CONTRIBUTIONS OF THE NIGERIAN CUSTOMS TO THE FIGHTAGAINST PIRACY IN NIGERIA: PROSPECTS AND CHALLENGES

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ABSTRACT

For over twenty five years now, Nigeria has been grappling with the upsurge in the importation of pirated copies of copyrighted works into Nigeria. This development is fuelled by the scarcity and high cost of the original of works pirated, as well as the high patronage enjoyed by pirated works due to their the low cost. This is done in contravention of copyright laws and related legal instruments. The pandemic called 'piracy' is a cankerworm that has eaten deep into the fabric of Nigeria. The continued importation of pirated materials into Nigeria will obviously throw both creators and those working in the creative and entertainment industry out of job. Besides, piracy has been constituting setback to the diversification policy of Federal Government of Nigeria and if nothing serious is done to eliminate piracy, it has the potentials of totaling annihilating creativity at the long run. Sadly, the activities of pirates have relegated the efforts of the Department of Customs and Excise which has proven to be the best copyright enforcement mechanism in the fight piracy along the territorial borders of Nigeria. This is as a result of the numerous challenges facing the Customs that have crippled this agency in the fight against copyright piracy. Adopting doctrinal research method, as well as analytical and comparative approaches, this research work thoroughly examined the provisions of the Nigerian Copyright Act, the Custom and Excise Management Act, the Constitution of Nigeria and the TRIPS Agreement with the sole aim of discovering those challenges bedeviling the Customs in the fight against piracy in Nigeria. It was found out that piracy thrives in Nigeria as a result of corruption bedeviling the Nigerian Customs; the operation of the obsolete Copyright Legislations which failed to comply with the provisions of International Copyright Agreements/laws; as well as other factors peculiar to the Nigerian system. A good number of recommendations were made on the ways to combat piracy, which includes the amendment of the obsolete Copyright Act of Nigeria and the Custom and Excise Management Act to be in tandem with the Agreement on Trade-Related Aspects of Intellectual Property Rights, the elimination of corruption from the Department of Customs and Excise, training and retraining of the staff of Department of Customs and Excise and others..

Keywords: Copyright protection, copyrighted works, Customs and Excise, Enforcement Mechanisms, Nigeria, Right Owners

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1. INTRODUCTION

Since the mid 1990s, there has been an increase in copyright infringement in Nigeria contrary to the Copyright Act which grants a monopoly rights on authors to do or restrain others from doing certain acts with respect to the authors' works. These rights are granted in relation to the authors' literary works, musical works, cinematograph films, sound recordings and broadcasts.[188] As a result of this piracy, these authors are not eager to further publish their works in order not to get involved in another economic disaster. Sometimes, the high cost of production of original works in Nigeria as well as their scarcity tends to propel the importation of foreign pirated works which are far cheaper than original works published in Nigeria. Again, some Nigerians are not patriotic enough to buy Nigerian made works but instead, prefer foreign works simply because of they were made overseas. This development has triggered an upsurge in the importation of pirated copies of copyrightable works into Nigeria, especially from China. The high powered piracy going on around the Nigerian borders has greatly undermined the efforts of the Department of Customs and Excise which is charged the responsibility of fight piracy along the territorial borders of Nigeria. This is as a result of the numerous challenges facing the Customs. Obviously, that if this high level of piracy is not urgently fought to a standstill, creativity will go into oblivion.

This work shall examine the concept of copyright protection; copyright piracy, copyright enforcement mechanisms, the Department of Custom and Excise as a copyright enforcement mechanism; as well as the prospects and challenges of this mechanism in the fight against copyright piracy Recommendations shall be made on the ways to reposition the Department of Custom and Excise as the premier border enforcer of copyright in Nigeria.

2. The Concept of Copyright Protection

For centuries now, copyright has been conceptualized as an intangible incorporeal right granted to authors of copyrightable works, enabling them to control for a specific period, the exploitation of their works.[189]
Copyright has been defined as: [190]

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[188] Copyright Act,(Cap C28), Laws of the Federation of Nigeria, 2004, Section 1, hereinafter referred to as
'C.R.A.N.' or the 'Act'.

[189] S Umeh & C Aniche, 'Copyright Enforcement on the Internet: An Appraisal of the Copyright Laws of Nigeria and the United States State of America', *IJOCLLEP 1(2),2019*, p.187.

[190] B Garner, *Black's Law Dictionary* (9th edn, United States of America: Thomas Reuters, 2009). p.366.

> the right to copy; specifically, a property right in an original work of authorship, including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and architectural works; motion pictures and other audiovisual works; and sound recordings, fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work'.

