

THE USEFULNESS OF EXTANT INTELLECTUAL PROPERTY LAWS IN THE GLOBAL DIGITAL SPACE

by

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Abstract

The rapid development of digital technologies has significantly reshaped the landscape of intellectual property (IP) rights, creating new and complex challenges for authors, innovators, and policymakers. The ease of content sharing through the Internet and other digital platforms has transformed traditional notions of IP infringement, making violations such as piracy, unauthorised reproduction, and copyright abuse more widespread and difficult to control. This article examines the relationship between digital transformation and existing IP protection frameworks in the global digital space, with a particular focus on Nigeria. It highlights that although legal frameworks and technological tools like encryption and digital rights management exist, they are often insufficient due to the speed, scale, and sophistication of modern digital innovation. The study explores key areas of IP, including copyright, patents, and trademarks, and explains how digitalisation has altered their enforcement and scope. It also addresses emerging issues such as the use of copyrighted materials in training artificial intelligence systems and the increasing liability of online platforms. Drawing on international legal frameworks like the TRIPS Agreement and relevant case law, the article identifies major challenges, including jurisdictional inconsistencies, the anonymity of infringers, and the uncertain application of the fair use doctrine. It argues that Nigeria's IP laws, particularly those governing trademarks and patents, are outdated and inadequate for current digital realities. The article concludes by advocating legal reforms, improved enforcement, stakeholder collaboration, and modern technological strategies.

Keywords: Artificial Intelligence; Copyright Infringement; Digital Transformation; Intellectual Property; Legal Frameworks and Nigeria

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1.1 Introduction

There is no denying that the digital space has witnessed significant growth and development in the last decade.¹ While this appears positive, the flipside of existing law development is largely discouraging.² The subject of Intellectual Property (IP) protection has emerged and become increasingly dominant in view of landmark digital innovations, like content sharing and distribution, which may pose a considerable threat to legal authorship and human ingenuity.³ For instance, the seamlessness to copy and paste a given content gives a leeway for pirates to thrive, at the expense of an author's rights.⁴ Piracy is by far the most common form of intellectual property rights violation in the digital age. It is a prominent global challenge within the scope of protection of intellectual property rights. Piracy has a far-reaching effect on different sectors, including but not limited to the creative economy.⁵ It encapsulates the unapproved use (usually through distribution and reproduction) of works already covered by copyrights.

The seamlessness of online sharing and the circulation of content has made it easier for piracy to thrive globally. Kapoor⁶ observed that Intellectual Property Piracy is an advanced form of intellectual property theft, he noted that petty intellectual property theft is mostly burden-laden and so piracy is preferred because it is considerably cost-effective and significantly seamless due to the help of modern computing. Although embedded technological solutions like encryption and online watermarks have been proffered to tackle current challenges with respect to piracy and copyright matters, these efforts are profoundly inadequate.⁷

It is suggested that having a legal framework that addresses the foregoing challenges and prescribes sanctions where necessary is by far

¹ Kahn, A and Wu, X 'Impact of digital economy on intellectual property law' (2020) 13(4) *Journal of Politics and Law* 117.

² Silaen, R and Sembiring, T 'Legal Protection of Intellectual Property Rights in the Digital Era' (2024) 1(4) *Ipsa Jure* 1-8.

³ *ibid*; Grinvald, L 'Social Media, Sharing, and Intellectual Property Law' (2014) 64 *DePaul Law Review* 1045.

⁴ Content within this context may include literary works, cinematography, music, movies and so on.

⁵ Serenko, A 'Antecedents and consequences of explicit and implicit attitudes toward digital piracy' (2022) 59(1) *Information & Management* 103559.

⁶ Kapoor, P 'Intellectual property & the challenge of a digital world' (2022) 3 *Jus Corpus Law Journal* 67.

⁷ Shrimant, S 'Why need for effective IP protection in digital space is critical' (2024) <<https://economictimes.indiatimes.com/small-biz/sme-sector/why-need-for-effective-ip-protection-in-digital-space-is-critical/articleshow/106466178.cms>> accessed 20 February 2026.

expedient and practical. Hence the sporadic rise to enabling legal frameworks,⁸ including laws, policies, conventions, and directive principles that are not only targeted at protecting intellectual property rights but generally ensure the sanctity of human ingenuity.

