

Appraising the Impact of the Nigerian Copyright Act and Regulations in Combating Piracy in Nigeria

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Abstract

Copyright Piracy is pervasive in Nigeria and consequently, it has affected the fortunes of copyright owners. The Copyright Act provides for anti-piracy measures in section 25 of the Act, which empowers the Nigerian Copyright Commission to make regulations to combat menace. Based on this power, the Copyright Commission has made regulations and adopted various measures to combat copyright piracy in Nigeria. This paper examined the impact of the Copyright Act anti-piracy measures and the copyright regulations on the war against piracy in Nigeria. It was found that the anti-piracy measures provisions of the Copyright Act and the regulations made pursuant to the Act have impacted positively on the fight against piracy particularly in the music and film industries where the Commission has successfully deployed litigation to hold violators accountable. Despite the positive impact, the paper also found that the efforts of the Commission to prevent piracy are inadequate, especially in the area of online/internet piracy where the Commission has not developed measures to prevent breach of copyright in the music industry. The paper recommended amongst others the strengthening of the anti-piracy measures under the Copyright Act and the proper training and equipment of the Nigerian Copyright Commission to enforce the Copyright Act.

Keywords

Copyrights, Piracy, Regulation, Internet, Digital Piracy, Copyright Commission, Nigeria

1. Introduction

The Nigerian Copyright Act is the extant law regulating copyright issues in Ni-

geria. The Act provides for the protection of various categories of works: literary works, musical works, artistic works, cinematograph films, sound recording and broadcast. It further provides for the protection of neighbouring rights or derivative works including expressions of folklore. However, despite the subsistence of the Act, there is evidence of large-scale infringement of copyrighted works in Nigeria. One of the forms of infringement is piracy, although the Copyright Act provides against it in section 25 of the Act. The Act empowers the regulatory agency, the Nigerian Copyrights Commission to make regulations aimed at further enhancement of copyright protection in Nigeria. In furtherance of the power, the commission has made several regulations to stem the tide piracy in Nigeria, including the Collective Management Organisations Regulation and Optical Disc Regulation amongst others.

This paper examines the impact of the Copyrights Act and its numerous anti-piracy measures and regulations on copyright (piracy) infringement in Nigeria. Apart from this introduction, the paper is divided into five sections. Section two of the paper discusses the Nigerian Copyright Commission and its powers. Section three explains the concept of piracy including the types and causes of piracy while section four discusses administrative regulations made by the Nigerian Copyright Commission for enforcement of copyright especially piracy. Section five considers the impact of the Copyright Act and its regulations in combating piracy in Nigeria, and finally, section six is the conclusion.

2. The Nigerian Copyrights Commission

The Copyrights Decree of 1970 did not create any government agency responsible for the administration of copyrights in Nigeria. However, the various powers to make prescriptive regulations, reciprocal extension orders and the appointment of a competent authority for the purposes of regulating the activities of collecting societies were conferred on the Federal Commissioner for Trade (sections 13 and 14).

Thus, it could be said that the administration of copyright was under the responsibility of the Federal Ministry of Trade. However, other aspects of copyrights were under the control of other government departments (Asein, 2012: p. 352). The Nigerian Copyright Commission (hereafter called “the Commission”) was established by section 34 of the Copyrights Act 1988 (Cap. C28 LFN 2010) and is charged with the following functions (section 34(3)):

- 1) responsibility for all matters affecting copyright in Nigeria as provided for in the Act;
- 2) monitor and supervise Nigeria’s position in relation to international conventions and advise Government thereon;
- 3) advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country;
- 4) enlighten and inform the public on matters relating to copyright;
- 5) maintain an effective data bank on authors and their works;

6) be responsible for such other matters as relate to copyright in Nigeria as the minister may, from time to time, direct.

