

COMPARATIVE ANALYSIS OF COPYRIGHT IN NIGERIA AND UNITED KINGDOM: THE LEGAL ISSUES AND PROSPECTS*

INTRODUCTION

Over time, individuals and corporate bodies have hidden under the auspices of copyright exceptions, to escape copyright infringement and its liabilities. These privileges have been used outside the supposition for fraud and undue economic advantage against the interest of the owner. In the light of the aforesaid, copyright owners come to law with the expectation that the Law will order remedy for their losses or injuries only to be met with stiff resistance as certain defenses preclude them from the requisite remedies that ought to be available to them within the jurisdiction of the Nigeria's legislation. On the other hand, it is different in other climes like the United Kingdom.

Furthermore, individuals and corporate bodies in the course of their operations do affect adversely the legal interests of others through the abuse and misuse of certain copyright privileges, even though the doctrine of copyright and its exceptions do not in every sense extinguish copyright liability. Notwithstanding these logjams, there are still some commendable positive imports when carrying out a comparative analysis of copyright practice in Nigeria and United Kingdom. However, successful imports of the merits have also become a challenge.

At this juncture, therefore, it is expedient to note that it is against this backdrop that the main research question is posed thus: What are legal issues and prospects in comparative analysis of copyright in Nigeria and United Kingdom? This makes it imperative to tailor the aim of this article inter alia – to critically examine the legal issues and prospects in comparative analysis of copyright in Nigeria and United Kingdom.

2. CONCEPTUAL FOUNDATION

2.1 Copyright and Why it is a Right

There is no universally acceptable definition of copyright. That notwithstanding many definitions of copyright exist as there are authors and texts on the subject. From the spectrum of the law, Section 51,¹ copyright is interpreted to mean “exclusive and assignable legal right, given to the author of a literary, artistic work. It is that right protective of the work of an author in any circumstance from invasion or infringement.”² Copyright is a set of exclusive rights granted by the law of a jurisdiction to the author or creator of an original work, including the right to copy, distribute and adapt the work.

* **Professor Chudi Charles Nwabachili**, LL.B, B.L, LL.M, Ph.D, Dean, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University Igbaram Anambra State Nigeria, Mobile: +2348033404185, Email: cc.nwabachili@coou.edu.ng

* **Chinwe Patricia Iloka**, LL.B, B.L, LL.M, Ph.D, Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University Igbaram Anambra State Nigeria Mobile: +2348035696281, Email: cp.iloka@coou.edu.ng

¹ Interpretation Section of the *Copyright Act*

¹ Interpretation Section of the *Copyright Act*

² W. Cornish and D. Llewelyn, *Intellectual Property: Patents, Copyright, Trademarks and Allied Rights* (6th edn. Sweet & Maxwell, 2007) p.85.

In Nigeria, copyright is governed by the *Copyright Act*³. Copyright is the exclusive and assignable legal right, given to the author of a literary, artistic or musical work, to print, publish, perform, licence, and assign the work for a fixed number of years.

In the case of *I. J Adenuga v Ilesanmi Press Sons (Nig) Ltd*⁴, “Copyright in relation to eligible work is the exclusive right to control, to do or authorise the doing of any of the acts restricted to the copyright owner.” Copyright protection has a restricted lifespan. It applies for a specific period of time, after which the work is said to enter the public domain. The period of restriction ranges from 25 years to 70 years. This limitation can be justified on the basis that copyright law does not lock away the ideas underlying a work. The legal copy-righted art, include the right to reproduce the work in any material form, performing it in public, broadcasting it, communicating it, recording it, making any cinematograph film of it, distributing it to the public or making any adaptation of the work.⁵ Suffice to state that the creator of a copyrighted work, also known as the “author”, is at liberty to transfer the rights to a third party.

It has also been defined by Ekpo⁶ as:

a right in law conferred on authors and owners of creative works to be literary, scientific or artistic in nature, to control the doing of certain acts in relation to those works. This means that the work is protected against unauthorized use. The rationale for this protection is that the law regards the work as property, which, like other properties entitles the owner to the exclusive right of usage.

It is in this light that Copyright seeks to protect the originality in works. As a whole, Copyright law intends to benefit both the public and the author. While copyright gives the author a limited monopoly over the rights of the work to assure him or her of a fair return, the work can also be used to advance the public’s knowledge, entertainment and cultural experience.

To Shay⁷: “Basically, it is the right to allow (or not to allow) any one to copy your work.” Simply put, copyright is the right to prevent others from copying or reproducing a person’s work without permission. According to Asien,⁸ copyright is an incorporeal intellectual property right vested in a work for the benefit of the owner. The *Black’s Law Dictionary*⁹ defines copyright as:

³ Cap. C28 Laws of the Federation of Nigeria 2004 (the “Copyright Act”), now repealed and enacted as Copyright Act, 2022.

⁴ (1991) 5NWLR (PT 189) 82.

⁵ J. B. Saunders (Ed.) *Mozley and Whiteley’s Law Dictionary* (8th Ed., Butterworths, 1970), p.87.

⁶ M. Ekpo, M. *Company Law and Management Practice* (Scientific Research Publishing Inc., 2005) 145.

⁷ H. Shay, *The Writer’s Guide to Copyright, Contract and Law* (How To Books Ltd, 2009) p.7.

⁸ J. O. Asien, “Nigeria Copyright Law: An appraisal of Recent Innovations and Implications” *Calabar Law Journal* [3] (1990) p. 124.

⁹ B. A. Garner, *Black’s Law Dictionary* (8th Ed., St Paul Minnesota: Thomson West Publishing Co., 2004) p.36.