It is good to note that strict compliance has been a recurrent issue and in some cases, the inadequacy of such regulatory frameworks is a huge challenge considering the fact technology and its apparatuses are fast-paced and continue to take novel forms daily.⁹ To put in perspective, the notable chatbox curated by OpenAI, Chatgpt was launched on November 30, 2022, shortly after Nigeria passed its new Copyrights Act on March 17, 2022,¹⁰ following the inadequacies occasioned by the repealed Copyright Act 2004. The use of Chatgpt has since birthed several challenges relative to generative artificial intelligence (AI) systems which the the new Copyright Act 2022 does not cover.¹¹

According to Lucchi,¹² generative AI systems like Chatgpt are often trained using copyrighted information, as such the use of AI training models occupies a novel area of copyright infringement which is yet to be substantiated in many jurisdictions.¹³ In *Paul Tremblay et al. v. OpenAI, Inc. et al.*,¹⁴ the claimants claimed that their books were utilised for training OpenAI language models that operate AI software. In the class action, the claimants argued that the defendant (OpenAI) had copyrighted their books and in furtherance to that they were liable for direct copyright infringement, vicarious copyright infringement, violation of the Digital Millennium Copyright Act (DMCA), unfair competition, negligence, and unjust enrichment.¹⁵ Although the case was delivered in favour of the defendants, the propensity of having such cases is invariably high. This is why the discussion around the subject matter of the

⁸ Herman, A Coombe, R and Kaye, L 'Your second life? Goodwill and the performativity of intellectual property in online digital gaming' in *Cultural studies*, (Taylor & Francis 2020), 184-210.

⁹ *ibid.*

¹⁰ World Intellectual Property Organisation (WIPO), 'Nigeria Passes New Copyright Act 2022!' (2023) <https://www.wipo.int/about-wipo/en/offices/nigeria/news/2023/news_0011.html#:~:text=On%20March%2017%2C%202023%2C%20the,new%20provisions%20to%20the%20Act.> accessed 20 February 2026.

¹¹ McGee, R 'ChatGPT and Copyright Infringement: An Exploratory Study' (2023) <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4578430_code2139.pdf?abstractid=4578430&mirid=1> accessed 18 March 2026.

¹² Lucchi N, 'ChatGPT: a case study on copyright challenges for generative artificial intelligence systems' (2023) 1 (23) *European Journal of Risk Regulation* 1-23.

¹³ Foster D, 'Generative deep learning' (2022) O'Reilly Media, Inc.

¹⁴ No. 3:23-cv-03223 (N.D. Cal. Feb. 12, 2024) (Dkt. 104) (the "Order").

¹⁵ Frenkel, S and Stuart, T 'Not for Machines to Harvest: Data Revolts Break Out Against AI' (2023) *International New York Times*.

usefulness of extant intellectual property laws in the global digital space has become increasingly prominent. Internet service providers, network curators, and key players within the technological innovation space have been recurrently mandated to reimagine excellence, albeit without compromising the creative work of others.¹⁶

Considering that errors and acts of violations are practically impossible in the ordinary course of engaging the internet, Intellectual Property Rights (IPRs) are at the centre of current discussions on the use of digital platforms. The current crop of IPRs is underpinned by varying legal frameworks and enforcement mechanisms globally. Accordingly, globalisation and digital interconnectedness have necessitated discussions on harmonising intellectual property laws across various legal jurisdictions. Global efforts are visible in prominent international engagements like the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, an international agreement that aims to standardise IP protections.¹⁷ However, jurisdictional diversities and peculiarities have recurrently stood in the way of uniform practice. Also, the uniqueness of the challenges occasioned by the current digital dispensation makes it practically impossible for proper implementation of rights related to intellectual property.¹⁸ It is often tasking to track a supposed online infringement, there is also the challenge of anonymity, where a web platform causing infringement cannot be ascribed to any entity (be it human or a product of artificial intelligence).¹⁹ Therefore, there has been a recurrent debate as to how policymakers will foster innovation while also endeavouring to maintain a strong regulatory framework that monitors both creatives and regulators and violators.

¹⁶ Bhupinder S, 'Unleashing Alternative Dispute Resolution (ADR) in Resolving Complex Legal-Technical Issues Arising in Cyberspace Lensing E-Commerce and Intellectual Property: Proliferation of E-Commerce Digital Economy' (2023) 5(10) *Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR* 81-105.

¹⁷ Mahdieh, F, Peiravian F and Yousefi, N 'Impact of the trade-related aspect of intellectual property rights agreement on pharmaceutical industry in developing countries: A scoping review' (2021) 20(4) *Iranian Journal of Pharmaceutical Research: IJPR*, 339; Morten, H 'Does TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) prevent COVID-19 vaccines as a global public good?' (2021) 24(3-4) *The Journal of World Intellectual Property* 195-220.

¹⁸ Reis, O, Eneh, N, Ehimuan, B, Anyanwu, A, Olorunsogo, T and Abrahams, T 'Privacy law challenges in the digital age: a global review of legislation and enforcement' (2024) 6(1) *International Journal of Applied Research in Social Sciences*, 73-88.

¹⁹ Gupta, M, Akiri, C K, Aryal, K, Parker, E and Praharaj L, 'From chatgpt to threatgpt: Impact of generative ai in cybersecurity and privacy' (2023) *IEEE Access*.

