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Legal Impact of the Advancement of Digital Technology on Copyright Protection in Nigeria

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Abstract

The revolution in digital technology has been witnessed in every sphere of human endeavour but mostly felt in information and communication technology where it has transformed the landscape of business. Digitalization which would have been in the interest of copyrighted works has turned out to be a cog in the wheel of progress where intellectual property protection is concerned. Digitalization has muddled the water considering the extent it has been aiding and abating intellectual crimes. To address the rising need for copyright protection in Nigeria, series of laws have been made and many international treaties ratified in a bid to checkmate the exploitation and use of copyrighted materials without permission or acknowledgement. Using doctrinal research methodology, this paper examined the legal impact of digital technology on copyright protection in Nigeria. Primary and secondary sources of data were used. The primary sources include statutory enactments, case laws and other relevant international treaties. Secondary sources include textbooks, law journals, periodicals, opinion of writers and information from the internet. The paper found that while a new and commendable copyright Act has been enacted, the Act is yet to be reconciled with other existing laws on the subject matter. It has therefore, among others, recommended that all laws in Nigeria which influences modern technology should be revisited and amended to complement each other.

Keywords: Legal, Impact, Advancement, Digital Technology, Copyright, Protection

1. Introduction

The problem of piracy is a long-standing challenge that has been a great thorn in the flesh of those in the creative industry. Digital technology is one of the major enablers of the activities of copyright infringers in Nigeria. The emergence of digital technology, granted, has been instrumental to societal advancement through information availability and accessibility. Digital technology and electronic networks presents an opportunity to advance public interest by promoting access to online resources for academic and research purposes. No doubt, digitalization has positively affected our lives globally, even in e-commerce. It has greatly contributed to the migration of people from the physical/analogue world to a virtual world. Today, a mere click of a mouse is enough to copy or replicate digital contents of any kind.

Unfortunately, digitalization of works protected by copyright has made it easy for third parties to access a copyrighted work without permission. It has changed the traditionally known modes of

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protecting copyright while the present copyright regime is in a state of flux, striving to catch up with its pace of ever changing forms of innovation.[1] In the analogue age, pirated works could easily be identified and distinguished from genuine works owing to its poor quality. This offered a form of deterrence to members of the public and, perhaps, inspired some to invest in genuine copies of copyrighted works.

With the advent of digital technology, it would take a lot to differentiate a pirated work from its original as it is now possible to reproduce the exact copies of an original work by any person who has the right technology for it. Copyright violations in the digital domain now occur in the form of downloads, reposting of copyrighted documents, uploading of contents on blogs, sharing of copyrighted works, hot-linking, engaging in circumvention of digitally protected works, use of digital resources without proper acknowledgements and citation, unauthorized use of proprietary software and databases without pay and duplicating CD content for commercial purposes.[2] Owing to this digital technology has now been included in the list of factors which pose a challenge to the work of the NCC in copyright protection.[3]

2. Protection of Copyright in Digital Works

The Copyright Act does not expressly state any method for the protection of copyright in digital Works or any work in which copyright subsists for that matter. What the Act provides are the Punishment/damages for copyright infringement.[4] This imposition of punishment/damages was also made on direct infringers and not on the service providers on whose platform the infringing copy was made available. According to section 108 of the Act, service provider means a provider of online services or network access, including operators of such facilities, and any entity offering the transmission, routing or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing without modification to the content of the material as sent or received. The activities of online service providers in looking the other way when accounts hoisted in their network are being hacked into and the copyright in the works published therein is regrettable. This is because the Act expressly exonerates them from liability on minimal condition of expression of good faith[5]. It does appear therefore, from the generality of the provisions relating to the provision of works published online, the bulk of the task is shoved on the owner as there are no dire consequences or criminal sanctions against the service provider under the Act. The procedure for filing a report against the service provider under the Act is rigorous, cumbersome and discouraging, especially given the fact that the copyright owner will still resort to the Court for redress. A more proactive approach in this regard would be to set up a special committee within the Commission, of professionals in the area of digital technology to

[1] P Hemen and N Olewale, 'The Limitations of Copyright Protection in Contemporary Nigeria: Re-Examining the Relevance of the Nigerian Copyright Act in Today's Digital and Computer Age', (2011) 2 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 212.

[2] A O Adetunji and N Okuonghae, 'Challenges of Copyright Protection in the Digital Age: The Nigerian Perspective', *Library Philosophy and Practice*, <.https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=13905&context=libphilprac>accessed 11/12/2023

[3] M O Nwogu, 'The Challenges of the Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria', (2014) 2(5) *Global Journal of Politics and Law Research*, pp.22-34

[4] Copyright Act, 2022, ss 44-47.