Copyright laws simply entails property ownership and the sole right to personally or authorizing any other person to produce, reprint, translate, publish or perform, any of the creative works brought out of an original work.[191] According to Obiora, the scope of copyright law covers:[192]

> creative literary, dramatic, musical and artistic works involving the writers as authors, publicists, poets, composers and novelists, the producers as printers, publishers, broadcasting organizations, broadcasters, the marketers, recording companies, the music and movie film makers, computer vendors, visual artists, cinema projectionists, camera-men as paparazzi and photographers, who snap (famous and notorious) people around the world to get interesting printed pictures of them to sell to the electronic and newspaper proprietors, promoters and buying media houses, guild of editors, the performers as the actors and actresses, (notably the USA Hollywood, the Indian Bollywood and the Nigerian Nollywood) theater practitioners, performing artists, stand-up comedians, the musicians, *et cetera.*

The Nigeria Copyright Act expressly confers the aforesaid monopoly rights on right owners and their successors-in-title, including the right to make derivative work from the original work.[193] The rights granted to right owners are so sacrosanct that they are not limited to the original works, but extend to any form recognizably derived from the original.[194] The law in its infinite wisdom granted

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[191] E Obiora, *'Information Age and Copyright Law: Foreign Books Availability and Affordability in Nigeria',*
Arabian Journal of Business and Management Review (Nigerian Chapter) Vol. 3, No. 1, 2015, p. 55.

[192] *Ibid.*

[193] Copyright Act,(Cap C28), Laws of the Federation of Nigeria, 2004, Section 1, hereinafter referred to as
'C.R.A.N.' or the 'Act'.

[194] C.R.A.N. Sections 6 1 (2)-(3), 7 (1)(a) & 8 (1) (b).

these monopoly rights right owners in recognition of their efforts and financial expenses in making the work; and to encourage them create more works through the enjoyment of the economic benefits accruing from their works.[195] However, it has severally been emphasized that copyright protection is not granted as a matter of cause. This is because Copyright Laws do not protect mere ideas but, the expression of such ideas. [196] Consequently, for works to qualify for copyright protection, authors must expend sufficient effort must in making their works to give them original character.[197] Furthermore, such works must be fixed in any definite medium of expression now known or later to be developed.[198]

3. Copyright Piracy

It has been judicially sated that copyright right being a right, the person ceased with an interest in copyright becomes the copyright owner entitled to hold or transfer such rights to the exclusion of all others.[199] The inalienability of copyright has been re-echoed by the Constitution which provides that:[200]

> No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in such property shall be acquired compulsorily in any part of Nigeria except in the manner prescribed by law.

Thus, any annexation of the copyright of another without his authority amounts to copyright piracy which Nwogu has aptly defined as 'the illegal reproduction or duplication of copyright works like phonograms, books, paintings, architectural drawings, photographs, films, broadcasts, computer software etc. for commercial Purpose'.[201] It is provided Nigeria that any person who without the license or authorization of the Copyright owner, does or causes any other person to exercise any of the aforementioned rights reserved to copyright owners shall be guilty of

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[195]S Umeh, 'Digital Rights Management and Access to Copyrightable works in Nigeria: Lessons from India',
(2020) 2(1) IRLJ, p.172.

[196]S Umeh, Technological Protection of Copyright and Access to Information in Nigeria; Lessons from the United States of America, *JCCL Volume 9, December 2019*, p.91,

[197]C.R.A.N. Section 1 (1).

[198]*Ibid.*Section 1(2).

[199]*Musical Copyright Society of Nigeria (Limited/Gte) (MCSN) v Compact Disc Technology Limited &Ors,* {2019}All FWLR (Pt.1015) p.203.

[200]Section 44 of 1999 Constitution of the Federal Republic of Nigeria as amended.

[201]M Nwogu,'Challenges of The Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy
in Nigeria', *Global Journal of Politics and Law Research Vol.2, No. 5; December 2014,*p. 25.

primary infringement of copyright.[202] Similarly, secondary infringement of copyright occurs when a person, without the license or authorization of the owner of copyright does any of the acts summarized below: [203]

> imports or causes to be imported into Nigeria infringing copy of a work; or exhibits in public any infringing article; or distributes any such work by way of trade, offers for sale, hire, or otherwise; or makes or has in his possession, plates, master tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work; or permits a place of public entertainment or business to be used for an illegal performance in the public of such work; or performs or causes to be performed for the purposes of trade or business or as supporting facility to a trade or business, any work in which Copyright subsists.

In the same vein, criminal infringement of Copyright occurs when a person, without the authority of the Copyright owner does any of the acts summarized below in relation to secondary infringement.[204]

4. Copyright Enforcement Mechanisms

Copyright piracy may be described as a global threat to creativity, considering the fact that it obstructs genuine investments and corrupts cultural values of a nation, such as Nigeria. Piracy is obviously responsible for the diminishing of the artistic and literal quality of formerly exciting staged performances; as well as the increasing colourless and uninspiring visual arts. As a result of the evil called piracy, investors are weary and the younger generation is not encouraged to pursue careers in the arts and entertainment industries. This development prompted Copyright Laws all over the world to institutionalize various enforcement bodies/mechanisms in order to achieve a holistic enforcement of Copyright. In Nigeria for instance, some of these bodies which are manned by human beings include: Nigeria Copyright Commission, Copyrights Inspectors, Copyrights Licensing Panel, Collecting Societies, Department of Customs and Excise, Police, and the Court.[205] It therefore follows that upon the breach of copyright, the copyright owner is authorized to embark on the enforcement of his right trampled upon by an intruder having recourse to any of these

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[202] C.R.A.N. Section 15 (1) (a).