This article presents an exposition of some of the salient challenges facing intellectual property rights in an increasingly digital world. It supports the argument that the paced development of technology, particularly in the Internet of Things (IoT) is mostly favourable and possesses numerous benefits to both humans and society. However, it notes that digital innovations like the internet are not without some demerits. This article considers the Nigerian perspective on intellectual property rights in an increasingly digital age, evidence gathered shows that Nigeria needs to improve its regulatory frameworks as subsisting regulations do not address recent challenges in the area of intellectual property rights protection. The article acknowledges the need for a reinvigoration of existing regulations on intellectual property rights, particularly rights relating to trademarks and patents. The rest of the article is structured as follows section 1.2 examines how the present digital world has expanded the use and accessibility of intellectual property rights with a focus on copyright, trademark, and patent rights

1.2 Intellectual Property in a growing digital world

Intellectual property rights are a universally recognised body of rights. Various rights within this context are reflected in international legal instruments like the Universal Declaration of Human Rights (UDHR),²⁰ the International Covenant on Economic, Social, and Cultural Rights (ICESCR),²¹ and the International Covenant on Civil and Political Rights (ICCPR).²² These rights generally presuppose proprietary interests resulting from any scientific, literary, or artistic expressions of authors.²³ The spate of varying digital innovations has spurred arguments on the state of intellectual property across the world. Copyrights, Trademark, and Patent occupy the crux of intellectual property rights. Under intellectual property, Copyright generally guarantees creatives' sole rights concerning the use of their original works, thereby restricting external parties from unauthorised reproduction, usage, and distribution of such works.²⁴ With the growth of digital media and its apparatuses, copyright enforcement is met with some unprecedented challenges. Modern practices in the usage of technologies like peer-to-peer file sharing and digital streaming platforms have significantly redefined content distribution, making it very tasking for proper

²⁰ UDHR, Article 27.

²¹ ICESCR, Article 15.

²² ICCPR, Article 19.

²³ Rodrigues, R 'Legal and human rights issues of AI: Gaps, challenges and vulnerabilities' (2020) 4 *Journal of Responsible Technology* 100005.

²⁴ Halsbury's Laws of England 4th Edition vol. 9(2) 10.

scrutiny of copyright infringement.²⁵ It is important to note that Contemporary digital practices like Peer-to-peer (P2P) have quite some utility benefits for both creators and users since they allow seamless sharing, and distribution of music, movies, software, and other electronic materials.²⁶

In the same vein, the patent right is another prominent intellectual property right sought to safeguard the ingenious inventions and innovations of inventors, it affords inventors with exclusive rights to products created, albeit for a period of time. Following the recent shift occasioned by the digital media, violations of patent rights under intellectual property have now been extended to software and algorithms, leading to intricate legal disputes, usually involving ownership and usage rights.²⁷

Trademarks tick another phase of intellectual property rights accruing to business or organisational brands. Generally, trademarks seek to protect brand images, exclusive identities, and corporate symbols that distinguish one entity from another. The current dispensation of new media has widened the nature of trademark protection to accommodate infringement relating to host titles, and domain names, thereby paving the way for strict monitoring of brand identities against unwarranted use of brand identities and cybersquatting.

The current digital trends have had a ripple effect on the way intellectual property is imagined, circulated, and preserved.²⁸ In view of this, it may be practically impossible to enforce and protect intellectual property rights through conventional means; increasing efforts in protecting intellectual proprietary rights have led stakeholders to undertake contemporary technological solutions such as digital rights management (DRM) systems. DRM is reasoned as the systematic approach to copyright protection for digital media. This management approach to digital rights focuses on enabling technologies that restrict the use of proprietary hardware and copyrighted works.²⁹ DRM

²⁵ Otieno, I 'The efficiency of copyright law in the digital space in Kenya: A case for the making available right in peer-to-peer file sharing' (2016) 1 *Strathmore Law Review* 25.

²⁶ Mičunović, M and Balković, L 'Author's rights in the digital age: how Internet and peer-to-peer file sharing technology shape the perception of copyrights and copywrongs' (2015) 8(2) *Libellarium: časopis za istraživanja u području informacijskih i srodnih znanosti* 27-64; Aronov, A 'Copyright protection in the Internet age: Whether copyright can combat against Peer-to-peer technology' (2021) <<http://repository.kazguu.kz/handle/123456789/895>> accessed 27 March 2026.

²⁷ Vindele, L and Cane, R 'The role of intellectual property rights in the technological age' (2022) 13 (1) *Acta prosperitatis* 183-197.

²⁸ Torous, M 'Intellectual property rights in the digital age: challenges and solutions' (2024) 23(1) *Journal of International Business Research* 1-3.