The Commission also has the following responsibilities: 1) the certification of countries that are parties to treaty obligations for the purpose of determining whether a copyright work may enjoy copyright by virtue of such international obligations (section 5). 2) the regulation of the conditions for the exercise of the right of an author of graphic works, three-dimensional works and manuscripts to share in the proceeds of any sale of that work or manuscript by public auction or through a dealer (section 13). 3) the issuance of exemption certificate for the purpose of enabling an otherwise unapproved collecting society to commence action for the infringement of copyright or any right under the Copyright Act (section 17). 4) the prescription of anti-piracy devices for use on, in, or in connection with any work in which copyright subsists (section 21). 5) the authorization of the reproduction, communication to the public and adaptation of expressions of folklore for commercial purposes outside their traditional or customary contexts (section 31). 6) the granting of compulsory licenses in accordance with the provisions of the Fourth Schedule to the Act as well as the establishment and regulation of the copyright licensing panel (section 37). 7) the appointment of copyright inspectors as it may deem fit (section 38). 8) the approval and regulation of collecting societies for the purposes of the Copyright Act (section 39). 9) the receipt and disbursement of funds arising from the imposition of compulsory levy on copyright materials (section 40). 10) the regulation of the conditions necessary for the operation of a business involving the production, public exhibition, hiring or rental of any work in which copyright subsists under the Act (section 45). 11) the carrying out of such directives of a general or special character with respect to its functions as the minister may give (section 50); and 12) the right to authorize the exploitation of folklore and to bring action for infringement of such rights (sections 31 and 32).

The Commission is supervised by a Governing Board established under the Act (section 35). The administrative system of the Commission can be seen from two perspectives, namely; institutional framework and private machinery for the collective administration of rights. The former being regulatory and the later being private individuals, constituting themselves into collecting societies for the administration, management and enforcement of their rights (Adewopo, 2012: p. 82; Olatunji, 2013: pp. 53, 64).

3. Concept of Piracy

Piracy is arguably one of the most rampant forms of copyright infringement in the entertainment industry in Nigeria. The dawn of information age and the advancement of technology in the reproduction of information and intellectual goods created a favorable tool for piracy. Copying and selling of another's intellectual works have become easy and less expensive. Copyright theft, production of fake, sub-standard and unlicensed products is on the increase (Nwogu, 2014:

p. 22). Hence copyright piracy is a global problem, although more prevalent in developing countries like Nigeria. Copyright piracy has been recognized worldwide as an enemy of creative arts, intellectualism and creativity. It obstructs genuine investments and corrupts cultural value of a nation. Nigeria's status as a favorable destination for foreign direct investment and a place where local creative talent can flourish is in jeopardy due to the activities of individuals who unjustifiably infringe on other's copyright works (Waziri, 2011: p. 196).

Piracy traditionally refers to acts intentionally committed for financial gain, though more recently, copyright holders have described online copyright infringement, particularly in relation to peer-to-peer file sharing networks, as 'piracy' (Nwogu, 2015: p. 118). Internet piracy, includes internet hacking and viruses. Piracy is the unauthorized and illegal reproduction or distribution of materials protected by copyright, patent, or trademark law (Garner, 2004: p. 1118; Blackwell, 2008). The test of piracy is not whether identical language or the same words are used, but whether the substance of the production is unlawfully appropriated (Drone, 1999: p. 97). In other words, it is the unlawful copying and distribution of copyrighted works such as software or recordings of music.

Piracy is also used to describe infringement of copyright on commercial bases. It involves a more organized form of crime by syndicates against intellectual property. It is a cankerworm that has eaten deep into the fabrics of the society. It is a clog in the wheel of the production and growth of copyrighted works leading to counterfeiting and fake products, which adversely affects the goodwill of original creators of the work.

Piracy is the activity of manufacturing unauthorized copies of protected materials and dealing with such copies by way of sale and other ways inconsistent with the interest of the right owner¹. It is one of the greatest challenges to intellectual property rights protection and enforcement in the entertainment industry in Nigeria. Infringement may occur by way of copying, having in possession plates for making unauthorized copies, distribution or importation of pirate copies and by sale of the copies. It is common place to see in Nigeria copies of films being sold for as low as N100 (20 cents) instead of legitimate value of between N500 - N1500 (\$1-3). The same is the position with music CDs and music videos produced in Nigeria.

The Copyright Act of Nigeria empowers the Commission to make regulations for anti-piracy measures. The Commission, with the consent of the Minister may prescribe any design, label, mark, impression or any other anti-piracy device for use on, in, or in connection with any work in which copyright subsists (section 21 Copyright Act). The Act creates an offence for anybody who sells, rents, hires, or offers for sale any work in contravention of section 21(1) of the Act. Section 21(3)(a)(b) of the Act also creates an offence for anybody who imports into Ni-

¹"Boot legging" is related to Piracy and it means the illegal recording and sale of records derived from live performances. Counterfeiting is the use of distinctive label, mark, to goods without the authorization of the rights owners and which makes people believe they are purchasing the goods produced or issued by the right owners.

geria or has in his possession without the consent of the commission any anti-piracy device or any machine, instrument or contrivance, intended for use in the production of the anti-piracy device. Finally, the Act makes it an offence for anybody who without the permission of the Commission is in possession of or reproduces or counterfeits any anti-piracy device (section 21(1)).

