

GLOBAL ISSUES AND NIGERIAN LAWS: ESSAYS IN HONOUR OF

HON. JUSTICE SALIU SAIDU



 Editors

Prof Abiodun Amuda-Kannike,^{SAN}
Prof Yusuf Oba Abdul,
Prof. Mahmud Kayode Adebayo,
Dr. Omopupa Kamal Tunde,
Dr Abdullateef Ameen,
Barr. Kolapo Abdulkadir Esq.,
Barr. Ibrahim Atanda Esq.,

Collaboratively published by: University of Ilorin/, Ilorin and Kwara State University, Malete

intellectual property against his right been infringed through a deliberate act of the intellectual property users or non-deliberate.¹ Copyright is one of the types of intellectual property law that protects an author's of original works including literary, musical, dramatic, and artistic works, such as poetry, novels, songs, movies, computer software, and architecture designs. The current information explosion coupled with the information and Communication Technologies exponential has given rise to indiscriminate copying and distribution of intellectual works without the permission of the intellectual property owners.²

The world's first copyright law was the Statute of Anne, enacted in England in 1710, it introduced the concept of the author of a work being the owner of its copyright with a fixed term of protection. This was soon followed by the American Congress implementation of the copyright provision of the US Constitution in 1790 with a provision for the Encouragement of Learning, by Securing the Copies of Maps, Charts, and Books to the Authors and Proprietors of intellectual property.

However, copyright law in Nigeria is governed by the Copyright Act 1988 with its amendments of 1992 and 1999 which is now re-enacted in the Laws of the Federation of Nigeria 2010 with a function under the law to protect the original owner of and artwork from been denied the fruits of work.³

INFORMATION FROM THE LIBRARIAN'S PERSPECTIVE

To librarians, information is regarded as knowledge, data, facts obtained from investigation, study, or instruction that are structured to make an informed decision. It is stimuli that have meaning in some context for its receiver. Information can be entered into and stored in electronic devices as data and can only be referred to as information when it has been processed, formatted or

¹ Onoyeyan, Glory, "Copyright Law and Photocopying Practice in Nigeria" (2018).Library Philosophy and Practice (e-journal). 2179.<https://digitalcommons.unl.edu/libphilprac/2179>

² Aina, L. O. (2008). Intellectual property rights in digital age. In L. O. Aina, S.M. Mutula, & M. A. A. Tihamiyu (Eds.), *Information and knowledge management in the digital age: concepts, technologies and African perspectives*. Ibadan: Third World Information Services, (pp. 335-354)

³ Babafemi, F. O. (2007) *Intellectual property: the law and practice of copyright, trade marks, patents and industrial design in Nigeria*. Ibadan, Justinian Books Limited

printed as an output.⁴ Information is an inevitable tool in the process of creativity; and that acquiring, processing and utilizing relevant and timely information should be channelled through the development of perspectives (technical and human relations skills) among workers to produce novelty, new designs, new realities and new experiences.⁵

Librarians or information professionals in Nigerian higher institutions manage copyright issues and attend to copyright queries and educate users about copyright law and digital licensing issues. Copyright law is no longer the exclusive domain of lawyers. There's still a definite and important role in copyright for lawyers whenever issues of infringement are noted. However, the role of librarians has and will continue to expand when it comes to regular copyright management.⁶ Information users in Nigerian higher institutions copyright questions are often discussed with the librarian or information professional responsible for copyright and licensing issues.⁷

COPYRIGHT

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, painting, sculpture and films- to computer programmes, databases, advertisements, maps and technical drawings. Copyrights are rights given to creators for their literary and artistic works. Literary works include novels, poems, plays reference works, newspapers, etc. Artistic works include paintings, drawings and sculptures.⁸ Garner⁹ defines copyright as the right to copy;

⁴ Bhilash Acharya, Sanjay Kumar Singh, Vijay Pereira, Poonam Singh, Big data, knowledge co-creation and decision making in fashion industry, *International Journal of Information Management*, Volume 42, 2018, Pages 90-101, ISSN 0268-4012,

⁵ Abubakar, Mohammed Suleiman and Akor, Philip Usman, "Availability and Utilization of Electronicinformation Databases for Research by Agricultural Scientists in Federal University Librariesin North Central Nigeria" (2017).*Library Philosophy and Practice* (e-journal). 1600.<http://digitalcommons.unl.edu/libphilprac/1600>

⁶ Copyright.com

⁷ <https://www.eifl.net/resources/eifl-handbook-copyright-and-related-issues-libraries-english>

⁸ Glory O & Olurotimi A, 'Role of Librarian in the Protection of Copyright in Nigeria,' (2018) 10 (7) *International Journal of Library and Information Science*, 73
<http://www.academicjournals.org/ijlis> accessed 10 October, 2020.

