journals.unizik.edu.ng/index-php/jcpl ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

A Review Of Copyright Governance In Nigeria

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Abstract

The dawn of information age and the advancement of technology in the reproduction of information and intellectual goods created a favourable tool for infringement; copying and selling of another's intellectual works have become easy and less expensive; copyright theft; production of fake, sub-standard and unlicensed products are on the increase. Hence copyright infringement is a global problem, although more prevalent in developing countries like Nigeria. It is in recognition of the above fundamental facts that the Nigerian Copyright Commission (NCC) was created and is saddled with the responsibility of monitoring, administering and enforcing copyright laws and ensuring proper implementation of set out rules and regulations on the citizenry. This article examined new method of copyright infringement in relation to policing capabilities of the copyright Nigeria and posited trajectories through it can continue wining the fight against advanced copyright free rides.

Introduction

It is truism that the greatest heritage of a nation remains the creativity of its citizens and therefore one of the primary functions of law is to protect the ingenuity, resourcefulness and innovation of the citizenry. Thus, the dictum of Belgore, J. in *Oladipo Yemitan v. Daily Times Nigerian ltd*[1] is very apt when he said that: "The right of a man to that which he had originally made is an incorporeal right and must be protected"[2]

The primary aim at discovering the development of the legal protection which is assigned to the creative and artistic work are under the name and style of copyright administration in Nigeria.[3] In fact, the administration of copyright protection must be carried out within an existing legal framework. Generally, the term copyright law is a branch of that part of law which deals with the rights of intellectual creators and such rights are respected by the laws of most countries Nigeria inclusive.[4] The reasons for this respect of the rights of creators are the needs to stimulate and foster the creativity of men and women in the society. The word copy right is a species of intellectual property with its unique character. A renowned Jurist[5] has in the past said:

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[1](1980)FHCR 186 at 190

[2]Faga, H. P. and Ngozi, O, 'Limits of Copyright Protection in Contemporary Nigeria: Re-examining the relevance of the Nigerian Copyright Act in Today's Digital and Computer Age'[2011] *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*(Vol. 2) p. 211 assessed at http:www.ajol.info>article>view on 1/5/2021.

[3]Abubakar, B. M. and Umar, M. A. and Audu, M. A.,'An Appraisal of Copyright Administration in Nigeria towards a Sustainable Development'[2014]*IOSR Journal of Business and Management*(Vol. 16, issue 11, ver 11) p. 8, at assessed on http://www.iosrjournals.org 14/04/2021.

[4]*Ibid.*

[5]Erie, J., in Jeffrey's Boosey(1885) H. L. C. P. 815

> *It is true that property in the order of words is a mental abstraction, but so also are many other kinds of property for instance, the property in a stream of water which is not in any of the atoms of the water, but in the flow of the stream. The right to stream none the less a right of property, either because generally belongs to the proprietor, or because the remedy for a violation of the right is by action in the case, instead of the detinue of troves*

In essence, if the person who makes physical objects through manual labour and craft is readily granted property right in his product, then there is a moral persuasion why another should be allowed to enjoy similar treatment and obtain proprietary rights over the products of his mind.[6] Until 1988 when the Copyright Act was passed into law, there was no effective administrative infrastructure for copyright practice in Nigeria. The Act provides for the establishment of a body to be known as the Nigerian Copyright Commission.

Definition Of Copyright

Copyright has been defined as[7]

> *The right of literary property as recognised and sanctioned by positive law. An intangible incorporeal right granted by statute to the author or originator of certain literary or artistic productions whereby he is vested for a limited period with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them in Nigeria.*

Elias, in his book[8], defines the term copyright as the right of author, to prevent others from publishing or reproducing his work without the owner's prior consent. Obatosin Ogunkoye defines it as; "copyright, simply put it as exclusive right given under the law to the owner of copyright to control the reproduction of the copyright of work which is subject of copyright"[9]. Copyright in Nigeria is a statutorily granted right exercisable by certain group of persons, over some designated works of art, and upon specified terms and condition as provided by the law. Copyright has also been defined as exclusive legal right, held for certain number of years to print, publish, sell, broadcaster, perform, film or record an original work or any part of but the above definition gives the wrong notion that the only qualification required of a work to be protected by a copyright is originality.[10] Copyright is a legal system that protects the creative outputs of authors by granting them exclusive rights to control the use of their creations for a limited time subject to certain limitations exceptions and statutory licensing arrangements allowing use and exploitation without the author's consent.[11]

