

# Enhancing and Enforcing Performing Rights as Copyright

Being a paper presented at the National Seminar on Performing and Mechanical Rights

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## Historical Overview

**W**. R. Cornish, the noted Professor of Intellectual Property Law, has described copyright as: "The right of a person to protect his ideas and information from commercial exploitation". To Yemi Osibanjo, Associate Professor of Laws, copyright is: "The right of a person to prepare and distribute copies of an intellectual property." Copinger and Skone say that: "Copyright law is concerned with the negative right of preventing copying of physical materials existing in the field of literature and the arts". Black's Law Dictionary offer the following meaning: "The right of literary property as recognized and sanctioned by positive law. An intangible incorporeal right granted by statute to the Author or Originator of certain literary or artistic productions, whereby he is invested for a limited period with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them."

These definitions have long received statutory recognition in national laws. In Nigeria, the extant legislation is the Copyright Act of 1988.

The evolution of copyright has attracted Scholars of formidable polish: Scrutton, Birrell, Kaplan, and so on. Too much has been said about this branch of the Law. And too much written. I do not propose to go over them nor rehash well-settled theories. I do not pretend I can add substantially to them. I should rather explore available techniques in the field of copyright law and practice and formulate some practical guide as to how performing rights, a hybrid right that is not copyright properly so called, can be enhanced and enforced more effectively.

A little history of copyright is required. The evolution of the modern notion of copyright is closely connected with the coming of Industrialization and the rise of the printing press. It was only after the introduction of the printing press that serious questions about copyright arose.

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The chief difficulty about ownership has been the traditional question of how to resolve the historical conflict between the creator or author of a work and the entrepreneur or copier of it. The tension between these two classes of claimants resolves around ownership

Before the age of Printing, people referred to as Stationers, because they traded in stationeries, dominated the field of recorded scholarship in England. These Stationers (Cornish describes them as "The forefathers of the modern publisher") came to dominate 'Copying' or reproduction of books acquired from authors. Disputes frequently broke out between the Stationers and Authors over the latter's entitlement (royalty) on reproduced books. Aggrieved Authors were usually confronted by the Stationers' plea of "copy" right.

The Stationers found an early ally in the English Crown. Eager to control the flow of books into England at the height of religious tensions, Mary, Queen of England, granted the Stationers letters patent to regulate copying (printing) of books. The Stationers seized the opportunity to organize what, in effect, became a Cartel. Manuscripts of books were of no use unless printed. Books could not be printed without the Stationers' license. Authors were forced to negotiate with the Stationers who insisted on a right to reproduce as a condition for publication. The influence of the Stationers diminished in time but they had left their imprimatur on modern copyright law.

From being concerned only with preventing the unlawful reproduction of books, copyright law has developed in two directions: First, by extending the subject-matter of protection and, second, by extending the classes of acts that constitute infringements. In its modern form, copyright has expanded to include musical works, artistic works, cinematograph films, sound recordings, and broadcasts.

Central to any discussion of copyright is the problem of ownership. This must be proved before copyright can be claimed. I will look at this problem in brief.

### The Problem of Ownership

The chief difficulty about ownership has been the traditional question of how to resolve the historical conflict between the creator or author of a work and the entrepreneur or copier of it. The tension between these two classes of claimants resolves around ownership. S. B. Bankole alluded to some of the difficulties in a contribution to the Gravitas Review of Business & Property Law. To Bankole, true ownership of copyright resides in the society. The public at large, he says, constituting the society has the idea that is embodied in any work and thereafter protected by copyright. The creator (author) or entrepreneur (copier) only has a secondary right bestowed by the public.

I am not at all certain I accept the views of Bankole. I only refer to them to illustrate ownership problems.

The whole basis of copyright is that protection inures not to the idea but to the result of the idea. This is the theory of fixation. Cornish says that:

"It is an assumption (as it is indeed Nigerian) of British copyright legislation that all subject-matter requires to exist in some permanent form (fixation) before it gains copyright. It is a fundamental requirement for the subsistence of copyright that it is reduced into concrete form."