[203] *Ibid.* Paragraphs (a) to (g).

[204] *Ibid.* Section 20 (1) (a)-(c).

[205] S Umeh & C Aniche, 'Challenges of Copyright Enforcement on the Internet: need for amendment of the Copyright Laws ', *(2020) 10 UNIZIK JPPL, p.8.*

enforcement mechanisms, or a combination of one or two of them, depending on the nature of his claim. If the infringement pertains to importation of infringing materials through the territorial borders of Nigeria, the copyright owner will employ the services of DCE to enforce his rights.

5. The Department Custom and Excise as an Enforcement Mechanism

Nigerian Custom and Excise was first established in Nigeria by the British Colonial Administration in 1891 when Mr. T. A. Wall was appointed the Director-General of Customs, for the collection of in-land Revenue in the Niger Coast Protectorate.[206] The name 'Department of Customs and Excise' emerged in 1922 when the first Comptroller of Custom and Excise of the Federation of Nigeria was appointed.[207] Towards the end of 1945, the Custom and Excise Preventive Service was established under the leadership of Mr. Nicol, with two divisions, *viz,* Maritime and Preventive. Sequel to the promulgation of the Customs and Excise Management Act,[208] the affairs of the Department was brought under the management of a Board. Today, the Department of Custom and Excise[209] is established by Nigerian Custom and Excise Management Act, with the Comptroller General of Customs at the helm of its affairs. [210] The DCE is subject to the general control of the Minister charged with responsibilities for matters relating to finance.[211] It has six zonal administrative structures each headed by an Assistant Comptroller General; and the following departments: (a) Finance, Administration and Technical Services; (b) Tariff and Trade; (c) Excise and industrial incentives; (d) Enforcement and drugs; (e) Economic Relating Research and Planning; (f) Investigation and Inspection. [212]

DCE has the exclusive powers over Custom and Excise duties;[213] the import of commodities into and export of commodities from Nigeria;[214] as well as the inspection of products to be exported from Nigeria.[215] CEMA also confers on the Department of Custom and Excise the powers to restrict the movement of goods

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[206] Available at https://customs.gov.ng acessed on 17th August, 2020.

[207] *Ibid.*

[208] Customs and Excise Management Act, No. 55, 1958.

[209] Hereinafter referred to as 'DCE'.

[210] Cap. C 45, Laws of the Federation of Nigeria, 2004, hereinafter referred to as CEMA.

[211] *Ibid*. Section 5. .

[212] Available at https://customs.gov.ng Acessed on 17th June, *Op. Cit.*

[213] Second Schedule to the Constitution of Nigeria, *Op. Cit.*

[214] *Ibid.* Paragraph 6 (2) (a)

[215] *Ibid.*Paragraph (b).

into and out of Nigeria by land or inland waters. [216] Olomu *et. al.* summarized the powers conferred on DCE when they stated that: [217]

> the statutory functions of the Nigerian Customs and Excise include but not limited to the collection of revenue and accounting for same, anti-smuggling operations, Security functions and general statistics for planning and budgetary purposes; combating illegal commercial activities and trade in illicit goods such as import of fake and substandard goods, combating in-fraction on intellectual property rights, combating international trade in endangered species, combating illegal trades in arms and ammunitions, combating money laundering, combating trade in illicit drugs, combating illegal trades in cultural artifacts, combating importation of pornographic materials, and combating importation of toxic and hazardous substances.

Added to these functions, the DCE plays the lead role in all matters relating to importation, exportation and physical policies guidelines of Nigeria; thereby making the DCE a lead agency in the implementation of the Nigerian Trade Hub**.** [218] For purposes of carrying out or enforcing the provisions of CEMA, all officers of the DCE have the same powers, authorities and privileges as are given by law to police officers.[219] Officers are thus empowered to board ships, examine and inspect goods or persons carried therein. [220]

6. The DCE and Fight Against Copyright Piracy

The movement of pirated material in and out of the nations of the world is controlled by an International Agreement known as 'Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995' which Nigeria is signatory to.[221] TRIPS enables right holders to obtain the corporation of Customs and Excise to intercept pirated copies of intellectual property works at the nations' territorial boarders and to prevent the release of such infringing copies into circulation.[222]

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[216] CEMA, section 18.

[217] *B Olomu et. al*. 'Border Security Issues and Challenges of the Nigerian Customs Service', *International*
Journal of Latest Research in Humanities and Social Sciences (IJLRHSS) Vol. 02-Issue 03, p.10.

[218] *Ibid.*

[219] *Ibid.* Section 18.

[220] *Ibid.* Section 21.

[221] Hereinafter referred to as 'TRIPS'.

[222] *Ibid.* Art. 51-60.

This is to ensure that the infiltration of counterfeit and pirated copies of works is checkmated locally and internationally. The Agreement mandates member states to have provisional enforcement measures for effective and expeditious actions to eliminate piracy when it expressly provides thus:[223]

> Members shall, in conformity with the provision set out below, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods.