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

This definition is elaborate and brings to fore one of the conditions to be satisfied before a work can be granted copyright protection. It is necessary to state here that this protection is of immense importance to artists, authors, musicians, designers and other creators.¹⁰ This is because copyright protects expression of idea and not idea per se. Thus, if I have an idea in my head on a topic to write but I communicated it to someone else by word of mouth, that idea still in my head will not be a copyright work. However, once I express it or that person to whom I communicated it, express it in a tangible form e.g. book, disc etc. it becomes a work in which copyright can subsist.¹¹ It has however been acknowledged by the U. K. Courts that it is not easy to draw a line between protecting ideas and expression.¹²

It is necessary to state here that the definitions of copyright given in this work show a fundamental principle that copyright serves to control the copying of intellectual materials existing in the field of literature and the arts protecting the writer or artist against unauthorized copying of his materials. The definitions also bring to the fore an important aspect of copyright which is that, it is regarded as property which can be owned to the exclusive right of usage. This indicates that a person who exerts his intellectual efforts in the creation of ideas deserves greater protection, for as stated by the legislature of the State of Massachusetts, USA in 1789, “there is no property more peculiarly a man own than that which is produced by the labour of his mind.”¹³ The statement by the legislature of the State of Massachusetts, USA is still relevant today in Nigeria and U. K. as it was in 1789.

It has become a peremptory norm to note that Copyright subsists automatically in a work from the moment the work is created and therefore, the work is not required to be registered, for instance with the Nigerian Copyright Commission (NCC) in order to be protected. The NCC, however, administers and operates a notification or depository scheme. Under this scheme, creators of copyright works or persons who have acquired any copyright in respect of eligible works may give notice to register their copyright with

¹⁰ R. O. Ugbe, “Copyright Law and the Protection of Folklore in Nigeria”, *Ph.D Dissertation* (Faculty of Law, University of Jos, 2015), p.38-39.

¹¹ *Ibid*, p. 39

Section 1(2) (b), Copyright Act, Cap. C28, LFN 2004.

¹² *University of London Press Ltd v University Tutorial Press Limited* (1916) 2 Ch 601; and *Designers Guild Ltd v Russell Williams Textiles* (2001) FSR II.

¹³ J. A. Sokefun, “An Overview of the Protection of Intellectual Property in Nigeria” in O. Oliyide (Ed.) *The Nigerian Journal of Private and Commercial Law* (NJPCLJ) [2] (2001) p.227.

the NCC.¹⁴ The purpose of this scheme is to provide notification to the NCC of the creation and/or existence of a work. This notification is given by completing an application form and making the applicable payments. A certificate is subsequently issued in this regard.

2.2 Concept of Fair Dealing in the Light of Copyright

The concept of fair dealing allows the copying or use of the work which will otherwise be an infringement and in most circumstances the amount of the original work used is important before an infringement can occur. Just like equity came in handy to ameliorate the severity of common law, so the concept of fair dealing soft peddles or mitigates the strict machination of copyright and patency. There are countless technical defences put up in this regards. The thought of fair dealing covers research that is non-commercial research.¹⁵ Where it is mainly private research, criticism, review, and reporting current events then the use of some copyright work is allowed. In this case, such use is referred to as fair use in the United States, and it mostly contains the requirement of due acknowledgement from the copyright owner. In *Independent Television Publications Ltd v Time Out Ltd*¹⁶, Whitford J, held inter alia that the whole purpose of the fair dealing provisions is to permit, in appropriate circumstances, the taking of a substantial part of a copyright work.

It is essential to note that where an author wishes to criticise the work of an eminent Professor, then much of the work will be extracted. This will be regarded as fair dealing. In *Hubbard v Vosper*,¹⁷ Lord Denning in his characteristic candour states that "... to take long extract and attach short comments may be unfair while to take short extracts and add long comments may be fair enough."¹⁸

The permitted act of fair dealing for research or private study is available in literary, dramatic, musical or artistic work. For fair dealing for research or private study, the factors to determine whether it is fair may be the nature of the research or study and the funds available to the researcher or student.

Fair dealing even though a recognized defence to copyright infringement is for the purpose of making temporary copies, noncommercial research, private study, discussing criticisms, review and reporting current events. Thus, for the fair dealing defence on any copyright infringement to succeed, it is adequate for the defendant to show that his conduct falls within the circumstances contained in Co-dependents Anonymous (CODA), 1988.¹⁹ That is, he must show that use of the copyright was fair, and within the content of Sections 28(a), 29, 30 and 31.²⁰ It must satisfy the question of quantum i.e. the amount of

¹⁴ U. Udoma and B. Osaghie, *Intellectual Property Law, Nigeria* (Ibadan University Press, 2000) p. 34.

¹⁵ *Ibid*, p.17.

¹⁶ (1984) FSR 64.

¹⁷ (1972) 2 QB 84 at 94.

¹⁸ *Hubbard v Vosper* (1972) 2 QB 84 at 94.

¹⁹ Co-Dependents Anonymous 1988 CoDA Service Conference (CSC)

²⁰ CODA 1988.

the original work which is taken.²¹ The purpose of the use of the work²², the necessity of the use of the work²³ and the status of the said work.²⁴

3. LEGAL FRAMEWORK FOR THE PROTECTION OF COPYRIGHT IN NIGERIAN AND UNITED KINGDOM

3.1 The United Kingdom Copyright Law

3.1.1 *Designs and Patents Act, 1988*

The United Kingdom copyright law is governed by the *Copyright, Designs and Patents Act 1988*. The following works are protected under the law (S.1)²⁵:

- (1) Original literary, dramatic, musical or artistic works;
- (2) Sound recordings, films, broadcasts; and
- (3) The typographical arrangement of published editions.