So protection goes only to particular expressions of ideas. If a painting, photograph, or other work is executed, the idea is transmitted into expression. Sunmi Smart Cole, Jackie Philips, or Peter Obe can rightly claim copyright of their photography because the act of creation and fixation become indivisible. But Onyeka Onwenu, Tyna Onwudiwe and, say, Tony Okoroji as performers face difficulties if their original ideas and information are not expressed in concrete form. It is clear that copyright only subsists where a claimant can identify an original idea expressed in concrete form. The real problem for the Performer is how to protect work not reduced to concrete form.

As Copinger and Skone emphasise, "it is essential to have in mind, in approaching any question of infringement, the nature of the thing protected by copyright law. What is protected is not original thought or information but the original expression of those thoughts in concrete form." Two problems confront the Performer:

1. Suppose Tyna Onwudiwe improvised a tune in the presence of Olisa Agbakoba, which Olisa carries away and subsequently performs; can Tyna sue Olisa for infringing copyright?
2. Again, suppose Olisa is present at Tyna's live performance, and records and reproduces it, can Tyna sue for infringement?

These illustrations are central to the debate about whether unpublished works and live performances are covered by copyright legislation. English copyright legislation was slow to recognize unpublished works and live performances but it is now firmly established that they are eligible for copyright. See S.2(5) English Copyright Act, 1956.

If Tyna were an English performer, the provisions of the relevant Sections of the English Copyright Act will restrict reproduction of her work by Olisa as described in the examples given. Let me look at Nigerian Legislation but, first, I must underline the fact that anyone familiar with the subject will know that the Copyright Decree of 1970 did not at all protect performing rights. Ayo Solarin, the noted Nigerian Commentator on copyright, says that: "Under this law, performers suffered terribly because their live shows (performances) were not fixed in permanent form." Bootleggers, pirates, and copycats benefitted tremendously. Solarin notes that with the enactment of the 1988 legislation (itself the result of intense lobby of PMAN, recording companies and so on) performing rights, the so-called neighbouring rights, became entitled to

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protection.

Performers now have a right of recourse to the judicial process. The foundation of this right is set out in Section 23 of the new Law.

It is hoped that the Performers will take the first opportunity to enforce their rights. They have not done so in any meaningful manner. They will be wrong to assume that only the Government or the administrators of the legislation, the Nigerian Copyright Council, have a role. They do too.

The chief tool by which Performers ought and can enforce their rights will be the subject of the second part of this presentation.

### Enforcement of the Performer's Rights

In the first part, we noted the effect of Section 23 as a mechanism for the protection of performing rights. Regrettably, it did not go far enough. One criticism that has frequently evoked discussion is the failure of the Act to protect unpublished works. Ayo Solarin asks the very pertinent question: "What happens where an author dies before completing his work? Will it be fair, he asks, that the work is not entitled to copyright only because it is not published? Suppose in the course of composing a new tune, its author dies? The manuscript falls into the hands of a person who exploits it for commercial advantage. There is no reason why the successors in title to the composer's estate cannot claim on behalf of his estate. So long as the composition was an original creation, there is no reason why it ought not to be entitled to copyright.

The time has never been more apt to question the basis of the theory of fixation that has, for 200 years, been central to copyright legislation. If Performers hope to actualize their rights as copyright, properly so called, the looming battle will be how to expand the narrow doctrine of fixation, or what Copinger and Skone call "Protection only of original thought or information in concrete form."

The problem of performer's rights, as copyright not properly so called, has been a feature of English copyright legislation. Most copyright legislations recognize performing rights only as second generation or neighbouring rights. This is so in Britain as in Nigeria.

Performing rights are beyond copyright because performers cannot readily show their work in permanent form. A performance by, say, Fela, is not fixed unless recorded. So, it is difficult to attribute and imbue it with copyright. Cornish notes that the extension of copyright from the making of copies to the giving of public performances began in 1873. The possibilities of infringement of performing rights have become complex because performance is too ephemeral a phenomenon for it to be easy to gain copyright capable of enforcement.

Those who have copyright in musical works and associated lyrics, say

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Cornish, have been leaders in pushing for special legislation and collective Societies for the enforcement of their rights.

Three great issues face Nigerian Performers: First, they need to get organized and establish very urgently a collective Society in line with the recent amendment to the Act to enforce their common rights. Second, they need to know about current techniques. So, keeping in touch with the International copyright network is important. Third, they need to push for full recognition under the copyright regime and press for performer's protective legislation.