[6]Abubakar, B. M. and Umar, M. A. and Audu, M. A., *Op.Cit.* at p. 8
[7]Garner, B. A., Blacks Law Dictionary, 8th edition: West Publishers, N. Y., p. 361.
[8]Elias, T. O., *Nigerian press Law*(1967) p. 58.
[9]Abubakar, B. M. and Umar, M. A. and Audu, M. A., *Op.Cit.* p. 9
[10]*Ibid.*
[11]Kunle, O.,'Evolution and Future Trends of Copyright in Nigeria'[2020] p. 2 assessed at http://www.researchgate.net on 1/5/2021.

Copyright Act 2004

The Act was promulgated under a military administration and was therefore passed as a decree. The Act has been amended twice, firstly in 1992 and secondly in 1999. In 2004, the laws were re-codified under the laws of the federation of Nigeria. The Act when passed in 1988 had 41 sections but the combined effect of the re-codification and the amendments to the Act has moved the number of sections to 53 sections while retaining the original number of parts and schedules, that is, 4 parts and 5 schedules.
The four parts provide for the following:

Part I: Copyright,

Part II: Neigbouring rights,

Part III: Administration of copyright

Part IV: Miscellaneous.

The five schedules to the Act cover the following:

First Schedule: Terms of copyright,

Second Schedule: Exceptions from copyright control

Third Schedule: Special exceptions in respect of a sound recording of a musical work respectively.

Fourth Schedule: Compulsory licences for translation and reproduction of certain works

Fifth Schedule: Translation and savings provisions.

Subject Matter of Copyright

Section 1 of the Copyright Act[12] sets out six works eligible for copyright. These are: literary works, musical works, artistic works, cinematograph films, sound recordings and broadcast. The meaning and scope of these works are set out in *Section 51* of the Act.

Literary Works[13]

By Section 51 of the Act, literary works include novels, stories and poetic works, plays, stage directions, film scenarios and broadcast scripts; choreographic works; computer programmes; textbooks; treaties; essays and articles; lectures, addresses and sermons; law reports, to mention but a few. It should be noted that the literary quality of the work is immaterial in determining whether or not the work qualifies as a literary work. From the definition or description of a literary work given by the Act, a post on Face book or Twitter will qualify as a literary work protected by the Act.

[12]Laws of the Federation 2004
[13]*Section 51* of the Copyright Act 2004 CAP. C28 laws of the Federation.

Musical Works

The Act defines a musical work[14] to mean any musical composition, irrespective of the musical quality, and includes works composed for musical accomplishment. This definition covers both sound and the lyrics of the song.

Artistic Works

The Act defines artistic works[15] as including, irrespective of the artistic quality, any of the following works or works similar thereto: paintings, drawings, etchings, woodcuts, engravings and prints; works of sculpture; photographs not comprised in cinematograph films, to mention but a few.

Cinematograph Films

A cinematograph film[16], according to the Act, 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. This definition encompasses visual images fixed in different media, such as video tapes, compact discs, etcetera.

Sound Recording

Sound recording[17]means the first fixation of a sequence of sounds capable of being perceived aurally and of being reproduced, but does not include a sound track associated with a cinematograph film. This definition clearly sets out sound recording contained in a cinematograph film from the ambit of sound recording. Such sound recording will be treated within the ambit of cinematograph films.

Broadcast

The Act defines broadcast[18]to mean sound or television broadcasting by wireless telegraphy or wire or both, or by satellite or cable programmes, and includes re-broadcast.

Ownership, Authorship and Subsistence of Copyright

Once it is established that a work falls within the six categories of works subject to copyright, the next step is to determine if copyright subsists in relation to a work at issue. The Act provides that for copyright to subsist in literary, artistic and musical works, the twin requirements of originality and fixation must be fulfilled. Once the twin requirements are fulfilled, copyright will subsist in the work whether or not the work is registered.

By originality, it is meant that the work must have not been copied but originates from an author. The work must therefore be the result of the author's intellectual creation. It should be noted that the mere fact that the author's works drew inspiration from an existing stock of knowledge, which was in the public domain, will not affect the copyright of the work. This was the decision

[14]*Ibid.*
[15]*Ibid.*
[16]*Ibid.*
[17]*Ibid.*
[18]*Ibid.*

of the court in the case of *University of London Press v. University Tutorial Press*[19], where the court rejected the contention of the defendant that the plaintiff's work was not entitled to copyright, solely because the work drew inspiration from the stock of knowledge common to mathematicians. Where, however, a work was simply copied from other works, such work is not original and does not qualify for protection.

