



# COPYRIGHT ADAPTATION AND CONSTRAINTS WITHIN THE FILM INDUSTRY IN NIGERIA

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## Abstract

The contentious topic of copyright, which primarily safeguards the owner's economic rights, has dominated discussions and arguments. This essay's goal is to review copyright regulations for adaptation and the limitations or flaws in Nigeria's film industry. The article used a qualitative and doctrinal approach, drawing on textual sources, journals, and the guidelines of Nigeria's copyright legislation, to explore the following topics: the definition and method of filmmaking; the idea and eligibility of copyrightable works; the rights that copyrights grant to owners; and the legal requirements and remedies for copyright infringement. By highlighting specific flaws in the Nigerian copyright law as it relates to the film and video industries, the article exposes the law's ineffectiveness and, on the basis of this exposition, suggests remedies that, if implemented, would result in a stronger and more effective copyright law. The article discovered that the current copyright law is toothless, senile, and lacking in bite.

**Keywords-** Copyright, Adaptation, Film, Industry, Constraints

## 1.0 INTRODUCTION

In its broadest meaning, culture is the subject of copyright. The copyright system was created and improved over the course of the last century or so to promote cultural production, the dissemination of knowledge, and the ensuing enrichment of people's lives by exposing them to a wider variety of perspectives on the world and helping them better understand both themselves and one another.

The literature, music, and artistic creation of a nation, as well as how actors, singers, and dancers interpret them, make up that nation's culture and, to a significant part, what is sometimes referred to as its national identity.

People with these amazing creative and interpretive skills can write books, create uplifting music, create stunning artwork, act in movies, sing, and dance. They can be found in any nation. These talented individuals work in the culture of the nation. These cultural works have alternately been referred to as "the most precious of properties," and the Massachusetts copyright protection statute from March 17, 1989, stated the following about these cultural works:

"No property is peculiarly a man's own more than that which is created by the labor of his mind." (Ojiji C. O., 1972)."

As a result, the term "intellectual property" is now aptly used to describe these works of culture. Intellectual property, in contrast to other types of property, is an intangible asset that cannot be secured by physical means. The copyright system was developed with the intention of offering these cultural workers some legal rights through the exercise of which they may make a livelihood (economic right) while also giving a valued expression of the human nature of the cultural workers or creative artist (moral right). Thus, the copyright system serves two purposes:

- i. to inspire artists to create cultural products; and
- ii. to offer encouragement for the distribution of these works.

These make it obvious that communication is copyright's main area of focus. The copyright system works to achieve this goal by granting creators of cultural works the right to control how such works are used by the public and, in turn, how they are communicated to the public.

In addition to the moral and financial rights of cultural workers (or authors), there are social rights to information. The copyright system's role has been to try to create an alignment between the society's core values and opposing requirements for knowledge and the creators' rights (or author).



The copyright system is now governed by law. The rights that creative persons can enjoy in a given country are established by copyright laws, which also specify the circumstances in which those rights may be used and exercised. In essence, copyright is a form of domestic law. This is due to the fact that countries who enacted copyright laws first focused primarily on national usage and protection for works of art due to the limitations of communication technology and the commercial market for their products. Foreign works were not given much consideration, and until roughly a century ago, national copyright laws had no bearing abroad. At the close of the 19th century, gave rise to the beginning of photography, cinematography, sound recording, broadcasting, as well as an international book industry. As a result of this evolution, bilateral and multilateral agreements providing reciprocal or non-reciprocal protection for the works of other nations started to appear. The 1886-adopted Berne Convention for the safeguarding of literary and creative artwork, was the first and most important multilateral accord. On the other hand, Nigeria is not a party to this agreement. The Universal Copyright Convention (UCC) was created in 1952 and has two goals:

- a. to enable the development of dependable ties between the nations of the Berne Union and those of the American continent; and
- b. to provide a framework that would be acceptable to recently independent nations and those who had not yet joined the global copyright system.