Their English counterparts have long been active in this field. In an article to Media Review, on Royalties, Ayo Solarin writes that the first copyright license in Nigeria was issued in February 1936 under contract between the Performing Rights Society of England (PRS) on behalf of Copyright Owners in England and the then Colonial authority, on behalf of government-owned Television and Radio Stations. The agreement fell into disuse in 1978. The conventional wisdom today is that broadcasters assume they have a "license" to broadcast without consent as a favour to performers who require the publicity. It is crucial that those entitled to performing rights find ways to enforce the law. I readily concede the difficulties of individual enforcement. There is simply no way of keeping track of all the infringements in this vast country. So the answer must lie in establishing Collective Societies.

It is heartening to know that Nigeria, recently, (May 1993), acceded to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971). And, according to the Federal Attorney General and Secretary for Justice, (Mr. Clement Akpamgbo, S.A.N.) at the Special Copyright Seminar held at the Federal High Court on May 27, 1993, "The Nigerian Government is currently undergoing the formal processes to accede to the Rome Convention, 1961 for the protection of Performers, Producers of Phonograms and Broadcasting Organisations." These are, undoubtedly, welcome developments.

The Federal Government has also demonstrated its determination to put in place an effective copyright regime by the addition, through an amendment, of a new Section 32(a) and (b) which provides for the appointment of Copyright Inspectors by the Copyright Council, and the setting up of Collecting Societies, respectively.

It is good to learn that Government has just enacted Regulations equivalent to the English Copyright Royalty Systems Regulations, 1967. The other legislation Nigerian performers must press the Government to enact is what their English counterparts achieved long ago in the shape of the Performers Protection Acts of 1958 and 1962 and the Dramatic and Musical Performers Act 1958. These Acts recognize the special fea-

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ture of performer's rights and give Performers' added protection over and above the general provisions of the copyright legislation of England.

Let me say something about the International Conventions on Copyrights because they are so very important. The practical problems of enforcing copyright are not peculiar to Nigeria. Copyright infringement is a global phenomenon. If copyright cannot be enforced in Nigeria, how can it be enforced globally? Eammon T. Fennesey, Chairman of the Copyright Group in the United States of America, says that "what has evolved in order to ease that problem is the Collective Society."

I have mentioned it. But Fennesey summarized the work of Collectives in this way:

"Many uses of intellectual property occur in ways that make it difficult or impossible for copyright owners individually to enforce their rights. Where each has small value relative to the cost of enforcement, no owner will find it economical to collect fees and enjoin infringers unless he can cooperate with other rights holders to economize on transaction costs. The result is the formation of copyright collectives."

Collective Societies are very useful in the administration of copyright legislation. The need to hook up and stay in touch with the International Copyright Network requires no persuasion. The benefits of exchanging and sharing ideas about current techniques are very vital. I can allude to one technique recently introduced to protect mechanical rights. It is the banderole device that prevents pirates, bootleggers and their ilk from copying and mass-producing Audio Cassettes.

Let me return to the International Copyrights Conventions.

These Conventions are concerned with treaties between nations requiring their signatories to respect, in their own countries, the copyright of nationals of other signatories. Happily, Nigeria is a party to the Universal Copyright Convention (U.C.C.) signed at Geneva in Switzerland on September 6, 1952. It obligates the contracting parties to accord protection (i.e. National Treatment) to the published and unpublished works of each other's citizens.

The reciprocity created by this Convention takes effect through a union for the protection of works entitled to copyright. This enhances performing rights.

A close study of the Conventions leaves the impression that performing rights are not accorded the same measure of protection as the other species of copyright. I have gone over these reasons and will not repeat them here. What is important is that performers must understand the need to campaign for added protection. Such an opportunity in fact ex-

6

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ists in the shape of an International Convention for the Protection of Performers, Producers of Phonogram and Broadcasting Organizations. Regrettably, Nigeria is not a signatory to this crucial Code specifically related to the problem of performing rights. Article 3 defines a performer to mean "actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, playing or otherwise perform literary or artistic works."

I will deal with the judicial process of enforcement, in the third and concluding part of this Presentation.

### The Judicial Enforcement of Performers Rights

I will leave out the procedure of copyright enforcement by the criminal process. I need only say, in passing, that wilful infringement of the rights protected by the Copyright Decree is an offence punishable under Section 14 with a fine of up to 10,000.00 for individuals and 50,000.00 in the case of corporate organizations.

