually impaired or other print disabled persons. It refers to them as beneficiary persons and allows them have access to copyrighted works without the permission of copyright owner.¹³
9. **Ownership Rights:** The Act provides that in the case where a person commissions another to take a photograph, paint or make an audiovisual work, the commissioner, although not the author of the work is vested with a non-exclusive license to exploit the commissioned work for non-commercial purposes and is also entitled to restrain the publication, exhibition, broadcasting, communication, distribution and making available copies of the work to the public.¹⁴

This is an interesting provision as under the Old Act, it was clear that the creator of a work ordinarily owns the copyright in the work save for the case where it was work created in the course of employment. However, by the provisions of the Act, a person who commissions a work though not the owner of the copyright in that work is given an automatic exclusive license to use the work for the approved purpose and has other rights conferred on him.

The Act also provides for copyright in a collective work¹⁵ and states that except where otherwise agreed, the copyright shall vest in the person on whose initiative or instruction the work was created. While the individual authors shall have the right to exploit their individual works, the right to exploit the right in the collective work remains in the one in whom it is vested.

10. **Copyright Infringement:**¹⁶ As it relates to acts amounting to copyright infringement, the Act excludes exhibition of a work which was the result of an infringement of another’s copyright which was provided for in the Old Act. The Act extends the acts of infringement to anyone who permits within its premises, the reproduction of a copyright work. The effect of this is enormous, as it captures a lot of people. An illustration is a landlord who rents out his property to a photocopier who then goes on to reproduce a copyrighted work on that premises. The effect of this provision is that, both the photocopier and the landlord will incur liability for copyright infringement.

¹² Section 20 of the Act.

¹³ Section 24 of the Act.

¹⁴ Section 28(3) of the Act.

¹⁵ Section 29 of the Act.

¹⁶ Section 36 of the Act.

Infringement occurs where the infringing acts are done to the whole or substantial part of the copyrighted work either in its original form or in any form recognizably derived from the original.

The Act provides for the reference of disputes to arbitration.¹⁷ The Act also makes provision to enter a premises where infringement is suspected to be ongoing to seize and detain said infringing copies.¹⁸

11. **Criminal Sanctions:** The Act broadens the liability for infringement to a welcome extent. Unlike the Old Act where the sanctions were minimal and in no way deterring to infringers, this new provision is laudable.¹⁹ There is also an expansion of what amounts to a copyright offence. With the introduction of the right of a copyright author to communicate his work through wire or wireless means, the Act criminalizes any person other than the author who does such.²⁰ The Act also confers liability on any person who aids or procures another person to commit a copyright offence.²¹

12. **Anti-Piracy and Other Measures:** In advancing anti-piracy measures, the Act requires publishers and any other persons who engage in the reproduction of copyrighted works to keep a record of works so dealt with and makes it an offence where such record is not kept, or the records are falsified.

The Act in section 50 recognizes technological protection measures²² and prohibits the circumvention of those measures. This is an innovative provision under the Act. Accordingly, it amounts to infringement, when a person in accessing a copyrighted work, tries to bypass any protective measures such as encrypted software, access codes and the likes which has been put in place by the copyright owner. It equally prohibits and criminalizes the importation of technology or devices to be used for the circumvention of technological protection measures.

Another innovative provision is the recognition of rights management information.²³ The Act prohibits the falsification, alteration or removal of electronic right management information and further vests in the right owner, the right to institute actions for where technological protection measures or right management information is circumvented.²⁴

13. **Restriction on Importation:** The Act confers on a copyright owner, the right to give notice to the NCC to notify the Nigerian Customs Service to restrict importation of goods into Nigeria, in respect of which the owner's right has been infringed. The Old Act merely provided for the restriction of importation of printed copies. The Act, on the other hand, expands this provision to all copyrightable works.²⁵ The effect of this is that a copyright owner upon being aware of the intended importation of infringing copies of his work (not just printed copies) in any form can give notice for such to be treated as prohibited goods.

14. **Copyright and Online Content:** Part VII of the Act makes provisions for the protection of copyrighted works in the online environment. This is a laudable provision as the current copyright regime acknowledges the digital space, the menace of digital infringement of copyright and regulates the use of copyrighted works in that space.

¹⁷ Section 37(7) of the Act.

¹⁸ Section 38 of the Act.

¹⁹ Section 44 of the Act.

²⁰ Section 44(7) of the Act.

²¹ Section 45 of the Act.

²² This refers to a technology, device, product or component incorporated into the work which is designed to effectively prevent or inhibit the infringement of any copyright or related right.