Author of a Work

Section 51 of the Act provides, with regard to literary, musical and artistic works, that the author refers to the creator of the work. The author of a photograph is the person who took the photograph.

Ownership of a Work

The owner of a work is the person entitled to the copyright of the work. The general rule is that copyright is vested in the author of a work. This rule applies even where such author has been paid by someone to create the work by way of commission or pursuant to a contract of employment. From the above provision of the Act, the author of a photograph is the photographer. The person appearing in the photograph can, in appropriate cases, be sued by the photographer for the breach of his copyright. This is, however, different from the position obtainable in the United States of America and other countries where ownership of such work, usually referred to as 'work made for hire', is vested in the person who commissioned the agent to do the work or the employer as the case may be. To avoid such situation, Section 10 of the Act provides a situation where the parties may by agreement vary the authorship of the work. This may be by contract of employment or any other contract between the parties.

Works Eligible For Copyright Under The Act

Works eligible for Copyright the world over is generally similar but there exist some differences depending on the jurisdiction. Under the Nigerian Copyright Act, six works are particularly mentioned as eligible for copyright.

They are as follows: literary, musical and artistic works; cinematograph films, sound recordings and broadcasts. For a work to be eligible for copyright under the Act, sufficient effort must have been expended on the work to give it an original character and it must have been fixed in a definite medium directly perceivable or perceivable with the aid of any device or machine.

Conferment Of Copyright[20]

Once a work is eligible for copyright, copyright may be conferred on such a work through a number of channels.

i. By virtue of nationality or domicile: The author(s) is a citizen of or is domiciled in Nigeria or an organisation/company duly registered under the laws of Nigeria.

ii. By reference to country of origin: The work was first published or made in Nigeria.

[19] (1916)2CH. 601.

[20]Kunle, O.,'Evolution and Future Trends of Copyright in Nigeria', *Op. Cit.*

iii. In Works of government, State authorities and International bodies: The work is made under the direction of the government, a state authority or an international body.

iv. Reference to International agreements: The work is made by a person who on the date of the first publication of the work, such person was a citizen of a country or domiciled in a country to which Nigeria is a party to an obligation in a treaty or other international agreement; or where the work was first published in a country where Nigeria has treaty obligations, or where it was first published in either of the following organisations, the United Nations or any of its specialised agencies, the African Union or the Economic Communities of West African States.

Powers Of A Copyright Owner[21]

The author of a copyright work or the owner of Copyright enjoys certain exclusive rights. These rights operate as restrictive rights in that the author is empowered by Copyright to control the doing of certain actions and without his consent or authorization, such works may not be carried out. The doing of any of such works amounts to an infringement of the right of the author or the copyright owner. Sections 6-9 of the Act provide for the general nature of copyright and provides for the exclusive actions that the author/copyright owner controls. These exclusiveactions include reproducing, publishing, performing, translating, making any cinematograph film or a record in respect of the work, distributing to the public for hire or for commercial purpose copies of the work, communicating to the public and making an adaptation of the work. The doing of any of the afore-mentioned actions amounts to copyright infringement which carries consequence both in the civil and criminal realms.

Infringement Of Copyright[22]

An important part of the legislation is the infringement provisions of the Act which provide for both civil and criminal actions which may be instituted simultaneously. The Act specifically states amongst other things when prescribing copyright infringement that copyright is infringed by any person who without the licence or authorisation of the owner of the copyright

(a) does or causes any other person to do an act, the doing of which is controlled by copyright;

(b) 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 under this section of this Act[23]

In the event of an infringement, the copyright owner, assignee or exclusive licensee may bring an action before the Federal High Court and may claim for damages, injunctions and/or accounts. Ignorance is a defence to copyright infringement, but it must be proved that at the time of the infringement the defendant was actually unaware and had no reasonable grounds to suspect that copyright subsisted in the work. In such situations plaintiffs are not entitled to damages but rather account for profits in respect of the infringement. The Act criminalises copyright infringement with Section 20 of the Act providing conviction or fine and conviction

