

LIBRARIANS AND COPYRIGHT PROTECTION IN NIGERIA

By

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Introduction

I will start by thanking the Nigerian Judicial Institute for inviting me to make this presentation at the May, 2017 biennial workshop of Judicial Librarians and I join the Institute to welcome all the participants. Let me will say that the topic of copyright has gained great attention in Nigeria in the last few decades particularly from the discussions that trailed the promulgation of the 1970 decree (now an Act) and the various amendments that followed to the last enactment of 1998 and the bill that has been in the national assembly since 2015 waiting for passage. For the vibrancy the sector has witnessed, we must acknowledge the role the Nigerian authors, the entertainment and book industry, librarians, lawyers, academics in general have played and are still playing in this regard. The libraries and librarians have also received a fair attention in the way librarianship is to be practiced in a regime of copyright we find ourselves and again this topic happens to be the core of the subject at hand and thus the focus of this paper.

This topic continues to gain currency as the libraries and librarians continue to select, acquire, organize information and knowledge resources as well as providing access to these resources for her numerous clientele. This is so as the use of these information resources are controlled by copyright law which aside from promoting progress in science and culture, ensures that the rights of the creators of these works are protected and sustained. It is hoped that our excursion through this presentation will see us through the relevant issues and the questions that would be asked in the course of the discussions that will follow and the answers that would be harvested will leave us richer and better for it as professionals who are guided by professional ethics and national laws.

Copyright: Concept & Law

The concept of copyright stems from the fact that creators of intellectual property deserve to benefit from their efforts. Copyright is an aspect of the law of intellectual property, which also includes patents, trade mark and industrial design laws. Copyright as a legal term refers to the rights which countries grant authors or other originators of intellectual and artistic works to enable them have control over certain uses of their creations for defined periods of time. This limits who may copy, change, perform, or share those creations. Copyright has also been described as intangible right protecting the products of human intelligence and creation. The author of a work is therefore vested with the sole and exclusive privilege of reproducing and selling copies of his work. We often see the

¹ DLS, BLS, Grad. Cert. Educ., LLB, BL, MLS, CLN.

warning which has become a common feature in books and phonographic records as reproduced below:

“All rights reserved. No part of this work may be reproduced in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior written permission of the publisher/author”.

Historically copyright law evolved after the invention of the printing press in Europe in the 15th century. As a step to curb the printing of what the British crown considered dissent or subversive (politically dangerous) books, the royal authorities in England which was essentially running a non - secular (Christian) state granted a publishing monopoly to a group of book publishers, who operated guild system called the Stationers’ Company. These publishers survived by the grace of the English crown and dared not offend the crown. Hence they were compelled to publish materials that received the nod of the royal authorities. The publishers who formed the printer’s guild agreed to refrain from competition among themselves. Hence any one that won a contract was left to execute it alone with no other pouching. This humble arrangement became the earliest form of copyright to be known in Europe. Later in 1710 when the British Parliament passed the law called the Statute of Anne, named after Queen Anne, who reigned in England from 1702 to 1714. The statute became the first copyright law in the modern sense. The statute for the first time granted authors the exclusive right to authorize the printing or reprinting of books for a limited number of years. The United States (US) followed suite, and in drafting the U.S. Constitution in 1787, in tone with the British Statute of Anne adopted the copyright as an incentive for authors to create new works. This was crafted in Article 1, Section 8 of the Constitution, with a clause empowering the Congress of the United States to promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries. This provision gave the federal government the power to enact copyright and patent statutes which the congress adopted as the first U.S. copyright law in 1790.

Therefore the goal of copyright is reflected in the wordings of the above copyright laws: In England, the first copyright statute, Statute of Anne (1710), states that copyright was to "encourage learning." ² Similarly, the "Copyright Clause" in the United States Constitution (1787), ³ states that Congress may grant authors copyright protection for their works for a limited time in order to "promote the progress of science and useful arts." Copyright law ensures that creators of works are paid as well. As time went by the protection derived from copyright extended from books to other works and the duration of the protection granted creators of works were also increased. WIPO saw the purpose of copyright in two folds; “ To encourage a dynamic creative culture, while returning to creators so that they can lead a dignified economic existence, and to provide wide spread, affordable access to content for the public”⁴

In Nigeria, as history will tell us, we were once under British ‘tutelage’ and when Britain consolidated her copyright statutes into copyright law in 1911; the act was imported and imposed upon the then

² 8 Anne chapter 19 (1710).