[5] Ibid, 55(5).

carry out an oversight function over the service providers. In the alternative, the minister, in his oversight function, can constitute a special agency for this purpose.[6]

3. Legal Impact of the Advancement of Digital Technology on Copyright Protection in Nigeria

Since the advent of digital technology, copyright infringement can take the form of file swapping, downloading, uploading, caching, browsing, mirroring, copying, pasting and scanning.[7] Creators who operate in the digital environment have their works under serious threat as more sophisticated technologies evolve, aiding the infringement of works and at the same time shielding the perpetrators.[8] Some of the technologies that promote copyright infringement include:[9]

a) Illegal Streaming of Content – This allows a user to view unauthorized copyrighted content online without actually downloading the file. A website may either provide links to a content hosted on other websites or provide access to streams directly.

b) Cyber Lockers – These are third party online services that provide file-storage and file sharing services for various media file types such as photos, videos and sound files. They also offer fast, convenient and anonymous distribution of content which can be downloaded or streamed. Cyber lockers are among the most harmful piracy sources in the world in terms of converting a mainstream audience to illegal distribution channels and their activities can lead to several issues for copyright owners.

c) Peer-To-Peer (P2P) Sharing Sites – This technology enables a person to share music, video and documents, play games and facilitate online telephone conversations. It enables computers using the same or compatible P2P programs to form a network and share digital files directly with other computers on the network.

d) Linking Websites – These websites collates thousands of links to pirated content often stored on external cyber lockers. In a website, a hyperlink (or link) is an item like a word or button that points to another location. Clicking on the link would take you to the desired destination which may be a webpage, documents or other online content. These linking websites facilitate copyright infringement because cyber lockers are usually not identifiable. Linking websites are common with blogs, affiliate marketing platforms, product marketing websites, company websites, etc.

e) Film Release Groups – These groups upload and share content on private torrent sites that rely on donations from members. The materials shared eventually make their way into public sites where they can be downloaded by unauthorized persons.[10]

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[6] N A Iguh and O E Ayanor,'The Impact of Technology and the Use of the Internet on Copyright Enforcement in Nigeria', (2014) 14(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, p10.

[7] C C Nwabauli and N Udeoji, 'Nigerian Copyright System in the Modern Age and its Implications', (2021) 12 *NnamdiAzikiwe University Journal of International Law and Jurisprudence*, pp 72-73.

[8] K Dawar*et al*, 'Copyright Protection in Digital Era', (2021) 8 (6) *International Advanced Research Journal in Science, Engineering and Technology*, pp 611-616.

[9] Iguh and Ayanor,(n 6).

[10] 'Sharing of Content through Online Platforms; Considering Digital Piracy in Nigeria', <https://www.aelex.com/wp-content/uploads/2021/01/Sharing-of-content-through-online-platforms-%E2%80%93-considering-digital-piracy-in-Nigeria-2.pdf> accessed 11 December 2023

The impact of all these technologies on works protected by copyright is that these works have increased vulnerability for infringement and circumvention of any form of technology used for protection against such infringements. Despite the laws and the decisions of Court against infringement using technology,[11] copyright has been plagued with the following challenges –

a) Tracing the Infringer (Problem of Evidence) – one of the greatest challenges in enforcing online infringement of copyright is the difficulty in tracing the identity of the infringer and his exact location. The issue remains due to the virtual and anonymous nature of the internet, infringers can usually go about their illegal business with impunity. This is due to privacy concerns. The Act has made provisions as to steps to be taken to identify an alleged infringer[12] all that is required is diligence on the part of enforcement. Once a copy of any work is identified as pirated, all that is required is to trace the source to an individual, company or premises for the arrest of the infringer. The larger problem of whether there is adequate protection for infringement remains. There should be a more defined means of linking each identified account with an act of infringement in a particular location or jurisdiction.

b) The Evolving Nature of Technology – the ever evolving internet-based technology which is usually in software and codes is one of the greatest nightmares of the copyright enforcers. Due to the recent advancement in due technology, copyright laws are becoming increasingly difficult to enforce. With the advent of the digital era, users of digital technology are being provided with more and more options to record, download and transmit data of higher quality in less time as compared to the analogue system which requires a lot of time to download and transmit data. Thus, the result would be that more and more copyrighted works would be prone to infringement and it would be more difficult to prevent.

c) Cross Border Violation of Copyright – a recurring issue concerning copyright infringement is with respect to the exact location in which the breach can be said to have occurred and the appropriate Court to assume jurisdiction over the matter. This issue raises the question of which law and Court should have jurisdiction to entertain a case of online infringement of copyright. Which law applies? Which Court has the competence to adjudicate over the case? At the moment, the answers to these questions are almost as infinite as the internet itself as international copyright law does not provide a complete and satisfactory resolution for such issues

d) Balancing Access and Protection – while copyright protection is important, it is also important to balance this protection with the need for access to information and creative expression. Finding the right balance between access and protection can be a challenge in the digital age.