[21]*Ibid.*
[22]*Ibid.*

[23]*Section 15(1)*of the Copyright Act 2004 CAP. C28 laws of the Federation.

and fine punishment to those found guilty. It provides that where a person is found guilty of making or causing to be made for sale, hire or other commercial purposes any infringing copy, or imports or causes to be imported into Nigeria a copy of any work which if it had been made in Nigeria would be an infringing copy, or makes, causes to be made or has in his possession, any plate, master tape, machine, equipment or contrivances, for the purpose of making any infringing copy of any such work, such a person shall be liable to a fine of an amount not exceeding N1,000 for every infringing copy or a term of imprisonment not exceeding five years, or to both such fine and imprisonment. The criminal provisions with stiff penalties have been tested in the courts and have in many ways served as deterrence to further copyright infringements.

Administration Of Copyright: The Nigerian Copyright Commission

The Federal Military Government in 1988 promulgated the Copyright Decree No. 47 of 1988. This Decree was redesignated the Copyright Act in 1990. This Act not only created favourable conditions or actualization of author's potentials through protection of creative work, but also incorporated on establishment, for the first time, machinery for the administration of copyright in Nigeria called the Nigerian Copyright Council. Owing to the need to align the council with the emerging trend in global copyright administration and enforcement, its status was changed to a commission in 1996. The Nigerian Copyright Commission is still incorporated in the subsequent amendment of the Copyright Act in 2004. The Nigerian Copyright Commission (NCC) is established under *Section 34(1)* of the Copyright Act, as a body corporate with perpetual succession and common seal. The Commission (NCC) has zoned offices in some states of the Federation for the purposes of decentralised administration of copyright matters.[24]

The Commission has numerous functions/roles provided under the Copyright Act[25], which include the following:

a. To be responsible for all matters provided for in this Act.

b. To monitor and supervise Nigeria's position in relation to international conventions and advise government thereon.

c. To advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country.

d. To enlighten and inform the public on matters relating to copyright.

e. To maintain an effective data bank on authors and their works.

f. To be responsible for such other matters as related to copyright in Nigeria as the minister may from time to time, direct.

In addition to the above functions, the commission has power to appoint Copyright Inspectors[26]. The Copyright Inspector shall have power to:

[24]Abubakar, B. M. and Umar, M. A. and Audu, M. A., *Op.Cit.* at p. 9.
[25]*Section 34(1)*of the Copyright Act 2004 CAP. C28 laws of the Federation.
[26]*Section 38*of the Copyright Act 2004 CAP. C28 laws of the Federation.

a. Enter, inspect and examine at any reasonable time any building or premises which he reasonably suspects is being used for any activity which is an infringement of copyright under this Act, such as piracy;

b. Arrest anyone who he reasonably believes have committed an offence under this Act;

c. Make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with;

d. Request the production of the register required to be kept under section 14 of this Act and to inspect, examine and copy it;

e. Request 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 purpose specified in this Act;

f. Carry out such examinations, test or analysis within or outside the premises as is required to give effect to any provision of the Act;

g. Exercise such other powers as the commission may delegate to it to give effect to the provision of this Act.

Furthermore, section 38(3) of the Copyright Act empowers the copyright inspector to prosecute, conduct or defend before court any charge, information, complaint or order proceedings arising under the Act.

The Copyright Commission also has power to approve the functioning of a collecting society[27]. A collecting society is an association of copyright owners which has as its principal objectives the negotiation and granting of licenses, collecting and distributing of royalties in respect of copyright works. In addition, the Nigerian Copyright Commission also has the power to grant compulsory licence, for the translation and reproduction of literacy or dramatic work for the purposes of teaching, scholarship or research. Apart from the responsibilities above as contained in the act, the Commission also provided for some additional functions which is to be added within the limits of the Commission, to include the following: -

(a) To grant compulsory licenses in accordance with the provisions of the fourth schedule to the act as well as the establishment and regulation of the copyright licenses panel.

(b) To appoint copyright inspectors as it may deem fit in order to monitor the affairs of the commission as required by the act.

(c) Responsibility for the certification of countries that are parties to treaty and obligations for the purpose of determining whether a copyright work may enjoy copyright by virtue of such international obligations, and certification of such a kind is a conclusive proof.

(d) Regulation and conditions which are necessary for the operation of a business involving production, public exhibition, hiring and rental of any work in which copyright subsists as provided by the act.