Notwithstanding these provision and even the efforts of the Commission to develop numerous anti-piracy measures, incidences of piracy continue to rise in Nigeria in every sector of creative industry, including software piracy, cinematography film piracy, music piracy and book piracy (Nwogu, 2015).

3.1. Forms of Piracy

1) Book Piracy

This is perhaps the oldest and most common form of piracy threatening intellectual development and creativity in the world today. Simply put, book piracy is the reproduction and distribution of copyright books on a commercial scale without the consent of its owner (Nkiko, 2013: p. 394). Book piracy has caused so much loss to honest and hardworking publishers and authors (Ahmadu, 2017: p. 104). This has led to a decline in our educational system as authors are now discouraged to write and students are left with substandard academic and literary books for use. Books are pirated on a large scale daily through massive photocopying and binding by book pirates. They do this and distribute to the public as authentic when in reality they are fake products. In highlighting the cost of this menace to publishers Shosanya (2012), noted that book piracy activities in the country causes N20 billion losses to domestic publishing houses each year and about \$600 million to United States of America. What is even more perturbing is the fact that some notable publishers engage in this act of piracy. They publish books on a large scale and deceive the author of the work by representing a false and smaller number of copies produced (Aladesuyi, 2014).

Piracy destroys the goodwill and reputation of an author and it is worrisome to the polity, particularly to the copyright owners. The Commission has made several arrests and discoveries of a large swathe of pirated works over the years in Nigeria but these efforts have certainly proved inadequate in dissuading perpetrators of the act (Nwogu, 2015: p. 120).

2) Music Piracy

Music piracy is the reproduction and distribution of copies of musical compositions and works composed for musical accompaniment protected under the copyright law on a commercial scale, without the authority of the copyright owner. These works may be recorded in files, CDS or DVDs (Nwogu, 2015: p. 120). It is no longer news that the music industry is one of the fastest growing industries in Nigeria because music is the most generic of all the subject matter of Copyright for it has direct impact on the people. In fact, the growth of the Nigerian music industry is so enormous that its impact is felt even outside the shores of the country (Adedeji, 2016: p. 261). One cannot mention afro music

without having to make reference to Nigeria. It is because of its great potential that the industry has become a target of pirates. The incidences of piracy in the genre of music abound in Nigeria (Wither, 2011). There exist several compact disc production plants that are engaged in the production of pirated music. It is worthy of note that the Alaba market is a great problem to the music industry and investors in creative arts generally. Dealers or pirates in that market have constantly and continuously reproduced works of Nigerian and foreign artists for sale, thereby reaping where they did not sow (Nwogu, 2015: p. 120).

In response to this problem, the Nigerian Copyright Commission focuses its enforcement effort on protection of rights of copyright holders in the sale of illegal copies of CDs and DVDs containing local and foreign music. Through the Court system the Commission has taken action against persons accused of selling or being in possession of pirated films and musical works. In *Nigerian Copyright Commission v. Oba Okechukwu* (2014), the accused was charged for being in possession (other than for private use) and for the sale of 126 infringing copies of cinematograph films and musical works in DVDs, VCDs and CD formats in breach of section 20(2)(a) and (c) of the Nigerian Copyright Act, Cap C28 Laws of the Federation of Nigeria 2004. The Federal High Court Abuja, per Abdu-Kafarati J, sentenced the accused to three (3) months imprisonment, imposed a fine of N12, 600 (\$25) and ordered that the infringing copies be handed over to the Nigerian Copyright Commission for destruction in accordance with Section 20(5) of the Copyright Act. A similar decision was also reached in *Nigerian Copyright Commission v Dominion Kalu* (2014).

3) Cinematograph Film Piracy

Nigeria film industry, known as Nollywood is the world's second largest producer of films (Oh, 2014). According to UNESCO, India remains the world's leading film producer, but Nigeria has closed the gap after overtaking the United States for second place. Bollywood produced 1091 feature-length films in 2006 compared to 872 productions (in video format) from Nigeria film industry, which is commonly referred to Nollywood. In contrast the United States produced 485 major films.

