Importance of the Protection of Expression of Folklore to the Society

Richard Ujah Oyiwona*

Abstract

Expression of folklore is an important aspect of cultural heritage due to its role in the cultural landscape, contributing to identity, education, history, social cohesion, and artistic creativity. The article articulated the extent of legal protection Folklore enjoyed in Nigeria owing to the diverse nature of the people. The methodology adopted in the article is doctrinal given the protection accorded Folklore in Nigeria under the Copy Right Act 2022. It is found that the copyright protection of expression of folklore in Nigeria does not inure for the benefit of an individual to exploit but for the protection of a community whose folklore is registered with the Copyright Commission. Again, should there be a violation, it is only the Copy Right Commission that is legally empowered to seek redress on behalf of the complainant. It is concluded that if the expression of folklore is to be taken seriously the Nigerian Copy Right Law should be amended to enable individuals or a community whose right is violated concerning folklore to seek redress instead of waiting for the Copy Right Commission to redress on behalf of an aggrieved community.

KEYWORDS: Copyright, Folklore, Intellectual Property, Nigeria

1. INTRODUCTION

Folklore is regarded as the expressive collection of culture, art, sayings, traditional beliefs, customs, and stories of a community or cultural group, typically passed through the generations by word of mouth or form of dance and movement,[1] In many African communities, performance poetry and drama plays have traditionally been a central part of African cultural life. Folklore (otherwise referred to as traditional culture expression) developed out of dramatic narration of actual events or fictional events while others have different functions, including political, educative, spiritual, and entertainment purposes,[2]The art of story-telling also uses songs and drama re-enactment to narrate stories. Over time, the audience will relay these stories from generation to generation, subsequently acquiring the status symbol of a community or culture. It should be noted that folklore is not the ownership of a known individual, hence, it is ascribed to a cultural or ethnic community. In other words, an individual cannot claim folklore.

2. LEGAL FRAMEWORK FOR THE PROTECTION OF FOLKLORE

A problem may arise when folklore is appropriated and passed off as original works. Also, there are instances of indigenous art, stories music, and dance being sampled by authors/artists, recording companies, and performance groups and presented to the general public as original compositions, without profits or compensations paid to the original communities,[3]This is also a true state of affairs with companies or individuals that incorporate folklore themes in songs, advertisements, and commercial propagandas or formally registered traditional names and folklore themes as Trademarks or copyright.[4] Consequently, the monopolistic tendencies of these intellectual property protections strip the communities of the right to use them,[5]

The call for the regulation of folklore is a result of the antecedent degradation of its sacred, cultural, and social relevance, and values therefore fuelled the call for the regulation and legal

* Richard U Oyiwona, LLB, BL LLM, PhD, Lecturer, Faculty of Law, Admiralty University of Nigeria, Ibusa. Delta State. The author can be reached via Oyiwona-law@adun.edu.ng

[1] J.H. Mike & G. Uloko, *Modern Approach to Intellectual Property Laws in Nigeria (*2nd edn Princeton & Associates Publishing Co Ltd Lagos 2022) 135-144

[2] *Ibid.*

[3] P. Kuruk 'Protecting Folklore under the Modern Intellectual Property Rights: A Reappraisal of the Tensions between Individual and Community Rights in Africa and United States' (1999) 48(4) American University Law Review 769-843.

[4] *Ibid*.

[5] *Ibid.*

protection of folklore. The quest for the protection of folklore as an aspect of IP was led by Third World Countries (mainly African and Asian countries) largely due to the unwritten and transient nature of folklore which can be easily appropriated. Since the knowledge they embody is priceless, once lost, it may never be recovered.

In Nigeria, expressions of folklore are protected against reproduction, communication to the public by performance, broadcasting, distribution by capable or other means, adaptation, translation, and other transformations made either for commercial purposes or outside their traditional or customary context. **Section 74(5) of the Copyright Act[6] Laws of the Federation of Nigeria (LFN) 2004** defines folklore as:

> *"a group-oriented and tradition-based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means."*

From the context of the legislation as stated above, the expression of folklore covers:

i) folklore, folk poetry and folk riddles;

ii) folk songs and instrumental folk music;

iii) folk dances and folk plays;

iv) production of folk arts in particular drawings, paintings, carvings, sculpture, poetry, terra cotta, music, woodwork, metalware, jewellery, handicraft, costumes, and indigenous textiles.

This provision broadly covers both intangible and tangible forms of folklore. To reiterate the recognition and preservation of cultural identity, **Section 74(3)** of the Copyright Act[7]provides that "in all printed publications, and connection with any communications to the public, of any identifiable expression of folklore, its source shall be indicated in an appropriate manner, and conformity with fair practice, by mentioning the community or place from where the expression utilized has been derived."