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

Copyrights are also conferred on works arising from an international agreement where at the date of first publication, one of the authors is a citizen of Nigeria or residing in Nigeria, or published in a country that is a party to an obligation in a treaty or agreement of which Nigeria is a party as well as works published by United Nations Organisation or any of its agencies, African Union, Economic Community of West African States and so on. Under the Nigerian Copyright Act, Cap C28, LFN, 2004, original literary, musical and artistically works, cinematography, films, sound recordings and broadcast are eligible for copyright. It is also conferred on works whose author or in the case of joint authorship, any of the authors is a citizen of Nigeria or residing in Nigeria or a body corporate incorporated under the law in Nigeria.¹⁰

The duration of protection of copyright is 50 years after the death of the author or the last surviving author in case of joint authorship.¹¹ The essence of the copyright concept under the laws is to protect from annexation the fruits of a person's labour. M. S. Belgore JSC in the case of *Oladipo Yerritau v Daily Times Nig Ltd*¹² opines that the primary function of copyright is to protect from annexation by other people the fruits of another's work, labour, skill or taste. The protection is momentous to actors, play writs, performers and other artists, musicians, publishers, newspapers proprietors and librarians.¹³

Copyright law refers to a legal framework that concerns rights to copy for the protection of labour, skill and judgment that some authors and other creators expended in the formation or creation of an original piece of work.¹⁴ The importance of copyright cannot be underrated in a country like Nigeria where

⁹ Garner B A, *Black's Law Dictionary*, (8th edn), USA, Thomson west Publishing Co. ((2004) 561

¹⁰ Emmanuel E, 'Nigeria: An Appraisal of Copyright Infringement and remedies under Nigerian Law.' (2015) <<https://www.mondaq.com/nigeria/copyright/366362/an-appraisal-of-copyright-infringement-and-remedies>> accessed 04 October 2020.

¹¹ Aina L O, 'Intellectual Property Rights in Digital Age,' in Aina L O, Murtala S MA & Tihamiyu M A, (eds) *Information and Knowledge Management in the Digital Age: Concepts, Technologies and African Perspectives*, Ibadan, Third World Information Service (2008) 335- 354.

¹² Unreported Suit No. FHC/L/1/1980.

¹³ Babafemi F O, *Intellectual Property: The law and practice of Copyright, Trademarks, Patents and Industrial Designs in Nigeria*, Ibadan, Justinian Books Ltd (200)

¹⁴ Glory O & Olurotimi A (note 2), 73.

books piracy, films and others reign supreme with antecedent losses of income to authors, publishers, filmmakers, musicians and other copyrights owners. Odunowo¹⁵ also believes that violation of copyright legislation leads to financial loss and it discourages creativity, retards industrial economy and cultural growth. It also deprives the government of a huge amount of taxes, especially in copyright-related industries.

INTELLECTUAL PROPERTY

Intellectual Property refers to the creation of the mind such as inventions, literary and artistic works, designs and symbols, names and images used in commerce. Intellectual property is protected by law, for instance, patents, copyright and trademarks which enable people to earn recognition or financial benefit from what they invent or create.¹⁶ Essentially, intellectual property rights are mainly proprietary rights granted by law to the owner thereof over intangible assets which are innovative products of the brain or the mind as opposed to personal or real properties. Intellectual property law, therefore, encompasses the body of rules and regulations governing the creation, acquisition and protection of the foregoing rights as well as adjudication over allegation of their infringements. Concrete efforts at developing Nigeria's indigenous intellectual property regime began to materialise shortly after the country attained political independence in 1960 till today.

PATENT

This is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how or whether the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document. The word patent has equally been defined as the right to exclude others from making, using, marking, selling, offering for sale or importing an invention for a specific period of twenty years from the date of filing, granted

¹⁵ Odonowo T A, 'Nigerian Copyright law: A Judicial Overview', in Esien J O & Nwauche E S (eds) *A Decade of Copyright Law in Nigeria*, Nigerian Copyright Commission, (2002) 54-65.

¹⁶ Femi O & Oluwatoba O, 'Strengthening Intellectual Property Rights and Protection in Nigeria.' <<https://www.mondaq.com/nigeria/trademark/7884/strengthening-intellectual-property-rights-and-protection>> accessed 01 October 2020.

by the Federal government to the inventor of the device or process is novel, useful and nonobvious.¹⁷

TRADEMARKS

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademark dates back to ancient times when artisans used to put their signatures or marks on their products.¹⁸

PERCEPTIONS OF INFORMATION UTILISATION AND COPYRIGHT AMONG UNDERGRADUATE STUDENTS

Learning is the process of acquiring skills and competencies through a formal learning environment or an informal learning environment. However, learning is the mental activity by which knowledge and skills, habits and attitudes, virtues and ideas are obtained, retained and utilized, resulting in the progressive adaptation and modification of conduct and behaviour.¹⁹ This is done through the various information resources utilise by undergraduate students in higher institutions of learning. The information resources are represented and stored in a variety of formats that assist undergraduates in their studies using local curricula including print, video and electronic resources. The information resources are made available for access to the users in the library; hence the library making it the gateway to information. Common Information resources used in the higher institutions in Nigeria are the printed information formats.²⁰ Infringement does occur among the undergraduates of higher institutions in the process of using copyrighted materials for course works such as writing term papers and assignments. Studies revealed that the level of copyright infringement of electronic contents was higher due to lack of awareness, ignorance, academic work pressure, the dearth of study materials, influence of social network and inability to acquire necessary reading materials were the factors that promote copyright infringement.

¹⁷ Garner B A, (note 3) 1156.

¹⁸ World Intellectual Property Organisation <<http://www.wipo.int/about-ip/en>> accessed 01 Jan 2020.

¹⁹ Garaba, F., & Mohammed, B. B. (February 11, 2019). An investigation on the forms of information sources and services utilised among rural dwellers from public libraries in the North-West zone of Nigeria. *South African Journal of Information Management*, 21, 1, 1-13.

²⁰ Isiakpona, Chidi Deborah. (2012). *Undergraduate Students' Perception of Copyright Infringement: A Case Study of the University of Ibadan, Oyo State, Nigeria*. DigitalCommons@University of Nebraska - Lincoln.