³ Article 1, section 8, Clause 8, United States Constitution 1787

⁴ “Copyright and Related Rights”, World Intellectual Property Organization, [http://www.WIPO.int/copyright/en/.7/2/2010\(WIKIPEDIA\)](http://www.WIPO.int/copyright/en/.7/2/2010(WIKIPEDIA))

Northern and Southern Protectorate of Nigeria by an order –in- council of 24th June 1912. This 1912 Act was replaced in Nigeria by the home made 1970 copyright Act, which in no time was found to be inadequate by stakeholders and a national workshop held in 1987, which led to the promulgation of the copyright decree (now Act) of 1988 and again the current copyright Act 1998 came as an improvement, and as we speak a bill presented to the national assembly in 2015 is receiving attention to be passed any time soon.

THE SCOPE OR COVERAGE OF COPYRIGHT LAW

Copyright law generally covers all “original works of authorship.”⁵ Such original works come in many forms. For example, in almost all countries, all of the following are protected by copyright law: literary works (books, articles, letters, etc.); musical works (tapes, phono-records, cassettes, compact disc; dramatic works (operas, plays); artistic works (Graphics like paintings and photographs, sculpture); computer software, (programs & databases); motion pictures and audiovisual works (films or movies, videos, television programs); advertisements, maps, technical drawings and architectural works.⁶

Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed. It only covers “original expression”, the distinctive way in which ideas are conveyed. So, the information contained in a science textbook is not protected by copyright law. After reading a science textbook, we are free, to write and publish a new book conveying the same information in different words, so also, we can after reading a work of history, we can equally come with a novel incorporating the historical facts without infringing on copyright law.

In Nigeria and some other countries like the United State require the original expression to be fixed in a tangible medium⁷, like paper or a digital recording format, in order to be protected by copyright law. Therefore improvisational stage presentation for example, of jazz, concert or dance would not be protected unless their authors record them.

Copyright therefore subsist in any original work of authorship fixed in a tangible medium⁸, That medium can be almost anything as discernable from the list above to paper, computer disk, clay, canvas, etc. Therefore for a work to be qualified as "original," it must fulfill at least two conditions:

- (1) **It cannot be a reproduction (copy) of another work;** and
- (2) **It must exhibit some amount (no matter how small) of creativity.**

Copyright law also covers works that have not been published or even made public. So, for example, private letters, diaries, and email messages are all protected by copyright law. Some countries used to require published works to be registered with some designated offices (Like the equivalence of the

⁵ See Copyright Act Cap. 68 LFN 1990 Act Cap. C28 L.F.N. 2004, Section 1 (2) (a)

⁶ See Ibid Section 1

⁷ See Ibid Section 1 (2) (b)

⁸ Copyright Issues Relevant to the Creation of Digital Archives A Preliminary Assessment body. Council on Library and Information Resources.

Nigeria Copyright Commission) or to carry a copyright notice with the name of the author and the year of publication in order to be protected by copyright law. Such formalities are no longer necessary for a work to be covered by copyright law. However this may still help to prove authorship or identify who must be contacted for permission before a work can be re-used. In USA for instance, registration of a work is necessary before the author is permitted to sue someone for copyright infringement. (Foreign authors, however, are exempted from this requirement.) In addition, some countries continue to require publishers to deposit one copy of every new work in a designated office, such as the legal deposit with the National Library of Nigeria.

In Nigeria like most jurisdictions, the scope of copyright as to time lasts for the life of the author and 70 years thereafter and sound recordings 50 years after the end of the year in which the recording was first published⁹. In some countries, government publications¹⁰ and other works in the form of maps, official reports, and judicial opinions etc. are protected by copyright law while in some other countries these species of government works are categorized as part of the public domain.

No matter the legal system, copyright law is dynamic and constantly changing to meet new creative, technological, and social challenges. In all countries, copyright law is shaped in part by legislature, courts and even politics. Legislature adopts and often modifies copyright statutes, and courts adjust and clarify the provisions of the statutes when applying them to particular situations (cases).

