COPYRIGHT ACT OF NIGERIA, 2023: AN APPRAISAL OF RIGHTS

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ABSTRACT

This essay conducts a comprehensive evaluation of the Copyright Act of Nigeria, 2023, which replaced the Copyright (Amendment) Decree (No. 42) of 1999. Given the recent endorsement of the 2023 Act, a thorough examination is essential to uncover the advancements it has ushered in. The analysis adopts a doctrinal approach, utilizing the Copyright Act, 2023 as the primary source material. The study reveals that the Act introduces notable developments, including provisions safeguarding digital content, empowering the Copyright Commission to prohibit websites engaging in copyright infringement, and establishing protection for folklore as a traditional cultural expression. An integral finding of the essay is that the Act adeptly addresses the formidable challenges confronted by copyright holders in the digital realm. Significantly, it grants these holders the authority to pursue legal recourse against online infringements of their works. In essence, the Act establishes a robust framework to combat copyright violations in the evolving landscape of digital content dissemination. The essay underscores the transformative impact of the Copyright Act, 2023, asserting that it effectively addresses the intricacies posed by the digital domain. The newfound capabilities granted to copyright holders position them to assert their rights and take legal action against infringements, thereby reinforcing the protection of intellectual property in the contemporary era.

1. INTRODUCTION

Copyright falls under the different categories of rights that are protected by intellectual property law. Intellectual property law itself pertains to the legal rights connected to creative work or brand recognition and goodwill in the marketplace. A very broad range of items fall under the umbrella of intellectual property, including films, computer programs, inventions, drawings, and marks used by businesses to identify their products or services. The law offers redress in the event that someone copies or unfairly exploits the reputation or work of another and discourages such behavior. Intellectual property is made up of a variety of distinct types of rights or areas of law that give rise to rights. These rights are: copyright, rights in performances, the law of confidence, patents, registered designs, unregistered design rights, trade marks, passing off, malicious falsehood (trade libel).
Copyright gives the owner the right to do certain things in relation to his work, which includes making a copy, broadcasting or giving a public performance. Anyone else who does any of these things (known as the acts restricted by copyright) without the permission of the owner, infringes copyright and may be subject to legal action taken by the owner for that infringement.

The kinds of works that are protected by copyright include literary works, artistic works, musical works, sound recordings, films, and broadcasts. However, the Copyright Act of 2004 does not recognise databases as a unique category of work.

The Copyright Bill, 2022 was signed into law by the Nigerian President on March 17, 2023, resulting in the repeal of the Copyright Act of 2004. This newly signed bill will likely be referred to as the Copyright Act of 2023 (hereinafter referred to as the Act).

Therefore, this paper discusses and analyses the basics of copyright and other rights co-related with it with a view to identify the new developments introduced by the Act using doctrinal legal research.

2. DEFINITION

According to the Copyright Act of 2023, copyright is a property right that exists in certain specific types of works. The Act stipulated in Section 2(1) of the Act that literary works, musical works, creative works, audiovisual works, sound recordings, and broadcasts fall under the ambit of the Copyright Act. The copyright holder has control over how the work is exploited, for instance by manufacturing copies, selling them to the public, or allowing someone else to do it in exchange for payment.

The United States Copyright Office states that "Copyright is a type of intellectual property that protects original works of authorship as soon as an author fixes the work in a tangible form of expression." This definition states that in order for a work to be protected by copyright, it must be original and on a medium that is sufficiently persistent to allow for long-term perception, reproduction, or communication.¹

The World Intellectual Property Organization defined the term Copyright as a legal term used to describe the rights that creators have over their literary and artistic works.²

¹ https://www.copyright.gov/what-is-copyright/
² https://www.wipo.int/about-ip/en/
The Black's Law Dictionary, 9th Edition defined the term as a right granted to the author or originator of certain literary or artistic productions, whereby the creator is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the literary or artistic works and publishing or selling them.