It has been stated earlier in this work that DCE is the Agency in charge the inspection of all goods entering into Nigeria,[224] It must be pointed out that the role of DCE in enforcing the protection of copyright seems to be limited to secondary and criminal infringement of copyright. The processes and procedures adopted by DCE to fight illegal importation of pirated materials into Nigeria are as discussed below.

6.1 Application

In compliance with the provisions of TRIPS, C.R.A.N. permits an owner of Copyright in any published literary, artistic or musical work or sound recording, to give notice in writing to the DCE that:[225]

a. he is the owner of the copyright in the work; and
b. that he requests the Department during the period specified in the notice, to treat as prohibited goods, copies of the work to which this section applies:

The Act allows the copyright owner to do this provided that the period specified in a notice under this subsection shall not exceed five years and shall not extend beyond the end of the period for which the Copyright is to subsist.[226] This application can be made in relation to printed copies of works made outside Nigerian which if they had been made in Nigeria, would be infringing copies of the works.[227] Such application must comply with any regulations made by the

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[223] Art. 50 of TRIPS.

[224]CEMA section 18.; Ibekwe & Obunne, 'The WTO-Trip's Agreement and Intellectual Property Rights Enforcement in Nigeria', *NAUJILJ 11 (1) 2020*, p. 93.

[225] C.R.A.N. Section 44 (1); Art. 52 of TRIPS.

[226] *Ibid.* Proviso to Section 44 (1).

[227] *Ibid*. Subsection (2).

Minister of Internal Affairs prescribing the form in which the notices are to be given under the Act, and requiring a person giving such notice, either at the time of giving the notice or at the time when the goods in question are imported; to furnish the DCE with such evidence and to comply with such other conditions if any, as may be specified in the regulations.[228] This requirement is in compliance with the provisions of Trips Agreement which provides that: [229]

> Any right holder initiating the procedures under article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities.

In all cases, the provisions relating to detention of copyrighted materials do not apply to the importation of any article by a person for his private and domestic use.[230]

It is apposite to state at this juncture that the requirement of notice is not indented to open the flood gate for frivolous applications against innocent importers of copyrighted materials. Hence, the TRIPS set the condition to be met by a prospective applicant when it provides that:[231]

> The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Although the C.R.A.N. does not expressly mention the provision of security, it copiously provides for the payment of a fee in relation to such notice.[232]

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[228] *Ibid.* Subsection (5).

[229] Art. 52 of TRIPS.

[230] *Ibid.* Proviso to Subsection (3); Article 60 of TRIPS provide that members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments.

[231] Art. 53.

[232] C.R.A.N. Section 44 (6).

6.2 Detention and Release of the Consignment

According to C.R.A.N., where a notice has been given in respect of a work and has not been withdrawn, the importation into Nigeria at a time before the end of the period specified in the notice of any copy of the work to which such notice applies shall be prohibited.[233] Upon the detention of the consignment, C.R.A.N. does not expressly provide that the notice of such detention should be given to either the applicant or the importer. Conversely, TRIPS requires that both the importer and the applicant shall be promptly notified of the suspension of the release of goods.[234] TRIPS further mandates members to provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authority inspected in order to substantiate the right holder's claims. [235] This is without prejudice to the protection of confidential information.[236] Furthermore, the competent authorities shall have the authority to give the importer an equivalent opportunity to have any such goods inspected.[237] Where a positive determination has been made on the merits of a case, members may provide the competent authorities the authority to inform the right holder of the name and addresses of the consignor, the importer and the consignee; and of the quantity of the goods in question. [238] Unfortunately, these provisions are not reflected in the Nigerian Act.

Again, under the C.R.A.N., once the consignment is detained, there is no need to institute court actions in relation thereto. This is in total disregard with international practice specified in TRIPS that: [239]

> If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released provided that all other conditions for importation or exportation have been complied with: in appropriate cases, this time/limit may be extended by another 10 working days.

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[233] *Ibid.* Subsection (3).
[234] Art. 54 of TRIPS.
[235] *Ibid.*Art.
[236] *Ibid.*
[237] *Ibid.*
[238] *Ibid.*
[239] *Ibid.* Art. 55.

> However, if proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard shall take place upon the request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.[240]

Furthermore, the Nigerian Act does not cover a situation whereby the DCE may act on its own initiative to suspend the release of detained consignment. However, the position of TRIPS on this is that where members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of goods which they have acquired *prima facie* evidence that an intellectual property right is being infringed: [241]

(a) The competent authority may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) The importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the condition *mutatis mutandis,* set out at article 55.

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures actions are not intended in good faith.

It is submitted that a situation whereby the customs should wait for a notice to detain pirated goods be issued to them by right owners before the former could act on their own initiative to restrain a possible breakdown of law and order totally makes nonsense of the powers conferred on DCE to fight piracy. This also portrays the DCE as a toothless bulldog. In such a situation, right holders will have no choice than to fold their hands and watch pirates illegally annex their copyright. Similarly, it will be inimical to the interest of importers if the DCE is fails to promptly release detained goods on its own initiative pursuant to the lacuna inherent in C.R.A.N. Such a situation will foist a situation of helplessness on innocent importers. It is therefore suggested that C.R.A.N. be urgently amended to remedy these lacuna along the line of TRIPS.