²⁹ Igor, C 'The right to have digital rights in smart cities' (2021) 13(20) *Sustainability* 11438.

technologies employ encryption and access control mechanisms to prevent unauthorised copying and distribution of digital content.³⁰

Rights protected within this context are not only inclined toward human characters but extend to the company and its brands. Quite a number of companies have faced intellectual property issues in view of some digital complexities. While laws on intellectual property have taken varying dimensions, the scope of emerging disputes is non-different. Thus, disputes have become increasingly wider in scope, with unprecedented areas affected by lawsuits. In the case of *Louboutin v Amazon*,³¹ the question of direct liability for online platforms where third parties advertise counterfeit goods was brought to the fore. In the above case, it was alleged that the defendant (Amazon) was liable for trademark infringement relating to advertisements for counterfeit Christian Louboutin shoes placed on its website by a supposed third party. It was alleged that the counterfeit Louboutin custom red-soled shoes were advertised and sold by third-party vendors on Amazon's marketplace, an activity which supposedly violates the European Union (EU) trademark regulations.³² It was noted particularly that even though Amazon was not directly involved in the sale of counterfeit products, it enabled and facilitated the advertisement and sale of such products. According to the ruling of the Court of Justice of the European Union (CJEU) the link between objects of trademark infringement of third-party providers giving rise to the liability of the platform operator is pronounced if the advertising of third-party products occupies a crux of the platform operator's commercial communication. Therefore, Amazon was held liable for trademark infringement by the court. This court ruling has since continued to spur intellectual property rights awareness, especially in areas that are not keenly observed. The implication of this and other related matters is that digital hosts and digital users have become increasingly aware of their digital rights beyond physical boundaries.

The United Kingdom (UK) has seen some important developments in 2022 (again involving Amazon) concerning the liability of online platforms for trademark infringement. In *Lifestyle Equities v Amazon*,³³ Lifestyle Equities

³⁰ *ibid.*

³¹ (C-148/21 and C-184/21).

³² European Union Trade Mark Regulation, Article 9, paragraph 2(a); Rosati, E 'The Louboutin/Amazon cases (C-148/21 and C-184/21) and primary liability under EU trade mark law' (2022) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4078987> accessed 22 March 2026; Ohly, A 'Red soles, a marketplace and the categories of trade mark liability: Louboutin v Amazon before the CJEU' (2022) 17(7) *Journal of Intellectual Property Law and Practice* 575-585.

³³ (2024) UKSC 8.

argued that the defendant's (Amazon) advertisements offer for sale and sales of some United States of America (USA) branded goods to the UK and EU customers amounted to trademark "use" in the UK and the EU and infringed its UK and EU trade marks. The Court of Appeal ruled in favour of the defendant on the sole ground that the defendant's actions as alleged did not amount to trademark infringement of the claimants' trademarks since the sales in question were not exclusive to UK/EU customers. Notwithstanding, the ruling of the Court of Appeal has been appealed and the Supreme Court is yet to give its stance on the matter.

Nevertheless, in another intellectual property infringement debacle involving *Google LLC v Oracle America, Inc.*,³⁴ Google was alleged to have used some lines of Java SE code in Android, thereby contravening established copyright laws. Following the alleged violation, Oracle demanded the sum of \$9 billion from Google as damages and compensation for the breach. In Google's defence, Google contended that the usage of the Java SE code in Android was subject to the doctrine of "fair use".³⁵ In 2018, a federal circuit court held judgment in favour of the claimant (Oracle). The court noted that Google's unapproved use of the code was unwarranted. In an appeal to the USA Supreme Court, the hitherto position and holding of the federal circuit court was overturned, with judgment held in favour of the Appellant (Google), albeit with a dissent. The case which spanned through a decade was finally laid to rest in 2023, with judgment in favour of Google. It was held that Google acted within the confines of the law to have used the subject matter code, notwithstanding unapproval. By implication, this ruling suggests that software copyright holders are incapable of maintaining absolute ownership of some aspects of software, especially those that may occasion transformation, as in this case.³⁶

In a Times Magazine interview with Jeanne Fromer, a Copyrights Law Professor at New York University School of Law argued that copyright owners relating to software "can't maintain a monopoly over critical interface aspects".³⁷ In other words, software applications are of a distinct class, sharing

³⁴ (2021) 141 S. Ct. 1183

³⁵ *ibid*; see also, Boyle, J 'A theory of law and information: Copyright, spleens, blackmail, and insider trading' in *Freedom of Information* (Routledge 2020) 123-250; Asay, C, Sloan, A and Sobczak, D 'Is transformative use eating the world' (2020) 61 Boston College Law Review, 905; Meskys, E, Kalpokiene, J, Jurcys, P and Liaudanskas, A 'Regulating deep fakes: legal and ethical considerations' (2020) 15(1) *Journal of Intellectual Property Law & Practice* 24-31.

³⁶ Carlisle, M 'How Google's Big Supreme Court Victory Could Change Software Forever' (2021) <<https://time.com/5952718/google-oracle-supreme-court/>> accessed 26 February 2026.

³⁷ *ibid*.

of which gives way to innovation.³⁸ This article submits that the decision of the US Supreme Court is a landmark judgment, underlining an unprecedented precedent in technology law, particularly with concerns relating to the shared link between copyright and software technology.