3. THE NEW PROVISIONS UNDER THE COPYRIGHT ACT OF 2023

The Act provides a comprehensive explanation of copyright, encompassing various forms of creative works such as audiovisual, musical, artistic, literary, and broadcast. Furthermore, it tackles concerns related to digital and online usage of copyrighted works by enhancing author rights and imposing stricter punishments for criminal violations. Additionally, the Act specifically safeguards audio-visual works in digital content. It declares it unlawful to utilize any form of internet content, including images, films, sound recordings, and other outputs, without the creators' consent.

The Act brings significant benefits to creators, inventors, and brand owners, especially those in the digital realm. It aims to balance the fair compensation of artists with the public’s access to new works and information. Furthermore, the Act addresses the challenges faced by copyright holders in the digital sphere and empowers them to take legal action against online infringements. Overall, the Act demonstrates a bold step in addressing the risks posed by technological advancements.

Important New Clauses of the Act:

i. The new Act contains clauses that give copyright owners the authority to send out notifications of infringement for the removal or deactivation of links to illegal content. With regard to online content that violates copyright, the legislation gives the Nigerian Copyright Commission the authority to prohibit websites.

ii. The Act specifies the types of works that are eligible for copyright protection, including broadcasts, audiovisual works, sound recordings, and literary and musical compositions. The former act’s cinematography was removed from this list and replaced with audiovisual works.

iii. Folklore is a traditional cultural expression granted specific respect under the new Act and is shielded from exploitation for commercial advantage outside of its original context. Any party wishing to utilize folkloric terms for commercial purposes must first acquire consent from the involved indigenous group and/or the Nigerian Copyright Commission. Failure to comply might result in the user facing criminal penalties.

iv. The Act outlines criteria for relying on the fair dealing defense. These considerations include the intended use, the quantity and longevity of the section utilized in proportion to the work as a whole, and the impact of the use on the work’s potential market or worth.

v. The law guarantees digital content protection. The creations of online content providers, including images, movies, audio files, and other media, are thereby shielded from copyright
violations. Therefore, it is prohibited to utilize digital content without the owner’s or the authors’ permission.

vi. The new Act specifies the types of works that are eligible for copyright protection, including broadcasts, audiovisual works, sound recordings, and literary and musical compositions. The former act’s cinematography was removed from this list and replaced with audiovisual works.

The Act makes it easier for those who are blind or visually impaired to access published works. This signifies a big step forward in the development of a society where everyone can benefit from education.

4. THE NATURE OF COPYRIGHT

The Act provides that subject to specific exceptions, copyright in a work shall be exclusive right to control the doing in Nigeria of the following acts:

4.1 Exclusive Right to Control

1. In a literary or musical works, to do and authorize the doing of any of the following acts:
   i. Reproduce the work in any material
   ii. Publish the work
   iii. Perform the work in public
   iv. Produce, reproduce, perform or publish any translation of the work.
   v. Make any cinematograph film or a record in respect of the work.
   vi. Distribute to the public for commercial purposes, copies of the work by way of rental, lease, hire, loan or similar arrangement.
   vii. Broadcast or communicate the work to the public by loudspeaker or any other similar device.
   viii. Make any adaptation of the work.
   ix. Do in relation to a translation or an adaptation of the work, any of the acts specified

2. Others are free to produce comparable, or even identical, works as long as they do so independently and through their own efforts. Copyright does not protect ideas; rather, it only

protects the manifestation of an idea (i.e., its tangible form). In other words, copyright does not grant the owner of a work a monopoly. For example, Chimamanda Adichie does not have a monopoly to write on the Nigerian Civil War. Anyone else is free to write on the Nigerian Civil war, since the concept of the civil war is an idea and not protected by copyright. However, writing a novel about the civil war by taking parts of her novel, Half of a Yellow Sun infringes on her copyright, because the actual novel is the expression of the idea. In Donoghue V. Allied Newspapers Ltd, 19Lord Farewell acknowledging this view said:

"There is no copyright in an idea or ideas. A person may have a brilliant idea for a story or for a picture or for a play and one which appears to him to be original; but if he communicates that idea to an author or an artist or playwright, the production which is the result of the communication of the ideas to the author or the artist or playwright is the copyright of the person who has clothed the idea in form whether by means of a picture, a play or a book and the owner of the idea has no right in that production."