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[240] *Ibid.*
[241] Art. 58 of TRIPS.

It must be pointed out that TRIPS mandates its members to provide for criminal procedures and penalties to be applied in clear cases of willful trademark counterfeiting or copyright piracy on a commercial scale, sufficient to deter piracy.[242] TRIPS further recommend remedies such as imprisonment and/or monetary fines, seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence.[243] TRIPS further provide that: [244]

> Without prejudice to other rights of action open to the right holder and the subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46.

TRIPS mandates the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances. Unfortunately, these noble provisions are missing in C.R.A.N. where the only available remedy against an importer forfeiture of the goods.[245] It is submitted that these omissions have the potentials to truncate the whole essence of copyright protection which the DCE is charged to enforce in favour of right holders and importers who are duly authorized to import copyrighted works. An immediate amendment of C.R.A.N. along the line of TRIPS is suggested that.

It is not in doubt that a person subjected to unlawful prosecution must be adequately indemnified monetarily. This is intended to assuage him of whatever damages he must have suffered in the process and also to sound a note of warning to individuals against initiating malicious detention processes. Accordingly, TRIPS provides that:

> relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of goods appropriate compensations for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to article 55. [246]

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[242] Art. 56 of TRIPS.
[243] Art. 56 of TRIPS.
[244] Art. 59 of TRIPS.
[245] C.R.A.N. Section 44 (8).
[246] Art. 56 of TRIPS.

It is noted with dismay that the provision adumbrated above is conspicuously absent in C.R.A.N. The latter. only emphasizes that where any such notice is given to the Commission in respect of a work, neither the DCE nor any member, officer, servant or agent of the DCE shall be liable to the owner of the work or to any other person for any act or omission by the DCE or its servants or agents in relation to the notice.[247] However, if the owner has suffered loss as a result of any such act or omission and a fee has been paid or is payable to the DCE in respect of the notice, any amount equal to the loss or the amount of the fee for one year, which is less, shall be repaid by the DCE to the owner, or if the fee has not been paid, shall be waived.[248] It is submitted that the failure of C.R.A.N. to provide for indemnification of innocent importers by malicious right owners is an open invitation for frivolous and malicious applications against innocent importers. This is capable of running such importers out of business as a result of financial disasters they face pursuant to such frivolous notices. It is suggested that C.R.A.N. be amended to remedy this anomaly.

6. The Prospects of DCE in the Fight Against Copyright Piracy

It is apposite to state at this juncture that the DCE has not relented in the fight against copyright piracy along the territorial borders of Nigeria. It has been collaborating with relevant stake holders, other agencies such as the Nigerian Copyrights Commission; and other sister Law Enforcement Agencies to carry out joint examination of cargoes the Nigerian boarders. This has propelled DCE to achieve a rare feat in the fight against piracy in Nigeria. It has been reported that in 2012, the DCE with the combined effort of the Nigerian Copyrights Commission, confiscated thirteen containers stacked with pirated items at different seaports in Nigeria.[249] The collaborative efforts of the DCE and Nigerian Copyright Commission have resulted into the confiscation and seizure of twenty-eight containers fully stacked with pirated materials which included: books, VCDs, DVDs, at the Apapa and Tin Can Seaports between 2011-2017, as these goods were being imported into Nigeria.[250]

7. Challenges Facing the DCE in the Fight Against Copyright Piracy

It has been stated that 'Piracy is a cankerworm that has eaten deep into the fabric as society. Piracy poses a tremendous threat to the Nigerian creative industry

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[247] C.R.A.N. Section 44 (4).

[248] *Ibid*.

[249] A Okafor, 'Counterfeiting and Piracy: The need for an effective Boarder Control Regime', available at https://barcodestillwaters law.com2014/02/11> accessed 10 January, 2020.

[250] Available at http://www.copyright.gov.ng Accessed on 19th June, 2020.

which is one of the most vibrant economic sectors. [251] Thus, the war against piracy is a must win war; otherwise creativity will be thrown into the oblivion. It is however sad to not that inspite of its laudable achievements, the DCE has failed to perform optimally as a result of some challenges encountered by the DCE in the cause of the performance of its lawful duties. These challenges are discussed below.

6.1. Porosity of Nigerian Boarders

The porosity of the boarders has been a source of continued encouragement to pirates. The Nigerian boarders span a total land mass of 923,768 square kilometers.[252] According to Olomu *et. al.,* Nigeria shares 773 kilometers boundary with Benin Republic; 1,690 kilometres with the Republic of Cameroun; 1,497 kilometres with Niger Republic; 85 kilometres with Chad Republic and with the Republic of Guinea at the Gulf of Guinea.[253] They further stated that while the Badagry/Seme Area command usually referred to as the 'Premier Land Border' is one of the busiest land borders in Nigeria; the Muritala Mohammed International Airport which is usually referred to as the 'Premier Airport', is the busiest airport in Nigeria.[254] While pointing out the difficulties in containing the activities of pirates in such a broad territorial borders such as that of Nigeria, it is a well known fact that about 1,479 illegal routes exist in Nigeria.[255] To win the war against piracy, it is envisaged that Nigeria should provide the umbrella and martial out the killer squad of NCE to protect talents.[256] Unfortunately, it has been reported that the DCE is short staffed as it only has the work force of less than eighteen thousand that man the Nigerian borders.[257] It is submitted that in order for the DCE to effectively combat piracy along the Nigerian borders, there is need to provide the DCE with adequate man power and resources such as patrol vehicles, arms and ammunitions. Unfortunately, the DCE is bereft of all of these, hence the underperformance of DCE.