Interestingly, as earlier noted, the decision of the US Supreme Court was not unanimous, Justice Clarence Thomas and Justice Samuel Alito dissented against the disposition of the majority Justices. According to Justice Clarence Thomas “By copying Oracle’s work, Google decimated Oracle’s market and created a mobile operating system now in over 2.5 billion actively used devices,”, Thomas noted further that “If these effects on Oracle’s potential market favor Google, something is very wrong with our fair use analysis.” The foregoing opinion undertakes a much more economic outlook. While this case may have been laid to rest, this article notes that the dissenting opinions of Justice Clarence Thomas and Justice Samuel Alito may be put forward for further scrutiny in subsequent copyright disputes.

Before the above case, there had been a similar suit filed against Google by Perfect 10, an adult entertainment publishing brand, on the subject of Copyright infringement.³⁹ According to Perfect 10, Google contravened established copyright law by displaying thumbnail images of those photos within the catalog of its search results. It contended further that Google ought to be held liable for possible copyright infringement emanating from platforms connected to it. Having considered the merits of the case, the court held that Google's creation and outright display of thumbnail versions of P10 was probable to violate P10's copyrights, it held further that any possible plea of fair use was unlikely to avail Google of its liability, in view of the extent of the violation.

The Louboutin, Oracle, and Lifestyle Equities cases portray the recent dimension of intellectual property rights in an increasingly digital world. From the peculiarities of having online audiences instituting cases against the hosts of digital platforms to emerging areas centered on Artificial Intelligence liabilities, the digital world has fundamentally altered the ways intellectual property rights are imagined.

³⁸ *ibid.*

³⁹ Lee, B and Floyd, B ‘The Future of Inline Web Designing After Perfect 10’ (2008) 17 *Texas Intellectual Property Law Journal* 1.

Pieces of evidence from the above cases show that there is more to be done in the area of applicable remedial mechanisms available to victims of intellectual property rights infringements. While investigating the effectiveness of existing legal remedies for intellectual property rights infringement, Sag and Haskell⁴⁰ considered the resultant effects of statutory damages on copyright enforcement in contemporary times. The study conducted a comprehensive empirical analysis of copyright litigation data from 2005 to 2018, focusing on cases involving online file-sharing, streaming, and linking. The findings showed that statutory damages were often excessive, unpredictable, and disproportionate to the actual harm caused by infringement. The study argued that statutory damages were ineffective and counterproductive for deterring infringement and incentivizing creativity.⁴¹ These issues and others contribute to some of the emerging concerns relating to intellectual property in an increasingly growing digital world.

1.3 Protection of Intellectual property rights in a growing digital world: Nigeria in Perspective

The discussions on the protection of intellectual property in today's business world have become even more prominent in jurisdictions with scanty legislation on technology-related matters, Nigeria inclusive.⁴² Intellectual property is crucial for the advancement of the creative economy; in recent times, the creative economy has dominated the precincts of socio-economic development. In Nigeria, the creative economy is at the fore of the country's economic growth; according to the Nigerian Bureau of Statistics (NBS), Nigeria's creative industry has contributed 2.54 percent to the Gross Domestic Product of the nation's income in the second quarter of 2023.⁴³ The industry has also been reported to have created employment opportunities for 4.2 million Nigerians and it is estimated to add 2.7 million to the existing statistics by 2025.⁴⁴ The foregoing statistics portray the sensitivity of the creative economy in Nigeria and why there have been recurrent debates on the need to bolster the current legal framework for intellectual property. It would appear

⁴⁰ Sag, M and Haskell, J 'Copyright Enforcement in the Digital Age: When the Remedy is the Wrong' (2019) 43(1) *Columbia Journal of Law & the Arts* 1-58.

⁴¹ *ibid* 1.

⁴² Oladeinde, M, Hassan A, Farayola O, Akindote, O and Adegbite, A 'Review of it innovations, data analytics, and governance in Nigerian enterprises' (2023) 4(3) *Computer Science & IT Research Journal* 300-326.

⁴³ Aro, B 'Culture minister projects \$100bn revenue from creative sector by 2030' (November 2023) <<https://www.thecable.ng/culture-minister-projects-100bn-revenue-from-creative-sector-by-2030/>> accessed 31 March 2026.

⁴⁴ *ibid*.

that the issue of dearth of laws or perhaps, the inadequacy of laws is not peculiar to Nigeria. According to Olubiyi,⁴⁵ intellectual property rights are a tropical matter that requires urgent attention, especially in developing countries. Olubiyi remarked that there are unquantifiable socio-economic benefits and gains embedded in employing legal instrumentalities to protect intellectual rights, especially in less privileged countries like Nigeria. Some of the socio-economic benefits include promoting indirect revenue generation, an enabling environment for innovation and job creation.⁴⁶

Intellectual property rights are essential for the promotion of creativity and innovation in society. They also play a major role in driving the socio-economic development of nations. Particularly in developing countries,⁴⁷ Intellectual property rights protection has been bedeviled by various challenges that have hindered developing countries from harnessing the potential that Intellectual property rights could contribute to their development. For some time, emphasis has been placed on the inadequacy of laws as a major contributory factor to intellectual property rights protection in Nigeria especially where the intellectual property rights laws have not been made compliant with international intellectual property rights treaties or adapted to today's knowledge and information and communication technology-driven society.⁴⁸