TABLE OF CONTENTS

List of Statutes Cited	xii
List of Cases Cited	xv
Editorial Advisory Committee Membership	xxvii
Notes on Contributors	xxviii
Preface	xxix
Foreword	xxx
 CHAPTER ONE: OVERVIEW OF MUTUAL LEGAL ASSISTANCE TREATIES AND EXTRADITION PROCESS IN NIGERIA: ISSUES, PROBLEMS AND PROSPECTS. HON. JUSTICE M.S. HASSAN	 1
 CHAPTER TWO: LEGAL AND SOCIO-ECONOMIC IMPLICATIONS OF FORCEFUL EJECTION OF TENANTS IN NIGERIAN URBAN CITIES: LAGOS AS CASE STUDY IMAM-TAMIM, MUHAMMED Kamaldeen, OLAWUYI, Halima Ajoke & IBRAHIM, Jariyat Ambali.	 17
 CHAPTER THREE: SEABED MINING AS A SOURCE OF REVENUE DIVERSIFICATION FOR NIGERIA: NOW OR LATER S. B. Sambo Esq	 46
 CHAPTER FOUR: LEGAL REGIME TO REGULATE OIL SPILLAGE IN THE NIGER DELTA REGION OF NIGERIA YAHAYA GANIYU	 64
 CHAPTER FIVE: SECURING CONFIDENCE IN THE JUSTICE SYSTEM: THE PLACE OF DECORUM ON THE PART OF COUNSEL AND JUDICIAL OFFICERS Mr Opeyemi Adekoya	 77
 CHAPTER SIX: ATTAINING THE REQUIRED STANDARD OF PROOF IN MONEY-LAUNDERING INCLUDING PREDICATE OFFENCES MUHAMMED L. SHUAIBU	 100

INSTITUTION AND LEGAL PROTECTION OF COPYRIGHTS IN NIGERIA

Infringement of copyright is rife in Nigeria because owners of artistic and literary works are more interested in creating works without ensuring that they reap the maximum benefits of their copyrights on those works. It is therefore imperative for owners to duly register their works with the appropriate authority, that is, the Nigeria Copyright Commission, seek adequate remuneration for use of their works and compensation for infringement of their copyrights. This will create wealth for the owners, increase confidence in the Nigerian intellectual property market and have a positive effect on the Nigerian economy.²¹ The two major institutions through which the copyrights of owners can be protected are the library and judiciary or courts.

ROLES OF LIBRARY IN CONTAINING HUMAN RIGHTS ABUSES OF AUTHORS IN NIGERIA

To play a role as an advocate for individual users of copyright material, a librarian needs to ensure that the rights and privileges of their consumers are guaranteed, that is, they must assure the library users of uninhibited access to available collections in aid research. All published information bearing materials are required by the law to carry a copyright message to indicate the limitation of users to prevent unnecessary infringement. Any user who is not sure if the material to be copied is protected by copyright need to seek advice from library staff. Similarly, intellectual material is required to be registered with the Apex Library, the National Library of Nigeria that issue International Standard Book Number (ISBN) or International Standard Serial Number (ISSN). The number is a unique identity for all published works registered with the National Library of Nigeria.²² Librarians have professional duties concerning copyright materials to both serve the clients' needs, using copyright-protected works that are used each day. Fabunmi stresses that librarian can provide assistance to library users to properly enforce the copyright laws in the library by ensuring that research projects in the library are made available to researchers for consultation only,

²¹ Emmanuel E, 'Nigeria: An Appraisal of Copyright Infringement and remedies under Nigerian Law.' (2015) <<https://www.mondaq.com/nigeria/copyright/366362/an-appraisal-of-copyright-infringement-and-remedies>> accessed 04 October 2020.

²² Aboyade, W.A. Aboyade, M.A. & Ajala, B.A. (2015). Copyright infringement and photocopy services among University students and teachers in Nigeria. *International Journal of Arts & Sciences*, 8:1 (2015) 463-473.

that photocopying an entire work is not allowed, and that the principle of fair use is strictly complied with, if photocopying is to be made for educational purposes, the librarian should ensure that precise citation is done by any researcher for any piece of information collected from a given source in the library.²³

To give orientation about the rule of copyright infringement is the concept refers to as fair use. In this principle, the law permits the use of a portion of copyrighted work for such purpose as criticism, comment, teaching and research, even without the permission of the copyright owner. To determine if a user is fair use, the court considered such factors as the purpose of the use, the nature of the work, the quantum of the work taken and the effect it will have on the value of the original work. Good examples of fair use include quoting except a book in a review, scholarly article or term paper, copying and distributing a newspaper article to illustrate and educational lesson and using a portion of a work in a parody of that work as proof of a version of a song.²⁴

In any educational institution, the librarian plays a prominent role in many aspects which include copyright. The major role of the librarian is to make available the library collections to students, academic staff and other consumers in pursuit of learning, teaching, research and scholarship. Librarians are the main entities that provide access to the vast majority of copyrighted works that loss market value long before the expiration of the copyright and they are the only entities that preserve public domain materials.²⁵

There is a need for librarians to have copyright education to familiar with the basic principles of copyright law. Copyright knowledge of the law by librarians will enable them to render services without violating copyright laws. With adequate education in copyright, librarians will be able to know the danger involved in coping with copyright-protected material and operate within the law. It is therefore the duties of the librarians to protect the users' rights, authors' rights and to provide proper guidance to their users on how to make use of library stock without infringing on the copyright of the authors. If there is a need for any of their users to make photocopies of any material (s), the principle of fair use must be strictly adhered to. Fair use implies that a user should be allowed to make photocopies of a very small portion of a particular work for

²³ Glory O & Olurotimi A, (note 2) 74.