Section 15 is the basis of civil remedy under the Copyright Decree. It enables the owner of copyright, his assignees, and licensees to bring suit in the Federal High Court for infringement of copyright.

Section 22 is the basis of what is called the Anton Pillar Injunction. Section 22 enables the Judge, in a proper case and where reasonable cause is disclosed, to authorize the applicant to enter a house or premises at reasonable times by day or night, accompanied by a Police officer to:

1. Seize, detain, and preserve infringing copies of works protected by copyright, and/or
2. Inspect documents in the custody or control of the infringer.

It was doubted whether the Anton Pillar process was available in Nigeria under the 1970 regime but it is now settled that it in fact applies by virtue of Section 22 of the extant Law.

Lord Denning observed in "EX PARTE RECORDS LIMITED":

"That the effect of these Ex-parte Orders has been dramatic. When served with them the shopkeepers have acknowledged their wrong doing and thrown their hands in. So useful are these Orders that they are in daily use in cases of infringement of copyrights."

Under the old Decree (1970), the performer rights were not entitled to protection. The new Law changed all that. Ayo Solarin has noted that since live performances were not fixed (i.e. not in written form) copyright did not subsist in such performances. So it was easy for bootleggers and pirates to illegally record these performances for commercial benefit.

The new Section 23 gives the performer exclusive right to control, in re-

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lation to his performance, the acts of performing, recording, broadcasting live, and reproducing in any material form any adaptation of the performance. Those rights, says Ayo Folarin, will be infringed if, without consent, any person does any or reproduces the whole or a substantial part of the protected work.

Section 26 of the Decree will enable an aggrieved person to approach the Courts for remedies in the nature of damages, account of profit or conversion, delivery up of infringing copies and injunction.

I referred earlier to the Anton Pillar procedure developed by the great English Jurist, Lord Denning. It is really only an injunction developed out of copyright practice. We have already noted that an aggrieved person is entitled to seek this remedy in Nigerian Courts by virtue of the ample provisions of Section 22. Before embarking on a further enquiry of the Anton Pillar Order, I must note that Section 23 rights pale when compared to the Conventions on performing rights. It is very crucial, if performing rights will mean anything, that the amplitude of protection afforded under domestic legislation be expanded in line with the protection afforded by International Conventions.

Let me return to the Anton Pillar process. Bambo Adesanya has described this process as "A potent remedy for copyright infringement." The injunctive remedy derives from antiquity but the copyright injunction, in its modern form, developed from the landmark Judgment in ANTON PILLAR K. G. vs. MANUFACTURING PROCESS LIMITED. On the Applicant's prayer for copyright infringement, Lord Denning made the following comments:

"It seems to me that such an order can be made where it is essential that the plaintiff should have inspection so that justice can be done between parties; and when if the defendant were forewarned, there is a grave danger that vital evidence will be destroyed, the papers will be burnt or lost or hidden or taken beyond jurisdiction and so the end of justice will be defeated: and when the inspection would do no real harm to the defendant or his case."

Richard Ough, in his book on Anton Pillar Orders, has appropriately characterized it as "the nuclear weapon of the Law." Ough described the development of this remedy in the following way:

"Technological advances in the recording and reproduction of auditory and visual material have led to enhanced opportunities for not only legitimate copying but also counterfeiting of such material. The problem of illicit copying became particularly acute in the world of popular music in the 1960's and 1970's with the appearance of so called pirates who made unauthorized recordings of copyright tapes and records. The usual remedies of injunction had become inadequate."

The Anton Pillar Order is today an established feature of English Law. Bambo Adesanya says that the attitude of Nigerian Courts, pre-1988, in respect of Anton Pillar application had been mixed. It was granted in JOSIAH PARKES & Sons LIMITED vs. A.M.V. MBADIKE & BROTHERS LIMITED., OLUWANISHOLA DEVELOPMENT COMPANY vs. GUINEA INSURANCE LIMITED., and FERODO LIMITED vs. UNIBROS STORES. It was refused in SONY KABUSHIKI KAISHA (trading as SONY CORPORATION) vs. SHEMONI & COMPANY LIMITED. Today there is no doubt that it ought to be granted in proper cases.