73 states had ratified or complied with this convention by the year 1980. Nigeria has not ratified the protocol despite being an adherent to the UCC. (Ojiji C. O., 1972)

In problems involving copyright, enforcement of the right is crucial, just like with any other property right. (Ifeoluwa A. O., 2014). In order to realize the creative outcome of an original piece of work, the law aims to protect the authors' labor, expertise, and judgment. This is so because copyright infringement can result in lost income, discourage creativity, impede industrial, (Onoyeyan G., 2018) economic, and cultural growth, as well as result in a reduction in government revenue in the entertainment sector, particularly when the creativity is exploited for financial gain by a third party without the author's consent or license. It is therefore imperative to safeguard these creators against the indiscriminate and unchecked exploitation of the works of their imagination in order to uphold their entitlement to the fruits of their labor. Poets, writers, artists, painters, broadcasters, performers, musicians, composers, etc. are among these creators, and their works include books, poetry, paintings, songs, films, etc. (Desmond O. O. and Alero I. F., 2014). The goal of copyright is to safeguard the creative work that represents an idea's original expression, not the concept itself.

This essay will address copyright adaptation and restrictions within the Nigerian film industry within this background. The paper is divided into eight sections after this introduction, which makes up the first section.

In section 2, the purpose and method of filmmaking are discussed. It argues that movies are works of art on film. It is the culmination of numerous creative processes that make use of contemporary technologies. These procedures are a result of the human mind's capacity for imagination and creativity. Interestingly, the most significant element that led to the development of film has nothing to do with its artistic potential. It also claims that the majority of films are produced by a large number of people with a variety of abilities due to the variety of artistic elements used. But in the instance of Nigeria, this is largely not the case.

Section 3 discusses the idea of copyright work and who is eligible to use it. It asserts that copyright has been defined as the sole right granted by law to the creator of a work to disclose it as his own creation, to reproduce it and distribute or otherwise make it available to the public in any way, as well as the right to grant others permission to make special use of the work. It further asserts that a piece of art ought to be unique and set in an evocative media in order to be eligible for copyright defense.

The primary subject of Section 4 is the rights granted by copyright. The right granted by copyright, it is claimed, is the ability to "block others from doing anything," although the concept of a "right" normally connotes the legal capacity or liberty to do something. As a result, it is a negative right, one that is intended to stop unauthorized individuals from using a work for their own gain. This is consistent with the purpose of copyright, which is to allow the creator of the work to profit from their labor.

The topic of copyright modifications is covered in Section 5. It makes the case that most people view adaptation as the modification of an original work in order to produce a new work. It also claims that the owner of the copyright has the authority to permit or forbid the production and use of derivative works due to the right of adaptation. In other words, the author must expressly grant permission for someone to modify their literary creation before it can be done.

Section 6 examines the laws and remedies for copyright infringement. It asserts that copyright protection is automatically granted. Therefore, the author enjoys exclusive exploitation of his work once it is established in a concrete form that can be perceived either directly or with the help of a machine or



gadget. Furthermore, it asserts that civil or criminal legal sanctions may be used to address copyright violations.

Section 7 talks with legal restrictions on the motion picture business. The first issue, according to this argument, has to do with how works are categorized and when copyright was first investigated. The second flaw in the current copyright legislation relates to In accordance with Section 7 of the Copyright Act (2022), works produced by or under the supervision or control of a government, a division of the federal government, or an approved international organization are entitled to copyright for literary, artistic, and creative works. According to **Section 19(1)(b) of the Copyright Act of 2022**, the copyright for magical artistic films, sound recordings, and broadcasts lasts for 50 years after the end of the year in which they were first made public. The third issue is who should be compensated for copyright violations in films and videos given that there are multiple creators involved, and the fourth issue is piracy. The articles' eighth section includes suggestions for more reading.

## 1.2 MEANING AND PROCESS OF FILM MAKING

Simply put, a film is a piece of art made of celluloid. It is the culmination of numerous creative processes that make use of contemporary technologies. These procedures are a result of the human mind's capacity for imagination and creativity. Interestingly, the most significant element that led to the development of film has nothing to do with its artistic potential. The film's hypothesis was illustrated through a series of optical toys. Its materials and tools were created in an effort to document life and observe animal motions, including those of people. What scientists and innovators had created was appealing to showmen and paying consumers since it could provide peepshow entertainment. The first technologists and businesspeople who learned how to project their images into screens later, when the novelty of lifelike movements started to wear off, hit upon an audience interest that had been dormant for some time: the story. They started presenting straightforward stories in a new format. Commercial viability followed, and an industry along with what appeared to be an art started to grow. (Shehu B., 1992).