Notwithstanding, the boundary between idea and expression is notoriously difficult to draw.

4.2. Forms of Right under the Act

Copyright gives rise to two forms of rights:

a. The proprietary or economic rights in the work, for example the right to control copying, and

b. Moral rights which leave the author (or principal director of a film), who may no longer be the owner of the copyright with some control over how the work is used or exploited in the future.

The moral rights are independent of the economic rights and hence the importance of the distinction between the author of a work and the owner of the copyright subsisting in it.

3. Copyright is also restricted in its lifespan; it is of limited duration, although it must be said that copyright law is rather generous in this respect. For example, copyright in a literary work endures until the end of the period of 70 years from the end of the calendar year in which the author dies.

4. Ownership of the copyright in a work will often remain with the author of the work, the author being the person who created it or made the arrangements necessary for its creation, depending on the nature of the work. Except where it is a literary, dramatic, musical or artistic work and the author is an employee working in the course of his employment. In that case, his employer will own the copyright subject to agreement to the contrary.

5. Copyright, like other forms of property, can be dealt with; it may be assigned; it may pass under a will or intestacy or operation of law, and licences maybe granted in respect of it.
6. By Section 4 of the Copyright Act, 2023, the author of a work protected by the Copyright Act shall enjoy all rights enshrined in the act without making any registration of the work or formalities relating to that.

5. **LEGAL FRAMEWORK REGULATING COPYRIGHT IN NIGERIA**

5.1 International Instruments

1. Article 27(2) of the Universal Declaration of Human Rights.\(^4\)


3. Berne Convention for the protection of Literacy and Artistic Works, 1886


5. Universal Copyright Convention 1971

5.2 Municipal Instrument


6. **BODIES REGULATING COPYRIGHT**

6.1 World Intellectual Property Organization (WIPO) is the global forum for intellectual property policy, services, information and cooperation. It is a self-funding agency of the United Nations established in 1967, with 193 member States. Its mission is to lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all.

The WIPO Convention provides that membership is open to any state that is:

- a member of the Paris Union for the Protection of Industrial Property, or member of the Berne Union for the Protection of Literary and Artistic Works; or
- a member of the United Nations, or of any of the United Nations’ Specialized Agencies, or of the International Atomic Energy Agency, or that is a party to the Statute of the International Court of Justice; or

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\(^4\) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
Invited by the WIPO General Assembly to become a member State of the Organization.

Nigeria joined WIPO in 1995

2. Nigerian Copyright Commission (NCC): Decree No. 61 of 1970 was the first indigenous legal instrument regulating issues relating to copyright in Nigeria. This Decree was promulgated just after the Nigerian civil war ended but salient provisions in the law did not foresee the rapid socio-economic development, as well as influx of products of advanced technology into the country, which made illegal reproduction of works protected by copyright much easier.

The consequence of the inadequacy of Decree 61 to protecting creativity and scholarship was high scale piracy that robbed creators, organisations and individuals who helped produce or disseminate creative works as well as the society, of potential income.

As a result of increased pressure from artistes, authors and creators who are originally the copyright owners, the then Federal Military Government promulgated into law, the Copyright Decree No. 47 of 1988, which now exists as Copyright Act Cap C28 Laws of the Federation of Nigeria 2004. The Act which has been aptly described as one of the best of its kind, not only created favourable conditions for actualisation of authors’ potentials through comprehensive protection of creative works, it also incorporated establishment for the first time, of a machinery for the administration of copyright and neighbouring rights matters in Nigeria, via the creation of the Commission.

In 1988, the then President and Commander-in-Chief of the Nigerian Armed Forces, General Ibrahim Babangida, GCFR, approved the establishment of the Nigerian Copyright Council which was inaugurated in August 1989 with a Governing Board. It had the sole mandate for the administration, protection and enforcement of all matters on copyright in Nigeria. Owing to the need to align the Council with the emerging trend in global copyright administration and enforcement, its status was changed to a Commission in 1996. Subsequently, the Nigerian Copyright Act was amended twice by the Copyright (Amendment) Decree (No. 98) of 1992 and Copyright (Amendment) Decree (No. 42) of 1999.