(e) The approval and regulation of collecting societies for the purpose of copyright act.

[27]*Section 39*of the Copyright Act 2004 CAP. C28 laws of the Federation.

It is pertinent to submit that, there are also restrictions on execution against the property of copyright commission by any individual, organization or by the government while performing it functions. That's why the copyright remains as a body corporate with the statutory power to sue only and defend an action in its name. The above roles are usually played by the copyright inspector who is empowered by the statute to prosecute, conduct or defend before any court of law, any charge, investigation or complaint or other proceeding arising under the Act[28]. As law officer, it is an offence under the act of obstruct a copyright inspector in performance of his duties

However, for effective and efficient administration of copyright, enforcement of copyright laws and fight against infringement, the Nigerian Copyright Commission has been divided into various departments, headed by duly appointed officers. Such departments include regulatory department, enforcement department, public affairs department, and administrative department, legal unit, governing board, prosecution department and internal audit unit. These departments are saddled with varying functions, including fight against copyright piracy.

The Membership of the Commission

Pursuant to the provisions of the Act[29],
Governing board is established by the copyright law, and is referred to as the "Board" which comprises of the following:

(a) A Chairman, who shall be a person knowledgeable in field of copyright administration appointed by the president of the Federal republic of Nigeria.

(b) The director general of the commission, who is also the chief executive of the Commission

(c) One representative of the Federal ministry of Justice

(d) One representative of the Federal Ministry of Education

(e) One representative of the Nigeria Police Forces not below the rank of a Commissioner.

(f) One representative of the Nigerian custom services, not below the rank of Comptroller of Custom.

(g) Six other persons appointed by the minister representing the following authors; literary works, artistic works, musical works, cinematograph films, sound recordings and broad cast. The rationale behind such a widespread of membership across many fields is to put the future of copyright in Nigeria in the possession of the proprietary owners and public servants whose official functions relate to law, public policy and administration copyright. To ensure protection of owners' rights, the Commission has been saddled with the responsibility for all matters affecting copyright in Nigeria and this responsibility is both symbolic and significant. It is symbolic because the Commission has been made the designated reference point for all copyright matters in Nigeria and it is significant because whilst the Commission protects the rights of

[28]*Section 38(3)*of the Copyright Act 2004 CAP. C28 laws of the Federation.
[29]*Section 35*of the Copyright Act 2004 CAP. C28 laws of the Federation.

Copyright Owners, it simultaneously must protect the rights of user. It must therefore carry out this very sensitive role of maintaining an uncertain balance and must at the same time avoid delving into the arena of conflict.

To achieve this symbolic and significant role, the Commission has been involved in and has also developed a number of mechanisms to administer copyright in Nigeria[30].

Copyright (Security Devices) Regulation 1999.

Advancement in technology has enabled the invention of machines such as the photocopiers, printers, cassette recorders and other recording machines. These machines have made it much easier to reproduce contents and a lot of these contents are copyright protected. Section 21 of the Nigerian Copyright Act empowers the Commission to prescribe the use of any antipiracy device for use on any work in which copyright subsists. The intention is dual; first of which is to help the general public identify genuine products and secondly to curb the menace of piracy thereby providing authors an additional incentive for further creativity and for copyright owners to recoup their investments. In view of the above, the Commission issued the Copyright (Security Devices) Regulation 1999 which majorly focused on the issuance of hologram stamps.

Copyright (Video Rental) Regulations 1999

As the hiring and renting of video cassettes, cd's and dvd's became common in most parts of Nigeria, the need to consider the issue of sells, rentals and hiring of cinematograph films became imperative. The practice amongst those involved in video rental was to buy one video cassette, cd or dvd, reproduce the single copy into multiple copies and then rent them out to as many people as were willing to rent or hire them. To the ordinary mind, this meant that the general public appreciated the films and that the actors were becoming famous. On the contrary, what was happening was that illegal reproduction, sells, rentals and hiring of cinematograph (audio – visual) works was taking place. These acts by virtue of the Nigerian Copyright laws constitute infringement of copyright. In addressing these new challenges, the Commission came up with the Copyright (Video Rental) Regulation. The regulation prescribed the issuance of a rental copy, which copy was meant to be produced by the copyright owners and would be purchased by the rental shops. The intention was that hiring, rentals, leasing or distributing in the public for commercial purposes would be regulated by the use of rental copies. A task force to monitor the rental shops would ensure compliance.