What fundamental qualities define film as a creative art form and set it apart from other works of art. Film exhibits a distinctively mongrel nature since it embodies so many other disciplines while avoiding copying any of them. It is clear and crucial that film has a connection to and borrows from the dramatic, literary, and visual arts. With its realistic approach, film is more akin to photography than painting because it is a flat, two-dimensional visual depiction. However, subject time is halted; a single moment from reality is fixed and frozen, unlike photography or painting with its succession of quickly projected still images and paintings. The viewer decides how long to spend viewing; he can skim the piece or spend hours getting to know it. In a movie, as one frame is followed by another, we see not just the instant snapshot that is being shown, but also what occurred before and after. We watch the series of images at the time and order that the filmmaker has predetermined. Both moving visuals and static visual arts need to be organized spatially and chronologically.

In order to give a series of moving images coherence, filmmakers use literary devices such narrative expository, descriptive, and argumentative structures. The fiction big-budget movie most closely resembles the novel in terms of structure. However, whereas the author must conjure a sensory world with the use of arbitrary and abstract printed signs, the film maker directly engages the senses with sight and sound. The author of the work expresses to us what he wants us to ponder about and about his characters' thoughts. The film director rarely speaks in his own voice; instead, he lets viewers deduce thoughts and emotions from what the characters do and say. In this way, he is similar to a playwright in that he relies on dramatic action and conversation (Shehu B., 1992).

Due to the stage's distance from the majority of viewers and its lack of visual variation, the performers' spoken words serve as the primary means of communication in theatre. Movement, gesture, and the environment serve as reinforcements. In contrast, when watching a movie, we tend to learn just as much from the actions of the characters—such as how a guy eats, how a woman dresses, or how items become brighter as daylight approaches. On stage, speech is typically more frequent than in real life, and it is also more dramatic, poetic, and loaded with ambiguity and innuendo. The language is typically sparser and less demanding of your undivided attention in movies. Speech is reduced to a supporting role in a complicated artistic work that also features music, sound effects, and a rich visual environment. The fact that time and space are wholly genuine on stage is another distinction between theater and film that should be made. Film, however, is not a representation of reality; it is a two-dimensional depiction of a three-dimensional reality.

The circle of the three primary aesthetic forms of film—pictorial, literary, and dramatic—should be appropriately concluded by reiterating the importance of the visual medium. These images, though, are very dissimilar from paintings or still photography. They perform their own unique kind of movement and storytelling. The aesthetic experience provided by movies is distinctive. The piece plainly differs from any of its component sections (Shehu B., 1992).

Before deciding who receives credit and compensation for copyright, it is prudent to have a thorough understanding of the intricate filmmaking processes (not just the sequential flow from script to processed reels of film, but also the sheer number of people involved, especially those who are crucial to the period of gestation).

The majority of films are created by a large number of people with a variety of expertise due to the variety of artistic content involved.

Regardless of whether art can be produced by a group of people working together, the western tradition for the past several centuries has been to view the art piece as primarily the expression of one person through forms that he shapes and controls. The director's controlling sense is the most prevalent and recognizable in movies. To put it briefly, the director's creative activities involve directing what sounds and visuals are captured during the crucial filming period. However, the director is the one who establishes the meaning and feeling, the precise mood and nuance. The script may describe, and others may give suggestions. The world is brought to life by the director in front of, behind, and through the camera and microphone. He commands and evokes that cinematic universe. In this regard, we discuss the D.W. Griffith and F. N. Marnau movie. among others, Sergel Eisenstein. Modern movies are growing more characterized by directorial control. (Shehu B., 1992).

However, on occasion, especially in American films during the first three decades of sound, a work bears a constant personal identity with its producer. Directors in these situations were mandated by orders. Some production experts' names, including Goldwyn and Meyer, Walter Wanger, or Carlo Ponti, may be mentioned. Alternatively, names like Hubert Ogunde, Ade Love, Jab Adu, and Ola Balogun immediately come to mind when thinking of Nigeria, a country with a plethora of independent cinema makers.

The writers of the scripts may also have some discernible control over a body of work. The idea came from him, and the script he creates serves as the creative framework for the movie. Sometimes the idea wasn't created by the person who wrote the script. He might be an employee hired to put the script together, or he might be a screenwriter whose responsibility it is to adapt a book or novel (someone else's work) into a screenplay. In Nigeria, the clever publication of a thoroughly researched storyline on premium times years ago gave rise to the acclaimed non-fiction film "Oloture," a Nigerian production inspired by a premium times trafficking investigation in 2014 that has attracted much-welcomed attention in Nigeria and other countries. Tobore Ovuorie, the reporter for the investigators, was recognized in the movie's appreciative section. The original author has filed a claim for compensation as a result of the producer's behavior, who likely believed that recognition for the original author's labor, talent, and judgment was sufficient. (Balogun O. G. and Ogundele S. A., 2022).