Folklore is not protected in the same manner as copyright, especially since the fixation requirement cannot possibly apply to works of folklore. Therefore, the expression of folklore is not copyrighted even though it is protected in the same Act as copyright. Expression Folklore forms an essential part of the cultural heritage of the indigenous people of Nigeria and by their very nature lies in their being handed down from generation to generation orally or in the form of dances whose steps have never been recorded. Requiring a fixation medium may destroy the nature of folklore and distort the essence of protecting folklore. By Section 74 (4) of the Copyright Act,[8] the right to authorize the exploitation or use of the folklore is vested in the Nigerian Copyright Commission.

Nigeria is a heterogeneous society with multi-ethnic groups and it is common to find similar customary standards of expression and folklore across ethnic groups. Different communities may share a language, proximity, origin, history, social structure, and economy. It is perhaps for this

[6]Copy Right Act, 2022.
[7]*Ibid.*
[8](n6).

reason, and many others, that Sections 74(4) and 75 of the Copyright Act[9] confers the implementation of expressions of folklore rights in the commission. The commission holds the cultural communal rights of any community laying claim to folklore in trust for and on their behalf. Consequently, no individual member of a community claiming folklore can institute an action for infringement of expressions of folklore as the law only empowers the Commission to sue an infringer. The commission is also empowered to institute criminal liability in respect of the unlawful exploitation of folklore.

A wide variety of other laws can supplement the protection of expressions of folklore beyond the scope of IP such as the law of unfair competition. Criminal law, the law of delict/torts, the general law of civil liability, cultural heritage preservation laws, blasphemy laws, customary laws, contract law, employment law, and marketing, and labelling laws.

United Nations Educational, Scientific and Cultural Organization (UNESCO) -World Property Organization (WIPO) forum on the protection of folklore[10] states that the topic of folklore has been attracting attention lately because of the UN-led emphasis on the rise of Indigenous people of the world. It focused on Australia as a case study where it maintained that in *Australia,* the impetus for the protection of folklore had been provided by the LandMark judgment of the High Court in that state in the case of *Mabo v The State of Queens Land [No 2]*[11]where it was stated that protection of folklore is important in creating and maintaining identity, and in promoting self-confidence and pride.

3. IMPORTANCE OF PROTECTING FOLKLORE

By **Section 15(4) of the 1999 Constitution**[12]which is one of the sections under the fundamental objectives in Chapter ii of the Constitution, the State should aim to foster a feeling of belonging and involvement among the various people of the Federation and to ensure that the exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community is prevented.[13] Therefore, it is necessary to protect folklore in Nigeria, and by doing so it will serve its purpose as well as other goals.The protection could facilitate economic benefits to the source community; prevent the appropriation of the folklore, lead to the recognition of a community's social standards and values; and safeguard the cultural identity of a community from degradation or misuse. For example, the degradation of cultural items may occur where the items are displayed outside their traditional setting and for purposes different from those for which they were created or where religious artifacts are sold as mere decorative art. There are many examples of artifacts from the ancient Benin Kingdom and other parts of Nigeria that were looted by British troops around 1897 and are now scattered worldwide in Western museums and private collections.[14]Before being stolen, the artifacts were used for many traditional, religious, and cultural representations. Today, these artworks and sculptures sit as ornamental pieces in museums.

[9]*Ibid*.
[10]UNESCO-WIPO forum organized by the United Nations Education, Scientific and Cultural Organization on 7th April 1997. Accessed on unesdoc.unesco.org 5th February 2025.
[11][1992] 66 A.L.J.R 408.
[12]1999 Constitution (As amend).
[13]*Ibid* section 17(1d) 1999 Constitution (As amended).
[14] Alex Marshal, 'This Art Was Looted 123 Years Ago. Will It Ever Be Returned?' New York Times. Jan 23, 2020 https://www.nytimes.com/2020/01/23/arts/design/benin-bronzes.html.

It has been stated that folklore is a powerful means of bringing people together and asserting generations and acts as a mirror that reflects their psychic makeup and explains the primeval civilization of race,[15] Folklore has its source in the life of their people and, like life, it evolves continuously. One of the common ways in which folklore manifests itself is through artistic creations. The fact that works of folklore draw upon custom and tradition for their basis means that the works produced by later Aboriginal artists represent a unique continuation of their time-honoured myths and legends.

In a WIPO national seminar on Copyright, related rights, and collective management,[16] it was stretched that folklore is an important element of the cultural heritage of every nation. It is, however, of particular importance for developing countries, which recognize folklore as a means of self-expression and social identity. All the more so since, in many of those countries, folklore is truly a living and still developing tradition rather than just a memory of the past.