With the exception of works of music or dramatic, the Act defines literary works to include any works written, spoken or sung including computer programs and databases. However, copyright does not subsist until it is recorded either in writing or otherwise. For literary works and others, they are protected only to the extent that they are original. They should not have been slavishly copied, although there are exceptions, from another work and sufficient amount of skill and labour must have been expended by the author.²⁶

As a result of increasing legal integration and harmonization throughout the European Union, EU jurisprudence has influenced the legal landscape of the U. K. copyright law. For instance, the concept of originality is not defined under U. K. copyright law but has been explained variously.

However, the EU's Court of Justice's decision in *Infopaq International A/S v. Danske Dogblades Forening*²⁷ implying that a harmonised concept of originality applies to all works has thrown the UK concept of originality in doubt. Given the decision of the UK to withdraw from the membership of the EU, whether or not EU jurisprudence would continue to have some influence on UK copyright law remains to be seen in the future.

3.1.2 Eligibility for Protection

The law provides a number of factors for a work to qualify for copyright protection. The author must have qualified or the country in which the work was first published is a qualifying country. In the case of broadcasts, the place of transmission must have been qualified. In other words, a work is protected by UK copyright law only if it was made by

²¹ *Fraser Woodward Ltd v. BBC* (2005) FSR 762.

²² *Hubbard v Vosper* (1972) 2 Q.B. 84.

²³ *Associated Newspaper v Newsgroup Newspapers* (1986) RPC 515.

²⁴ *Beloff v Pressdrom Ltd* (1973) 1 All ER.

²⁵ *Designs and Patents Act, 1988*.

²⁶ *R. Griggs Group Ltd & Ors v. Evans & Ors* (No.1) [2005] EWCA Civ 11.

²⁷ [2009] ECJ 17.

a British author or a person who is a national of a country to which the 1988 Act applies. Alternatively the work must have been first published in the UK or a country to which the Act applies. In the case of broadcasts, it must have been made in the UK or sent from the UK or a country to which the Act applies.²⁸

3.1.3 Copyright Term

The term of protection depends on nature of the work and the rights concerned. For literary, dramatic, musical and artistic works protection is for 70 years from the death of the author or from the first publication of the protected work in the case of anonymous works. The Act also provides for specific rules on the term of protection for entrepreneurial works such as sound recordings and broadcasts, which are protected, as a general principle, for 50 years from creation.²⁹

3.1.4 Authors and Ownership

The Act distinguishes between copyright and moral rights. The owner of the copyright in a work has the exclusive rights including the copying of the work, issue copies out, rent them and make adaptations. On the other hand, the moral rights give the author the right to be identified as the author or director, the right to object to derogatory treatment of a work and the right to object to false attribution.³⁰

These rights persist on the death of the author, until the expiration of the copyright. The copyright owner also has a right to initiate legal proceedings including injunctions, damages and account of profits, against persons who infringe his copyright.³¹ According to section 66 of the Act³², UK copyright office is responsible for the registration, investigation, implementation, administration and enforcement.

3.2 Copyright Law of Nigeria

Prior to the copyright law which was enacted in 1988, there was no effective administrative infrastructure of copyright practice in Nigeria. The *Copyright Decree* of 1970 was in disarray as the then Federal Ministry of Trade, on whom the responsibility of administering copyright was vested, did not establish a competent authority to administer copyright. However, with the establishment of the Nigerian Copyright Commission by the *Copyright Act*, the administration of copyright in Nigeria has been more effective. Sections 34-40³³, provide for the administration of copyright in Nigeria. The administration of copyright law is carried out majorly by the Nigerian Copyright Commission in conjunction with Copyright Societies, specialized legal practitioners and the judiciary. There are also other stakeholders such as the Nigerian Police and the

²⁸ n18, p.90.

²⁹ *Ibid*, 93

³⁰ *Ibid*, 93

³¹ O'Connell, A. 'Copyright and the UK Economy' *Online Database*. <<http://copyright-debate.co.uk/?p=842.sed>> accessed on 28th December, 2022.

³² *Copyright, Designs and Patents Act*, 1988.

³³ *Copyright Act*, 2004, Part III.

Customs and Excise Department who assist in the implementation of the mandate of the NCC.

Notwithstanding the general principle underlying the Berne Convention that a work once created, is protected automatically and its exercise and enjoyment not subject to any form of formalities, certain countries including Nigeria practice some form of registration system for copyright to exist, although, it is not a prerequisite for the conferment of copyright.³⁴

Nigeria like the UK provides a system of registration known as the ‘notification scheme’. It is not a mandatory registration scheme but rather a platform to enable authors give notice of the existence of their work in which copyright subsists. However, unlike the recordation system in the United Kingdom, failure by a copyright owner to notify the Nigerian Copyright Commission on the existence of a work does not affect the right of a copyright owner to commence any action for enforcement in relation to infringement of rights.³⁵

In addition, Section 38 (3)³⁶ empowers Copyright Inspectors to ‘prosecute’ (prosecution) in its legal sense may mean institution and carrying on proceedings, not necessarily criminal prosecution –*Yabugbe v COP*³⁷ conduct or defend before a court any charge, information, complaint or other proceedings’ arising under the Act. Whichever way one may look at it, there is nothing under the said Section 38(3)³⁸ empowering a Copyright Inspector to institute civil proceedings in respect of infringement of Copyright. The expression ‘or other proceedings’ in the said subsection should be construed *ejusdem generis* with the words ‘charge’, ‘information’ and ‘complaint’.