4. Measures to Address the Negative Impacts of the Advancement of Digital Technology on Copyright Protection in Nigeria.

Having stated the negative impacts of digital technology on copyright protection, the following measures are suggested to be adopted to address, remove and, with time, eradicate the said negative

[11] *Fraser v Jones TV Ltd. (1984)1 QB 434*
[12] Copyright Act, 2022, s 60.

impacts. They are: Legislative measures, judicial measures, technological measures and regulatory measures.

4.1 Legislative Measures

The measures provided by the Act are only effectively seen in breach of the copyright of an owner. This means that it does not expressly state what an author should do to protect his work from copyright infringement but states the procedures of redress in case of a breach/infringement.[13] The legislative rational for the enactment of the Copyright Act, 2022 is to address the emergence of digital technology that has revolutionize the creative economy as the creative economy, such as production and dissemination of creative works, became more accessible and has lent themselves to global exploitation beyond national boundaries.

By virtue of the powers vested on the NCC by the Act[14]to make regulations relating to copyright, the Commission has made a number of regulations towards the protection of copyright on the digital platform. The said Regulation made provision for the use of a hologram approved by the commission which shall be in form of a tamper of sticker and to be affixed at the point of production or importation of the copyright work.[15]

Right owners also have the right to attach right management information to their work to prevent infringement. Rights management information, according to the Act,[16] means information which identifies a work or other subject matter, the author, owner or any right in it, including information about the terms and conditions of its use and any number or code that represents such information, attached to, or appearing in connection with the communication to the public of a work or subject matter. Any person who knowingly, and with the intent to induce, enable, facilitate or conceal infringement provides rights management information that is false has committed a crime under the Act.[17]

4.2 Judicial Measures

There is a serious dearth of judicial authorities on copyright matters. This has to do with sensitization of the public as to their rights as much as it has to do with the Courts. With the evolution of copyright into the digital platform, it should no longer be business as usual. Therefore, the need for expertise cannot be over emphasized. There is a crucial need for the setting up of a special court for copyright matters, just like the National Industrial Court is for Labour related matters. This will ensure that the conceptual terms will be understood and the exigency for copyright protection will be met.

4.3 Heavy Criminal Penalty against Contributory Infringers like Internet Service Providers.

The Act did not expressly make any imposition of crime on any other person other than the direct infringers. As a result, service providers may knowingly and even upon reasonable belief that an

[13] Copyright Act, 2022, ss 36-47
[14] Ibid, s 78
[15] Copyright (Security Devices) Regulations, 1999, Paragraphs 1 - 2
[16] (n.53), s. 51
[17]Ibid.

infringement is taking place, allow and facilitate the exchange of the infringing copies through uploading and downloading on their platforms.

They should be made responsible, in that they ought to have the right technology to detect an infringing copy of a work on their platform to reject same. In the case of *Sega Enterprises Ltd. v Maphia*[18]decided by Northern District Court of California, liability was imposed on parties that were not directly the infringers but the roles that they played in carrying into effect the act of infringement was considered and they were held liable. Same was the basis of the decision of the Court in *Fonovisa v Cherry Auction Inc.*[19] Again, the US Supreme Court in the case of *MGM v Grokster,*[20]considered whether the operators of file sharing networks could be held indirectly liable for infringing and distribution of copyrighted works by users of their services. Notwithstanding the potential non infringing uses of such services, it was held that one who distributes a device with the object of promoting its use to infringe copyright as shown by clear expression or other affirmative steps taken to foster infringement is liable for the resulting acts of infringements by third parties.

4.4 Technological Measures

It would not be out of place, but would be quite ideal that technology be used in controlling access to copyright works. The odds will be balanced when law and technology synergize in sharing responsibility for protecting intellectual property rights.[21] Some of the technologies for use in copyright protection are:

a) **Digital Rights Management (DRM)/Encryption:** Encryption is the method by which information is converted into secret code that hides the information's true meaning. The primary purpose of encryption is to protect the confidentiality of digital data stored on computer systems or transmitted over the internet or any other computer network.[22] DRM/Encryption restricts access to digital content and prevents unauthorized copying and distribution of copyrighted materials such as music, movies and e-books from piracy. DRM enables the copyright holder to regulate the use of their works electronically. The process of a working DRM system starts by the copyright owner sending the digital work to the service provider and the consequent acceptance of the content from the creator into an asset management system that manages the use of the content. Therefore, if access to the copyright work is managed by the content provider and the content itself can be streamed when authorization is verified, unlawful use of digital content will be minimized.[23]