There are notable craftspeople among the cameramen and editors who typically work closely with directors but are underappreciated. Some cameramen approach their work with talent, aesthetic integrity, and unique style. A talented cameraman can turn a drab narrative into beautiful images. The editor is typically responsible for turning visual action into coherent segments that make up a storyline. His scenes may occasionally follow the narrative, but more often than not, they are guided by his aesthetic vision. Great directors like V.T. Pudovkin highlight the editor's dominance in the film's creative processes. A similar amount of influence goes to the performer in the making of movies. The actor or actress who plays the lead role is an expert at performing artistically as instructed by the screenplay under the direction of the director. A script that is otherwise lifeless gains soul through performance. These days, we refer to a Charlie Chaplin, Clint Eastwood, James Bond, or Elizabeth Taylor movie. All of the aforementioned groups of people are essential to the process of making a movie. The fact that everyone contributes in some way to the whole makes the movie a work of collective art. But in the instance of Nigeria, this is largely not the case. Nigerian film production is undoubtedly in its infancy and is typically a one-man show. Take Hubert Ogunde as an example. He is the film's producer, director, editor, and he also stars in the most of it. a true master of all trades. The current copyright law only allows for the payment of compensation to one person, typically the producer or some sort of organization like the government, a state authority, or an international organization. This is specifically because of the unusual nature of film production in Nigeria. Later, we'll demonstrate how this presumption is false. (Shehu B., 1992).

### 1.3 CONCEPT AND ELIGIBILITY OF COPYRIGHT WORK

According to the World Trade Organization (WTO), copyright is the sole legal right granted to the creator of a work to identify it as his own, duplicate it, and make it available to the public in any way. It also includes the ability to grant permission for others to use the work in specific ways.

The term "copyright" is defined as copyright as defined by the Copyright Act (2022) in Section 108. Since no copyright claims exist outside of the Act, copyright protection in Nigeria can only result from what the Act states. It has been remarked that this is egregiously inadequate and that it "does not permit lay person" to truly understand what copyright entails (Ugbe R. O., 2000).





However, the works that are eligible for copyright are listed in Section 2 of the Copyright Act. Among them are broadcasts, sound recordings, musical compositions, visual arts, and literary works. According to *I.J. Adenuga v. Illesanmi Press Sons (Nig.) Ltd (1991)*, copyright in regard to an eligible work is the sole right to direct, carry out, or permit the performance of any actions that are reserved to the copyright owner.

A clearer description is provided in Section 1 of the United Kingdom Copyright, Design and Patent Act (1998). It says this about copyright:

a property right that exists in accordance with their contribution to the subsequent work descriptions -

- a. original writings, plays, songs, or other creative works;
- b. recordings of sound, broadcasting-related movies, and
- c. the layout of published editions' typography.

Another definition of copyright is "original works of authorship," which includes, among other things, printed materials, sculptures, musical compositions, plays, poems, novels, dramas, buildings, dance, and technical documentation. (Idris K., 2003).

Copyright, according to Black's Law Dictionary, is the authorization to reproduce. It is a property right that grants the holder the sole authority to reproduce, adapt, distribute, perform, and display an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and architectural works) fixed in any tangible medium of expressions (Bryan A., 2004).

The creator of a work has the unalienable but exclusive legal right to copy, reproduce, publish, sell, or otherwise transfer his creative works. It grants the author the legal right to demand that his works be kept in its original form and to protest any alterations made to or mutilations made to copies of his works (Yerima T. F., 2002). This implies that works with copyrights are shielded from being used with permission. This right also grants the author of the work the right to a portion of any proceeds from its public usage and the ability to claim authorship and respect for the fundamental integrity or character of the protected works (Tudesola L. S., 2018).

However, copyright is not a monopoly right because it does not restrict others from producing identical works, so long as the identical work is conceived of separately. Preventing the appropriation of one man's work by another is another negative right (*Coreli v Gray 1913*; *Halsburys, 1962*). According to some, the goal of copyright is to increase knowledge by promoting the creation and dissemination of new works (*Gero v Seven-Up*). The incentive is the sole right granted to authors to reproduce and disseminate their works. Preventing others from reaping the fruits of the creator's labor is another purpose of copyright (*Oladipo Yemitan v Gbenga Odusanya 1980*).