Nollywood is a great employer of labour; this is evident in the number of job opportunities it has created for youths (Oguamanam, 2020: p. 534). The influx of a great number of talented individuals has seen a boost in the quantity and quality of films produced on a yearly basis. This in turn has contributed to the economic development of the nation and attracted a lot of foreign investors. Just like its counterpart, this boost which should be a positive thing has attracted illegal activities of film pirates. Hence, cinematograph film piracy is the unauthorized and illegal reproduction and distribution of copies of copyright protected films/movies (Nwogu, 2015: p. 123). Film or movie piracy abound in Nigeria despite the protection of owners' rights under the Copyright Act and the establishment of the National Film and Video Censors Board (NFVCB).

This Board is the regulatory body set up under Act No. 85 of 1993 to regulate films and video industry in Nigeria. The Board is empowered by law to classify

all films and videos whether imported or produced locally. It is also the duty of the Board to register all films and video outlets across the country and to keep a register of such registered outlets among other functions, across the country. It gives license to persons and premises to exhibit films and videos (NFVCB, 2022). The essence of this power given to NFVCB is to check movie appropriation and piracy. Yet piracy still abounds in the film industry. This has discouraged many producers from making high quality films and incurring losses to pirates.

4) Broadcast Piracy

Broadcast piracy occurs when a person downloads copies or reproduces a substantial or the whole part of a radio or TV broadcast and sells to the public. Most times such persons copy events, sports, or even go as far as pirating decoders and calling on the masses to subscribe while posing as genuine service providers. A good example is the operation of the Nigerian Copyright Commission (NCC) at the notorious Alaba International market, Ojo and the Isashi area of Lagos in 2011 to burst the trend of importation, marketing and exploitation of high-tech equipment for hacking or piracy of encoded broadcasts signals, mostly DSTV Channels. Three thousand seven hundred and fifty (3750) units of pirated broadcast decoders worth over One Million, Four Hundred Thousand naira (N1.4 million) used for broadcast signal hacking were impounded during the raid (Daily Champion, 2011). The multipurpose broadcast signal-hacking device has the capacity to decode copyright protected encrypted signals, receive such signals from any part of the world and transmit such to as many television sets that are connected to it. This activity of some unscrupulous individuals resulted in colossal loss for international and local cable TV organizations like DSTV. In the case of *Nigerian Copyright Commission (NCC) v. Godwin Kadiri* (2015), the Federal High Court convicted and sentenced the accused to six and half years imprisonment for piracy of the broadcast rights of HiTV in contravention of the Copyright Act.

5) Internet Piracy

The internet is a network of computers spanning the globe. It is defined as a global computer communications network which provides almost instant transfer of electronic data from one computer to another, linking business, academic and private users (Robinson & Davidson, 2014). The advent of the internet has made the world a global village (Dixon, 2009); hence, various information and copyrighted works are being uploaded, stored, transferred and downloaded. In Nigeria, many organizations and establishments, including media houses carry their activities online and these services are patronized through online streaming and download.

The internet is awash with vast information and knowledge. This has led many to carry out illegal activities on people's work, of which piracy is one of them. Internet piracy is the practice of using the internet to illegally copy software and pass it on to other people (Xanthidis & Aleisa, 2012: p. 153). Internet piracy is using the internet to illegally copy and or distribute copyrighted works. It transcends borders and geographical boundaries and presents new challenges

to the law enforcement agencies, especially in the area of locating the pirates, gathering evidence and prosecuting the culprits (Heminge, 2013: p. 460). These challenges are not peculiar to Nigeria, and they can only be mitigated globally by adopting both global and domestic legal frameworks and enforcement mechanisms to confront the hydra-headed menace.

3.2. Causes of Piracy

Copyright piracy is an unnecessary nuisance that affects a nation's economy and resources. According to UNESCO (2013), the phenomenon stems from social, economic and legal causes, which include:

1) High Cost of Genuine Products

Genuine products are expensive to create, produce and distribute, and the multiple costs that arise before the product reaches the consumer add up to make the final product expensive. But the pirated copies are substandard and cheaper; hence, people are tempted to find cheaper sources, which increases the propensity to patronize pirated products (Ozertan & Cevik, 2008).