INTERNATIONAL ORGANISATIONS & TREATIES

Over the years there have come to exist international organizations¹¹ that set internationally accepted minimum standards for domestic laws on copyright and Nigeria has subscribed to a number of these conventions, these organizations include:

The Berne Convention for the Protection of literary and Artistic Works, which was the first to emerge and most significant international treaty concerning copyright law and neighbouring rights. It was adopted in Berne, Switzerland, in 1886 and has since witnessed several reviews. Nigeria subscribed to the treaty in 1993 and there are about 134 member states. The highlights of the treaty include provisions on the minimum protection to grant member states for protection of literary and artistic, significantly is the provision is the special provision for developing countries. The convention is founded on three fundamental principles: (i) that works originating from any member state will receive the same protection from other member state as the latter grants to works of its own nationals. Members of the Convention grant copyright protection to works of authors who are citizens of any member countries; (2) that protection should not be made consequent any special procedure. It prohibits the use of formalities, such as registration of the copyright or placement of the copyright notice on copies of the work to deprive holders of their rights; and (3) the protection shall be independent of protection of country of origin. Thus, making it easy for an author to obtain copyright protection in many nations based on the principle of reciprocity.

⁹ See Copyright Act Cap. 68 LFN First schedule (2) Terms of Copyright

¹⁰ See Ibid Section 4

¹¹ See Ibid Section 5

The Universal Copyright Convention (UCC), this convention seeks to ensure adequate protection for performers in their performances, phonogram producers and broadcast organizations. Performers in this convention include actors, singers, musicians, dancers, etc. The member states are 97 at the last count and Nigeria subscribed to this convention in 1962.

Nigeria also subscribed to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations on October 29, 193. It has about 53 member states. Nigeria also joined the convention establishing the World Intellectual Property Organization (WIPO) on April 1995 and its membership comprises of 171 states.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came on board in 1994 it further clarified several aspects of copyright law and strengthened copyright protections internationally.

There are others like the Anti - Counterfeiting Trade Agreement which is a multi-lateral trade agreement which is supposed to be a response “to the increase in global trade of counterfeit goods and pirated copyright protected works. The scope of ACTA is broad, including counterfeit physical goods, as well as internet distribution and information technology”¹²

ELIGIBILITY FOR A COPYRIGHT (OWNERSHIP)

As a general principle copyright is ordinarily obtained by the creator of a work, who writes a novel, makes a painting, or composes a song, the creator acquires the copyright in the creation. The human creator of a work is generally the author and initial owner of copyright¹³. Copyright rights can be transferred, either separately or together. For example, someone can transfer the right to reproduce a work without transferring the right to create a derivative work. A transfer of copyright ownership, including the grant of an exclusive license, must be in writing and signed by the grantor.¹⁴ Nonexclusive licenses need not be in writing, but frequently are. A copyright license can span a very long period of time. Complicated issues have arisen when new forms of exploitation are developed during the license term. Usually, the grantor will claim she or he did not intend to include the new rights in the license, and the grantee will claim the opposite. (See the case of *Random House, Inc. v. Rosetta Books LLC*¹⁵ .

Another debate about electronic rights was resolved in 2001 in *New York Times Co. v. Tasini*.¹⁶ In this case, the Supreme Court in America held that *The New York Times*, in licensing back issues of the newspaper for inclusion in electronic databases such as Nexis, could not license the works of freelance journalists contained in the newspapers. *The Times's* contracts with the journalists did not address copyright ownership, so the newspaper relied on a provision in the Copyright Act that gives limited privileges to owners of collective works, such as journals and newspapers, in respect of individual contributions to those works.¹⁷ According to the Court, *The New York Times* had the right to

¹² Copyright - Wikipedia, the free encyclopedia 2010. <http://en.wikipedia.org/wiki/Copyright>. P.9. 29/072010

¹³ See Section 10, CA 1988

¹⁴ See section 11 CA 1988.

¹⁵ Ibid *Random House, Inc. v. Rosetta Books LLC*

¹⁶ *Tasini*

¹⁷ Ibid

publish the free-lancers' articles in the original issue of the newspaper in which they first appeared and in revisions of that newspaper, but the authors—not the Times—retained the rights to license use in electronic databases.

As these two cases illustrate, ownership of electronic rights can be ambiguous, and sometimes widely dispersed. The law distinguishes between ownership of a copy of a work (even the original copy, if there is only one) and ownership of the copyright rights. A museum that acquires a painting does not thereby automatically acquire the right to reproduce it. Libraries and archives commonly receive donations of manuscripts or letters, but they generally own only the physical copies and not the copyright rights. Not all rights attach to all works. For example, some works, such as sculpture, are not capable of being performed. Other works—notably musical compositions and sound recordings of musical compositions—have rights that are limited in certain respects. For example, reproduction of musical compositions in copies of sound recordings is governed by a compulsory license¹⁸ that sets the rate at which the copyright owner must be paid. Sound recordings, for historical reasons, long had no right of public performance, and they now enjoy only a limited performance right in the case of digital audio transmissions.¹⁹

Some situations arise, for example where an employee creates a work as part of his or her employment. In approaching this, countries vary a great deal in how they deal with such situations. In common law tradition, the copyright in a work created by an employee within the scope of employment goes to the employer. Finally on this, in the United States and some other countries, when specific types of works are created in specific circumstances by independent contractors, the contractors and the organizations commissioning the works may agree in writing that the commissioning organizations shall be awarded the copyrights.

