

Nigeria Creative Industry and the 2022 Nigerian Copyright Act: A Review

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Abstract

This study evaluates the 2022 Nigerian Copyright Act's potential to foster the country's music industry growth amidst rapid digitalization and socio-economic shifts. Using the repealed copyright Act 28 of 2004 as the baseline, this review explores the relevance of the new act in contending with emerging realities such as vibrant digital space, improved communication technology and volatile economic terrain that are prevalent in the country. Through a mixed-methods approach, incorporating legal documents and stakeholder insights, the paper identifies an improvement in the content of the new act. Findings revealed that the injection of new clauses in the new act is more proactive than reactionary. The paper also suggests a periodic review of the copyright act for it to maintain its bite and be in consonance with the global practices.

Keywords: Copyright act, Digitization, Technology, Musical arts, Contemporary

Introduction

Demand for creative works responds to economic, cultural and social indices. (Oriakhogbe & Fenemigho, 2014). Therefore, to arrest the possible drifts and lapses in the music industry, shore-up the fundamentals of the music business and regulate the administration of the industry, laws and administrative processes are constantly reviewed to cater for those emerging realities that are germane to its growth and sustenance. This has been the practice in Nigeria from the inception of the country. Having realized the importance of copyrights in the overall success of the industry, relevant laws in Nigeria have constantly been enacted and reviewed to conform to the global standard and also to reflect innovations in the socio-polity, particularly those innovations that have direct bearing on the music industry, such as technology. It is to this effect that the former president of Nigeria, Muhammadu Buhari, signed into a law the copyright act of 2022 sometimes in March 2023. While this act is a review of the old act, it was designed to mitigate those challenges of the 21st century that are confronting the industry. The question now is, to what extent has this new act provided for the rising challenges in the music industry at large?

It is to this extent that this paper is aimed at enhancing understanding of copyright administration and management in Nigeria's music industry. It examines the relevance of copyright in modern music production and management, evaluates the traditional African perspectives of copyright and artistic ownership, explores various perspectives of different copyright laws that had been in operation, and assesses the new law's provisions in mediating growth in the industry by addressing existing gaps. By bringing to the fore, relevant provisions of the new act, the paper is designed to ultimately

benefit, the Nigerian artists and copyright owners who often face challenges due to avalanche of issues impeding the growth of the industry and practitioners. It is also hope that relevant government agencies, departments and academics will benefit from the paper. The approach to the paper entails a cursory overview of previous copyright bills to highlight the lapses. Thereafter, the newly enacted act/bill in circulation is reviewed in perspectives to see how adequate it is in addressing the present realities. It is also important to assess the new copyright law and how it has conformed to the global standard of practice. The protection of copyright preserves and develops the national culture; its importance cannot be overemphasized. (WIPO, 2016). World Intellectual Property Organization, WIPO, state further that;

The interest of developing countries in the protection of copyright and related rights goes beyond development of domestic cultural industries into the realm of international trade and development. The extent to which a country protects IP rights is inextricably linked to that country's potential to benefit from the rapidly expanding international trade in goods and services protected by such rights. (p. 32).

In this paper, the researchers draw substantially from available resources such as the Nigerian Copyright Act, 1970, 1988, 2004, Benin Convention art, South Africa copyright act World Intellectual Property Organization, WIPO Treaty in reviewing the Nigerian Copyright Act 2022. Relevant data were also be collated using the interview methods. This work has thus been divided into four parts, the first of which is the introduction. The second part looks at the historical development of copyright law and practices in Nigeria, while the third part

undertakes a comparative analysis of the old and new laws. It does a critical review of the two in determining how adequate it can be in mediating the various notes of advancement that have characterized the industry in recent times while the fourth part shall contain the conclusion and recommendations.

Historical overview

Copyright refers to the exclusive rights granted to creators of original works, recognizing their intellectual property as their own. These rights, categorized as moral and economic, allow creators to control, enjoy, and benefit from their work for a limited time. That means the rights are not owned in perpetuity. After the period of rights ownership, the rights are relinquished to the public or restricted according to law.