2) Difficulty of Access to Legitimate works

Supplies of legitimate artistic products in stores and libraries are often insufficient or lacking, particularly in developing countries (Tafer & Abbar, 2017: p. 200). Technical protection measures in digital format products also hinder access to certain copies, and therefore, limit the availability of legitimate works to the general public (ibid). When genuine products are scarce, it gives room for pirates to make fake products and pass into the market as real.

3) Poverty

Most people engaged in illegal copyright breaches do so in order to find a source of livelihood in the midst of poverty. This is however, not an excuse for illegal activities, although it constitutes a major factor for copyright piracy in Nigeria (Asongu, 2012: p. 528).

4) Financial Gains/Profits

Often times, the prospect of making money quick and easy informs the activities of copyright pirates. They do not spend nor incur the cost of producing genuine products in the bid to make huge profit and windfall from the investment of others. This attitude is propelled by greed to gain without working hard for it as it is evident that from time immemorial, there have always been people who are willing to take credit for other's works.

4. Administrative Regulations for Enforcement of Copyrights in Nigeria

The Nigerian Copyright Commission in an effort to carry out its mandate of enforcement of copyright in Nigeria has made several Regulations to reduce copyright infringement in Nigeria. In order to fully appraise the enforcement activities of the Commission, it is necessary to consider some of these Regulations and enforcement measures.

4.1. Copyright Inspectors

In exercise of the enforcement role of the Commission, the Copyright Act provides for Copyright Inspectors (section 38), who may be appointed by the Commission as it deems fit. A copyright inspector shall have the power to:

- 1) enter, inspect and examine at any reasonable time any building or premises which he reasonably suspects is being used for any activity which is an infringement of copyright under the Act;
- 2) arrest any person who he reasonably believes to have committed an offence under the Act;
- 3) make such examination and inquiry as may be necessary to ascertain whether the provisions of the Act are complied with;
- 4) require the production of the register required to be kept under section 13 of the Act and to inspect, examine or copy it;
- 5) require any person who, he finds in such building or premises to give such information as it is in his power to give in relation to any purposes specified in the Act;
- 6) to carry out such examination, test or analysis within or outside the premises as is required to give effect to any provision of the Act and to take instant photographs where such examination, test, analysis or photograph is carried out within the premises. Such examination, test, analysis or photograph shall be required to be endorsed by the occupier of the premises or his agent. A refusal by an occupier to endorse any document containing the result of an examination, test, analysis, or photograph shall not invalidate the result or finding of the examination, test, analysis or photograph; and
- 7) exercise such other powers as the Commission may delegate to him to give effect to the provisions of the Act.

The copyright inspector is empowered to prosecute, conduct or defend before a court any charge, information, complaint or other proceedings arising under the Act. Any person who obstructs the function of a copyright inspector is guilty of an offence, and the copyright inspector have all the powers, rights and privileges of a police officer as defined under the Police Act and under any other relevant enactment pertaining to the investigation, prosecution or defense of a civil or criminal matter under the Act (section 38(5)). This later provision has been described in *Musical Copyright Society of Nigeria Ltd/ Gte v. Nigerian Copyright Commission* (2008) as a “peculiar power that should be exercised with circumspection” (ibid). It has been held in *Federal Republic of Nigeria v. Osahon* (2006) that the power of police officers under section 23 of the Police Act 2004 to prosecute in superior courts is lawful as long as they have right of audience in such a court, (e.g. as legal practitioners) by virtue of being called to the Bar. The same principle may well apply to copyright inspectors (Asein, 2012; p. 358).

4.2. Regulation of Collecting Societies

The aim of the copyright system is to ensure that owners of rights have the ex-

clusive right to exploit their works or authorize the exploitation of such works. Thus, the right owner has the responsibility of ensuring that his legal rights are effectively administered. However, it is difficult or near impossible for a right owner to monitor all the points where their works are being exploited. In this regard, the copyright system provides for the collective administration of rights as an alternative to non-voluntary licensing of the rights concerned. The practice of domestic and foreign copyright laws has proved that it is very effective to manage those rights that the copyright owners cannot or control for the collective administration of copyright (Nan, 2011: p. 1). It entails the copyright owner surrendering his rights to an association of right owners with a mandate to the association to act on his behalf and negotiate tariffs, grant licenses and the collection of agreed royalties which are subsequently distributed among the right owners (Asein, 2012: p. 362).