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[251] K Waziri,'Intellectual Property Piracy in Nigeria: The Impending Economic and Social Conundrum', *Journal Of Public Law, Vol.4, No.2:Septemberember 2011,* p.200, available at www.ccsenet.org/jpl accessed 15th September, 2020.

[252] *B Olomu et. al*. 'Border Security Issues and Challenges of the Nigerian Customs Service', *International Journal of Latest Research in Humanities and Social Sciences (IJLRHSS) Vol. 02-Issue 03*, p.11.

[253] *Ibid.*

[254] *Ibid.* P.13.

[255] *Ibid.* P.11.

[256] K Waziri, 'Intellectual Property Piracy in Nigeria: The Impending Economic and Social Conundrum', *Op. Cit.* p.200.

[257] *Olomu et. al*. 'Border Security Issues and Challenges of the Nigerian Customs Service', *Op. Cit.* P.15.

6.2 Lack of State of the Art Piracy Fighting Equipment

It must be emphasized that the vastness of the Nigerian borders in the face of ongoing high powered piracy witnessed in Nigeria today brings to the fore the need for a rethink on the management and security of the Nigerian borders and seaports. Without this, the effective fight against piracy will wane. While acknowledging the fact that the DCE is beset with problem of inadequate personnel, it is also true that the DCE lacks patrol vehicles, surveillance helicopters, as well as state of the art piracy fighting equipment such as 21st century arms and ammunitions; scanners and other crime detecting equipment. [258]

6.3 Inter-Agency Rivalry

It is undoubted that security agencies all over the world rely on both formal and information networks capable of being converted to intelligence report. In order to fight crimes, effective utilization and application of basic elements of security, timely procurement of security intelligence, prompt identification and joint actions on the part of security agencies are required. Unfortunately, rather than working towards this direction, the DCE is engaged in unhealthy interagency rivalry and lack of synergy/information sharing between the DCE, Police, Immigration, Navy, Army, Air Force, *etc.* This development has sowed the seeds of discord and distrust in the conduct of inter-agency intelligence sharing and other operations against piracy.[259] Rivalry amongst the Law Enforcement Agencies in Nigeria is usually motivated by self aggrandizement and unpatriotic inclination among the officers of these Agencies. This rivalry not only propagates contention between these Law Enforcement Agencies, but has gone ahead to scuttles the fight against piracy.

6.4 Poor funding.

It is not in doubt that the functions of DCE require adequate funding to enable it carry out its responsibilities efficiently.[260] As such, Nigeria should pay urgent attention to the factors that undermine effective enforcement of copyright laws such as poor resources.[261] It is however unfortunate that most of the security agencies in Nigeria including DCE are not properly funded. This development is bound to hinder comprehensive investigative prowess of DCE against piracy

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[258] *Ibid.* P.15.

[259] *Ibid.* P.13.

[260] M Nwogu,'Challenges of The Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria', *Op. Cit.* P.29.

[261] K Waziri,'Intellectual Property Piracy in Nigeria: The Impending Economic and Social Conundrum', *Op. Cit.* P.200.

and also reduces the quantum of information gathered for that purpose.[262]This has resulted into the poor state of the equipment and the unavailability of 21st century devises needed to fight piracy to a standstill. Poor funding is also responsible for the inactions and lukewarm attitudes of DCE officers in the cause of the fight against piracy. Thus, it is either the right owners sponsor the fight against piracy or nothing is done. This is because officers are not expected to use their meager salaries to sponsor activities against piracy in the absence of provision of funds by the government. It is submitted that the poor funding of DCE is fatal to the fight against piracy. If this practice continues, corruption that will ensue there from will consume both the fight against piracy and DCE.

6.5 Corruption

It has been warned that attention must be paid to the disastrous effects and consequences of corruption on intellectual property enforcement in Nigeria.[263] This is because right from independence, Nigeria has been plagued with high level of corruption that has eaten deep into the fabrics of the Nigerian system.[264] It is equally a well known fact that the DCE is one of the worst corrupt enforcement Agencies in Nigeria. Most times, the officers of DCE are compromised as a result of the tips the collect from pirates. These officers most often, have private dealings with pirates and as a result deliberately refuse and find it difficult to fish out pirates in their regular raids. These officers close their eyes to the evils perpetrated by these pirates. This is quite unfortunate and unbecoming of such trusted officials who were sent on these raids with confidence. Again, the employment of DCE just as is the case with any other Agency in Nigeria, has been marred by corruption which now allows the hiring of staff on the basis of who knows who; how fat the pockets of job seekers are; and god fatherism. This has been responsible for the hiring of unqualified candidates in preference to seasoned and qualified staff that are very conversant with the nitty-gritty of the job of DCE. As a result of corruption, funds meant for the trainings, conferences and workshops of staff are usually pocketed by corrupt top officers of DCE. This is also the faith of the funds mapped out for logistics. Till date, there have been no serious efforts made by DCE to purge its officers of corruption. In view of this high level of corruption, it is submitted that there is need for accountability on the part of NCE.