In traditional African musical arts, while the term "copyright" may not be explicitly used, selective ownership and protection of creative works are recognized within cultural norms. This collective ownership approach differs from European cultures, where individual rights are emphasized. Research suggests that traditional African societies have long acknowledged intellectual property rights, despite differences in documentation and commercialization. In Nigeria, for example, creators' rights were implicitly recognized and protected, even if not formalized like Western copyright systems. The key differences lie in the oral tradition of African arts, contrasting with Western written traditions. Nonetheless, the concept of ownership and control over creative works has existed in Nigerian culture, even if not initially driven by commercial purposes.

Nigeria's modern copyright law has its roots in the United Kingdom's laws, due to their historical and colonial ties. This relationship between the two countries and this law can be understood through the lens of economic and political interests, particularly as Nigerians

increasingly relied on Western literary, artistic, and musical works. The British copyright law of 1912, in written form, which replaced the Statute of Anne (1710), introduced concepts of moral and economic rights, emphasizing respect, appreciation, and remuneration for creators. However, this as law introduced by the colonial masters, had limited impact on ordinary Nigerians' daily lives, likely due to cultural and religious differences between Britain and Nigeria as well as other fundamentals. For instance, the British tradition of documenting creative works in writing was unfamiliar to Nigerians, who favored communal ownership and shared creativity. The British approach was seen as individualistic, contrasting with Nigeria's oral tradition and communal values.

The post-colonial era saw Nigeria having the first indigenous law on copyright in 1970. This law, enacted as decree 61, was the first attempt at indigenizing the regulations guiding the right of artists to own their works and administer the usage. The act was passed on the 24th day of December in 1970 under the then General Gowon led military government of Nigeria. This copyright law provides for works eligible for copyright, conferment of copyright, nature of copyright, ownership structure, assignment and licensing, infringement and penalties arising from infringement. It also makes provisions for the administration of the law which enables the establishment of a competent authority to resolve copyright licensing and administrative conflicts. The major shift in this legislation is contained in the first Schedule to the Act which provided for the term of copyright. This section stipulated the term from 50 years after the death of the author to 25 years for literary, musical and artistic works. While a reduction of 25 years was propagated in the case of photography after the end of the year in which the work was first published.

The loopholes that sign poled this act became apparent early in its existence. 1970 signified the end of the Nigeria civil war and commenced an era of oil-boom economic prosperity. With increase in wages, this period attracted immense wealth to the country and the peoples' disposable income increased tremendously. This period, the Nigerian entertainment industry entrenched its presence in the international frontiers with foreign musicians and music in high demands. The wave of technological advancement brought with it gadgets like cassette player and cassettes duplicators. In addition to these are radios and television sets, which became house hold products. In effect, these gadgets and equipment served as tools for mass music production which further brought about cheaper and easier copying. The development endangered the inalienable rights of artists to control their works. Despite several anti-piracy raids and collaborations with the police, piracy was a major setback for the 1970 copyright act. The inadequacy of this act to make provision for penalties for copyright infringers became a major lapse that weakens the law. The general perception of practitioners is that the law was not reflective of the peculiarities of the country's creative industry and it carried the burden of the colonial law that was inherited. While reflecting of the inefficiency of the act Okoroji (2008) says;

The very weak provisions of Decree No 61 of 1970,... was identified as the major obstacle to effective confrontation of the copyright problem. The civil provisions were cumbersome and had many loopholes... The criminal sanctions...were laughable. There was no provision for any imprisonment. There was therefore very little legal deterrent against piracy... It became very clear that the most important and urgent task ...

was to get an effective copyright law promulgated in Nigeria. (np)

The ineffectiveness of the 1970 act became apparent for the time it existed and for the purpose it was created. Expectedly, another copyright act was promulgated in 1988 to replace the 1970 law and attend to the noticeable shortfalls. In quick successions the new law (1988 act) was amended in 1992 and 1999. In addition to improving on the 1970 copyright act, the 1988 act delved into the area of copyright administration. This special provision was captured by Nwabachili & Udeoji (ibid) as follows;

The 1988 Act established the Nigerian Copyright Council and reasonably provided safeguards and remedies and sanctions for copyright infringement. The 1992 amendment altered section 38 which provides for the appointment of Copyright Inspectors who had authority to search infringers' premises and make arrests, even without warrant (p. 144).