Section 39 of the Copyright Act provides that a collecting society may be formed in respect of any one or more rights of copyrights owners for the benefit of such owners and the society may apply to the Commission for approval to act as a collecting society for the purposes of the Act. The Act provides that collecting society means an association of copyright owners which has as its principal objectives the negotiating and granting of licenses, collecting and distributing of royalties in respect of copyright works (section 39), and such persons includes a body corporate.

The nature of collecting society was described in *Musical Copyright Society of Nig. Ltd v. Details Nig. Ltd.* (1996) thus:

The essential characteristics are these: the owners of copyrights authorize collective administration organizations to administer the use of these rights by monitoring the use of their works, negotiate with prospective users of such copyrighted works, give them licenses on the basis of pre-agreed fees, collect such fees and apportion them among the owners of such rights which is an indirect and cost effective way of enjoying the fruits of their intellectual properties which are protected by the Copyright Act (*Compact Disc Technologies v Musical Copyright Society*, 2011).

The court went on to state that the collecting society can be formed in two ways: the owners of protected works can either come together under an umbrella organization or constitute some of their members into a committee that will assume administrative responsibility for collecting appropriate royalties on behalf of such members, instead of each copyright owner suing all infringers individually. The other way is for a company to be independently established with the primary object of negotiating with as many copyright owners as possible to secure the assignment of their rights on mutually agreed terms of payment.

It follows from the above that where a person assigns his rights to a collecting society to negotiate tariffs and grant license, the collecting society also have the implied right to prevent others from using that right without its license. The assignment of the right gives the collecting society the authority to represent the author in negotiation and grant of licenses as well as the judicial and extra judi-

cial enforcement of those rights (Asein, 2012: p. 363). The Copyright Act provides that the commission may approve a society if it is satisfied that:

- 1) it is incorporated as a company limited by guarantee;
- 2) its objects are to carry out the general duty of negotiating and granting copyright licenses and collecting royalties on behalf of copyright owners and distributing same to them;
- 3) it represents a substantial number of owners of copyright in any category of works protected by the Act. In this paragraph of this sub section, “owners of copyright” includes owners of performer’s rights;
- 4) it complies with the terms and conditions prescribed by regulations made by the Commission under this section (section 39(2)).

The Act further provides that it shall be unlawful for any group of persons to purport to perform the duties of a society without the approval of the Commission as required under section 39(2) of the Act. In *Compact Disc Technologies Ltd v. Musical Copyright Society of Nigeria Ltd* (2011) the court held that by the combined effect of sections 9, 10, 15(1), 17 and 39 of the Act a collecting society may not bring an action unless it has been approved as such by the Commission. In *Musical Copyright Society of Nig. v. Ade Okin Records* (2011) the court held that no collecting society may lawfully operate as such without approval in accordance with the Act and the Regulations.

In exercise of the powers conferred on the Commission under section 39(7) of the Act, the Commission made the Copyright (Collective Management Organizations) Regulations, 2007, stating the requirements for the grant of approval to function as a collecting society. Subject to the conditions specified in section 39 of the Copyright Act, a company seeking approval to operate as a collecting society is required to make a formal application in the prescribed form and pay the prescribed fees. The company is further required to furnish the Commission with the following documents (Regulation 1(1) Copyright (Collective Management Organization) Regulation 2007).

- 1) certificate of registration in respect of the company, issued under the Companies and Allied Matters Act;
- 2) the memorandum of association of the company;
- 3) the articles of association of the company;
- 4) a statement indicating the class of rights or category of right owners in which the collecting society owns rights, or intends to represent or act for;
- 5) membership list of not less than 100 right owners representing the classes of right for which the company is seeking a license to operate as a collecting society. The list should include the signed consent of such persons to belong to the organization, or where the organization have been in existence, that they are members of the organization;
- 6) an undertakings by at least five Directors including the Chairman of the Company that the company will comply with the provisions of the Copyright Act and the Regulations;

- 7) a copy of the membership agreement used by the organization;
- 8) evidence of payment of the prescribed fee(s); and
- 9) such other documents as may be required by the commission.

Under the Regulations, the Commission may accept the application of a company if it is satisfied the conditions listed under Regulation 1(3) are satisfied. Upon approval, the collecting society is issued a certificate as evidence of its license to operate as a collecting society. The Regulations stipulate that the governing board of a collecting society should, as far as possible, be representative of the different classes of right owners in the society (Regulation 6, *ibid*).