Copyright Notification Scheme

The notification scheme of the Commission is the mechanism through which a national copyright databank of authors and their works are kept. This scheme is not a mandatory registration system and does not confer any additional right than what copyright already confers. The scheme operates by encouraging authors to notify the Commission of the existence of copyright in their creative endeavours or the transfer of such copyright. The advantage of the scheme is that one's work is in the databank of the commission and in the event of litigation or uncertainty; it could constitute prima-facie proof of the date of the existence of the work.

[30]Kunle, O., *Evolution and Future Trends of Copyright in Nigeria* p. 20.

Copyright (Optical Disc) Regulation 2000

This regulation became imperative to address the issue of piracy from the point of production. The aim of the regulation was therefore to identify the sources of production and provide a legal regime for optical disc manufactures and producers to operate within a regulated legal framework. The regulation which requires all manufactures, importers and producers of optical discs and production parts to be registered with the Commission

Copyright (Collective Management Organisation) Regulations 2007

Authors all over the world create works which users enjoy. Works made by authors find their way around the world and users continue to discover new works and use them. Considering the vast number of copyright owners and users, it is impracticable to expect every user to track down every copyright owner and obtain the requisite authorisation. To address the above challenge, collective management organisations (CMO) exist to negotiate on behalf of copyright owners and grant licences to users as well as to collect payments from users and distribute royalties on an agreed rate to copyright owners. CMO's could therefore be considered as a one stop shop for clearing copyright contents in the interest of both copyright owners and the user publics.

Copyright (Levy on Materials) Order 2012

This is the most recent regulation issued by the Commission. It takes its route from the provisions of the Act in Section 40 which provide for levies on copyright materials and more directly mandates the payment of a levy on any material capable of being used to infringe copyright in a work. The intendment of the regulation is to create a platform where right-owners are able to receive some form of remuneration for the exploitation of their work however through a compulsory licensing methodology.[31]

The Nigerian Police Forces and Its Function in Copyright and Related Matters.

The efficiency of the Nigerian police as a case study therefore is generally considered as one of the major limitations of the copyright in Nigeria. In the word of R.C. fuller and R.R. Myers,

> *The police is a formal control agent who has been assigned the duty of consciously enforcing deliberately formulated criminal laws; and that his enforcement activity involves clear out events such as an arrest which stand out from the daily routine of life*

The Nigerian police force is the only body constitutionally empowered to ensure the security of lives and property in Nigeria. It derives its existence from section 214(a) of the 1999 constitution which expressly provides that; There shall be a Police Force for Nigerian, which shall be known as the Nigerian police force whereas the section 4 of the Police Act, 2004 further outlines the general duties of the police as follows; "the Police shall be employed for the prevention and detection of crimes and the apprehension of offenders, the preservation of law and order, the protection of lives and properties, and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within and outside Nigeria as may be required of the by or under the authority of this or any other acts." In the same vein,

[31]*Ibid.*

the police being appointed members of the council retain their traditional power under the law to prevent and detect copyright related offences and apprehend offended as stated above. The police force remains the only reliable instrument for the enforcement of copyright offences as there is no comfortable framework for the provision of the instrument for the enhancement of inspectors work in Nigeria. The policeman has the power and duty in law to arrest anyone who commits an offence in his presence on copyright infringement. The law[32]empowers the Nigerian police force as to their functions to include:

1. Duty of a police to arrest any person who he reasonably believes to have committed a copyright infringement as provided by Copyright Act.
2. To enter, investigate and examine any building or factory which he reasonably suspects is being used for any activity with a infringement of copyright
3. To prosecute an offender of a copyright infringement to the appropriate court of law that have jurisdiction (Federal High Court)
4. It is also their primary task to ensure that piracy crime is maintained at tolerable level, because this is the pass mark that every police organization fights to attain.

It has been submitted that, the Nigerian police force has a vital role to play in copyright administration and other related matters, but the law has put in place some directions. There shall be the right organizational, economic and social atmosphere to enable them undertake this laudable assignment to the desired standard. In the event of an infringement, the copyright owner, assignee or exclusive licensee may bring an action before the Federal High Court and may claim for damages, injunctions and/or accounts.