²³ This refers to information that identifies content protected by copyright.

²⁴ Section 51 of the Act.

²⁵ Section 53 of the Act.

The internet, now more than ever, continues to aid the creation of copyrightable works. This has equally allowed for the means of uploading already created works on the digital space. These new works on the internet or digital space are referred to as “digital contents”. It is not doubted that the services of intermediaries like internet service providers (ISP) have with the advancement of the digital space been used to carry out infringing activities in the digital environment. As a result, the Act recognizes the need to incorporate these ISPs in its fight against infringement.

The Act contains notice and takedown provisions. It vests in the copyright owner the right to notify the relevant service provider to take down or disable access to an infringing content or link being hosted on its site or network.²⁶ The Act equally provides for the suspension of accounts of repeat infringers.²⁷ The failure of an ISP to comply with the Act renders such ISP liable for a breach of statutory duty and infringement as well.

The Act also contains provisions for the limitation of liability of these service providers under the conditions in section 58 of the Act. The limitation of liability becomes necessary as they do not have the technical power to prevent customers from using the system to commit acts of infringement and the best that can be done by them is exercising their power to terminate their relationship with any customer who infringes.

These provisions regarding digital contents are very welcome as with the speed of digitalization, the amount of copyrightable works on the internet is on the increase. With TikTok, Instagram, YouTube, academic sites like Research Gate and other social networking sites being the rave of the moment, creatives need assurance that their works will be afforded due legal protection.

15. **Definition of Copies:**²⁸ The definition of ‘copy’ under the Act has been extended to include digital copies. This means that copyright owners may now proceed against infringements of their copyright even if the unauthorized copy is in digital form. With the steady growth of the digital economy, copyright owners are now able to ensure that they can also take full advantage of the digital economy.

16. **Performer Rights**²⁹

- a. **Presumption of Consent:**³⁰ By the provisions of the Act, except with an express agreement to the contrary, when a performer has consented to the broadcasting of his performance, he is deemed to have consented to an authorized rebroadcasting, the fixation of his performance and the reproduction of the fixation for broadcasting purposes. This means every performer must be explicit in the terms of their contract to state what consent they give and which one they withhold.
- b. **Criminal Liability for Infringements:**³¹ Any person found infringing upon a performer’s copyright is guilty of an offence and is liable on conviction, in the case of an individual, to the payment of a fine not less than ₦100,000 (One Hundred Thousand Naira only) or one year imprisonment, or both and in the case of a body corporate, to a fine not less than ₦2,000,000 (Two Million Naira only).

Issues Arising - Enforcement

Whilst we applaud the innovative provisions introduced by the Act, there has been no significant alteration or improvement to the provisions relating to enforcement. Over the years, there has

²⁶ Section 54 of the Act.

²⁷ Section 56 of the Act.

²⁸ Section 108 of the Act.

²⁹ Part VIII of the Act.

³⁰ Section 65 of the Act.

³¹ Section 73 of the Act

been a significant lacuna with the enforcement of copyright in Nigeria and if there is no change or improvement to the enforcement regime, things might remain the same.

It is thus our recommendation that there be established a specialized department under the NCC to enforce copyright provisions regulating digital works. The current regulatory body is clearly overstretched. To mitigate this, the NCC ordinarily saddled with general copyright regulation and enforcement can delegate the enforcement of digital copyright to the specialized department. The NCC remains the primary regulatory body and this new department is just to allow for better and stronger administration and enforcement.

We also recommend the establishment of a court to handle only Intellectual Property (IP) claims.³² This will allow for easier and quicker enforcement of IP rights which are ventilated in the courts. It may equally have the added advantage of creating awareness of these rights as with the quick, informal and cost-effective procedure, more IP right owners will frequently seek to enforce the same and this will significantly reduce cases of infringement in Nigeria.

Conclusion

The enactment of the Act is a clear case of regulation catching up with innovation. The innovative provisions as to online or digital contents is an acknowledgement of the significant role currently played by the digital space in this new era of technology.

The due implementation of the provisions of the Act, is expected to bring about a significant boost in the Nigerian creative industry as with the protection of digital contents, creatives will now be able to exclusively exploit their rights.

It is envisaged that the implementation of the Act may invoke confusion and reduced compliance as it relates to the definition of “some effort” as part of the copyright eligibility requirements for literary, artistic and musical works. A specific definition for the effective implementation of the Act may be required to properly curtail this.

³² The United Kingdom is the blueprint for this with its Intellectual Property Enterprise Court.

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