Unlike patents, designs, and trademarks, which need to be registered in order to be protected, copyright protection kicks in as soon as a work is created and is not reliant on any kind of registration. However, whether a work is an eligible subject matter determines whether the copyright in that work will continue to exist. It complies with the Copyright Act's standards for fixation and originality, and it has a suitable connection to the person who created it. Literary works, musical works, creative works, audio-visual works, sound recordings, and transmission are all considered protected works under *Section 2 of the Copyright Act*. According to Sections 63 and 74 of the Copyright Act, neighboring or related rights, such performer's rights and folklore expression, might also be considered acceptable subject matter.

Additional eligibility criteria are provided by *Section 2(2) of the Copyright Act*. It specifies:

Despite subsection (1), literary, musical, or artistic works are not eligible for copyright protection unless they have been fixed in a form or medium that allows for their perception, reproduction, or other forms of communication, either directly or with the aid of a machine or device, and unless some effort has been made to give them an original character. The foundation for the ideas of uniqueness and fixation is provided by these clauses. In Nigeria, eligibility for copyright protection is based in large part on the ideas of originality and fixation.

In *University of London Press Ltd v University Tutorial Press Ltd (1916)*; *ICIC (Directors Publication Ltd v Ekko Delta (Nig.) Ltd 1977)* the court noted,

The term "original" in this context does not imply that the work must be an expression of novel or creative ideas. Thought expression, and in the case of "literary work," thought expression in print or writing, are the issues that copyright acts address rather than the originality of ideas. The Act does not specify that the expression of the notion must be in an original or novel form; rather, it just stipulates that the work must not have been plagiarized, or that it must have originated with the author.

Fixation requires that the job be tangible in some way. As a result, the work must be able to be seen, heard, and reproduced without the use of any intermediaries.

This is required because both works must be able to be compared in order to demonstrate the existence of a work and/or its infringement. As stated in *Section 5 of the Copyright Act*, which states the following, "in addition, for copyright to exist in a work in Nigeria, the work must have connection with Nigeria, by virtue of the author's nationality or abode in Nigeria."

In accordance with this clause, copyright will be granted to every eligible work where the author or, in the case of a joint authorship work, any of the authors, is present at the time the work or a significant portion of it is made.

- a. a person who is a citizen of Nigeria or resides there regularly; alternatively
- b. a legal entity created by or in accordance with Nigerian law.

If the work is an audio-visual, literary, musical, or artistic production that is first published in Nigeria, or if it is a sound recording recorded in Nigeria (**Section 6 Copyright Act 2022**), copyright would exist on the work even if the creator is neither a national of nor a resident of Nigeria (**Section 2**).

The Act in Nigeria provides for works eligible for copyright protection (**Section 2 Copyright Act 2022**) The following are eligible for copyright protection, subject to this section: literary works, musical works, creative works, audio-visual works, sound recordings, and transmission.

By virtue of **Section 108 of the Act**, "literary work" includes, regardless of literary quality, any of the following: novels, stories, and poetical works; plays; stage directions; film scenarios; broadcasting scripts; choreographic works; computer programs; textbooks; treaties; histories; biographies; essays; encyclopedia; dictionaries; directories; lectures; addresses; sermons; and law reports, excluding decisions. Any musical composition, regardless of musical quality, is considered a musical work, and this includes works written for musical accompaniment. WIPO states that a musical work may be serious or humorous, include song choruses, operas, musicals, or operettas, and be composed for one instrument (solos), a few instruments (sonatas, chamber music, etc.), or many (bands, orchestras) (**WIPO**).

According to the Act, "artistic work" refers to any of the following works or works that are comparable to them, regardless of their artistic quality:

- a. artwork such as drawings, paintings, etchings, lithographs, woodcuts, engravings, and prints;
- b. Maps, plans, and diagrams;
- c. Works of sculpture;
- d. Photographs not comprised in an audio-visual work;
- e. Works of architecture in the form of building model; and
- f. Work of artistic craftsmanship, including pictorial woven tissues and articles of applied handicraft (**Section 108 Copyright Act 2022**).

The term "audio-visual work" refers to any collection of connected visual images, with or without sound, that can be displayed as a moving image using a mechanical, electronic, or other device. It also includes the sound track but excludes broadcasts because they are not considered audio-visual works.

Broadcast refers to the wireless dissemination of sounds, images, or both in a way that makes them accessible to the general public (**Section 108 Copyright Act 2022**).