Furthermore, the Commission has the power to grant compulsory license to any qualified person to produce and publish a translation of a literary or dramatic or for the purpose of teaching, scholarship or research.³⁹ In pursuance of this power, the Commission shall on receipt of an application, for such compulsory license to produce and publish a translation of a work into any language, constitute a Copyright Licensing Panel.⁴⁰ A compulsory license granted to an applicant does not constitute an exclusive license.⁴¹

3.2.1 Works Eligible for Copyright

The Act protects copyrighted works such as literary, musical, artistic, cinematograph films, sound recording and broadcast. It also protects performer’s right and expression of folklore. The nature of rights reserved for each class of rights is similar with little

³⁴ C. M. Adelowo *et al*, ‘The Management of Copyright in the Creative Country Industry in Nigeria: Nollywood Experience’, *Paper Presentation* (8th Globelics International Conference, University of Malaysia, November 1-3, 2010).

³⁵ *Ibid*.

³⁶ Copyright Act of Nigeria, 2022, Section 34(3).

³⁷ (1999) 23 NSCC (PT 1) 651,654).

³⁸ (n36).

³⁹ Section 37(1), Fourth Schedule, Copyright Act of Nigeria, 2022.

⁴⁰ Section 37(2), Copyright Act, 2022.

⁴¹ Copyright Act, 2022, Paragraphs (4) of Fourth Schedule.

variation. However, by virtue of Section 6⁴² of the Act, the owner of copyright in a literary or musical work has the exclusive right to reproduce the work, publish and perform in public, make any recording in respect of the work and authorize any person to do same. The owner also has the right to distribute the work to the public for commercial purposes, broadcast or communicate the work to the public by making any adaptations of the work among others. Copyright is infringed by any person who, without the license or authorisation of the copyright owner, does or causes any other person to do an act, contrary to the provisions of section 15 (1)(a) of the Act.⁴³

The right to reproduce a literary work is reserved for the owner of the work and must comply with section 6(2).⁴⁴ In this regard, reproduction of the whole or substantial part of a work without license or authority is an infringement of the right of the owner. What is whole or substantial is not defined. However, the statement made by Lord Reid in the English case of *Ladbroke (Football) Ltd. v William Hill (Football) Ltd.*⁴⁵, that “the question whether the defendant had copied a substantial part of a work depends much more on the quality than the quantity of what he has taken” offers a much more guide to the determination of the issue. It suffices therefore to say that each case would be determined on its own facts.

Works that are eligible for copyright includes literary, artistic and musical works, sound recording, audio-visual work and computer software (S.1) and Folklore (S.4) For a work to be eligible for copyright protection it must be original – i.e. the work must be the independent creation of the author. The enforcement provisions under the Act increases penalties for copyright infringement to the civil remedies provided thereunder. In addition to the range of civil remedies available, the law imposes criminal liability to a fine or imprisonment up to three years or both on any one found culpable of infringement.⁴⁶

3.2.2 Conferment of Copyright

Like United Kingdom law, a work is protected by Nigerian copyright law only if it was made by a Nigerian author or a person who is a national of a country to which the Act applies. Alternatively the work is made by a person who on the date of the first publication of the work, was a citizen of a country or domiciled in a country to which Nigeria is a party to an obligation in a treaty or where it was first published in either of the following organizations, the United Nations or any of its specialised agencies, the African Union or the Economic Communities of West African State.⁴⁷

⁴² *Ibid.*

⁴³ Copyright Act, 2022.

⁴⁴ *Ibid.*

⁴⁵ [1964] 1 All ER 465.

⁴⁶ P. Goldstein, and B. Hugenholtz, *International Copyright. Principles, Law and Public* (Oxford University Press, 2013) 247.

⁴⁷ Section 5, *Copyright Act, 2022.*

3.3 Liability for Violating Copyright Law

3.3.1 Infringement of Copyright

In both jurisdictions, Copyright is infringed by any person who, without the license or authorization of the owner of the Copyright does the following acts⁴⁸:

- (1) Does or causes any other person to do an act, the doing of which is controlled by Copyright.
- (2) Import or causes to be imported into Nigeria any copy of a work which it had been made in Nigeria would be an infringing copy.
- (3) Exhibit in public any article in respect of which copyright is infringed.
- (4) Distributes by way of trade, offers for sale, hires, or otherwise for the purpose prejudicial to the owner of the Copyright any article in respect of which Copyright is infringed.
- (5) Makes or has in his possession plates, master tapes, machines, equipment, or contrivances used for making infringed copies of the work.
- (6) Permits a place of public entertainment or business to be used for a performance in public of the work, where the performance constitutes an infringement of the Copyright in work, unless the person permitting the place to be used not aware, and had no reasonable ground for suspecting the performance would be an infringement of the Copyright.
- (7) Performs or causes to be performed for trade or business or as supporting facility to a trade or business, any work in which Copyright subsists.⁴⁹

3.3.2 Action for Infringement

Section 16⁵⁰ provides that an action for infringement of Copyright shall be actionable at the suit of the owner, assignee, or an exclusive licensee of Copyright in the Federal High Court exercising jurisdiction in the place where the infringement occurred. In action for infringement, all reliefs by way of damages, injunctions, accounts, or otherwise shall be available to the plaintiff.