[18] 948 F Supp. 923 (N.D. Cal. 1996)
[19] (1996) 76 F. 3d 259
[20] (2005) 545 U.S. 913
[21] L O Babatope, '*Intellectual Property Protection in the Age of Open Access and Digital Rights Management – Balancing the Odds'* , <https://www.semanticscholar.org/paper/Intellectual-Property-Protection-in-the-Age-of-Open-Babatope/bb3b8e5b3f5d5fda5dbed7e626e0db4b294b8a39>accessed 14 December 2023
[22] 'What is Encryption and How does it Work' <https://www.techtarget.com/searchsecurity/definition/encryption> accessed 14 December 2023.
[23] SC Chiemeke and O B longe. 'Beyond Web Intermediaries: A Framework for Securing Digital Contents on Client Systems*',* Paper Presented at the World Congress of Engineer International Conference (London, July 2007) pp. 574–577<https://.iaeng.org/publication/WCE2007/WCE2007_pp574-577.pdf&ved=2ahUKEwilp7C0i4-DAxWCzQihhCRWdrwQFnoECBAQAQ&usg=AOvVaw1wEqNrojfCLHHT-saSzQ4h> accessed 14/12/2023

b) **Digital Watermarking:** This is a digital system that can be used to track and protect digital content. The aim of digital watermark is to insert information into digital data such as audio, video or image files in a way that it is imperceptible to the human eyes or ears yet detectable by compliant electronic equipment.[24] It is a process of embedding a unique identifier into digital content such that it can be used to track and identify the source of a content to deter unauthorized use. It could be perceptible or imperceptible, fragile or robust; a robust sign may withstand any alteration to the original such as file compression or decompression or cropping whereas a fragile work may be damaged or destroyed easily. Digital watermarks can also be programmed to allow the making of a single or certain number of copies and restricting the making of subsequent copies from a work after the allowed number of copies.

c) **Blockchain Technology:** This is a decentralized digital ledger that can be used to track ownership and usage of digital content. It is a modern digital distributed ledger or infrastructure that allows a person to record peer-to-peer transactions as they occur. The ledger records duplicated works sent through a computer system and are encoded with certain digital code details which is uniquely signed or identified. With the recorded data, a person can trace the history and verify the source of such media content. It is a highly tamper resistant and transparent database. The database is stored centrally but is distributed over the network.[25] By using blockchain technology, copyright owners can create an immutable record of their ownership and control the distribution and usage of their content more effectively. It makes it possible to upload copyrighted content, control licensing or copyright options, manage distribution, trace sources of piracy and receive payment upon content usage. Blockchain is important to copyright more than all other intellectual property rights because it not only timestamps a creation (and its later revisions) but also provides proof of ownership of that creation and makes same public effectively providing immunity from tampering and modification[26].

5. Conclusion and Recommendations

While the Nigerian Copyright Act of 2022 makes some progress in recognizing copyright works on digital platforms, there are still many areas that need to be updated in order to fully protect creators and their works. Key terms in the Copyright Act are not aligned with other regulations and laws and some punishments for copyright infringement are inadequate to act as a deterrent. It is therefore recommended as follows:

a. All the laws in Nigeria which influences modern technology should be revisited and amended to complement each other.

b. Judicial activism should be encouraged so that internet activities which cause great harm to copyright owners and economic loss would be recognized and pronounced on by the Courts even when the law does not cover that aspect of protection. The world and the digital community are in a constant change and we must move with it.

[24] *Ibid*

[25] S Pech, 'Copyright Unchained: How Blockchain Technology can change the Administration and Distribution of Copyright Protected Works', (2020)18 (1) *Northwestern Journal of Technology and Intellectual Property*

[26] S Lari-Williams, 'Is Blockchain the Future of Copyright Protection?' (2021) <https://aanoip.org/is-blockchain-the-future-of-copyright-protection/#_edn9> accessed 14 December 2023

c. Expert witnesses should be required and called in trial proceedings so as to bring home the point. Evidence of persons who are technologically savvy should be accepted in situations of digital infringement as they can appropriately explain to the Court where and how the copyright of an owner was infringed on the internet platform. Where direct evidence is required, the use of power of attorney should be explored.

d. Creation of awareness: seminars and trainings for lawyers, judges, legislators and administrative staff over the functions of modern technology should be paramount. Relevant stakeholders, like the National Library Association, as part of their core functions should continue to sensitize members of the public on the need to stop sharing copyrighted content on social media.

e. Authors and creators of digital contents in Nigeria should, in addition to the available legal framework on copyright protection, adopt independent modern technological measures such as blockchain and watermarking technology to protect their works and prevent undue exploitations.

f. A special Court/Tribunal should be established for Copyright matters, just like in the case of labour law, for which the National Industrial Court was created. The judges of the Court or Tribunal should comprise persons who are ICT-inclined, technologically savvy and interested in keeping pace with the development of technology.