Intellectual property in Nigeria is widely regulated by the Copyrights Act 2022, the Trademark Act 2004, and the Patent Act 1990. Aside from the Copyrights Act 2022, it would appear that the intellectual property laws in Nigeria lack the required depth to allow intellectual property protection to blossom in the digital age. This is because both the Trademark Act 2004, and the Patent Act 1990 have existed for far too long, so much so that they do not capture today's digital realities. According to Ubayionwu, Nigeria's regulatory frameworks on intellectual property protection regime suffer from the subsistence of old and archaic laws and policies that are bereft of contemporary ideas, and development, particularly in the area of technology.⁴⁹ The need for a more conducive intellectual property legal regime to match the ever-growing digital

⁴⁵ Olubiyi, I 'A comparative analysis of copyright enforcement provisions in Nigeria: Maximising the current legal regime' (2014) 5 *Journal of International Law and Jurisprudence* 89-104.

⁴⁶ *ibid.*

⁴⁷ Ajay, S and Kumar, S 'Expert's perception on technology transfer and commercialization, and intellectual property rights in India: Evidence from selected research organizations' (2022) 6(1) *Journal of Management, Economics, and Industrial Organization* 1-33.

⁴⁸ Okonkwo, I 'NFT, copyright and intellectual property commercialization' (2021) 29(4) *International Journal of Law and Information Technology* 296-304.

⁴⁹ Ubayionwu CJ, 'Impact of Emerging Trends in Technology on Intellectual Property Rights in Nigeria' (2023) 1(3) *Frontline Bar Journal* 126.

environment in Nigeria cannot be over-emphasised.⁵⁰ As such, Nigeria's intellectual property laws are not suited for emerging commercial and technological development.⁵¹ It is a well-known fact that the body of intellectual property laws in Nigeria has been in need of reform and the attempts at reform have had a chequered history.⁵² This article submits that even though the new Copyright Act, of 2022, is a good leap from the old copyright order - the old Copyright Act, the new Act still omits certain important provisions on copyright protection like the provision for applicable interests of the heirs and successors-in-title of a copyright owner, considering that they may likely succeed the copyright owner in case of his demise.

Oluwasemilore⁵³ noted that there has been a tsunamic evolution in the area of trademarks in Nigeria due to advancements in digital access, the resultant effect of this is the commonality of conflict in domain names,⁵⁴ she recommends a potential harmonisation of conventional traditional trademark regulations in order to keep track of continued development in the field and to ensure that goals of trademark protection are not deviated from. The interconnectedness between trademarks and domain names is absent in regulations governing intellectual property in Nigeria but it occupies the fulcrum of contemporary ways of infringing on trademarks.⁵⁵ This article submits that these concerns and others have informed the urgent need for sustainable legal responses to protect trademark owners and unsuspecting members of the public from the fraudulent antics of violators.

⁵⁰ *ibid.*

⁵¹ For instance, the Trademark Act was passed in 2004, since 2004 there have been series of trademark infringement offences like cybersquatting as a result of proliferated digital use. This offence is not provided for in the Trademarks Act, therefore, where such offence is to be tried in Nigeria, other extant laws are consulted for direction. Currently, offences relating to cybersquatting are tried pursuant to the Cybercrimes (Prohibition, Prevention) Act 2015, however, the implication of this is that, the Cybercrimes Act ascribes more criminal undertone to the offence as against if such were to be treated under extant laws exclusive on intellectual property.

⁵² Ubayionwu (n49).

⁵³ Oluwasemilore, I 'Trademark in the digital age in Nigeria' (2022) In *Nigerian Intellectual Property Law*, Routledge 117-134.

⁵⁴ *ibid.*

⁵⁵ Domain name clashes are an integral part of trademark protection in recent law and technology history. A domain name is essentially the user-friendly form of the Internet equivalent to a telephone number or street address. It is the address of a person or organisation on the Internet where other people can find them online and it can also become the online identity of that person or organisation.

While addressing the menace of musical copyright infringement in modern-day Nigeria, Akintoye⁵⁶ noted Nigeria has exerted notable efforts to ensure that copyrighted musical works are afforded the required protective mechanisms. For example, concerns have continued to grow in the area of rights of musical authors and sanctions applied to criminal infringements. Be that as it may, the question of the effectiveness of the law has continued to be a factor. Akintoye noted further that there are inherent societal behaviour among Nigerian violators that intellectual property laws should address, and are currently non-existent.⁵⁷ One of the societal behaviours she noted is the careless downloading of free online content.

Despite highlighting the weaknesses in intellectual property rights protection, the next section discusses the challenges in enforcing intellectual property rights even when there is protection in today's digital world.