4. JUSTIFICATION FOR THE LEGAL PROTECTION OF EXPRESSION OF FOLKLORE

Due to the importance of folklore as mentioned above it is imperative for there to be legal protection of folklore. The justification for the legal protection is for the following reasons.

a) Cultural integrity

All indigenous communities are concerned with the continuous existence of their culture which should be free from unnecessary interference. Indeed, their sense of identity and self-respect are bound up with their group cultures,[17] In the *Philippines*, the Indigenous Peoples Rights Act 1997,[18] is an Act that recognizes, protects, and promotes the rights of the Indigenous Cultural communities or Indigenous peoples, has explicitly provided the rights of cultural integrity. This shows that maintaining the cultural integrity of a community has been recognized as a basis for the legal protection of folklore.

b) Another obvious reason for conferring legal protection to folklore is to avoid the unjust enrichment on the part of those non-indigenous entrepreneurs who profit from the commercial use of folklore whereas the indigenous or traditional owners are left with no share of the economic returns. It would amount to injustice on the part of Indigenous communities for outsiders to profit from the folklore of such communities.

c) Prevent economic harm to the communities

Communities benefit from their Indigenous arts and crafts as a source of income. If such Indigenous artists have no right to control the use and reproduction of their arts and crafts, this may result in undesirable competition from non-indigenous people who, by cheap imitations, mass produce similar arts and crafts. This will cause economic harm to Indigenous artists and communities in the sense that the market becomes more crowded, and their economic opportunities are invariably reduced. Therefore, the need for legal protection is desirable.

[15]B. Ndoye *'Protection of Expressions of Folklore in Senegal'* (1989) Copyright 374-375.

[16]WIPO national seminar on Copyright, related rights and collective management held in Khartoum February 28thwww.Wipoint. Accessed 5th February 2025.

[17]Weatherall K, *"Cultural Autonomy and Djulibinyammurr - Individual and Community in the Construction of Rights to Traditional Designs*" (2001 64 MLR 215 @224).

[18]IPRA 1987.

5. EXCEPTIONS TO THE RULE ON THE VIOLATION OF FOLKLORE IN NIGERIA

It is believed that where there is a general rule certainly there should be an exception. The exception of folklore is found under **Section 74(2) (a-e) of the Copyright Act[19],** which carves out fair use of fair dealing exceptions for the use of expressions of folklore. The exceptions are geared towards ensuring that the protection given to folklore does not hinder dissemination or lawful derivations of other works from the expressions of folklore. These are intended to apply to teaching, research, and other private, domestic, and public use and fair dealings as long as due regard is given to the source. The broad and flexible exception would also encourage innovation and provide a flexible standard that could easily be used by others. In this regard, the following exceptions are permitted:

a) The doing of any of the acts by way of fair dealing for private and domestic use, subject to the condition that, if the use of the title of the work and its sources;

b) The utilization for purposes of education;

c) Utilization by way of illustration in an original work of the author; provided that the extent of such utilization is compatible with fair practice;

d) The borrowing of expressions of folklore for creating an original work of the author;

e) The incidental utilization of expressions of folklore.

6. INFRINGEMENT OF THE EXPRESSION OF FOLKLORE

Folklore is infringed when a person without the consent of the Nigeria Copyright Commission, uses an expression of folklore in a manner not permitted by the Act. Section 75 of the Copyright Act[20] provides that any person who without the consent of the Commission, uses an expression of folklore in a manner not permitted by Section 73 of this Act, is in breach of statutory duty and is liable to the Commission in damages, injunction, and any other remedies as the court may deem fit to award in the circumstances. Section 76 of the Copyright Act[21] makes any person who goes against the provision of Section 73 without the consent of the Commission criminally liable and subject to a fine or imprisonment for a term or both.

7. CONCLUSION

The lack of existence of genuine and effective protection of folklore is a big concern to the communities that are originators of folklore. The absence of effective protection for the work of art known as folklore makes the original community works of art to be pirated by individuals and corporations who commercialize the folklore without paying attention to the interest of the community. Individuals who make use of the original folklore fail to give recognition to the community and no share of the profit from the exploitation is shared among the community, which in turn prejudices the economic growth of the community. Because the extant copyright law in Nigeria only empowers the Copyright Commission to seek redress on behalf of an aggrieved community, where the Commission fails to redress a particular complaint of a community to the commission, that would bring an end to the matter as the community themselves will lack the *locus standi* to directly approach the court for redress.

[19](n6).
[20] (n6),
[21]*Ibid*,

It is found in this article that the protection accorded to folklore under the Copyright Act in Nigeria and most of the globe is towards the community's creative and original work of art, as against individual creation or work of art. Many artistic ideas are attributable to individuals, but since the law protecting folklore is targeted against the protection of the community, the artistic work of an individual is not cognizable under the laws that protect folklore. Again, leaving the issue of redress of breach or threatened breach to folklore to the discretion of the Copyright Commission as in the case of Nigeria, will make the law dormant in the statute book.Therefore, there is every need to amend the extant provision of the Copyright law which touches on the protection accorded to folklore in Nigeria.

8. RECOMMENDATIONS

It is recommended that the extant protection accorded to folklore in Nigeria should be amended to make it more encompassing and embracing to accord recognition to individuals whose artistic work within the community deserves recognition. Also, in the area of enforcement which is left to the discretion of the Copyright Commission, the law should be amended to allow communities to seek redress against intruders or those who violate the right to folklore in a given community.