Where in any action for infringement of Copyright, it is proved or admitted that an infringement was committed, but at the time of the infringement, the defendant was not aware and had no reasonable grounds for suspecting that the Copyright existed in the work to which the action relates, the plaintiff will not be entitled to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement, whether or not any other relief is granted.⁵¹

⁴⁸ Section 15 of the Copyright Act, 2022.

⁴⁹ O. Jegede and W. Idiaru, "Overview of Copyright Law and Copyright Registration in Nigeria." *Online Article: Resolution Law Firm* <<https://www.mondaq.com/nigeria/copyright/983450/overview-of-copyright-law-and-copyright-registration-in-nigeria>> surfed on 13th May, 2021.

⁵⁰ *Copyright Act, 2022.*

⁵¹ J. A. Sokefun, "An Overview of the Protection of Intellectual Property in Nigeria" in O. Oliyide (Ed.) *The Nigerian Journal of Private and Commercial Law NJPCLJ* [2] (2001) p. 76. *The World Book Encyclopedia* (International) [4], (Scott Fetzer Company, 1992) p. 347.

Section 38 (3)⁵² empowers Copyright Inspectors to ‘prosecute’ (prosecution) in its legal sense may mean institution and carrying on proceedings, not necessarily criminal prosecution –*Yabugbe v COP*⁵³ conduct or defend before a court any charge, information, complaint or other proceedings’ arising under the Act. Whichever way one may look at it, there is nothing under the said Section 38(3)⁵⁴ empowering a Copyright Inspector to institute civil proceedings in respect of infringement of Copyright. The expression ‘or other proceedings’ in the said subsection should be construed *ejusdem generis* with the words ‘charge’, ‘information’ and ‘complaint’.

3.4 Other Statutes Regulating Copyright in Nigeria

Internationally, Nigeria is now a signatory to the Berne Convention, Rome Convention, Universal Copyright Convention and member of the World Intellectual Property Organization. Also, Nigeria has ratified the General Agreement on Tariffs and Trade (GATT) which contains regulations on trade related aspects of intellectual property rights. The Berne Convention took place as follows:

- (a) Berne Convention was in Berne, Switzerland, in 1886.
- (b) Rome Convention was signed on October 26, 1961.
- (c) Universal Copyright Convention (UCC) was adopted in Geneva, Switzerland on September 6, 1952.
- (d) Trade Related Aspects of Intellectual Property Rights (TRIPs) was signed on April 15, 1994 and effective on January 1, 1995, in Marrakesh, Morocco

Other complimentary treaties include the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, (Rome Convention). This convention provides international protection for record producers, as well as performers and broadcasters. Brussels Satellite Convention aimed at combating the misappropriation of satellite signals; Geneva Phonograms Convention which protects against unauthorised duplication of sound recordings; WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty aimed at bringing copyright protection into the digital age and the TRIPs Agreement which incorporates comprehensive enforcement of rights to deter piracy.⁵⁵

4. COMPARATIVE ANALYSIS OF COPYRIGHT PRACTICE IN NIGERIA AND THE UNITED KINGDOM

4.1 Nature of Protection of Copyright in United Kingdom after 1709 and Relative Import into Nigeria

The United Kingdom is undeniably the birthplace of copyright law legislation and codification, just as the ancient Greek world is considered as the cradle of art and culture.

⁵² Section 34(3) Copyright Act, 2022.

⁵³ *The World Book Encyclopedia* (International) [4], (Scott Fetzer Company, 1992) p. 347.

⁵⁴ Section 34(3), Copyright Act, 2022.

⁵⁵ T. Hart, ‘Copyright and the Constitution’. *Online Database* <<http://www.copyright.com/2010/09/copyright-and-the-constitution/>> surfed 20th April, 2022.

This is because the world's first copyright law, the *Queen Anne's Statute on Copyright* entered into force on April 10, 1710. But before this statute, the Queen granted the monopoly privileges in the fifteenth century to the printers. This also led to the printing trade developing its own system of regulation through the Stationers' Company in London.⁵⁶

The Statute of Anne actually created an alienable copyright and it aimed at protecting not only the authors, but publishers too as legal successors of authors. As part of this process, the Statute was a major step to creating the supposed civil state.⁵⁷ The importance of legal regulations on copyright relations and on copyright works can be found in the thought of Thomas B. Nachhar, who said that "The copyright system allocates control over certain creative content by awarding copyright protection to authors for their creative expression."⁵⁸

The development of copyright law of the United Kingdom has been characterized by a kind of fragmentation as illustrated by the creation of some copyright acts.⁵⁹ This was mostly shown by the legislation policy that the separate types of artworks were protected by separate acts. This legislative technique basically resulted, that there were no uniform principles, which would govern the general and uniform regulations of the different types of copyrighted works.⁶⁰

According to the Section 1 of the CDPA⁶¹ "Copyright is a property right". In relation to the meaning of copyright as a 'property', Lior Zemer, writes that "I have a copyright' is a challenge to the world. It denotes a property rights against all other conflicting rights and interests. It is superior to all non-rights. Like property, the strength of the title secures excessive rights of use and exclusion."⁶² The approach of copyright law as a "property" is an important difference between the common law and continental law countries. The so-called 'creator doctrine'²⁵ can be found in the CDPA too.⁶³ According to this doctrine the author is the initial copyright owner of the works. This doctrine leads to the difference between "authorship" and "ownership". The importance of the difference can be found, that "ownership flows from authorship".⁶⁴ Normally, the author is the first owner of the work,⁶⁵ (s)he created it, that is the creator doctrine. A significant exception is the area of

⁵⁶ E. Sápi, "Nature of the Protection in the Copyright Law of the United Kingdom" *European Integration Studies*, University of Miskolc (2018) (14) (1) pp. 84-96

⁵⁷ *Ibid*, 84.