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[262] M Nwogu,'Challenges of The Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria', *Op. Cit.* P.29.

[263] K Waziri,'Intellectual Property Piracy in Nigeria: The Impending Economic and Social Conundrum', *Op. Cit.* P.200.

[264] M Nwogu,'Challenges of The Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria'P.30.

6.6 Lack of Training

It is evident that there could be no effective enforcement of copyright by inefficient custom officers. It is also correct to state that most of the personnel of DCE are ether completely bereft of the modus operandi of DCE, or they have poor understanding of the issues involved. These personnel are also bereaved of copyright knowledge and enforcement related matter. Even after this staffs are hired, they hardly take their jobs serious since they have godfathers and nothing serious will be done to make them face the music because their employers are compromised. Above all, there is no adequate training of the so called employed quack staff to at least keep them updated with the current trends of their job and copyright matters. This position forced Waziri to stress in 2011 that for over fifteen years, no custom officer has been trained by the NCC, as was the practice before. [265] It is submitted that the lack of training of the officers of DCE will not only limit the copyright know-how of these officers; it will go ahead to render the whole essence of the fight against piracy nugatory if nothing serious is done in the near future to remedy this anomaly.

6.7 Favouritism

Favouritism is a cankerworm that has eaten deep into the fabric of Nigerian society. [266] A competent official who is good in a particular area of fighting piracy may be left out and the incompetent official sent to do the job simply because he is highly connected or related to a high ranking government official or an influential person. Moreso, a pirate may be well connected to an influential person or someone friendly to the rank and file of the DCE. Thus, officers may find it difficult or nearly impossible to enforce antipiracy measures against such a pirate. Having seen that piracy is a setback on the diversification policy of federal government as it destroys creativity', [267] It is submitted that if DCE must fight piracy to a standstill in Nigeria, DCE should eliminate favouritism or godfatherism from its system.

6.8 Operation of Obsolete Copyright Laws

There are a lot of lacunas in the Copyright Act of Nigeria suggestive of the fact that the drafters of the Act contemplated only the protection of analogue works;

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[265] K Waziri,'Intellectual Property Piracy in Nigeria: The Impending Economic and Social Conundrum', *Op. Cit.*P.200.

[266] M Nwogu,'Challenges of The Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria*' Op. Cit.* P.32.

[267] Press conference granted by Mr. Augustine Anodu, the Director of Enforcement, NCC, nlipw.com/ncc-confiscates-n36-1m-broadcasts-items-items-apprehends-2-suspectsp-in-delta/ accesed 11th September,2020.

without considering the emergence of digitization which has one it's main characteristics as not being limited to one single national territory but in many cases, crosses borders.[268] Hence, the Act does not confer on the DCE the power to fight on line piracy. Again, the Act only empowers the DCE to fight unauthorized importation of printed copies of copyrighted works excluding cinematograph films and broadcasts, made outside Nigeria. This means that the unauthorized importation into Nigeria of any other copyrighted materials not being a literary material, or contrivances used in making infringing materials are allowed. On the other hand, DCE is not empowered to confiscate pirated material made in Nigeria, either for domestic use or for export; or imported works already in circulation in states of Nigeria for onward export another country or any other part of Nigeria. More so, unpublished works are not included in the prohibited goods.

The Act also provides that upon the detention of pirated goods, the importer will only forfeit the goods. Thus, there is no other remedy available to the right owner irrespective of the huge funds he must have expended in fighting for his rights, including the statutory fees, security and indemnity may be provided by the right owner. This position forced the former Director General of NCC to state that one of the major challenges obstructing the fight against piracy is the inability of CEMA to provide for the prosecution of persons impounded with counterfeit and pirated materials.[269] Thus, while it is glaring that the C.R.A.N. was passed into law without broad-base public discussion on the scope of protection desired to eliminate copyright piracy; [270] CEMA also fell in the same ditch with the C.R.A.N. Discovering the anomalies inherent in the CEMA, the Nigerian former minister of Finance, Mansur Muktar lamented that 'the Nigerian customs service obsolete law has failed to provide the legal framework and tools that makes the organization a potent agency for the enforcement of federal government trade and fiscal policies'. [271]

It is submitted that the uncertainties inherent in both C.R.A.N. and CEMA will deter right owners from initiating the fight against piracy. It is further submitted that if pirates are not subjected to other harsh punishments such as imprisonments and the conversion of the pirated good in favour of the right owners, piracy will continue to thrive in Nigeria.