²⁴ Jadhav V, 'Intellectual property Right, with Special reference to Copyright Law in India' (2014) *International Journal of Science and Research*, 4.

²⁵ Jadhav V (note 14).

educational purpose and not for commercial purpose. Any copies made for a commercial purpose need prior permission from the copyright owner. The permission could be obtained to copy or use copyrighted materials by contacting the copyright owner.²⁶

Academic libraries promote the use of information resources it manages for the purpose of education and research. Library as an education agency is poised to ensure that knowledge is adequate and disseminated and to ensure that access to information is enjoyed by all. It should be stated here that it does not amount to infringement of copyright law if a portion of a document is copied for criticism and review or for reporting in a newspaper.

COURTS AND COPYRIGHT PROTECTION

One of the mechanisms for the protection of copyright in Nigeria is the publication of judicial decisions at the request of the copyright owner at the expense of the copyright infringer. This remedy is momentous to show the customers and others that have commercial dealing with a party to the suit that he or she is not infringing or serve as a deterrent to other intending infringers that the copyright Act owner would not accommodate an infringement of his right. While the Copyright Act does not provide for this remedy, it may not be impossible for a copyright owner to request such an order from the court where he provides evidence to prove that it is necessary to have such remedy as to a matter of course.

In the absence of certain remedies in Nigeria, copyright owners can maximize the flexibility of law in obtaining effective remedies. Nigerian Copyright makes non-exhaustive provisions for civil remedies where it provides that '... all such reliefs by way of damages, injunction, account or otherwise shall be available to the claimant as is available in any corresponding proceedings in respect of infringement of other proprietary rights.'²⁷

Although the law and remedies in Nigeria have not developed like that of some other countries, there may be possibilities of obtaining similar remedies within Nigeria. Parties may not have been maximizing the possibility of asking for more effective remedies.

²⁶ Babafemi F O, (note 7) 76.

²⁷ Section 16 (1) Copyright Act, 1898.

Another remedy or means of protecting copyright against infringement is through the payment of legal costs and other expenses incurred by the successful party by the unsuccessful party except equity does not allow this. This is a strong deterrence for infringer and would-be infringers. In the UK, this would amount to a recovery of about 75 % of the legal costs incurred by the successful party. In *GoldenEye (International) Ltd & ors v Telefonica UK Ltd*,²⁸ Golden Eye international Ltd and 13 others brought a claim for Norwich Pharmacal orders against Telefonica UK Ltd (trading under the name O2). The essence was to obtain disclosure of the names and addresses of O2 customers who were alleged to have committed copyright infringement through peer-to-peer (P2P) file using the Bit Torrent Protocol. The court granted the order to only Golden Eye and Ben Dover on the condition that their letter to the alleged infringers was in form of approved by the judge and that any proceedings that might be brought would proceed in patent county court (PCC). The court granted the order after it was satisfied that the said claimants indeed intended to seek redress for the wrong done and that disclosure was necessary to enable them to do so. Their copyright outweighs the intended defendant's interest in protecting their piracy and data protection right.

The Nigerian Copyright Act did not allow a successful copyright owner to have access to the information within the custody of the infringer or relevant third parties. The Act needs to be amended to incorporate such an order. This is needed to effectively contain infringements. Through such an order, the copyright owner can frustrate the infringing activities of a syndicate or chain of infringers. Until such an amendment is made, a copyright owner must consider exploiting the procedure available under civil procedure law by bringing an application before the court that an infringer discloses the necessary information in his purview that the applicant could make use of to another infringer. It is not certain whether the court would be ready to grant such an order, especially where the order is sought against a third party/an intermediary who is not a party to the suit.²⁹

The copyright in Nigeria is governed by the English Copyright Act of 1911 which applied to the country under an Order-in-Council made under section 25 of the Act.³⁰ This Act remained operative even after the Nigerian independent in 1960 till 1970 when a new Act was enacted in 1988 which has been amended in 1992

²⁸ (2012) EWHC 723 (ch).

²⁹ Ifeoluwa A O, 'A Comparative Analysis of Copyright Enforcement Provisions in Nigeria: Maximising the Current Legal regime (2014) 7.. <https://www.researchgate.net> accessed 12 October 2020

³⁰ Babafemi FO, (note 7) 4-6.

and in 1999 respectively.³¹ The current law which formed the basis of copyright protection is the copyright Act of 1998 (as amended) Cap C28, LFN, 2004. The judicial remedies available to an alleged infringer under the Act are:

Conversion/Delivery up³², Damages, Injunctions and Account.³³ The inspection and seizure order available under the Copyright Act, similar to *anton piller* order is an effective mechanism for seizure and preservation of evidence.³⁴ Damages refer to monetary compensation paid to a copyright owner for infringement of his right. In action for infringement, actual damages need not be proved as damages are at large as in the case of *Emirate Airline v Ngonadi No. 1*³⁵ where the court explained that damages at large are an award that has no exact measurement as it is essentially compensation for non-economic or non-pecuniary loss. It could also consist of exemplary damages in certain cases and can be *inter alia* compensation for pain and suffering, loss of reputation or injured feelings.

Mere infringement for copyright gives rise to damage to which the claimant is entitled. In the case of *Claydon Architectural Metal Work Ltd v DJ Higgins & Sons*,³⁶ the court held that the normal measure of damages for copyright is the amount by which the value of the copyright as a chose in action has been depreciated.