⁵⁸ S. Stokes, *Art and Copyright* (Hart Publishing, Oxford and Portland, Oregon, 2012) 27.

⁵⁹ Statute of Anne, 1709; Engraving Copyright Act, 1734; Sculpture Copyright Act, 1798; Dramatic Copyright Act, 1833; Lectures Copyright Act, 1835; Fine Arts Copyright Act, 1862; Copyright Act, 1911; Copyright Act, 1956; and Copyright, Design and Patent Act (CDPA), 1988.

⁶⁰ S. Von-Lewinski, *International Copyright Law and Policy* (Oxford University Press, 2008) pp. 13-14.

⁶¹ *Copyright, Design, and Patent Act*, 1988.

⁶² L. Zemer, *The Idea of Authorship in Copyright*. (Routledge Press, London, 2016) 43.

⁶³ Sections 2 and 9, CDPA

⁶⁴ C. O. Nwabachili, "Authorship and Ownership of Copyright: A Critical Review" In C. C. Nwabachili, *Journal of Law, Policy and Globalization*. (34) (2015) 1.

⁶⁵ Section 11 (1), CDPA.

works made for hire. If the author is an employee whose job requires making an artwork, the employer is the first owner of any copyright in the work.⁶⁶ If the author is the first owner of copyright, it does not mean, that (s)he remains the all-time owner of the work, because (s)he can assign, transfer or licence the rights to another.⁶⁷ Consequently, the author has the moral rights⁶⁸ and the owner has the economic rights.⁶⁹

Succinctly put, it is worth mentioning that the CDPA (1988) is influenced heavily by both the European Union (EU) directives and international treaties. Thus, it has incorporated several amendments, up to the Digital Economy Act, 2017, enacted on April 27, 2017.

4.2 Rationale behind the Copyright Infringement

Some of the motives for engaging in copyright infringement are the following:

- (1) **Pricing** – unwillingness or inability to pay the price requested by the legitimate sellers
- (2) **Testing and evaluation** – try before paying for what may be bad value
- (3) **Unavailability** – no legitimate sellers providing the product in the language or country of the end-user: not yet launched there, already withdrawn from sales, never to be sold there, geographical restrictions on online distribution and international shipping
- (4) **Usefulness** – the legitimate product comes with various means (DRM, region lock, DVD region code, Blu-ray region code) of restricting legitimate use (backups, usage on devices of different vendors, offline usage) or comes with non-skippable advertisements and anti-piracy disclaimers, which are removed in the unauthorized product making it more desirable for the end-user
- (5) **Shopping Experience** – no legitimate sellers providing the product with the required quality through online distribution and through a shopping system with the required level of user-friendliness
- (6) **Anonymity** – downloading works does not require identification whereas downloads directly from the website of the copyright owner often require a valid email address and/ or other credentials⁷⁰
- (7) **Freedom of Information** – Not believing that the idea of copyright law can or should exist⁷¹
- (8) Sometimes only partial compliance with license agreements is the cause.⁷²

⁶⁶ Section 11 (2), CDPA

⁶⁷ The legal basis is the Section 90 of the CDPA, which states, that „copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.”

⁶⁸ E. Adeney, “The Moral Rights of Authors and Performers: An International and Comparative Analysis” (Oxford University Press, 2006).

⁶⁹ *Ibid*, 1.

⁷⁰ B. Gates, "The Bill & Warren Show" *Online Database* (Digital newspaper archive). <www.archive.fortune.com> accessed on 30th November, 2022.

⁷¹ D. Panethiere, "The Persistence of Piracy: The Consequences for Creativity, for Culture, and for Sustainable Development" *UNESCO Copyright Bulletin*. (13) (211) (Oxford University Press) 5th January, 2019.

⁷² M. Eaton "Tribeca Film Festival programmer urges film industry to forget piracy and embrace internet". *ABC News*. <<https://assets.documentcloud.org/documents/844100/188004334-mpaa-piracy-ban.pdf>> accessed on 7th April, 2022.

4.3 Exceptions to Copyright Protection in Nigeria and United Kingdom

It is worth noting that not all cases of publication of an author's work without authorization can be successfully instituted in Court as Copyright suit. In both jurisdictions, there are three major exceptions to the copyright law that are commonly used by educators and intellectual property experts. They are:

- (1) Fair use
- (2) Face-to-face instruction
- (3) Virtual instruction

Exceptions allow for the use of a work without requesting permission from the copyright holder and potentially paying fees, or being legally liable. The last two (face-to-face instruction and virtual instruction) work as the names imply.

The exception of fair use is the effect of the use upon the potential market for or value of the copyrighted work. Fair use provides for the legal, unlicensed citation or incorporation of copyrighted material in another author's work under a four-factor test. The four factors in measuring 'fair use' exception in Copyright are:

- (a) The purpose and character of your use;
- (b) The nature of the copyrighted work;
- (c) The amount and substantiality of the portion taken; and
- (d) The effect of the use upon the potential market.⁷³

The Nigerian Act under SS. 19 to 21⁷⁴ provide some exceptions with regard to permitted uses (fair use in other jurisdictions) for personal and teaching purposes, reproduction of single copy of a computer programme as a back-up and permitted use of copyright material by a library. The restrictions provided under s 19 apply to literary and artistic works which includes textbooks and learning materials used in the educational institutions. However there is no measure of what constitutes permitted use to determine an infringement of the provision.