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[268] *RENO v ACLU* 521 U.S 844 (1997).

[269] K Waziri,'Intellectual Property Piracy in Nigeria: The Impending Economic and Social Conundrum', *Op. Cit.* p.200

[270] *Ibid.*

[271] K *Ibid.*

It is also observed that C.R.A.N. does not specify what happens to the detained pirated goods in total disregard to TRIPS which requires that such goods be destroy by the appropriate authority, as discussed earlier in this work. It is submitted that in the face of this omission, the detained goods are liable to be converted or sold off by corrupt officers DCE without traces. It is therefore suggested that detained pirated goods be converted to the right owners. This will greatly discourage pirates who will now see the act of piracy as dangerous as ever and as a risk that is most likely to enrich right owners upon the discovery of the piracy. This suggested step will also motivate right owners to vigorously initiate anti-piracy processes; having been assured that if successful, they stand to gain a lot.

It is also noted that contrary to the provisions of TRIPS, the Nigerian Act does not require the initiation of any judicial process after the detention of pirated goods and the maintenance of data bases in relation to detained goods. Worst still,

DCE is not conferred with judicial powers in relation to detained goods, as is the case in India which is a co signatory to TRIPS with Nigeria.[272] Above all, there is no Enforcement Procedure Rules in Nigeria in relation to importation of pirated materials quite unlike the situation in India where Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, is in existence. It is submitted that these omissions of C.R.A.N. and CEMA pointed above are igniting piracy in Nigeria. It is therefore suggested that the Nigerian Act be urgently amended to incorporate these suggestions.

9. Conclusion

Having examined the exercise of the powers conferred on the DCE in relation to restrictions on the importation of pirated materials along the territorial borders of Nigeria, it is concluded that copyright piracy is having a field day in Nigeria. This is as a result of a lot of factors/challenges facing DCE, ranging from the operation of archaic Copyright Act of Nigeria which failed to consider the emergence of digital exploitative technologies; lack of Enforcement Rules in relation to importation of pirated goods; corruption and other inefficiencies bedeviling the DCE. Apart from corrupting the cultural values of the Nigeria as a nation, the upsurge of copyright piracy in Nigeria is a pandemic that constitutes serious threat and obstacle to creativity, capable of destroying the Nigerian nation. Unfortunately, inspite of the repeated warnings sounded by

[272] Selvam & Selvam, 'India: Customs Recordial in Border Management of Infringing Goods', available at http://www.mondaq.com>trademark accessed 1st September, 2020.

experts against this looming disaster, DCE has not done enough to eliminate copyright piracy from the Nigerian borders.

10. Recommendations

It must be stated that although the challenges facing the DCE in the fight against copyright piracy are enormous, yet, they are not insurmountable. A good number of steps could be taken to totally eliminate piracy in Nigeria. The recommended steps are as fully discussed below.

a. Amendment of C.R.A.N. and CEMA

There is need for the amendment of C.R.A.N. to fully embrace the provisions of TRIPS Agreement. The suggested amended Act should also contain provisions on the protection of digitally transmitted works. It will also ban all manner of infringement in relation to all works protected under the Act. The proposed Amended Act should contain an Enforcement Rules of the same nature with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. CEMA should also be amended to confer judicial powers on DCE over detained pirated goods. Above, the Amended C.R.A.N. and CEMA should spell out stiffer penalties against corrupt officers, ranging from minimum of twenty years imprisonment to the minimum of one hundred thousand naira fine, depending on the level of culpability.

b. Adequate Funding

There is need for the DCE to be adequately funded by the Federal Government. This will eliminate hassles faced by DCE in relation to patrol vehicles, patrol helicopters, scanners, arms and ammunitions, and other logistic issues. It will also eliminate corruption from the system in that officers will no longer demand for bribes if Nigerians are convinced that DCE is adequately funded.

c. Recruitment of Qualified Staff

Having seen the under-performance of officers employed through corrupt means, it must be ensured that only qualified candidates with requisite knowledge of the job, including Copyright knowledge are employed as staff of DCE

d. Training and Retraining of Staff

The staff of DCE should be subjected to regular trainings, retraining and refresher courses. Staff should also be made to attend Conferences and Workshops organized locally and internationally on a regular basis. This will help reposition the DCE as the primary enforcer of copyright along the borders.

e. Improved Staff Welfare

To improve the performance of DCE staff, there is need to improve the welfare of these staff. Hence, staff should be assured of the prompt payment of their salaries; pensions and gratuities upon retirement. Apart from guaranteeing the prompt promotion of staff of DCE, there is need to provide staff with incentives in the form of allowances and bonuses in response to their outstanding performances and or; in order to boost their performances.

f. Inter and Intra Agencies Co-Operation

Having seen that the fight against piracy is a herculean task which can only be won through co-operation, there s need for DCE to co-operate with other Agencies, private persons, stake holders and even other sister enforcement agencies in intelligence sharing and otherwise. There is also need for the DCE to co-operate with the DCE of neighbouring countries to Nigeria to eliminate copyright piracy which is a border based cankerworm. There is further need for the DCE to co-operate with other relevant international agencies in this regard.