There is the other feature of the Anton Pillar remedy that is very important. It is the class action or representative action. Innumerable violations daily occur that it would be well-nigh impossible for the aggrieved parties to pursue all who infringe their work with any measure of success and certitude. The formula developed by Law in aid of this enforcement is the class action. The technique enables a plaintiff to sue on behalf of an aggrieved class or to sue a class of infringers to enforce a right. The case of Re WELCOME FOUNDATION LIMITED vs. OPEOLUWA & Co. established that the class action procedure applies in Nigeria. Let me illustrate how it works:

Suppose that Tyna Onwudiwe, Charley Boy, and Ras Kimono notice that their performances in several Nigerian cities were illegally recorded by several bootleggers and pirates. Suppose that in the course of enquiry they establish that "A" infringed their copyright by making illegal recordings that was sold to 120 outlets at the Onitsha market. It would be quite difficult to have to pursue 121 people to enforce their copyright. A good way out is to bring a class action against "A" on his behalf and on behalf of and as representing all other persons importing, selling or stocking, for the purpose of trade, illicit recordings of the performances of Tyna, Charley boy and so on. The usual Order a Court of Law can make in this class of cases is broad.

A model would be:

"An order for delivery up or destruction, upon oath, of all mechanical recordings and any other illegal act to which the infringed copyright performance relates or any article in which that performance is inextricably comprised which are in the possession or custody of the defendants or of any of those on whose behalf the defendants are sued"

The effective Order is usually formulated in these terms:

"An order that the defendants, whether jointly or severally and whether acting by themselves, their officers, directors, partners, employers, servants or agents, or any of the persons appearing to be in charge of the premises holding infringed copyright works complained

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of, do forthwith permit a Legal Practitioner from 'O' and 'A' and a Police officer, for the purpose of preventing a breach of the peace, to enter and remain upon the premises of the defendant, for the purpose of taking into possession and removing therefrom into the possession and custody of the plaintiff, all units of the infringed copyright work and all materials, order, forms, invoices, bills delivery orders and receipts" etc.

The nature of the Anton Pillar remedy, in the hands of enlightened claimants and good Counsel, is truly a nuclear weapon. When an Anton Pillar Order is issued against a member of a chain of infringers, such as the class action example, it is called a Roving Order. This is so because the Order is not necessarily person-specific but goes against a named defendant and other infringers in whose possession infringing evidence may be discovered.

Let me attempt to summarize this discussion:

1. For historical reasons, performers have not gained the stature accorded, say, to authors of books.
2. Performing rights, in their original form, are not fixed: plays, dramas etc.
3. Performers need to band together to administer their affairs more effectively. Establishing Collective Societies is one way forward. The Performing Musicians Association of Nigeria (PMAN) needs to refocus its energies here.
4. Law reform and review is imperative to take account of the peculiar nature of performing rights. Two points require to be noted: Expanding the scope of protection given by copyright law and domesticating relevant International Conventions.
5. Expanded use of the judicial process. Felix Leberly's National Union of Musicians prefers self-help. I am not at all sure this is effective. The Anton Pillar Order, particularly the Roving Orders, is to be preferred. The Federal High Court is well organized and not as cluttered as their State counterparts are. Protracted and sustained litigation will achieve results. Regrettably, no suit has ever been brought about performing rights infringement. This must change.

I did not mention the role unions of performers can play in this process. I ought, therefore, to conclude on this note.

Unions are the only way forward if performing rights will be enhanced. I have two unions in mind. Tony Okoroji's Performing Musician's Association of Nigeria (PMAN), and Felix Leberly's Nigerian Union of Musicians (NUM). Both have done well to bring out the cause.

But they have far to go. There is the need to look at the whole process

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of contract administration. The problem usually starts from this point. Performers will require protection from exploitation when they sign contracts with recording companies. Again, artistes (used interchangeably with performers) need to keep in mind modern concepts used by their foreign counterparts in securing their interests. The time has certainly arrived when no Artiste, who hopes to make a career out of giving performances, will go far without professional advisors - Managers and Lawyers. Performers and their Unions will have to help organise the entertainment industry so that professional services they need can develop. Sustained pressure, I can assure, will produce, in a short time, the most amazing results.