COPYRIGHT PROTECTION OR ENTITLEMENTS FROM COPYRIGHT

A copyright provides a host of rights that can be exploited or licensed separately or together. The rights created by copyright law fall into two categories: economic rights and moral rights. These rights are articulated and enacted in section 6 of Copyright Act.

Economic Rights²⁰

The economic rights are intended to give authors the opportunity to use their works to earn money. These are things that typically only the owner of the copyright may do unless the owner grants permission to others. The primary economic rights include:

The reproduction right (the right to make copies); for purposes of the reproduction right, a "copy" of a work in any form in which the work is fixed and from which it can be perceived, reproduced, or communicated, either directly or with the aid of a machine.²¹ Courts have held that even the reproduction created in the short-term memory (RAM) of a computer when a program is loaded for use qualifies as a copy.

The right to create adaptations or derivative works, such as translations, abridgments, or

¹⁸ See section 37 (1-6) Copyright act 1988

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

adaptations; A "derivative work" is a work that is based on a copyrighted work, but contains new material that is original in the copyright sense. For example, the movie *Gone With the Wind* is a derivative work of the book by Margaret Mitchell. "Version" is not a term of art in copyright law. If a new version consists merely of the same work in a new form—such as a book or photograph that has been scanned to create a digital version—then it is a reproduction of the work. However, if new copyrightable authorship is added, then it is a derivative work. For example, Windows 2000 is a derivative work based on Windows 98.

The right to distribute copies of the work to the public: It could be for example, by selling or renting copies of it; the distribution right is limited by the "first sale doctrine," which provides that the owner of a particular copy of a copyrighted work may sell or transfer that copy. In other words, the copyright owner, after the first sale of a copy, cannot control the subsequent disposition of that copy²². Making copies of a work available for public downloading over an electronic network qualifies as a public distribution.²³ However, neither the courts nor the Copyright Office has yet endorsed a "digital first sale doctrine" to allow users to retransmit digital copies over the Internet.²⁴

The right to perform and or display the work publicly. To "perform" a work means to recite, render, play, dance, or act it, with or without the aid of a machine.²⁵ Thus, a live concert is a performance of a musical composition, as is the playing of a CD on which the composition is recorded. To perform or display a work "publicly" means to perform or display it anywhere that is open to the public or anywhere that a "substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered."²⁶ Transmitting a performance or display to such a place also makes it public. It does not matter whether members of the public receive the performance at the same time or different times, at the same place or different places. Making a work available to be received or viewed by the public over an electronic network is a public performance or display of the work.²⁷ Moral Rights²⁸

The moral rights are designed to protect authors' noneconomic interests in their creations. Moral rights do not exist in all countries. Generally speaking, they are recognized more widely and are enforced more firmly in civil-law countries than in common-law countries. The primary moral rights are:

The right of paternity, this is the right to be identified as the author²⁹

The right of integrity, this includes the right to prevent or object to derogatory treatment of work (e.g. the destruction or defacement of a painting or sculpture);

The right of attribution, this is the right to be given appropriate credit for one's creations, and not to be blamed for things one did not create;

The right of disclosure -- the right to determine when and if a work shall be made public;

The right of withdrawal -- the right (in certain limited circumstances) to remove from public

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

²⁸ See Section 12 Copyright Act Cap. 68 LFN 1990 Act Cap. C28 L.F.N. 2004

²⁹ Section 11 of the Act.

circulation copies of a work one has come to regret.
The right to privacy in private photographs and films³⁰

Neighboring Rights³¹

Neighboring rights, sometimes called related rights, are a species of copyright. The oldest and best known neighboring rights are economic rights granted to persons who are not authors of a work but who contribute to its creation as often with performers, producers, and broadcasting associations.

Privacy and Publicity Rights

Some countries also have privacy and publicity rights that complement copyright. For example, some countries prevent the public distribution of works that contain personally identifiable information, unless permission is granted by that person.