It is apposite to state here that general and special damages are the usual compensatory damages, a court can however grant punitive or exemplary damages which are intended to punish the defendant and serve as a deterrent which is termed as additional damages under the Act.³⁷ Therefore, section 16 (4) of the Copyright Act provides the grant of additional damages as the court may deem fit in the circumstance where it is satisfied that the effective relief would not otherwise be available to the claimant. The court is to the flagrancy of the

³¹ Amended by Copyright (amendment) Decree No. 98 of 1992 and Copyright (amendment) Decree N. 62 of 1999.

³² Section 18 of Copyright Act, 1988.

³³ Section 6 (1) *ibid*

³⁴ Section 25 of Copyright Act of 1988. Also see *Anton Piller AGV Manufacturing Processes Ltd* (1976) All ER 779.

³⁵ (2014) 9 NWLR (PT 1413)429

³⁶ (1997) FSR 475.

³⁷ See section 16 (4) of the Copyright Act of 1998; *Zenith Bank PLC v Ekereuwem* (2012) 4 NWLR (PT 1290) 207 & *FCDA V Unique Future leaders Int'l Ltd* (2014) 17 NWLR (1436) 213.

infringement and any benefit shown to have occurred to the defendant because of the infringement.

Another remedy for copyright infringement is an injunction. In the case of *Jimoh v Aleshinloye II*,³⁸ the court considered injunction, essentially, an equitable remedy which is granted at the discretion of the court, compelling a party to do or to refrain from doing an act. *Asien*³⁹ considers an interlocutory injunction which is granted pending the final determination of a case on merit as an effective remedy in the copyright infringement. This is to ensure that the parties maintain the status quo pending the determination of the case. It is used by the copyright owner to refrain the alleged infringer from further acts of infringement to prevent irreparable damage.⁴⁰ It is only granted in cases of urgency requiring an immediate relief and usually made *ex parte* though, in most cases, there must be an accompanying motion on notice to be served on the other party⁴¹ to ensure that the opposing party is informed about the order and to allow him to be heard during the determination of the motion on notice. Because of the urgency, the applicant need not have instituted an action by filing or serving a writ.⁴²

Another remedy that serves as an effective tool for a copyright owner in the fight against infringement is the inspection and seizure order.⁴³ This order is essentially a statutory codification of its equivalent equitable remedy, the *anton piller* order. It permits the applicant to enter into the premises of the defendant to inspect for infringing goods and any other evidence which is relevant to prove the applicant's case and it could also permit the applicant to seize and preserve such evidence. The essence of this order is the discovery and preservation of evidence where the defendant is likely to destroy or remove such evidence if notified which would be detrimental to the applicant's case. Therefore, it is made *Ex Parte* benefit from the surprise effect on the defendant.⁴⁴

In *Anton Piller KG V Manufacturing Processes Ltd*,⁴⁵ the court laid down the conditions for the grant of this order. It has to be an exceptional circumstance

³⁸ (2014) 15 NWLR (pt 1430) 277.

³⁹ *Asien J O, Nigerian Copyright Law and Practice*, (2nd edn) Abuja, Book & Gavel Publishing (2012) 311.

⁴⁰ *Ifeoluwa A O*, (note 19) 92.

⁴¹ Order 9 Rule 7, Federal High Court Civil procedure Rules

⁴² *Babalola A*, (note 7) 29-30.

⁴³ Section 25 of Copyright Act, 1988.

⁴⁴ *Asien J O*, (note 29) 320.

⁴⁵ (1976)1 All ER 779.

and the claimant must have a strong *prima facie* case. Potential or actual damage to the claimant should be serious and it should be obvious that the defendant possesses relevant evidence to defeat the ends of justice. When these circumstances are satisfied, the court may order the defendant to permit the claimant to enter his premises to inspect and/or removes such evidence. Being an injunction, the conditions for granting an injunction must also be fulfilled before the grant. The court, in *Anton Piller KG*, distinguishes this order from a search warrant because there can be no forceful entry into the premises, rather, the order puts pressure on the defendant or orders him to permit the entry of the claimant through a consequence of contempt of court if the order is disobeyed.⁴⁶ Conditions precedent for the grant of the injunction are equally stated in *American Cyanamid Co. v Ethicon Ltd*⁴⁷ that the claimant has to satisfy the court that he has an arguable case. This does not imply that a strong case; a *prima facie* case would be sufficient. Damages must not be a sufficient remedy; where damages are sufficient, an injunction would not be granted. The court would also consider the balance of convenience. The financial standing and ability to liquidate damage are also considered. In the case of *Saraki v Kotoye*,⁴⁸ the court decided that the conduct of the parties is also important in the consideration of the court. The claimant must not delay in bringing the action because this may be considered acquiescence as was determined by a court in the case of *Foseco Int. Ltd v Fordath Ltd*.⁴⁹ The claimant is equally required to give an undertaking as to damages should it be proved that the injunction ought not to have been granted to protect the interest of the defendant.⁵⁰

It is also relevant to examine how the copyright of owners can be safeguarded through criminal liabilities. Therefore, copyright infringement is criminally culpable with imprisonment, penalties or a fine. Criminal prosecution of copyright infringement is usually instituted by the Nigerian Copyright Commission (NCC). Civil and criminal actions can be instituted simultaneously against an infringer. The copyright owner is not precluded from bringing a civil action for the purpose of recovering damages although NCC has initiated a criminal proceeding.⁵¹

⁴⁶ Ifeoluwa A O, (note 19) 94.

⁴⁷ (1975) 1 ALL ER 504.

⁴⁸ (1989)1 NWLR (pt 98) 419.

⁴⁹ (1975) FSR, 507.

⁵⁰ See Order 34 Rule 2 (3) Federal High Court Civil Procedure Rules.