1.4 Challenges of Intellectual Property Rights Enforcement in an Increasingly Digital World

1. **The Doctrine of Fair Use or Fair Dealing with Work:** This is perhaps one of the major forms of defence put forward by alleged infringers. This concept cedes some rights to unauthorised users to utilise copyrighted materials, as such, where the use of copyrighted material is termed fair, approval or permission before use is inconsequential.⁵⁸ The doctrine of fair use or fair dealing with work permits utilising copyrighted material to be used by other parties without prior approval provided that such usage falls within the precincts of public's interest. In other words, where using copyrighted material will help bring about unprecedented development or transformation in a country, a party does not need to get approval from the owner of the copyright.⁵⁹ This means that the doctrine sometimes operates to avail would have been sentenced violators of intellectual property rights some protection. The problem with the doctrine of fair use or fair dealing with work is what constitutes fair use as the doctrine may differ from jurisdiction to jurisdiction.⁶⁰ It is often reasoned that

⁵⁶ Akintoye, O 'Challenges of Protecting Music Intellectual Property in the Digital New Age in Nigeria' (2023) 6(1) *East African Journal of Law and Ethics* 15-29.

⁵⁷ *ibid.*

⁵⁸ Awomolo-Enujiugha, O 'Piracy and its burden on copyright in Nigeria: Challenges and solutions' (2020) 23 *Journal of World Intellectual Property* 413.

⁵⁹ Meskys, E, Kalpokiene, J, Paul, and Liaudanskas, AV 'Regulating deep fakes: legal and ethical considerations' (2020) 15(1) *Journal of Intellectual Property Law & Practice*.

⁶⁰ Ikenna, I and Udeoji, N 'The Transformative Use Doctrine and Fair Dealing in Nigeria Copyright System: A review of US Supreme Court in *Andy Warhol Foundation for the Visual Arts, INC. V. Lynn Goldsmith* NO. 21-869 (US May 18, 2023)' (2024) 6(1) *International Review of Law and Jurisprudence* 46-47.

determining whether or not a use is fair is largely dependent on the degree of use.⁶¹ This article reasons that this reason may perhaps be responsible for why the doctrine has no universally recognised connotation. In *Hubbard v Vosper*,⁶² Lord Denning observed that it may be practically impossible to ascribe meaning to the doctrine of fair use as it may on be determined pursuant to the facts of each case brought before the law courts. This sentiment resonates with the reasoning of the court in *Lawrence v Dana*⁶³ where the court noted that fair use is perhaps “the most difficult question which can well arise for judicial consideration”. The case of Oracle above is a fit example of cases where violators put forward the principle of fair use as a defence to rights infringement. Therefore, in enforcing intellectual property rights, the courts are more often than not, confronted with the herculean task of differentiating between acts constituting fair use and actual fair use. The foregoing notion is captured correctly by Singh who opined that the court in recent times has been faced with the challenge of “Balancing copyright protection with the principles of fair use and open access poses challenges, as it requires delineating between permissible use and infringement”.⁶⁴ The doctrine of fair dealing is captured under section 20 of the Copyrights Act 2022. The defence of fair dealing is carefully metered by the provisions of section 20(1)(a)(b)(c) of the Copyrights Act 2022 to accommodate areas where transformative use is perceived; this article notes that this is good practice and reduces sometimes unrestricted access opened to copycats.

2. **Jurisdictional Complexities:** The internet has a global outreach which makes it quite complex for matters transcending jurisdictional boundaries to be tried accordingly. The borderless nature of the internet has continued to impede victims of intellectual property rights to seek redress where necessary. Various digital engagements have birthed the possibilities of violating intellectual property rights across varying jurisdictions, and the lack of uniformity in regulatory standards (across jurisdictions) has made it practically impossible to hold erring parties to a definitive account, especially for infringers who eventually get entitled to forum shopping.⁶⁵ In addition, some sovereign states like India are yet to domesticate some key international legislations like the

⁶¹ *ibid.* 47-49.

⁶² [1972]1 ALL ER 1023.

⁶³ 15 F. Cas. 26, 51 (C.C.D. Mass. 1869).

⁶⁴ Singh, G ‘Intellectual Property Rights in the Digital Age: Challenges and Solutions for Copyright and Patent Protection’ (2016) 5(7) *International Journal of Advanced Research in Management and Social Sciences* 145.

⁶⁵ Thio, R, Christiawan, R and Wagiman, W ‘Trademark Law in the Digital Age: Challenges and Solutions for Online Brand Protection’ (2024) 2(4) *Global International Journal of Innovative Research* 710-721.

TIPRS Agreement that pave the way for seamless adjudication of matters relating to intellectual property rights across geographical borders.⁶⁶

3. **Novel nature of offences:** Various online engagements are captured with different names, terms, and titles that are mostly non-inclusive in conventional laws. For instance, offences like cybersquatting had no place within the borders of Nigeria's regulatory framework. Notwithstanding its prominence in the area of trademark infringement, such illegal acquisition and use of domain names were not obtainable until 2015, following the enactment of the Cybercrimes (Prohibition, Prevention) Act 2015. Even worse is the non-inclusion of terms like domain name within the definition of trademarks. The provision of Section 67 of the Nigerian Trade Marks Act (TMA) 2004 defines a "trademark" as:

"a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods or services and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under section 431 of this Act."