Orphan works

Public domain

Piracy is a term in copyright vocabulary which has been defined as “the unauthorized commercial exploitation of a copyright work”³² it involves illegal copying of copyright works, counterfeiting copyright works and distribution of same as well as the making of copies of copyright works in excess of the permitted limit.

Plagiarism

In Nigeria, Section 1 (3) of the Copyright Act provides that an artistic work shall not be eligible for copyright, if at the time when the work is made, it is intended by the author to be used as a model or pattern to be multiplied by any industrial process.

Section 1 (4) provides that a work shall not be ineligible for copyright by reason only that the making of the work or the doing of any act in relation to the work involved an infringement of copyright in some other work.

Under Section 2: Copyright by virtue of nationality or domicile provides that;

(1) Copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the authors is at the time when the work is made, a qualified person, that is to say—

- (i) an individual who is a citizen of, or is domiciled in Nigeria; or
- (ii) a body corporate incorporated by or under the laws of Nigeria.

(2) The term of copyright conferred by this section shall be calculated according to the table set out in the First Schedule to this Act.

[First Schedule.]

(3) In the case of anonymous or pseudonymous literary, musical or artistic works, the copyright therein shall subsist until the end of the expiration of seventy years from the end of the year in which the work was first published:

Provided that, when the author becomes known, the term of copyright shall be calculated in

³⁰ Adebambo Adewopo, Legal Framework for Copyright Protection in Nigeria in Development and reforms; Nigerian commercial Laws, Edited by Lanre Fagbohun and Bambo Adewopo (1998)p49.

³¹ See Section 26 Copyright Act Cap. 68 LFN 1990 Act Cap. C28 L.F.N. 2004

³²³² J. O. Asein, Protection of Computer software. In J. O. Asein and E. S. Nwauche (Eds) A Decade of Copyright Law in Nigeria. Abuja, Copyright Commission, 2002. P189.

accordance with paragraph 1 of the First Schedule to this Act.

(4) In the case of a work of joint authorship, a reference in the First Schedule to this Act to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person within subsection (1) of this section.

Under Section 3, Copyright by reference to country of origin provides that:

(1) Copyright shall be conferred by this section on every work, other than a broadcast, which is eligible for copyright and which—

(a) being a literary, musical or artistic work or a cinematograph film, is first published in Nigeria; or
(b) being a sound recording, is made in Nigeria,
and which has not been the subject of copyright conferred by section 2 of this Act.

(2) Copyright conferred on a work by this section shall have the same duration as is provided by section 2 of this Act in relation to the same type of work.

Under Section 4, Copyright in works of Government, State authorities and International bodies provides that;

(1) Copyright shall be conferred by this section on every work which is eligible for copyright and is made by or under the direction or control of the Government, a State authority or a prescribed International body.

(2) The term of copyright conferred by this section shall be calculated in accordance with the table set out in the First Schedule to this Act.

[First Schedule.]

Under Section 5, Copyright by reference to international agreements provides that;

(1) Copyright shall be conferred by this section on every work if—

(a) on the date of its first publication at least one of the authors is—

(i) a citizen of or domiciled in; or

(ii) a body corporate established by or under the laws of,

a country that is a party to an obligation in a treaty or other international agreement to which Nigeria is a party;

(b) the work is first published—

(i) in a country which is a party to an obligation in a treaty or other international agreement to which Nigeria is party;

(ii) by the United Nations or any of its specialised agencies; or

(iii) by the Organisation of African Unity; or

(iv) by the Economic Community of West African States.

[1999 No. 42.]

(2) Where the question arises as to whether a country is a party to an obligation in a treaty or other international agreement to which Nigeria is also a party, a certificate from the Commission to that effect shall be conclusive proof of that fact.

Infringement of Copyright³³

(1) Copyright is infringed by any person who without the license or authorization of the owner of the copyright—

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

(b) imports or causes to be imported into Nigeria any copy of a work which, if it had been made in Nigeria, would be an infringing copy under this section of this Act;

[1992 No. 98.]

³³ See Section 15 Copyright Act Cap. 68 LFN 1990 Act Cap. C28 L.F.N. 2004

- (c) exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this subsection;
 - (d) distributes by way of trade, offers for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a) of this subsection;
 - (e) makes or has in his possession plates, master tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work;
 - (f) permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;
 - (g) 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.
- (2) Notwithstanding subsection (1) of this section, or any other provision of this Act, where any work in which copyright subsists, or a reproduction of any such works, is comprised in—
- (a) the archives stored in the National Archives established under the National Archives Act; or [Cap. N6.]
 - (b) the public records of a State, being records for the storage or custody of which provision is made by law,
- the copyright in the work is not infringed by the making or the supplying to any person of any reproduction of the work in pursuance of that Act or law.