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## Appendix: History and Evolution of Copyright Law

### Introduction

The decision in ST COLUMBA1 is generally regarded as the first copyright case. Prior to the invention of printing, it can be said that there was

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The Law of Copyright was first concerned only with preventing the unlawful reproduction of copies of books. The conventional wisdom then was that nothing could better be regarded as a man's property than the fruit of his own brains in a fixed form. Early legislations on the protection of copyright were indicative of this view

nothing like copyright or anything similar to it. Consequently, the first form of copyright consisted of the prerogative claim by the Crown to the exclusive right to print books such as the Bible, Statutes and, in due course, Common Law books.

This privilege was naturally exercised by the King's printer. Other printers had to petition the Crown for grant of Letters-Patent giving them a monopoly over the printing of particular books in some cases for a period of years. Expectedly, this system was as haphazard as it was inconclusive.

It was the later control exercised by the Printers and Stationers' Guilds over the printing of books that proved more effective and consistent. It was technology that made it possible for performances to be fixed that informed the need for Performers to be granted Copyright protection.

The Law of Copyright was first concerned only with preventing the unlawful reproduction of copies of books. The conventional wisdom then was that nothing could better be regarded as a man's property than the fruit of his own brains in a fixed form. Early legislations on the protection of copyright were indicative of this view. However, subsequent legislations extended the subject-matter of protection by including dramatic, musical, and artistic works, as well as the classes of acts that constitute infringement.

The history of protection of copyright in Nigeria can be traced to the United Kingdom Copyright Act of 1911. The 1911 Copyright Act was made applicable in Nigeria by an Order-in-Council.<sup>2</sup> The 1911 Copyright Act was repealed in the United Kingdom by the 1956 Copyright Act. But the 1911 Act, by virtue of a saving provision, remained in operation in Nigeria until 1970 when our Copyright Act of 1970 was promulgated.

The lacuna in the 1970 Copyright Act, which allowed exploitation of copyright works, resulted in the extant Legislation - The Copyright Act, Cap 68, Laws of the Federation of Nigeria, 1990.

### **General Review of Applicable Legislations**

#### **The Copyright Act, Cap 68, Laws of the Federation of Nigeria, 1990**

This Act, though widely acclaimed, did not entirely resolve the problem of exploitation of copyrights. The Act is curiously silent on the protection to be accorded unpublished works. This omission is clear from Section 1 of the Act, which limits the category of works eligible for copyright protection to:

1. Literary works,
2. Musical works,
3. Artistic works,

4. Cinematograph films,
5. Sound Recordings, and
6. Broadcasts

Section 2 of the Act confers copyright on works of which the author (or one of the authors) is a citizen of or domiciled in Nigeria, or, in the case of bodies corporate, those incorporated under Nigerian Law. Section 23 contains detailed provisions on the Performer's rights in relation to his performance. The duration of such right is fifty (50) years from the end of the year in which the performance first took place. By Section 26(1), infringement of a performer's right is actionable and the Plaintiff in such an action shall be entitled to damages, injunction, account for profit, or conversion. Section 18 imposes criminal liability on the violator of a copyright generally.

Infringement of a copyright is actionable at the suit of the owner, assignee, or an exclusive licensee of the copyright as the case may be, - Section 15(1). The venue of trial is the Federal High Court exercising jurisdiction in the place where the infringement occurred. Section 21 of the Act allows both criminal and civil actions to be taken simultaneously in respect of the same infringement under the Act. Responsibility for the administration of copyright in Nigeria is vested in the NIGERIAN COPYRIGHT COUNCIL, (Section 30).

### **International Instruments on Copyrights**

The need to protect copyright owners outside their national boundaries gave birth to Treaties and Conventions between Nations requiring the State contracting parties to accord protection in their own countries to the copyright of nationals of other signatories. This is the concept of national treatment and reciprocity.

International instruments on copyright include:

1. The Berne Convention, 1887
2. Additional Act of Paris, 1896
3. Revised Berne Convention of Berlin, 1908
4. Rome and Brussels Conventions (1928 and 1948, respectfully)
5. The Stockholm Convention, 1967
6. International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organisations, 1961
7. Performer's Protection Acts (1958-1972).
8. Paris Act, 1971.
9. The Universal Copyright Convention, 1952/1971: This is, perhaps,

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the most prominent of the Conventions. Copinger and Skone James<sup>3</sup> have summed up the object of the Convention as:

"...Creating a bridge between the Berne Convention countries on the one hand and the Pan American Convention countries on the other hand, and particularly in the hope that the United States might be persuaded to enter into copyright relations with the Berne Union countries."