In setting tariffs, a collecting society may have regard to the following:

- 1) the monetary advantage obtained from the exploitation;
- 2) the value of the copyright material;
- 3) the purpose for which, and context in which, the copyright material is used;
- 4) the manner or kind of use of the copyright material;
- 5) the proportion of the utilization of work in the context of exploitation;
- 6) any relevant decision of the court or the dispute resolution panel; and
- 7) any other relevant matter.

The Regulations permit a collecting society to enter into agreements with trade associations, concerning the use of their *repertoire* by members of such trade association. Where there is an agreement, the collecting society is required to notify the Commission of any tariff scale accepted under such agreement (*ibid*, Regulation 13).

Any dispute that arises between a collecting society and a user over the tariffs payable by the user shall be referred to the Commission, which may set up a Tariffs Arbitration Panel for the purpose of resolving the dispute (*ibid*, Regulation 14). It has been argued that the provisions of the Act appear to be a mandatory requirement of submission to arbitration (Oserogho & Associates, 2018). Thus, a dispute between users and an approved society cannot proceed directly to the court without first being heard by the panel. Subject to the right of any party to appeal to the Federal High Court on points of law, the decision of the panel would be final on the parties before it (*ibid*, Regulation 15).

4.3. Copyright Notification

The Commission introduced an administrative initiative, which is intended to provide a data bank of authors and their works as mandated by the Act, as well as assist right owners with evidence of their rights. The copyright notification initiative has no specific statutory back up. The Commission accepts the notification of copyright works from owners, licensees or assignees (Asein, 2012: p. 361). An applicant seeking to notify the Commission would have to complete the appropriate forms, pay the appropriate fees and deposit one or two copies of the work, in case of unpublished and published works respectively. In view of the automatic grant of copyright under the Act, notification is not mandatory and does not confer copyright or raise any statutory presumption of ownership.

4.4. Regulation of Optical Discs

The Copyright (Optical Discs Plants) Regulation was made in 2006 in furtherance of the statutory powers of the Commission under section 45(4) to make regulations specifying the conditions for the operation of any business involving the production, public exhibition, hiring or rental of any work in which copyright subsists under the Act. Through the regulations, the Commission is empowered to control the activities of reproduction and manufacture of optical discs plants. The aim is to monitor their activities and stem the tide of piracy. Specifically, manufacturing, replicating and duplicating activities are subject to control. So also are the importation and exploitation of production equipment, parts and raw materials.

Any person intending to carry on any of the controlled activities is required to first register with the Commission after which he will be issued a certificate of registration valid for one year and subject to annual renewal. As part of the requirements for registration, the manufacturer would have to make an undertaking to comply with the provisions of the regulation. Such provision include, carrying on business only at the registered premises, to use any code or anti-piracy device as may be prescribed and to keep the prescribed records. The Commission has the powers to enter and inspect the premises, plants and records with a view to ensuring compliance. Failure to keep the required records, entry of false information, refusal to mark optical discs with the prescribed code or refusal to give or the giving of false information constitute offences under the Regulations.

4.5. Regulation of Video Rentals

The Video Rental Regulation is designed to provide a mechanism through which legitimate cinematograph films in the video format can be made available for hiring without infringing the copyright provisions that prohibit the rental of works without the prior authorization of the owner of the copyright in the film. The idea is that by enabling the producer to provide rental copies of his works, the rental outlet would have an implied consent for the rental of such copies and through that mechanism, the producer would be able to receive an up-front payment of the royalties due to him on each rental copy through the sale of the rental copy.

There is no doubt that these regulatory provisions are practical and useful measures of reducing infringement of works of copyright owners. The regulation of optical disc is a laudable anti-piracy measure to check the seemingly intractable piracy prevalent in the music and film industries in Nigeria. On the other hand, the regulation of video rentals would make it possible for right owners to benefit from their works exploited by rental, which is prevalent in Nigeria. What is required is to ensure wide publicity and enforcement of these regulations. This will go a long way to check copyright infringement in Nigeria.

The Commission now has enhanced prosecutorial capabilities by virtue of the convictions it has secured in court. The Commission has also strengthened its

human and institutional capacity for better service delivery and embarked on copyright awareness education and participated in the Nigeria-US Bi-national Commission (Asein, 2012: p. 364).