Comparative Analysis With The United States Copyright Administration

Comparatively, in the United States, the United States Copyright Office is the agency solely charged with the administration of copyright in the United States.[33] The Copyright Office is the centralised agency charged with regulating copyright law. It has no Jurisdiction in copyright litigation; however, it does provide advice to Congress on anticipated changes in US copyright law, expert assistance to Congress on IP matters, analyses and assistance in drafting copyright legislation and studies on copyright issues.[34]The U.S.C.O promotes creativity and fee expression by administering the nation's Copyright laws and by providing impartial, expert advice on copyright law and policy for the benefit of all. It administers provisions of law related to statutory licensing, helping manage and distribute royalties as required by law. The U.S.C.O unlike the NCC cooperates and works with all the agencies of the US government including the populace for the benefit of all.[35]

[32]*Section 214* of the 1999 constitution as amended.
[33]http://www.usa.gov>federal-agenciesaccessed on 4/5/2021
[34]www.lexology.com>library>detailaccessed on 4/5/2021
[35]www.copyright.gov>about accessed on 4/5/2021

Challenges affecting the Administration of copyright[36]

The NCC like any other body entrusted with some responsibilities, has some challenges. This is seen in its fight against piracy. These challenges include:

a. Poor Financing

The NCC by its function and enforcement procedure needs adequate fund to operate and carry out its responsibilities efficiently. Sadly, and surprising too, the NCC is not adequately funded. This automatically hinders necessary and comprehensive investigations and reduces the quantum of information gathered and as a result affects the commission's optimum performance.

b. Corruption

Some of the NCC officials who are charged with the responsibility of carrying out raids on infringed works are corrupt, so are compromised by the pirates. The officers at times have private dealings or transactions with the infringers (pirates), and consequently, they deliberately refuse or find it difficult to find them out during their regular raids. By this, these officials close their eyes to the evil being perpetrated by the pirates. This is quite unfortunate and unbecoming of such trusted officials, who were sent on this raid in confidence.

c. Enforcement

It is a long and weary walk to justice regarding copyright, a situation that invariably encourages deliberate offenders and discourages victims to seek justice.[37]The conferment of exclusive jurisdiction on the Federal High Court by Section 251 of the Constitution of the Federal Republic of Nigeria 1999, as amended, with respect to intellectual property right claim is a set back to the enforcement of intellectual property rights. It is on record that not every state in the country, until recently, had a Federal High Court. What happens to intellectual property disputes arising in that jurisdiction? Furthermore, there is no special expertise acquired by a judge of a Federal High Court as to make him an expert in handling such cases[38]

Effective enforcement of intellectual property laws is a key to curbing piracy, consequently, the position and role of law enforcement agencies like the police, army customs and officers of other relevant government agencies is crucial. In most developing countries, like Nigeria, these personnel are faced with various challenges such as, poor understanding of the issues involved; poor training; poor funding of enforcement activities; and absence of good working tools either to aid detection or in the conduct of post arrest operations. However, a disturbing attitude also exists in the minds of the public and sometimes in the judiciary and in law enforcement agencies, that piracy is a low level of mischief with little real consequence. Delays in the judicial system and lack of transparency in the enforcement system discourage copyright litigation and

[36]Nwogu, M. I. O.'The Challenges of the Nigerian Copyright Commission in the fight against Copyright piracy in Nigeria(2014) '*Global journal of Politics and Law Research* (vol 2) published by European Centre for Research Training and Development Uk assessed at www.eajournals.org on 1/5/2021 p. 29.
[37]Chinweze, C. E, 'Copyright law and Administration in Nigeria: Issues and Challenges'[2021], *Orient Law Journal* (vol. 4,ISSN:2682-6658)p. 117.
[38]*Ibid.*

enforcement. This lack of transparency is as it affects right holders, for they are generally in the dark about the cases and ongoing investigations[39].

d. Culture

Culture is the way of life of the people within a given community. Culture of the people is a strong factor/challenge militating against the enforcement of anti-piracy measures, because the way and manner people behave affect their lives and will definitely determine the extent of the behavior of NCC officials who are on anti-piracy raids. For example, in the hinter-lands where the people patronize and are used to buying pirated copies of works at reduced prices, it will definitely be difficult to convince them about the negative impact of piracy and carry out raids[40].

e. Mobility of Officials

This is one of the major and fundamental constraints in the fight against piracy. The NCC departments and units, especially the enforcement departments should have strong, good and mobile vehicles that the officers will use to go on raids. Without these vehicles, effective surveillance and raids will be a mirage and nearly impossible, especially where the officials should cover more than one location during the raid[41].