The universities and other tertiary institutions in Ghana continuously infringe on the copyright regime by way of photocopying copyrighted works without license or permission. CopyGhana, a collecting society for authors has made several attempts to charge a universal fee per student under a blanket royalty scheme but this has been resisted by both students and authorities of these tertiary institutions. This is an unhealthy situation which threatens to deprive copyright owners of their livelihood in royalties. Whether the situation will continue is subject to the interpretation of Ghana's Supreme Court (within the Commonwealth) in the foreseeable future. The Canadian case of *CACHE Canadian Ltd v Law Society of Upper Canada*⁷⁵ certainly provides a guide for these tertiary

⁷³ *Ibid.*

⁷⁴ Copyright Act, 2022.

⁷⁵ [2004] 1 S.C.R. 339, 2004 SCC 13.

institutions to put their acts together before they are taken unaware. In that case the jurisdiction of the Supreme Court of Canada was invoked to decide on whether copyright was infringed when a single copy of a statute/book was copied for research purposes. Although, the Court held that copyright has not been infringed, the opinion of the Court was largely influenced by the access policy of the defendant which provided a disclaimer against liabilities of infringement by third parties.⁷⁶

4.4 Limitations/Restrictions to the Use of Copyright

Works eligible for Copyright, as earlier discussed, means that not all works can be copyrighted. Section 1 of the Act⁷⁷ provides that the following listed works qualify for Copyright:

- (1) Literary works;
- (2) Musical works;
- (3) Artistic works;
- (4) Cinematograph films;
- (5) Sound recordings; and
- (6) Broadcast.

However, there are limitations to the eligibility of copyrighted works. Thus, the limitations apply in the occurrence of the following

- (1) Sufficient effort was expended in making the work to give it its original character;
- (2) The work has been fixed in a definite medium of expression that is now known or to be developed later from which it can be perceived either directly or with the aid of any machine;
- (3) At the time the work was done, it was intended by the author to be used as a model or pattern to be multiplied by an industrial process.
- (4) The making of the work or the doing of any act about the work involved an infringement of copyright in some other work.⁷⁸

4.5 Offences Related to Non-Assignment and Licencing of Copyright in Nigeria vis-à-vis United Kingdom

Section 11⁷⁹ makes provisions for the assignment and licensing of copyright in Nigeria. It states that Copyright shall be transmitted by testamentary disposition or by operation of the law, as moveable property. The assignment will be limited to apply to only some of the acts which the owner of the Copyright has exclusive right to control, or to a party

⁷⁶ P. Adusei, K. Anyimadu-Antwi, and N. Halm, "Ghana in Access to Knowledge in Africa" *Online Database* <http://www.aca2k.org/attachments/281_ACA2K-2010-Ch3-Ghana.pdf> accessed 2nd March, 2022.

⁷⁷ *Copyright Act*, 2022.

⁷⁸ O. Jegede and W. Idiaru, "Overview of Copyright Law and Copyright Registration in Nigeria." *Online Article: Resolution Law Firm* <<https://www.mondaq.com/nigeria/copyright/983450/overview-of-copyright-law-and-copyright-registration-in-nigeria>> surfed on 13th May, 2021.

⁷⁹ *Copyright Act*, 2022

only of the period of the Copyright or to a specified country or geographical area. The assignment of Copyright and exclusive license to do an act controlled by the Copyright must be in writing to be effective.⁸⁰

Prima facie offences for non-assignment and licencing of copyright in work shall be the exclusive right to control the doing in Nigeria, in the case of a literary or musical work, to do and authorize the doing of any of the following acts⁸¹:

- (1) Reproduce the work in any material form;
- (2) Publish the work;
- (3) Perform the work in public;
- (4) Produce, reproduce, perform or publish any translation of the work;
- (5) Make any cinematograph film or a record in respect of the work;
- (6) Distribute to the general public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan, or similar arrangement;
- (7) Broadcast or communicate the work to the public by a loudspeaker or any other similar device;
- (8) Make any adaptation of the work;
- (9) Do about a translation or an adaptation of the work.⁸²

The doing of any of the acts mentioned above shall be in respect of a whole or a substantial part of the work either in its original form or in any way recognizably derived from the original.

4.6 The Challenge of Copyright to Education and Research in Nigeria and United Kingdom

Like any other proprietary right, enforcement of rights is of utmost importance in copyright matters. It is however common knowledge that Nigeria has a very weak copyright enforcement regime and piracy remains a mammoth challenge. While so many factors have been adduced for piracy in Nigeria, the inadequacy and sometimes lack of effective copyright enforcement laws is of significance. The author and copyright holder is the only one who can photocopy a book legally. Unless the copying is deemed fair use, people are prohibited from copying the book. This almost never happens, and more often it is the copier who is responsible for the distribution of illegal materials.⁸³

Also, changing of copyrighted image is still copyright infringement. It is creating a derivative work, and you need permission from the holder of the copyright on the original

⁸⁰ D. I. Bainbridge, *Intellectual Property* (Pearson Education, 2009) 162.

⁸¹ Section 6, *Copyright Act, 2022*.

⁸² M. H. Bell, *et al. Contemporary Intellectual Property. Law and Policy*, (2nd ed., Oxford University Press, 2008) 152.