The Universal Copyright Convention was signed at Geneva on September 6, 1952 and revised in Paris in 1971. Essentially, the Convention protects published works, not only if first published in a contracting State, but also if first published anywhere, provided the author is a national of a contracting State. The period of protection under the Convention is the lifetime of the author, and twenty-five (25) years after his death.

10. The Montevideo Convention, 1889. Under this Convention, the Law of the country of origin follows the work into the other countries of the Union.

### **An Appraisal of These Instruments and the Copyright Act, Cap 68 Laws of the Federation, 1990**

#### **The International Instruments on Performing Rights**

From a general review of the foregoing international instruments, a central principle would appear to have emerged, to wit: the copyright of authors from States that are signatories to each of the protocols would be protected in other States that are parties to such Convention/Protocol.

It is, perhaps, only under the Universal Copyright Convention and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations that efforts were made to provide a detailed Code on protection.

It is remarkable that it is under the Universal Copyright Convention that it was provided that from the time of first publication, all copies published bear the symbol (C) accompanied by the name of the copyright proprietor and the year of first publication, placed in such manner and location as to give reasonable notice of claim of copyright.

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, in its thirty-four (34) articles, contains detailed provisions on the protection of copyright of owners from contracting States. The standard of protection under this Convention is "national treatment."<sup>4</sup>

The period of protection under this Convention is a period of twenty (20) years computed from the end of the year in which:

**The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, in its thirty-four (34) articles, contains detailed provisions on the protection of copyright of owners from contracting States**

1. The fixation was made - for phonograms and for performances incorporated therein,
2. The performance took place – for performances not incorporated in phonograms,
3. The broadcast took place - for broadcasts. (- Article 14).

However, the International Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organisations like most other international instruments provides extensively for copyright protection, while leaving the details as well as the logistics of such protection to the domestic Laws of the contracting parties.

From every consideration, it cannot be said that the above development has been in the best interest of international copyright. Consequently, it can be respectfully submitted that the relevant international instruments on performing and mechanical rights have been grossly inadequate at least from the perspectives of uniformity and enforcement.

**The Copyright Act, Cap 68 Laws of the Federation of Nigeria, 1990:**

The Act, clearly, is a commendable piece of Legislation. It, however, has not been able to cure all the defects of the 1970 Act. The Act, like the 1970 Act, is silent on the fate of unpublished works. This has led to divergent opinions among learned commentators as to whether or not an unpublished work has any protection under the Act.

The view has been posited<sup>5</sup> that if publication were a sine qua non to protection of copyright, the Supreme Court would not have held the Appellant liable for infringement in PLATEAU PUBLISHING COMPANY vs. CHIEF CHUKS ADOPHY<sup>6</sup>. It must be stated that this omission in the Act is a very grave one.

**References**

1. Osibanjo & Fogam: Nigerian Media Law, Gravitas Publishments, Lagos, 1991.
2. Copinger and Skone James on "Copyright," 12th Ed., Sweet & Maxwell.
3. The Copyright Act, Cap 68, Laws of the Federation of Nigeria, 1990.
4. Performers' Rights and Recording Rights, Richard Arnold, E.S.C. Publishing Limited, Oxford, 1990.
5. Law and the Media: An Everyday Guide for Professional - Tom Crone, Heinemann Professional Publishing, 1989.

The view has been posited<sup>5</sup> that if publication were a sine qua non to protection of copyright, the Supreme Court would not have held the Appellant liable for infringement in PLATEAU PUBLISHING COMPANY vs. CHIEF CHUKS ADOPHY<sup>6</sup>

## Enhancing and Enforcing Performing Rights as Copyright

### Historical Overview

1. In which St. Columba is supposed to have copied Abbot Fenian's Psalter. The Abbot complained to King Diarmed who gave judgment for the Abbot saying "... to every cow her calf, and according to every book its copy."
2. Order-in-Council No. 912 of 1912.
3. Copinger and Skone James on Copyright, 12th Ed., Sweet & Maxwell, P. 598.
4. i.e. the treatment accorded by the domestic Law of the contracting State.
5. Bankole Shodipo, Esq., in an unpublished work.
6. [1987] 4 NWLR Part 36, page 25.

16

...the International Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organisations like most other international instruments provides extensively for copyright protection, while leaving the details as well as the logistics of such protection to the domestic Laws of the contracting parties.