f. Insecurity

Importantly, the NCC officials find it difficult to successfully carry out raids without the police, this is because of the fear of the unknown in the field of operation. At times the copyright pirates may be aggressive and armed with different harmful instruments, that the officers need security and protection. Also the issue of insecurity in the country has made it difficult at times for thepolice hierarchies to release their men to NCC, and so they give the excuse that they do not have enough manpower on the ground. This definitely hampers the raid operations, because the officers find it difficult to go alone. This makes the fight against piracy difficult and consequently the pirates flourish and thrive in their businesses[42].

g. Language Barrier

This is another challenge facing NCC in its enforcement programs. Nigeria is a multi-lingual state and there are instances where officers are deployed to operate in an area where they do not understand the language of the natives, consequently, they will not understand each other and the raid operations will be practically impossible because of lack of communication[43].

h. Information and Communication Technology (ICT)

ICT is the world leading technology today; it includes the Internet. The Internet is a global network; it is a network of computer networks and has made the world to become a global village. The Internet by its very nature has vast information in it and various activities take place

[39]Nwogu, M. I. O.'The Challenges of the Nigerian Copyright Commission in the fight against Copyright piracy in Nigeria, supra at p. 29
[40] *Ibid.*
[41]*Ibid.*
[42]*Ibid.*
[43]*Ibid.*

on the Internet including crimes and torts. Copyrighted works uploaded on the Internet are basterdised and copied with impunity. It is always common to see surfers at the cyber cafes or in their houses or offices, with few clicks on their computer distributing a copyrighted work to the entire world; some even downloading the works and selling them. Most of the NCC officials are not computer literate. Each of them should have a functional computer connected to the global network, the Internet, so as to go through the Internet from time to time detecting infringers. The NCC has also taken a step in the right direction, as stated earlier, in this work, by going into alliance with Google, which is one of the largest search engines on the Internet to fight Internet piracy.

i. Provision on Punishment under the Copyright Act

The penalties on criminal infringement as provided under S. 20(2) of the copyright Act is too small and may not even be a deterrent to an infringer. This also makes it difficult to convince the police that piracy is a crime that needs immediate and maximum attention.

Section 20(2) provides thus: Any person who –

a) Sells or lets for hire or for the purpose of trade or business, exposes or offers for sale or hires any infringing copy of any work in which copyright subsists

b) Distributes for the purposes of trade or business any infringing copy of any such work; or

c) Has in his possession, other than for his private or domestic use, any infringing copy of any such work;

d) Has in his possession, sells or lets for hire or distribution for the purposes of trade or business, or exposes or offers for sale or hire any copy of a work which, if it had been made in Nigeria, would be an infringing copy. Unless he/she proves innocent infringing, is guilty of an offence and liable on conviction to a fine of N100 for each copy dealt with, or to a term of imprisonment not exceeding two years or in the case of an individual, to both such fine and imprisonment.

j. Favouritism: This is a cankerworm that has eaten deep into the fabrics of the Nigerian society. A competent official who is good in a particular area of fighting infringement may be left out and the incompetent official sent, because he/she is related to a high-ranking person in the government of Nigeria. This definitely hinders successful raids. Also, the pirate may be a well-known person, that the NCC officer may find it difficult or impossible to enforce the anti-piracy measures. Hence piracy will continue and remain. The NCC its officers and the government must be firm in this fight and do it without fear or favour[44].

CONCLUSION

In conclusion, although it is commendable that Nigeria has taken a huge step in the protection of copyright by the promulgation of the Copyright Act of 2004 and the establishment of the

[44]ibid

Nigerian Copyright Commission, yet with the challenges faced in the administration of copyright, much still needs to be done in order to solve the challenges discussed above.

Protection of copyright being a unique branch of the law, the populace are still unaware and ignorant as to the enforcement/administration of copyright. It is recommended that trainings and awareness sections should be held to educate the people as to what copyright entails and how it can be protected under the law. The members and officials of the NCC should be enlightened as to the functions of the commission. The NCC officials must be ICT compliant. The commission should train their officers on ICT, so as to use their expertise to curb piracy on the net. Government should also endeavour to provide the necessary logistics needed by the Commission to achieve its mandate. It is also recommended that the Copyright Act be reviewed and amended in order to include the functions of the United States Copyright Office.