Nigerian Copyright Commission (NCC) is responsible for the following:

- all matters affecting copyright in Nigeria as provided for in the Act
- monitoring and supervising Nigeria’s position in relation to international convention and advise Government thereon
- advising and regulating conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country;
- enlightening and informing the public on matters relating to copyright and
- maintaining an effective data bank on authors and their works
7. INFRINGEMENT OF COPYRIGHT

Section 36 of the Copyright Act provides:

"Copyright is infringed by any person who without the authorisation of the owner of the copyright -
(a) does or causes any person to do an act, which constitutes a violation of the exclusive rights conferred under this Act;
(b) imports or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy under this Act;
(c) sells, offers for sale or hire any work in respect of which copyright is infringed under paragraph (a) of this subsection;
(d) makes or has in his possession, plates, master tapes, machines, equipment or contrivances used for the sole purpose of making infringing copies of the work;
(e) permits a place of public entertainment or of business to be used for a public performance of the work, where the performance constitutes an infringement of copyright in the work, unless the person permitting the place to be used was not aware and had no reasonable ground to suspect that the performance constitutes an infringement of the copyright;
(f) permits within its premises, the reproduction of a copyright work; or
(g) performs or causes to be performed for the purposes of trade or business or the promotion of a trade or business, any work in which copyright subsists.

By the dint of this provision, any mentioned above shall make one liable to copyright infringement and Section 37 of the same Act went further to make it actionable at the court at the instance of the owner, assignee or an exclusive licensee of the copyright.

8. OTHER RIGHTS

8.1 Patent

A patent is a grant by a country to an inventor of an exclusive monopoly right to preclude another person from exploiting, making, using, importing, or selling invention his invention without his consent for a fixed period of twenty (20) years. Unlike Copyright, Patent Law is fixated on issuing "Monopoly" to the inventor of a product.

5 https://www.resolutionlawng.com/patents-law-in-nigeria/
It is envisaged that the inventor, during the period of such a monopoly would have derived maximum financial benefit from the exploitation of the invention.

The Patent and Design Act 1971 (the Act) is the principal patent law in Nigeria and by virtue of Section.

Patents are granted for the invention of products or processes. However, for it to be patentable, the invention must meet the following requirements provided in Section 1(1) of the Act to wit;

1. It must be new a new invention
2. It must have an inventive step that is not obvious to someone with knowledge and experience in the subject.
3. It must be capable of being made or used in some kind of industry and not be, a scientific or mathematical discovery, theory or method, a literary, dramatic, musical or artistic work, a way of performing a mental act, playing a game or doing business, the presentation of information, or some computer programs, an animal or plant variety, a method of medical treatment or diagnosis,
4. The invention must not be against public policy or morality.
5. An invention results from inventive activity if it does not obviously follow from the state of the art, either as to the method, the application, the combination of methods, or the product which it concerns, or as to the industrial result it produces; and
6. An invention is capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture.

8.2 Rights Conferred By Patent

Section 6 of the Patents and Designs Act 1970, provided that that the grant of a patent confers on the patentee the right to preclude all other persons from doing any of the following acts:

(a) where the patent has been granted in respect of a product, the act of making, importing, selling or using the product, or stocking it for the purpose of sale or use; and

(b) where the patent has been granted in respect of a process, the act of applying the process or doing, in respect of a product obtained directly by means of the process, any of the acts mentioned in paragraph (a) of this subsection.

Infringement of any of the rights above is actionable at the suit of the patentee or design owner in question.\(^6\)

8.3 Trademark

\(^6\)Section 25 of the Patents and Designs Act 1970
A trademark is a word, sign, symbol, logo, device, slogan etc. capable of distinguishing the goods or services of an enterprise from the other. They protect against confusion in the identification of products.\(^7\)

The laws governing trademark in Nigeria are Trade Marks Act, Cap T 13, Laws of the Federation of Nigeria 2004 ("TMA") and the Trademark Regulations 1990.

8.4 Industrial Design

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

8.5 Geographical Indications

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.