⁵¹ See section 24 of Copyright Act, 1988.

To protect the right of innovative minds, promoting creativity and containing piracy in the media and entertainment industry, the Copyright Act provides instances where a person would be criminally culpable for copyright infringement and the sanctions thereto. The Act provides that any person who;

- a. makes or causes to be made for sale, hire or for the purpose of trade or business any infringing copy of a work in which copyright subsists;
- b. import or causes to be imported into Nigeria more than two infringing copies of such work; or
- c. makes or causes to be made; or has in his possession, any plate, master tape, machine, equipment or contrivance for purpose of making any infringing copy of any such work; shall unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was not an infringing copy of any such work, be guilty of an offence under the Act and shall be liable on conviction to a fine of an amount not exceeding N 1000 for every copy dealt with in the contravention of this section or to a term of imprisonment not exceeding five years imprisonment or both fine and imprisonment.⁵²

It is clear from the above that, the section applies to manufacturers of pirated copies. With technological advancement, any person can reproduce the original work in copies without first obtaining the required permission of the author. The internet facility has given consumers unprecedented opportunity to reproduce, alter and immediately transmit perfect digital copies of copyrighted works globally.⁵³

CHALLENGES OF ENFORCING INTELLECTUAL PROPERTY

A very serious challenge facing the enforcement of intellectual property owners in Nigeria is the lack of efficiently deterrent enforcement mechanisms. It appears that reforming the Nigerian intellectual property legislation alone may not achieve the desire expectations in protecting intellectual property owners except the mechanisms for enforcing the law is equally enhanced.

Law enforcement agents, particularly, the Nigerian Police Force and the Nigerian Customs Service need to be more empowered to carry out their policing and prosecuting function. Experience has shown that lack of adequate funding, inadequate or obsolete equipment and lack of up-to-date skills in the use of

⁵² Section 18 (1), Copyright Act, Cap C28 LFN, 2004.

⁵³ Mobolaji J A, 'Criminal Sanctions for Copyright Infringement: The Half of a Yellow Sun Copyright Piracy, (2014) 31, Journal of Law, Policy and Globalisation,' 50

modern techniques among the rank and file officers prevent the various efforts being made in combating infringement from achieving desired results.

The dearth of judicial precedent in intellectual property. The dearth of intellectual property cases in the country indicates that more effort needs to be made among the stakeholders in the sectors, particularly, lawyers, judges, judicial bodies, law teachers and Law Reform Commissions, regulatory bodies and the general public toward developing Nigerian jurisprudence in this area. This challenge is also exacerbated by the inadequate numbers of competent judges skilled in intellectual property laws in the Nigerian judiciary.

Lastly, librarians in Nigeria are trained to know the extents of both user and intellectual property owners rights but hardly enforce it thereby compromising with students, academic staff and other library users to stumble over rights or infringed the copyright of owners. It is therefore important for the librarians to know the implications to the copyright owner and the law to guard against the users from violating the copyright of owners and breaking the law under the guise of fair use.⁵⁴

CONCLUSION AND RECOMMENDATIONS

Copyright infringement is adjudged to be of concerns to all stakeholders in the higher institutions in Nigeria. Authors are seen as being prone to denial of their benefits if librarians and lecturers do not protect the intellectual properties in the custody of the higher institution libraries. Therefore, undergraduates need to be tutored with comprehensive orientations on the laws guiding the fair use of information resources for their studies.

This study, therefore, recommends that the curriculum for the training of librarians should include the knowledge of copyright to arm them against infringement by library users and also not to abet them unconsciously. The General Studies courses in the higher institutions should be blended with copyright law for lifelong use by the undergraduates. Nigeria higher institutions should purchase the common and frequently used manual, online books and

⁵⁴ Clifford, I.B.; Oghenenyerhovwome, O.F. (2014). A violation of copyright law through photocopying in tertiary institution in Delta State: Case study of Delta State University Abraka. // Journal of Education and Practice 5: 3(2014) 17-25.

GLOBAL ISSUES AND NIGERIAN LAWS: ESSAYS IN HONOUR OF HON. JUSTICE SALIU SAIDU 505

journals for general use by undergraduates. The consortium can be formed by the higher institution for the purchase of expensive materials.

Higher institutions in Nigeria should be equipped to own the intellectual property right of relevant information materials to allow undergraduate use of them for learning and research. Funding must be provided for institutions and students to owned personal copies of information resources. Relevant bodies and organisations like the Nigeria Library Association and Nigerian Copyright Commission should work together to create awareness and enforcement as may be required on regular basis. Additionally, higher institutions should be well equipped with enough and relevant printed/literary resources that will be readily available and accessible to the students when needed with the provision of reprographic resources to provide photocopying and printing services within reach.

CHAPTER SEVEN:

CONTEMPT OF COURT: THE POTENTIAL FOR ABUSE

Justice Buba

111

CHAPTER EIGHT:

LAW AND NIGERIAN FEDERALISM: ISSUES AND CHALLENGES

Abdullateef Ameen and Yahaya Ganiyu

140

CHAPTER NINE:

ADR AND ARBITRATION IN MARITIME MATTERS

HON. JUSTICE A. O. FAJI

173

CHAPTER TEN:

**CIRCUMSTANCES UNDER WHICH WINDING UP PROCEEDINGS WILL BE
GRANTED AMIDST A DISPUTE IN DEBT**

E. A. Oyebanji, SAN, FCI Arb

186

CHAPTER ELEVEN:

**A UNIFIED EFFORT TO END DOMESTIC VIOLENCE IN NIGERIA:
CORRECTIONALLY JUSTIFIED OR A VIOLATION OF WOMEN'S RIGHTS?**

MAHMUD KAYODE ADEBAYO

194

CHAPTER TWELVE

**THE FIGHT AGAINST CORRUPTION IN NIGERIA: A CONSIDERATION
FOR NON- LEGAL APPROACH**

Prof. Abiodun Amuda-Kannike (SAN)

228

CHAPTER THIRTEEN:

**AN EXPOSITORY STUDY OF THE RESPONSE OF THE ADMINISTRATION OF
CRIMINAL JUSTICE ACT 2015 TO THE TREATMENT OF CRIME VICTIM AT THE TRIAL**

Dr. Yahaya Duro Uthman Hambali

279

CHAPTER FOURTEEN:

**CHILD TRAFFICKING: A CLOG IN THE WHEEL OF SOCIO-ECONOMIC
DEVELOPMENT OF NIGERIAN CHILDREN**

Fatimah Funsho Abdulrazaq

295

EDITORIAL TEAM

Prof. Abiodun Amuda-Kannike, SAN; LL.B (Hons), LL.M (Hons) Ph.D,



BL(Hons), is a Professor of Law and the current Dean of the Faculty of Law, Kwara State University, Malete, Via Ilorin, Kwara State and also a member of the Governing Council, Kwara State University, Malete. Prof. Abiodun Amuda-Kannike, a Senior Advocate of Nigeria, had taught Law courses, at various institutions both in Nigeria and abroad. He has about 60 Journal Articles, 2 published books and contributed to not less than 3 book chapters apart from paper presentations in seminars, conferences

and occasions which are about 18 in numbers. He is also a fellow of the Chartered Institute of Arbitrators (FCarb), Fellow Institute of Chattered Economists (FCE). Fellow Institute of Arts, Management and Professionals (FCIAP) among others. He has been honoured with over 12 honours with the recent one as the "Most Notable and Top Solicitor of the 21st century" endorsed by the International Chartered World Learned Society, base in the United States of America on the strength of his contributions to knowledge and the two theories he propounded on Entrepreneurship and the Law between 2019 and 2020.

Prof. Mahmud Kayode Adebayo holds LL.B (Hons), B.L, LL.M & Ph.D degrees in law



from University of Maiduguri Nigerian Law School and University of Jos respectively. He is presently a Professor of Law and one time Head of Department Private & Property Law, University of Ilorin. He is an Advocate & Solicitor of the Supreme Court of Nigeria and member Nigerian Bar Association. He specializes in Human Rights Law (Women's Human Rights). He has experienced in both teaching & research.

Prof. ABDUL-HAMID, OBA, LL.B, BL, LL.M, M.Phil, Ph.D.. He commenced his exciting



working career as a Legal Adviser to Bali Local Government Council, a position which he effectively combined with been the Principal Counsel, Free Legal Aid Clinic, Bali, Taraba State, as a member of the NYSC. He also engaged in voluntary teaching at the Government Advanced Secondary School at Bali LGA between 1992 and 1993 during his mandatory national youth service.

He, thereafter, joined the Ayodele, Gafar & Co. a firm of Lawyers, with offices in Ilorin and Lagos, where he worked as a Counsel between 1993 and 1995. In 1995 Prof. Abdul-

Hamid's love for teaching propelled him to join the services of the Federal Polytechnic, Offa, as a Lecturer, he taught at the frontline Polytechnic until 1999.

After four years of very impactful services, he left the services of the Polytechnic for the University of Ilorin where he has since then been involved in teaching, research and community services till date. He is the Director Center for Ilorin Studies (CILS) of University of Ilorin.

Tunde Kamal Omopupa holds BA (LS), MILR, MLIS and a Ph.D. from Bayero



University, Kano, the University of Ilorin, the University of Ibadan, Nigeria and the University of KwaZulu-Natal in South Africa respectively. He is presently a Senior Lecturer and immediate past Acting Head of Dept. of Library and Information Science, University of Ilorin Nigeria. He is a Chartered Librarian, registered member of the Nigeria Library Association (NLA) and CILIP, UK. He specialises in health information, academic libraries and rural librarianship. He has experience in teaching and

research in Librarianship and the Humanities.

IBRAHIM ATANDA ESQ, FICMC, FIMC is a seasoned legal practitioner whose practice spans civil, criminal, corporate law and alternative dispute resolution. Armed with a Bachelor's Degree in Law from the University of Ilorin, He got qualified as a solicitor and advocate of the Supreme Court of Nigeria after which he obtained a Masters' Degree in the same discipline from the Obafemi Awolowo University, Ile-Ife. Atanda Esq is the founder and principal partner of Ibrahim Atanda & Co, a frontline law firm in Nigeria. He is a fellow of the Chartered Institute of Mediation and Conciliation as well as a fellow of the Institute of Management Consultants.



ABDULKADIR, ALIYU KOLAPO Is a successful legal practitioner and retired carrier technocrat. He holds an LL.B (ABU Zaria), BL. (NLS), LL.M (IMLI Malta). He specialises in Maritime Law. He voluntarily retired from NIMASA as a Director in 2018. He had earlier worked as Company Sec:/Legal Adviser to the defunct Midland Mortgage Bank. He established a law firm in Ilorin called Abdulkadir-Abdulkadir & Co. Royal Chambers. He had delivered many unpublished professional papers and still loves reading and writing. He is happily married.



Dr. Ameen, Abdullateef Certificate, Diploma (Kwara polytechnic) B. Sc., M. SC., (Unimaid), Ph. D (University Utara Malaysia) Lecturer II from University of ILORIN in the department of Public Administration and a researcher in public policy analysis, administrative Law, Development Administration.