The above acts must be done with permission or license of the right holder or else who so ever does so infringes on copyright. The law like most law created some excepts as you will find below.

Exceptions

Second schedule to the Act provide exceptions (a-s) from copyright control and we as information and knowledge practitioners we need to take particular note of sections: a, f, h, k, q, r and s of the second schedule.

The right conferred in respect of a work by section 6 of this Act does not include the right to control-

- (a)** the doing of any of the acts mentioned in the said section 5 by way of fair dealing for purposes of research, private use, criticism or review or the reporting of current events, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgment of the title of the work and its authorship except where the work is incidentally included in a broadcast;
- (f)** the inclusion in a collection of literary or musical work which includes not more than two excerpts from the work, if the collection bears a statement that it is designed for educational use and includes an acknowledgment of the title and authorship of the work;
- (h)** any use made of a work in an approved educational institution for the educational purposes of that institution, subject to the condition that, if a reproduction is made for any such purpose it shall be destroyed before the end of the prescribed period, or if there is no prescribed period, before the end of the period of twelve months after it was made;
- (k)** any use made of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific or other institutions as may be prescribed, where the use is in the public interest, no revenue is derived there from and no admission fee is charged for the communication, if any, to the public of the work so used;

(q) the making of not more than three copies of a book (including a pamphlet, sheet music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such a book is not available for sale in Nigeria;

(r) the reproduction for the purpose of research or private study of an unpublished literary or musical work kept in a library, museum or other institutions to which the public has access;

(s) reproduction of published work in braille for the exclusive use of the blind, and sound recordings made by institutions or other establishments approved by the Government for the promotion of the welfare of other disabled persons for the exclusive use of such blind or disabled persons.

Users' Rights

Fair dealing and fair use

Copyright Enforcement

Copyright infringements are mostly dealt with as civil matters in the Federal High Court and there are also criminal liabilities attached. Sections 16 – 19 of the Act deals with most of the civil situations while section 20 – 21 (the Act) deals with the criminal aspects. Civil and criminal action could be instituted at the same time in respect of the same infringement under the Act³⁴.

In the civil cases, the law provides remedies to copyright owners whose rights are infringement upon, these include; injunction against future infringement, refraining the offender from committing further violations of the copyright, destruction of infringing copies, reimbursement for any financial loss suffered by the copyright owner, account and transfer of profits made from the sale of infringing copies, and payment of specific damages, and costs. The court may order inspection and seizures, conversion right to the copyright holder and action may be by Exparte motion.

In the sphere of criminal liability the infringing party may be subject to penalties attracting fines or imprisonment or both³⁵. The penalties are stated along the sections stating the offences. One can however say that the penalties in term of imprisonment are too lenient for the grievous nature of the offences and the fines are so paltry if compared to losses suffered by right - holders and loss in government revenue. It has been observed that government and particularly the Nigerian Copyright Commission needs to step up efforts at enlightenment and enforcement of the copyright law as this has great implication for our educational, intellectual, cultural and economic development³⁶.

The copyright commission needs to be mentioned separately here but time and space constraint, makes it adequate to say the commission was established under the Copyright Act and inaugurated in August 1989³⁷, its functions as stated in the law creating the commission makes the commission a major player in the future of the copyright system becomes in Nigeria.³⁸

The role of Librarians in Copyright Protection

³⁴ Section 24 Copyright Act Cap. 68 LFN 1990 Act Cap. C28 L.F.N. 2004

³⁵ Section 20 – 23 Copyright Act Cap. 68 LFN 1990 Act Cap. C28 L.F.N. 2004

³⁶ Okwilagwe (2001),

³⁷ The Copyright System: challenges For Nigeria in the Next Millenenum p.7.

³⁸ See Section 34 Copyright Act Cap. 68 LFN 1990 Act Cap. C28 L.F.N. 2004

It is important for every librarian to have some understanding of copyright law if he is to avoid infringing the law. Anyone who does or causes another to do any of the above acts in relation to a literary work without the license or authorization of the copyright owner infringes copyright. There is infringement not only when any such act is done in respect of the whole work but also with respect only to a substantial part of the work and, in either case, whether with respect to the work in its original form or in a form which can be recognized as having been derived from the original. Substantial part of a work is not judged by quantity of the work taken alone but, more especially, by the quality or value of the part taken. Where an author gives his license, i.e. permission to another to do any of these acts, e.g. reproduction of a work, or authorizes such act, there is, of course, no infringement. Authorization, clearly, is wider than license, and may include ratification of act already performed.