⁸³ B. D. Alden "Can You Copy an Entire Book Legally?" *Online Database*
<<https://www.byreddavis.com/blog/2014/10/can-you-copy-an-entire-book-legally.shtml>> accessed on 30th November, 2022.

image to do that. In a case a copyrighted image is modified, and then used it publicly, it is copyright infringement.⁸⁴

Also, sharing copyrighted software content with other people is considered illegal. Sharing or downloading computer software (programs, games, etc.) is copyright infringement.⁸⁵

Typically, a slogan cannot be protected under copyright law as copyright does not protect short phrases. A short phrase can be protected in conjunction with an illustration or it may be protected in some cases, if it is taken from a larger well-known work, such as taking a line from a movie.⁸⁶

Copyrights protect expression and creativity, not innovation. Patents protect inventions. Neither copyrights nor patents protect ideas. Without some identifiable manifestation of the idea, there can be no intellectual property protection obtained and no exclusive rights will flow.⁸⁷ Thus, in its most general sense, a fair use is any copying of copyrighted material done for a limited and “transformative” purpose, such as to comment upon, criticize, or parody a copyrighted work. Such uses can be done without permission from the copyright owner.

5. PROSPECTS AND WAY-FORWARD TO COPYRIGHT ISSUES

There are four simple steps the holder of copyright can take that can help ensure the work is safe. These steps are as follows:

- (1) Ensure your work is properly marked. A correctly worded notice will deter infringement, as it states that the work is protected under law.
- (2) Register your work.
- (3) Keep or register supporting evidence.
- (4) Agreement between co-authors⁸⁸

How to Avoid Copyright Infringement include the following:

- (1) Copyright laws are designed to protect the creator of original works, which are creative expressions from others using and profiting their work, without permission. ...
- (2) Use Caution If It's Not Your Original Work. ...
- (3) Read, Read, Read. ...
- (4) Don't Believe the Urban Legends. ...
- (5) Look for Fair Use.⁸⁹

⁸⁴ “If you take an image from the web, modify it using tools like” *Online Database* <<https://www.quora.com/If-you-take-an-image-from-the-web-modify-it-using-tools-like-...>> Surfed 5th May, 2022.

⁸⁵ “Is file sharing or torrents illegal or legal?” *Online Database* <<https://www.computerhope.com/issues/ch001042.htm>> Surfed 5th May, 2022.

⁸⁶ “Can a Slogan Be a Trademark?” *Online Database* <<https://www.nolo.com/legal-encyclopedia/can-slogan-be-trademark.html>> Surfed 5th May, 2022.

⁸⁷ “Protecting an Idea: Can Ideas Be Patented or Protected?” *Online Database* <www.ipwatchdog.com/2018/11/17/protecting-idea-can-ideas-be-.../id=103389/> Surfed 5th May, 2021.

⁸⁸ *Ibid*, p.85

⁸⁹ “How to Avoid Copyright Infringement?” *Online Database* <<https://www.legalzoom.com/articles/how-to-avoid-copyright-infringement>> Surfed 5th May, 2022.

Furthermore, The BSA outlined four strategies that governments can adopt to reduce software piracy rates in its 2011 piracy study results:

- (1) "Increase public education and raise awareness about software piracy and IP rights in cooperation with industry and law enforcement."
- (2) "Modernize protections for software and other copyrighted materials to keep pace with new innovations such as cloud computing and the proliferation of networked mobile devices."
- (3) "Strengthen enforcement of IP laws with dedicated resources, including specialized enforcement units, training for law enforcement and judiciary officials, improved cross-border cooperation among law enforcement agencies, and fulfillment of obligations under the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)."
- (4) "Lead by example by using only fully licensed software, implementing Software Asset Management (SAM) programs, and promoting the use of legal software in state-owned enterprises, and among all contractors and suppliers."⁹⁰

6. RECOMMENDATIONS AND CONCLUSION

Based on the observations from this research work, the researcher makes recommendations as his suggested solutions to the problems identified, as well as the means of sustaining the positive effects. These recommendations are as follows:

- (1) The legislatures and every stakeholder should harness a determined effort to amend Nigeria's Copyright Act to reflect advancement in technology and global best practices, as this lies the prospect to addressing the legal issues bedeviled Nigeria's copyright.
- (2) The international and regional organizations which Nigeria is a member state should specifically recommend to the Nigerian legislative arm of government to amend the copyright Act which was enacted during the military ruling and later transformed in nomenclature from Degree to Act.
- (3) The international and regional organizations should set up international framework on copyright practice for international best practice and recommend to all its member states, including Nigeria to adopt same, and as well set up an administrative tribunal or an arbitration panel, or even a separate court that would be saddled with the responsibility of discharging urgently issues relating to copyright infringement.
- (4) Some commendable platforms like establishment of a social helpline used of digital signature and key encryption, "V-chip" in television set as provided in the American *Satellite Improvement Act* of 1999, creation of Business Software Alliance, etc. should be adopted for improved copyright practice.

Finally, for any nation to progress economically, it must not play down the development of its intellectual resources. The only way to ensure the protection of original intellectual

⁹⁰ *Berne Convention*, 1886, section 2, Article 2; "Shadow Market: 2011 BSA Global Software Piracy Study" *Business Software Alliance*. (N.P., 2012) p. 4.

works is by tightening provisions for the safeguard of copyright products and especially, liberalizing provisions in the extant copyright laws of the country to be able to accommodate products derived from the rapidly growing technology in the world. In Nigeria, the position of the country as Africa's largest market for copyrighted works has given Nigeria a bad name in the international community as the major hub of the global digital and software copyright infringement.

Copyright regimes also affect education and scientific research through their impacts on the diffusion of knowledge embodied in copyright media, such as print and Internet publications, software and databases, among others. However, copyright system can thus have important influence on human capital accumulation if properly harnessed and research by intellectual property scholars is intensified to address the emerging issues.