8.6 Trade Secrets

Trade secrets are IP rights on confidential information which may be sold or licensed. The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.

9. RUDIMENTARY QUESTIONS

a. What are the requirements for copyright to subsist in a work?

For copyright to subsist in a work under the Nigerian Copyright Act 2022 (the “Act”), it must come under the six categories of eligible works provided in Section 2; and in case of literary, musical or artistic works: (a) sufficient energy must have been expended on making the work to give it an original character; and (b) the work must be fixed in a definite medium of expression that exists or will be developed in the future, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device. For the other works – audiovisual works, sound recordings and broadcasts – copyright protection is inherent upon creation or fixation.

\(^7\) https://www.lawglobalhub.com/trademarks-in-nigeria/#google_vignette
Further, the author of the work must be a Nigerian citizen, a person habitually resident in Nigeria, or a company incorporated in Nigeria, and the work must have been first published in Nigeria.

Copyright protection is also conferred on works of foreign authors, corporate bodies or agencies; or government organisations from countries that are parties to international treaties or agreements to which Nigeria is also a party; on the condition that on the day the work is first published, at least one of the authors is a citizen of, or a habitual resident of such country, or corporate body established under the laws of such country. Where the work is first published in such a country which is a party to an obligation in a treaty or other international agreement to which Nigeria is a party, such work is also eligible for copyright protection.

b. Does Nigeria operate an open or closed list of works that can qualify for copyright protection?

Nigeria operates a closed list of works that can qualify for copyright protection.

c. In what works can copyright subsist?

Copyright can subsist in the following works: literary works; artistic works; musical works; audiovisual works; sound recordings; and broadcasts. The Act lists six categories of works that are eligible for copyright protection.

Works outside the categories of works referred to in question 1.3 above are excluded from copyright protection. Artistic works which, at the time the work was made, were intended by the author for use as a model or pattern to be multiplied by any industrial process, are also excluded from copyright protection.

Additionally, ideas, procedures, processes, formats, systems, methods of operation, concepts, principles, discoveries or mere data, official texts of a legislative or administrative nature, as well as any official translations, official state symbols and insignia, including flags, coat-of-arms, anthems, and banknote designs, are not eligible for copyright protection.

d. Is there a system for registration of copyright and, if so, what is the effect of registration?

Copyright is conferred on eligible works upon creation, without the need for registration. However, Nigeria operates a notification system, called the Nigerian Copyright e-Registration System (“NCeRS”) administered by the Nigerian Copyright Commission, under which protected works may be registered to provide evidence of the possible date of creation of the work and other facts stated in the application form in the event of a dispute.
e. What is the duration of copyright protection? Does this vary depending on the type of work?

The duration of copyright protection depends on the category of work.

Copyright in literary, musical, and artistic works (excluding photographs) lasts for 70 years from the end of the year in which the author dies, and where the author is a government or a body corporate, 70 years after the end of the year in which the work was first published.

Cinematograph films and photographs are protected for 50 years after the end of the year in which the work was first published. Copyright protection for broadcasts and sound recordings lasts for 50 years after the end of the year in which the broadcast or the recording was first published.

f. Who is the first owner of copyright in each of the works protected?

Copyright ownership is first vested in the author, with the exception of work made by or under the direction or control of the Government, a State authority or a prescribed International body. For these works, first ownership shall vest in that Government on behalf of the Federal Republic of Nigeria, in the State authority on behalf of the State in question, or in the international body in question, as the case may be, and not in the author.

g. Where a work is commissioned, how is ownership of the copyright determined between the author and the commissioner?

Ownership is vested in the first instance in the author, unless otherwise stated in the contract between the author and the commissioner.

h. Where a work is created by an employee, how is ownership of the copyright determined between the employee and the employer?

Generally, where a work has not been commissioned by the employer, the copyright vests in the first instance in the employee, as the author of the work.