IBRAHIM ATANDA ESQ, FICMC, FIMC is a seasoned legal practitioner whose practice spans civil, criminal, corporate law and alternative dispute resolution. Armed with a Bachelor's Degree in Law from the University of Ilorin, He got qualified as a solicitor and advocate of the Supreme Court of Nigeria after which he obtained a Masters' Degree in the same discipline from the Obafemi Awolowo University, Ile-Ife. Atanda Esq is the founder and principal partner of Ibrahim Atanda & Co, a frontline law firm in Nigeria. He is a fellow of the Chartered Institute of Mediation and Conciliation as well as a fellow of the Institute of Management Consultants.



ABDULKADIR, ALIYU KOLAPO Is a successful legal practitioner and retired carrier technocrat. He holds an LL.B (ABU Zaria), BL (NLS), LL.M (IMLI Malta). He specialises in Maritime Law. He voluntarily retired from NIMASA as a Director in 2018. He had earlier worked as Company Sec./Legal Adviser to the defunct Midland Mortgage Bank. He established a law firm in Ilorin called Abdulkadir-Abdulkadir & Co. Royal Chambers. He had delivered many unpublished professional papers and still loves reading and writing. He is happily married.



Dr. Ameen, Abdullateef Certificate, Diploma (Kwara polytechnic) B. Sc., M. SC., (Unimaid), Ph. D (University Utara Malaysia) Lecturer II from University of ILORIN in the department of Public Administration and a researcher in public policy analysis, administrative Law, Development Administration.



CHAPTER FIFTEEN:

**ADMISSIBILITY OF DOCUMENTS AND WEIGHT AIMED AT SAME
PURPOSE BUT STAGES OF CONSIDERATION DIFFERENT**

Hon. Justice James Kolawole Omotosho

316

CHAPTER SIXTEEN:

**AN EXAMINATION OF THE PLACE OF THE JUDICIARY AND ITS CONTRIBUTIONS
TO THE DEVELOPMENT OF FAMILY LAW AND POLICY IN NIGERIA USING
SPECIFIC DECIDED CASES AND SCHOLARLY LITERATURE**

MOSHOOB ABDULLAHI ORE (LL.M UNILAG)

351

CHAPTER SEVENTEEN:

**ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS IN THE FEDERAL HIGH
COURT; A CRITICAL APPRAISAL THROUGH JUDICIAL PRONOUNCEMENT**

MESSRS N. AYO-EMMANUEL and AKINTAYO ALUKO

377

CHAPTER EIGHTEEN:

A SYNOPSIS OF SOME PROVISIONS OF THE EVIDENCE ACT 2011

Justice A. M. Liman

392

 CHAPTER NINETEEN:

SUPPRESSION OF PIRACY AND OTHER MARITIME OFFENCES ACT 2019:

AN APPRAISAL

CHUKWUECHEFU UKATTAH (PhD)

401

 CHAPTER TWENTY:

SUPPRESSION OF PIRACY AND OTHER MARITIME OFFENCES ACT 2019:

AN APPRAISAL

CHUKWUECHEFU UKATTAH (PhD)

438

CHAPTER TWENTY-ONE:

THE FEDERAL HIGH COURT IN JURISDICTIONAL CONUNDRUM: ANY SOLUTION?

Chief Mike A. A. Ozekhome, SAN, OFR, Ph.D, FCI Arb, LL.D.

468

 CHAPTER TWENTY-TWO:

**REFLECTIONS ON COPYRIGHT LAWS AND UTILISATION OF INFORMATION
IN NIGERIA HIGHER INSTITUTIONS**

Dr. Omopupa K.T., Dr. Hanafi Adekune Hammed, Ismail Olatunji Adeyemi

490

CHAPTER TWENTY-TWO

REFLECTIONS ON COPYRIGHT LAWS AND UTILISATION OF INFORMATION IN NIGERIA HIGHER INSTITUTIONS

OMOPUPA, Kamal Tunde

Department of Library and Information Science,
University of Ilorin, Ilorin, Nigeria
Email: omopupa_kt@yahoo.com
<https://orcid.org/0000-0003-4252-4681>

Hanafi A. Hammed

Department of Public and Jurisprudence,
Faculty of Law,
Kwara State University, Malete
Tel: +2348033843685
Hanafi.hammed@kiu.ac.ug

ADEYEMI, Olatunji Ismail

Pinheiro LP, 5/7 Folayemi St, Ilupeju, Lagos 100001, Nigeria
Email: adeyemiismailolatunji@gmail.com

Abstract

The study traced the advent of copyright laws from their enactment in the UK and the passing of similar law by the US Congress through the passing of the same law in Nigeria in 1988 and 1992 respectively. It further discussed the types and relevant terms related to copyright laws such as intellectual property, patents and trademarks. Librarians perspective of information, perception of undergraduates utilisation of information in the Nigeria higher institutions with the institution and legal protection of copyright laws were also discussed. Additionally, roles of libraries in containing human rights abuses of authors in Nigeria, courts and copyright protection with the Challenges of Enforcing Intellectual Property. Finally, the study recommends among others education and awareness of librarian and library users on how to prevent infringement of authors rights, higher institutional strategies and stakeholders participation in copyright laws enforcements.

Keywords: Copyright, Information Utilisation, intellectual property, Infringement, Violation of Human rights

INTRODUCTION

Copyrights are laws enacted for the protection of the owner of intellectual property from being exploited through the application of a section of the law of a nation where the owner is domiciled or not. It gives cover to the owner of