The foregoing definition goes to show that claims relating to domain name infringement cannot be explicitly brought pursuant to a clause. However, it has been argued by Onyilo⁶⁷ that the definition of trademark in Nigeria, though fraught, is non-restrictive. Thus, making it accommodative of other marks that are applicable but novel. Notwithstanding, intellectual property laws like the TMA 2004 are old and are unlikely to keep abreast with the latest trends. The lacunas created by old legislation are explicitly obvious, making it uneasy for smooth adjudication.

4. **Anonymity:** This challenge makes it hard for violators of intellectual property rights to be held to account. In various online engagements, basic internet protocols demand that users' identities are concealed or at best represented by some pseudonyms, as a commitment to upholding user privacy.⁶⁸ In other

⁶⁶ Donald, R *Intellectual Property Rights and Global Capitalism: The Political Economy of the TRIPS Agreement: The Political Economy of the TRIPS Agreement* (Routledge 2020).

⁶⁷ Onyilo, P 'Towards Effective Enforcement Mechanism of Trademark Rights Infringement in Nigeria' (2021) 8(2) *Journal of Commercial and Property Law* 99.

⁶⁸ Chakraborty, 'D Copyright Challenges in the Digital Age: Balancing Intellectual Property Rights and Data Privacy in India's Online Ecosystem' (2023) <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4647960_code6323560.pdf?abstractid=4647960&mirid=1> accessed 20 February 2026.

words, internet service providers sometimes grapple with the need to protect intellectual property rights and the data privacy of infringers. The uncertainty of creating such balance by internet service providers impedes the effort towards making violators accountable for their acts of violation. Internet service providers are by no chance blamed for the violation, this article opines that the collaboration of providers with enforcement agents will help maximise the efforts toward protecting intellectual property rights.

1.5 Conclusion and Recommendations

This article has attempted to explore the corridors of intellectual property in a growing digital world drawing from the experiences in the European Union, Nigeria, the United Kingdom, and the United States of America. It recognises the many ripple effects caused by the revolution in media usage, especially with activities relating to the sharing, distribution, and dubbing of protected creations of professionals. It draws attention to the many underlying benefits embedded in contemporary digital practices, noting that this article is not set on the path to condemn the recurrent advancement in technology and innovation. However, the focus of the article is clear, as it identifies some areas that pose serial threats to creativity and innovation. It submits that where the trend in repeated violations of intellectual property rights is allowed to thrive, or perhaps, linger, the sustainability of innovations is at risk of being endangered.

In recognising some recent intellectual property right infringement scenarios, this article submits that the scope of modern disputes relating to copyrights, patents, and trademarks has undertaken drastic development as opposed to previous disputes. The need to ensure that jurisdictions across the world are open to welcoming laws that will address these matters accordingly is at the crux of discussions in this article. The subject of jurisdictional inefficiencies in digital-related disputes is pointed at to be one of the major challenges bedeviling the smooth enforcement of rights in recent times. This is coupled with the challenge of anonymity which renders the identity of infringers unknown.

Having considered the current legal regime of intellectual property protection in Nigeria, this article submits that subsisting regulations are widely inconsistent with current existential realities, particularly areas relating to patents and trademarks. It concludes that there is an emergent need to review the current Trademark Act 2004 and the Patents Act 1990 so as to reflect contemporary realities. It is noteworthy that combatting intellectual property infringements requires a multifaceted approach. This article recommends that

the Nigerian situation is somewhat unique and there is a need for collaborative efforts, especially between internet service providers and other relevant stakeholders. Nigeria is a dominant player within the E-commerce marketplace which has continued to be a breeding den for violators, this article recommends that collaborative strategies between product owners and online marketplace platforms may help curate an extensive anti-counterfeiting preventive mechanism, such as ousting infringing listings on marketplace platforms, preventive monitoring strategies, sales verification procedures and so on.

In addition, this article recommends the implementation of modern digital rights management approaches with proven technological underpinnings capable of preventing unapproved use and circulation of copyrighted materials and protecting the interests of creatives. It also recommends the need for improved enforcement mechanisms as against conventional means, like strengthening and reviewing available remedies to victims of intellectual property rights infringement. It is averred that this would help to deter prospective violators from engaging in any act of violation against the rights of creatives. The need to comply with some international regulatory standards on intellectual property rights protection is also very pivotal in the bid to strengthen rights protection. This may be made possible through the domestication of international treaties that serve tremendous benefits to intellectual property rights enforcement.

This article also recommends the leveraging of blockchain technology which is capable of creating quality data of copyright and patent ownership, facilitating secure rights management and licensing. Lastly, it recommends that Nigeria needs to revolutionise the strategy of licensing and collective management by promoting efficient licensing mechanisms, and creating collective management organizations that can simplify copyright and patent transactions and ensure fair compensation for rights holders.⁶⁹

⁶⁹ Singh (n7).