Copyright in literary, artistic or musical works created by employees at newspapers, magazines or similar periodicals under contracts of service or apprenticeship shall, in the absence of any agreement to the contrary, vest in the employer for the purpose of publication in any newspaper, magazine or similar periodical, or for the reproduction of the work for the purpose of publication. In all other respects, the author (that is, the employee) shall be the first owner of the copyright of the work.
i. Is there a concept of joint ownership and, if so, what rules apply to dealings with a jointly owned work?

Joint ownership is recognised where people share a joint interest in the whole or any part of a copyright or they have interest in the various elements of copyright in a production consisting of two or more works.

j. Are there any formalities which apply to the transfer/assignment of ownership?

A transfer or assignment of copyright ownership will only take effect if it is in writing.  

k. Are there any ancillary rights related to copyright, such as moral rights, and, if so, what do they protect, and can they be waived or assigned?

Ancillary rights refer to all rights that are related to exploiting property in ways that are different from their original format. You may often see the terms, allied and ancillary rights, listed on a purchase agreement or an option agreement.

Moral Rights and Neighbouring Rights are the ancillary rights related to copyright under Nigerian law.

Moral Rights guarantee the author of the work the right to claim authorship of the work, in particular that his authorship be indicated in connection with certain acts done in respect of the work; the right to object to and to seek relief in connection with any distortion, mutilation or other modification of and any other derogatory action in relation to the work, where such action would be or is prejudicial to the author’s honour or reputation; and the right to object to a work being falsely attributed to him as the author. Moral Rights cannot be transferred during the lifetime of the author and are only transmissible upon the death of the author, by testamentary disposition or by operation of law.

Neighbouring Rights describe the rights of performers of musical or dramatic works or reading or recitals of literary works. They include, amongst others, the exclusive rights to: perform the work; record a performance of the work; broadcast the performance live; reproduce the performance in any material form; and make an adaptation of the performance. Neighbouring rights may be waived, licensed or assigned by the performer; however the moral rights of a performer are only transmissible upon the death of the performer, by testamentary disposition or by operation of law.

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8 Section 30(3) of the Copy Rights Act, 2023
Further, the authors of artistic works (excluding architectural works or works of applied art), and manuscripts of a literary work or of a musical composition have an inalienable right to a share in the proceeds of any sale of that original work, subject to regulations made by the Nigerian Copyright Commission.

1. Are there circumstances in which a copyright owner is unable to restrain subsequent dealings in works which have been put on the market with his consent?

Nigeria does not have a well-defined doctrine of exhaustion of rights. However, it is safe to say that a copyright owner may be unable to restrain subsequent dealings in the circumstance where the dealings in question do not offend his moral rights.

The exhaustion of intellectual property rights constitutes one of the limits of intellectual property (IP) rights. Once a given product has been sold under the authorization of the IP owner, the reselling, rental, lending and other third party commercial uses of IP-protected goods in domestic and international markets is governed by the principle.\[1\]

After a product covered by an IP right, such as by a patent right, has been sold by the IP right owner or by others with the consent of the owner, the IP right is said to be exhausted. It can no longer be exercised by the owner. This limitation is also referred to as the exhaustion doctrine or first sale doctrine.

m. Are there any statutory enforcement agencies and, if so, are they used by rights holders as an alternative to civil actions?

The Nigerian Copyright Commission is statutorily responsible for all matters affecting copyright in Nigeria. They are available to rights owners in addition to civil action.

n. Other than the copyright owner, can anyone else bring a claim for infringement of the copyright in a work?

Copyright infringement claims may also be instituted by assignees, exclusive licensees and collecting societies.

o. Can an action be brought against ‘secondary’ infringers as well as primary infringers and, if so, on what basis can someone be liable for secondary infringement?

An action can be brought against “secondary” infringers as well as primary infringers, as the Act does not make any distinction between primary or secondary infringement.
p. Are there any general or specific exceptions which can be relied upon as a defence to a claim of infringement?

Defendants to copyright infringement claims can rely on the specific exceptions from copyright control on the grounds of private use, parody, satire, pastiche or caricature and uses that amount to fair dealing.

In determining whether the use of a work in any particular case is fair dealing, the purpose and character of its usage, nature, amount and substantiality of the portion used, and effect of the use upon the potential market or value of the work, will be considered.

q. Are interim or permanent injunctions available?