The deregulation of the broadcast media in Nigeria with decree 38 of 1992 came with the establishment of the Nigerian Broadcasting Commission, NBC, as the regulatory body. The decree abolished the monopoly of the Nigerian Broadcasting Commission and gave way for the establishment of private broadcast stations. In 2002, the Nigeria government further deregulated the telecommunication sector and established the Nigerian Communication Commission, NCC. All these could be attributed to the Federal government of Nigeria's commitment to the indigenization policy. As explained by Ogbuagu, (1983), this policy was initiated in 1970 and aimed at setting greater participation of Nigerians in the ownership, management and control of the productive enterprise in the country. The basic objective of Nigeria's foreign investment policy since the end of the civil war, as indicated by Biersteker, (1983)has

been to increase indigenous control over economic activities.

The establishment of the NBC and NCC, which were fallouts of the indigenization policy of the government, further reinforced the need for effective copyright laws. The NBC decree, for instance encourages increase in home grown content in both the television and radio stations. That amounted to a direct call to local artists, musicians in the case, for greater participation. The introduction of global satellite communication system, GSM in Nigeria in 2001 by NCC was another policy that put pressure on the copyright commission to become responsive and proactive. To this effect, more laws regulating the copyright management were enacted. It was in response to these developments that the copyright act of 1998 was repealed and another, law was promulgated in 2004 by an act of parliament no 28 of that year.

Coming after firth four years of indigenization of copyright laws and administration in the country, the 2004 act was verse in scope. Prior the emergence of the act the, a survey of the industry revealed that it was fraught with problem arising from, inadequate and ineffective legal framework. Other problems associated with the act was the poor orientation of authors or creators of works about the importance of copyright; ineffective market strategy for distribution of copyright works in Nigeria, lack of

awareness; the lack of will to enforce copyright laws, inability of the Nigerian Copyright Council to maintain same pace with, copyright institution of other jurisdiction especially with the advancement of technology in the world at large.

While the 2004 act made strides in responding to most of these challenges, it never envisaged the rate at which the industry would be affected by technological innovations and digitization. Within a few years of existence the act was confronted with such innovations like interpolation- an interpolation is when a recording is recreated note for note and reflects the underlying composition. Other innovations include surfing, streaming, sampling- sampling is a snippet of an original song that has been copied and pasted into an entirely new music piece, and intense social media activities. In all these, owners' rights were flagrantly abused. For instance, the emergence of internet has shaped music distribution and marketing channels. Prior to this time, means of music marketing and distribution were limited to radio, Television, public performances, such that conventional sale of hard copies has declined significantly since music is largely consumed in these platforms such as YouTube etc

The researchers have undertaken this review for two reasons; to premise the present study and also in justification of the study.

Comparative Table of the Copyright Act, 2022 and the Repealed Act

Section in The New Act	Side note	Equivalent In the Old Act	Remarks
s. 1.	Objectives of the Act.	None	s. 1.
s. 2.	Works eligible for copyright.	s. 1	
s. 3.	Ineligibility for copyright.	None	
s. 4.	Formalities.	None	
s. 5.	Copyright by virtue of nationality or.	s. 2	The new Act used habitual residence as against domicile in the old act.
s. 6.	Copyright by reference to country of	s. 3	
s. 7.	Copyright in works of government, state authorities and international bodies	s. 4	
s. 8.	Copyright by reference to international agreements	s. 5	
s. 9.	Nature of copyright in literary and musical works	s. 6	The nature of copyright, literary, artistic and cinematography films were provided for separately under the old section 6

s. 10.	Nature of copyright in artistic works.	s. 6	Ditto
s. 11.	Nature of copyright in audiovisual works.	s. 6	Ditto
s. 12.	Nature of copyright in sound recordings.	s. 7	
s. 13.	Nature of copyright in broadcasts.	s. 8	
s. 14.	Author's moral rights.	s. 12	Referred to under the old Act as right to claim authorship.
s. 15.	Right to remuneration for broadcasting of sound recording	None	s. 15.
s. 16.	Broadcasting of works incorporated in an audio – Visual work	s. 9	s. 16.
s. 17.	Right to share in proceeds of sale.	s. 13	
s. 18.	Commencements of rights.	None	
s. 19.	Duration of copyright.	First schedule	