THE LIBRARIAN AND COPYRIGHT

As we have seen one way in which copyright is infringed is by the doing or causing another to do any of the acts within the exclusive right of a copyright owner without his license or authorization. There is no doubt that the librarian and copyright law have a common goal—that is, the dissemination of knowledge. But a librarian may often find himself placed between a rock and a hard place. In discharging his duties he may be faced with difficulties arising from the additional

role of copyright law in protecting the property rights of an author. Thus, where a user or reader infringes copyright in a work it may be possible to hold the library liable for the infringement in that it has caused the user to infringe. The courts have held that a person or library causes infringement where the infringing act is done by a servant or agent of that person or library. A good example would be the placing of a photocopying machine in a library for the use of readers. Where a photocopy of the whole or a substantial part of a work is made for a reader there would be infringement for which a library would be liable having caused the infringement. It must be noted that an intention to infringe is not a requirement for liability for infringement. Where there is infringement it is no defense to allege that the infringer did not know and had no cause to know that his act is an infringing act.

There are six other enumerated ways by which copyright may be infringed but only two of these need be mentioned and only as a danger signal to libraries. Any person who, without the licence or authorization of the owner of copyright in a work, distributes by way of trade, offers for sale, hire or otherwise or for any person prejudicial to the owner of the copyright, any article in respect of which copyright is infringed by the doing of any of the acts within the exclusive right of control of the copyright owner, infringes copyright. Similarly there is infringement where a person, without the licence or authorization of the copyright owner, makes

or has in his possession plates, master tapes, machines, equipment or contrivances used for the purpose of making infringing copies of the work.

Libraries play a key role in educational institutions in many spheres, including copyright. Library collections house both copyrighted and public domain materials and their missions are to make these works available to students and faculty in support of teaching, learning, research and scholarship. Libraries are creatures of the historical and statutory balance in copyright law. Libraries lend materials based on the First Sale doctrine. Libraries share materials and preserve works under specific provisions for libraries in the Act. Libraries are often the only entities that provide access to the vast majority of copyrighted works that lose market vitality long before the expiration of the copyrights, and are often the only entities that preserve public domain materials. Libraries enable users to access copyrighted and public domain works and to exercise their rights under the exceptions and limitations to creators' rights in the law. The creation of new intellectual property building on the old is stimulated as a result of the existence of libraries. Libraries are places where public and the proprietary meet. The multiple roles of libraries as social organizations address the balance in the law and are shaped by it. The institutional roles of libraries, librarians and their associations necessitate paying close attention to that balance and promote users' rights as well as creators' rights. Libraries are a small but significant market for published works. The vast majority of copyrighted works in library collections were purchased or acquired through license agreements. Often libraries pay more for copyrighted works than works of an individual. This is especially true of subscriptions to periodicals, to ongoing research works, and to electronic information. Hence, there is the need for library staff and users to know about copyright, their limitations and benefits, when making use of any of the materials on the library shelves, either in open or closed access in order to safeguard anti-piracy legislation.

Libraries have an important role to play in caring for and providing access to other people's copyrighted work. Librarians need to recognize that most users of copyrighted materials are not aware of their dependence on balanced law and policy for access to information and for gaining knowledge. Members of the public take their rights for granted and generally exercise common-sense, but do not usually get involved in policy deliberations. Librarians should take seriously their role as advocates for individual users of copyrighted materials. Librarians need to ensure that the rights and privileges of their customers are safeguarded i.e. they must assure the library users of uninhibited

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access to available collection in aid of research. Any user that is unsure if the material to be copied is protected by copyright needs to seek advice from the library staff.

Onatola & Dina (2005/2006) are of the view that library users need to change their orientation towards "fair use legislation". This means that they can copy a very small amount of a work for educational purposes and not for commercial purposes. It may be possible to get permission to copy or use copyright material by contacting the copyright owner. Any copying now carried out for a commercial purpose requires prior permission from the copyright owner or payment of a copyright fee.