5. Impact of the Copyright Act and Regulations on Piracy in Nigeria

In the bid to combat copyright piracy in Nigeria, the Copyright Commission adopted a number of regulations, some of which we already discussed above². Despite these legislative measures, piracy remains a major challenge in the protection and enforcement of copyright in the entertainment industry in Nigeria. The advent of the internet has compounded the challenge. Online infringement of protected works is rampant and almost unabated. In fact, the digital threat to copyright has assumed incalculable proportions with the advent of peer-to-peer (P2P) software, which can be downloaded for free (Mittal, 2004).

This online software enables copyrighted works to be replicated with ease and speed and thereafter such unauthorized data are made available to the world through the file-sharing network (Prasad & Agarwala, 2008). This technology makes it easy to pirate both sound recordings and audio visual recordings (films) online which deprives copyright owners of legitimate income that they would have made thus, discouraging creativity. The phenomenon clearly affects economic development of the country because inputs that would boost economic development is hindered through piracy with the attendant adverse effect on the revenue accruable to both the individual rights owners and the government. Most Nigerian artists in the entertainment industry are affected by digital piracy as they have their works on the internet.

To give a sense of the cost of digital piracy to the global entertainment industry, one just need to look at the figures. In 1995 and 1996 global music sale was at about \$40 billion annually (Danaher, Smith, & Telang, 2014; Hosen, 2017) but in 2003, the sales plummeted to about \$15 billion a decline of 62% as a result of online piracy (Carlisle, 2014). In a report on the effect of piracy on the entertainment industry (Danaher, Smith, & Telang, 2014: pp. 42-43), a correlation was made between piracy and dwindling revenues in the entertainment industry (ibid: 42). It was concluded that file-sharing was the cause for the collapse of record industry sales from 1998 to 2003 (Strauss, 2013)³.

In Nigeria, it is estimated that piracy affects all sectors of the copyright industry, but the worst affected is the entertainment industry (Ridwan, Akashoro, &

²The Regulations made include the following: Copyright (Video Rental) Regulations, 1999, Government Notice No.144 Gazette No.63 vol. 86 of 10th September, 1999. Copyright (Security Devices) Regulations 1999, with commencement date of 7th September 1999, Government Notice 145, Gazette No.63, vol. 86 of 10th September, 1999. Copyright (Optical Disc Plates) Regulations, 2006, with commencement date of 15th December 2006. Copyright (Collective Management Organizations) Regulations, 2007 with commencement date of 28th September, 2007.

³The author argued that even though piracy cannot be denied, that the rise or streaming video content hubs like Netflix and Amazon has to certain extent recaptured some users that may have resorted to piracy (in the US). But this cannot be true for Nigeria where most people do not have access to the internet and will have recourse to pirated hard copies of films.

Ajaga, 2013; Fielding-Smith, 2014). In a recent study, it was estimated that eight out of every ten artistic works found in the market today is pirated (Abraham & Oguntola, 2016). The study revealed the endemic nature of piracy in Nigeria and how it negatively impacts on the Nigerian economy. The prevalence of piracy in Nigeria is estimated at 82%, 83%, 82% and 83% for 2008, 2009, 2011 and 2012 respectively (Bamwo & Ighadolo, 2015). In 2014 alone, Nollywood lost N82 billion to piracy (ibid).

Notwithstanding the colossal loss, the Nigerian Copyright Act and its regulations have made significantly progress in the fight against piracy going by the number of pirated music and video CDs and DVDs seized so far. The regulations have made it easier to identify pirated copies of music and film videos. Provisions of the Copyright Act on piracy have enabled the trial and conviction of offenders, which has in turn deterred other prospective offenders.

6. Conclusion

There exist in Nigeria laws and regulations aimed at checking piracy. However, such laws appear not to have the expected impact in checking piracy due to challenges in the enforcement of the laws and regulations. Some of such challenges include corruption on the part of law enforcement officers, inadequate funding of the copyright supervisory agencies, inadequate work force, low training and inadequate equipment for fighting piracy amongst others. However, this paper posits that the laws and regulations aimed at combating piracy have made positive impact in combating the menace in Nigeria. There is still room for improvement though. The current drive towards enactment of an internet Act in Nigeria will undoubtedly enhance the ability of the Copyright Commission to combat piracy in Nigeria.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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