Interim and perpetual injunctions are available in copyright infringement actions. However, no injunctions shall be granted in copyright infringement proceedings to authorise the demolition of a completed or partly-completed building, or to prevent the completion of a partly-completed building.

r. On what basis are damages or an account of profits calculated?

This will depend on the court as well as the plaintiff.

Where it is proven or admitted that copyright infringement was committed but the defendant was not aware at the time of infringement and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff would not be entitled to receive damages, but would be entitled to an account of profits in respect of the infringement, without prejudice to any other reliefs.

s. What are the typical costs of infringement proceedings?

The cost of infringement proceedings is determined by a number of factors. The filing fees are influenced by the size of the claim, with the maximum filing fees being NGN 50,000, and the professional fees varying depending on the law firm and the experience of the counsel handling the matter.

 t. Is there a right of appeal from a first instance judgment and, if so, what are the grounds on which an appeal may be brought?

There is a right to appeal from the first instance judgment of a trial court. Grounds of Appeal may be brought by an appellant on any issues of fact or law or procedure which, if upheld, would lead
to the appeal being allowed. Particulars of the errors made by the court must be supplied, alongside
the relevant grounds, and the appellant must also specify the relief being sought on appeal.

**u. What is the period in which an action must be commenced?**

The Copyright Act is silent on this.

**v. What is the threshold for criminal liability and what are the potential sanctions?**

The plaintiff in a copyright infringement lawsuit has the burden of proving two elements: that they
own a copyright, and that the defendant infringed it.

1. **The Plaintiff Owns a Valid Copyright**

To establish ownership of a valid copyright, a plaintiff must demonstrate that the work is original,
and that it is subject to legal protection. Copyright law protects “original works of authorship” that
exist—or could exist—in a “tangible medium of expression.” This includes books and other
literary works, musical compositions, musical recordings, visual works like paintings or
photographs, films and videos, and computer code. The U.S. Supreme Court has held that
“originality is a constitutional requirement” in copyright law and it “requires independent creation

Certain works are not subject to copyright protection. These include:

- Logos, business names, or brand names, which might be subject to trademark protection;
- Processes or systems, which might be subject to patent protection;
- Information that is generally known to the public;
- Statutes, court decisions, and other public materials; and
- Ideas and concepts.

In *Baker v. Selden*, 101 U.S. 99 (1879), the Supreme Court held that, while a book describing a
particular system or process could be protected by copyright, that protection does not extend to the
system or process itself.

Next, the plaintiff must establish that they have complied with the formal requirements found in
the copyright Act for giving notice about a copyright.

Potential sanctions are fines varying from NGN 1,000 – NGN 10,000 per copy of the infringing
work, depending on the offence, conviction for a term of imprisonment ranging from one year to
five years (and/or payment of fines varying from NGN 1,000 (per copy of infringing work) – NGN 5,000,000), depending on the offence, or to both a fine and imprisonment.

**Additional Elements for Criminal Copyright Infringement**

Copyright infringement could be a criminal offense if the alleged infringer meets two additional elements.

1. **The Defendant Acted Willfully**

   A “willful” act, in this context, means that a person acted intentionally in a way that violated the law. Federal appellate courts are split on what prosecutors must prove:
   - The defendant willfully copied or otherwise used the copyrighted work, or
   - The defendant willfully infringed the copyright.

   Most courts have adopted the latter standard, requiring proof beyond a reasonable doubt that a defendant intended to infringe a copyright.

2. **The Defendant Sought “Commercial Advantage or Private Financial Gain”**

   Prosecutors must show that a defendant intended to make money or obtain some other gain from their infringement. It is not necessary to show that they actually gained anything.

**10. CONCLUSION**

The Act effectively tackles the formidable challenges faced by copyright holders in the digital domain by granting them the authority to take legal action against online infringements of their works. This Act represents a courageous endeavor to address the imminent perils associated with technological advancements.

It is recommended that the Act be subjected to regular reviews amendments to ensure its relevance and effectiveness bearing in mind the rapid impact of technology and AI on Intellectual Property.