Schechter (2005) is of the opinion that a very important exception to the rule of copyright infringement is the concept known as *fair use*. Under this principle, the law permits the use of portions of copyrighted works for such purposes as criticism, comment, teaching, and research, even without permission of the copyright owner. In deciding whether a use is a fair use, courts consider such factors as the purpose of the use, the nature of the work, the amount of the work taken, and the effect it will have on the value of the original work. Some examples of fair use include quoting excerpts from a book in a review, scholarly article, or term paper; copying and distributing a newspaper article to illustrate an educational lesson; and using portions of a work in a parody of that work, such as a spoof version of a song. The Supreme Court of the United States has held that it is also fair use to use a home videocassette recorder to make copies of television programs and movies for later viewing. There is a need for all the librarians in Nigeria to have copyright education and the nation's Copyright (Amendment) Decree of 1999, in order to familiarise with the basic principles and concept of copyright laws in Nigeria. This will enable them to render their services without violating copyright laws. With adequate education in copyright, librarians will be able to know the risk involved in copying from copyright-protected material and operate within the laws. Above all, they will be able to make use of the 'fair use' principle which means that one can copy a very small amount of a work thereby catering for the interests of the owner of the work and that of the user. Copyright warnings should be displayed by librarians in conspicuous locations in the libraries so as to pass the message across to the users.

There is no doubt that libraries and Librarians in Nigeria have a lot of functions, very vital ones indeed, to play in the protection of author's rights. Firstly, they must provide the right guidance to their library users on how to make use of the library stock without infringing on the copyright of the authors of such works. The librarians can provide the following assistance to library users in order to properly enforce the copyright laws in the library. Research projects in the library should be made available to researchers for consultation only. Photocopying the entire work should not be allowed, and if there is the need to photocopy, the principle of fair use should be strictly adhered to. Also, the librarians should ensure that precise citation is done by any researcher for any piece of information collected from a given source in the Library. Librarians through their body, Nigerian Library Association (NLA) need to draw the attention of the Federal Government through the Federal Ministry of Education to the present non-inclusion of the Nigerian Libraries on the Board of the Nigeria Copyright Commission.

Conclusion

The socio-economic development of a country depends to a large extent on the creativity of her people and creative works cannot be encouraged without effective administration of copyright laws.

Librarians as the custodians of most of the intellectual property cannot be left out in the successful implementation of copyright laws. Violation of copyright laws can easily be carried out in the library.

In order to have books, author and creators of literary and artistic works, there should be adequate reward commensurate with the work. Hence, the enactment of copyright law to encourage creativity.

Librarians need to be carried along in the war against violation of copyright laws.

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Implications for Policy and Practice

Authors and publishers need to be motivated by putting a strong enforcement mechanism in place so as to motivate authors and publishers. A good copyright system should be put in place in order to discourage pirates from investing in other people's work. Since the policy could impound, destroy or

sell the equipment used by copyright infringers. Research should be sponsored by all the stake-holders in the book trade so as to look at the incidence of textbook piracy and its effect on the book industry in particular and the national economy in general in order to come out with relevant statistical data. There should be licensing option to reprint those textbooks of copyright owners for foreign books, which may be needed locally, if we must meet out textbook demand. The copyright council should set up collection societies to administer the collection and distribution of royalties due from photocopying on large scales.

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History

Libraries/ Librarians

In a gathering of professionals such as this it would be over flogging, if not monotonous recounting the various flavours that the definitions of libraries has harvested. One could say that the various definitions of the library seem to strike a consensus that at the centre of the role of the library is selection and acquisition, organization and dissemination of the ideas or facts in its collection for information, education and recreation of the users as well as serving its cultural role of preservation. For the purpose of this workshop permit me to adopt the definition that the “library is an organized collection of published (and unpublished) books, periodicals and other

reading and audiovisual materials, and the services of a staff able to provide and interpret such materials as are required to meet the information, research, education or recreational needs of users” (UNESCO).

Library Materials

The bulk of what constitute library collections have evolved through time to embrace several forms and contents. There are various types of libraries and the types are determined by the clientele it serves and the nature of its information content and the services it renders. Hence you find libraries referred to as academic, school, public, national, special, etc. Today regardless to types, the typical library stocks information and knowledge in print and non- print media. The print media includes books and periodicals, while the non – print include audio-visual media sometimes referred to as technological sources and they include such materials as tapes, microforms, videos, slides, Braille, compact disc, memory cards, flash, on line resources etc. All these materials have their various characteristics, advantages as well as challenges. As in the topic at hand, the implication of these various forms of library materials as regards copyright are enormous and the advent of digital formats have further complicated the copyright challenges for the libraries and librarians in the course of performing and meeting their professional and social obligations of providing access to information to its various clienteles.