s. 20.	General exceptions.	Second Schedule	Te exceptions have been enlarged under the new act
s. 21.	Acts for purposes of instruction or examination	None	
s. 22.	Recording of broadcasts by educational establishment	None	exceptions exist in respect of educational institutions, the old Act does not have an exception specifically on broadcasts by educations establishments
s. 23.	Restriction on reprographic copying by educational institutions	None	
s. 24.	Subsequent dealings with authorized copies	None	
s. 25.	Special provisions for archives, libraries, museums and galleries	Partially in s. 15	The exceptions under the new Act are more elaborate
s. 26.	Special exceptions for blind, visually impaired otherwise print disable persons	None	The only exception under the old Act was in respect of Braille in the second schedule par.(s)

s. 27.	Special exceptions in respect of sound recording of musical works	Third Schedule	
s. 28.	First ownership of copyright.	s. 10	
s. 29.	Ownership of copyright in collective works	None	
s. 30.	Assignment and license.	S. 11	
s. 31.	Compulsory license to produce and published translation	Fourth schedule par 2	
s. 32.	Compulsory license to reproduce and publish work for certain purposes	Fourth schedule par 3	
s. 33.	License for broadcasting organizations.	Fourth Schedule par 4	
s. 34.	Definitions for the purposes of sections 31-133	Fourth Schedule	
s. 35.	Compulsory license for public interest.	None	
s. 36.	Infringement of copyright.	s. 15	
s. 37.	Action for infringement.	s. 16	

s. 38.	Order for inspection and seizure.	s. 25	
s. 39.	Limitation to the right of action.	s. 17	
s. 40.	Forfeiture of infringing copies.	None	
s. 41.	Infringement actionable as a breach of statutory duty	s. 19	
s. 42.	Admissibility of affidavit evidence.	s. 42	
s. 42.	Admissibility of affidavit evidence.	s. 42	
s. 44.	Criminal liability.	s. 20	
s. 45.	Aiding and procuring copyright offence.	None	
s. 46.	Offence by bodies corporate.	s. 22	
s. 47.	Simultaneous actions.	s. 24	
s. 48.	Duty to keep records.	s. 14	
s. 49.	Anti-piracy measures.	s. 21	
s. 50.	Circumvention of technological protection measures	None	

s. 51.	Falsification, alteration or removal of rights management information	None	
s. 52.	Actions for circumvention of technological protection measures and rights management information	None	
s. 53.	Restriction on importation.	s. 44	
s. 54.	Notice to take down.	None	
s. 55.	Take down of infringing content.	None	
s. 56.	Procedure for suspension of accounts of repeat infringer	None	
s. 57.	Misrepresentation.	None	
s. 58.	Information domiciled in systems or network of directions of users	None	
s. 59.	Information location tools.	None	
s. 60.	Identification of infringer.	None	
s. 61.	Blocking access to online content.	None	
s. 62.	Application of this Part.	None	
s. 63.	Right of performers.	s. 26	
s. 64.	Protected performance.	None	

s. 65.	Presumption of consent.	None	
s. 66.	Moral rights of performers.	None	
s. 67.	Collective performances.	None	
s. 68.	Exceptions to performer's rights.	None	
s. 69.	Transfer of performer's rights in audio-visual fixations.	None	
s. 70.	Duration of performer's right.	s. 27	
s. 71.	Infringement of performer's right.	s. 28	
s. 72.	Action for infringement of performer's right	s. 29	
s. 73.	Criminal liability in respect of infringement of performer's right.	s. 30	
s. 74.	Protection of expressions of folklore.	s. 31	
s. 75.	Infringement of expressions of folklore.	s. 32	
s. 76.	Criminal liability in respect of infringement of expression of folklores	s. 33	

s. 77.	Establishment of the Nigerian Copyright commission	s. 34	
s. 78.	Functions and powers of the commission	s. 34	
s. 79.	Establishment and membership of the governing board	s. 35	The Schedule to the new board provides for proceedings of the board and other incidental matters
s. 80.	Tenure of office.	None	
s. 81.	Cessation of membership.	None	
s. 82.	Removal of the Chairman or any members of the board of the commission	None	
s. 83.	Appointment of the Director-General and other staff of the commission	s. 36	
s. 84.	Removal of the Director-General, Chairman and other members of the Board	None	
s. 85.	Appointment of other staff of the commission	s. 36	
s. 86.	Copyright officers.	s. 38	Copyright inspectors under the old Act are now copyright officers

s. 87.	Registration of works.	None	
s. 88.	Collective Management Organizations.	s. 39	Collecting societies under the old act are now collective management organization
s. 89.	Levy on copyright material.	s. 40	
s. 90.	Dispute Resolution Panel.	s. 37	Under the old Act known as copyright licensing panel with limited powers
s. 91.	Establishment of fund for the commissions	None	
s. 92.	Expenditure of the Commission.	None	
s. 93.	Annual estimates, accounts and audit.	None	
s. 94.	Annual report.	None	
s. 95	Borrowing and investment power of the commission	None	
s. 96.	Power to accept gifts.	None	
s. 97.	Regulations.	s. 45	
s. 98.	Application of the Pensions Reform Act.	s. 36(4)	

s. 99.	Power of the Minister to give directives.	s. 50	
s. 100.	Restriction on execution against property of the commission	s. 49	
s. 101.	Indemnity.	None	
s. 102.	Avoidance of conflict of interest.	None	
s. 103.	Jurisdiction.	s. 46	
s. 101.	Indemnity.	None	
s. 104.	Limitation on suit against the commission	s. 47	
s. 105.	Service of documents.	s. 48	
s. 106.	Repeals and savings provisions.	s. 52	
s. 107.	Transitional provisions.	s. 52	
s. 108.	Interpretation.	S. 51	
s. 109.	Citation.	s. 53	
Schedule			The new Act has only one schedule dealing with the proceedings of the Board and other incidental matters, whereas the old Act has 5 schedules the subject matter of which are now substantive provisions in the Act.

John O. Asein, Nigerian Copyright Commission

analysis

Total number of clauses modified	Total number of clauses newly introduced	Total number of sections retained
9	45	53

Total no of sections plus schedules = 107
 Total % modified clauses in the new copyright law = 8.4
 Total number of newly introduced sections in the new copyright law = 42
 Total number of sections retained = 53.
 The one year operation of the new law is insufficient to arriving as an assessment but it is obvious that the aspiration of the industry is largely met (Amudipe 2024 oral interview). Amudipe is the article deputy director (operation in the Nigerian copyright Commission, Lagos division acknowledge the rigorous undertaking by the commission in getting pass the basic challenges in the industry with the new law.

Summary and Conclusion

This paper tried to examine the viability of the newly introduced copyright law in Nigeria. It started by defining the concept of copyright within the global view of protecting the interest of intellectual property owners. To establish the relevance of the subject copyright to the contemporary system, the paper chronicled the emergence of copyright law tradition in the country from the pre-colonial tradition to the present day. It focused on those factors that led to the ineffectiveness of the laws thereby justifying the reasons for the enactment of new laws and amendments. All these led to the review of the present copyright laws using the most recent repealed act 28 of 2004 as the baseline.

In doing these the paper identified a concerted effort at keeping the copyright system as being operated in Nigeria in tandem with the global standard. The global standard in this case is being dictated by such organizations like World Intellectual property organization, WIPO, the Berne and Rome conventions of copyright. It traced the origins of such protection from our colonial past- it having its roots in the English copyright system, up until now. This paper recommends continuous efforts at sustaining the tempo of review activities on the newly introduced copyright lasts without events overtake it before such review is done.

In conclusion, the newly introduced copyright law in Nigeria represents a significant step towards aligning the country's intellectual property protection with global standards. By examining the evolution of copyright law in Nigeria and identifying the factors that led to the ineffectiveness of previous laws, this paper has highlighted the importance of continuous review and adaptation to ensure the law remains relevant and effective. As Nigeria's creative industry continues to grow and contribute to the global economy, it is crucial that the copyright system remains robust and responsive to the needs of creators and innovators. To achieve this, it is recommended that regular reviews and updates be conducted to keep pace with the

rapidly changing global landscape, ensuring that Nigeria's copyright law remains a catalyst for creativity, innovation, and economic growth. The advent of Artificial intelligence, AI, for instance, is already posing a challenge for the industry. This has already put to task the copyright administrators if they are to keep pace with the growth in the industry.

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