#### 1.4 RIGHTS CONFERRED BY COPYRIGHT

The right granted by copyright is the ability to "block others from doing anything," although the concept of a "right" normally connotes the legal power or liberty to do something. As a result, it is a negative right, one that is intended to stop unauthorized individuals from using a work for their own gain. The negative aspect of copyright stems from the fact that it forbids other parties from acting in the interests of the works in which the copyright owner is authorized without consent. In fact, it seems strange for someone who has the power to allow or prohibit the performance of any act with respect to their property (copyright) to be unable to perform the same act with regard to that property themselves. Furthermore, a copyright owner's authority over his or her creation is not restricted to the privileges outlined in Section 9 of the Copyright Act. It includes the author's moral right as stated in Section 14 of the Copyright Act. The section states that authors (along with their heirs and successors in title) of works protected by copyright have the unalienable, unabridgeable right to claim authorship of the work, be recognized as the creators of the work, and object to and seek relief from any deformation, dismemberment, other alterations, or other negative action in connection to the work, where such action would be or is detrimental to their good name or image. Authors' paternity and attribution rights are additional names for this right (**Oriakhogba D. O. and Ifeoluwa A. O., 2021**). This is consistent with copyright's goal, which is to enable the work's author to make money off of their effort.

The two (2) types of rights that copyright confers are moral and economic rights. Reproduction, distribution, the ability to create derivative works, and public performance and display rights are all examples of economic rights.

According to *Section 9 of the Copyright Act*, a literary or musical work's copyright is the sole right to perform or provide permission for the performance of any of the following acts, with the exceptions listed in Part II of this Act: Produce, reproduce, perform, or publish any translation of the work; create any audiovisual work or a record about the work; publish the work; perform the work in public; and distribute to the public. if the work has not been subject to distortion allowed by the owner, copies of the work for



commercial purposes may be made through sale or other transfers of ownership; the work may also be broadcast; Publicly disseminate the work; make it accessible to the public via wired or wireless methods in a way that allows users to access it from a location and at a time of their choosing; make any adaptation of the work, as well as perform any of the activities related to the work that are included in subsection (1)(a), (b), and (c) (c). The utilitarian elements of a three-dimensional piece of artistic handicraft are not protected.

The exclusive right to control the construction of any building that replicates the entirety or a significant portion of a work of architecture under the Nigerian form or in any other form that is clearly derived from the original is also included in copyright, but not the right to control the reconstruction of the building under the Nigerian form in the same style as the original.

In accordance with Section 11 of the Copyright Act, and subject to the exception under Part II of this Act, copyright in an audio-visual work is the exclusive right to perform or authorize the performance of any of the following actions: reproduction; causing the audio-visual work, which is made up of sounds and visual images, to be seen and heard in public; and; Make the audiovisual work available to the public via wired or wireless methods, broadcast it, or make any copies of its soundtrack. such that the general public can access the labor at a time and a location of their choosing; if the work has not been the subject of authorized distribution by the owner, distribute copies of the work to the public for commercial gain through sale or other transfer of ownership; adapt the audiovisual work; translate the audiovisual work in whole or in part; and carry out any of the acts related to a translation or adaptation of the work that are listed in relation to the work under this section.

According to Section 12 of the Copyright Act, a sound recording's copyright gives the owner the only authority to do any of the following things: reproduce the sound recording; transmit the sound recording; with the exceptions listed in Part II of this Act, As long as the work hasn't already been the object of permitted distribution by the owner, you may make copies of it available to the public for commercial use through sale or transfer of ownership. Inform the public about the sound recording. Make the sound recording accessible to the public via wired or wireless methods in a way that allows people to access it from a location and at a time of their choosing.

According to Section 13 of the Copyright Act, subject to the exclusions listed in Part II of the Act, copyright in a broadcast is the sole right to perform or provide permission for the performance of any conduct, including the broadcast and being rebroadcast; inform the general public about the broadcast; Fixing the broadcast, reproducing a fixation of the broadcast, or distributing a fixation of the transmission or copies for use in commerce through the rental, lease, hiring, lending, or other similar arrangement are all examples of making the broadcast accessible to the public by wire or wireless means in a way that allows viewers to access the work from a location and at a time of their own choosing. Cable operators do not have the rights specified in Subsection (1) with regard to broadcasts they merely retransmit on behalf of broadcasting companies. A television broadcast's copyright includes the ability to restrict the capture of still images from the broadcast.

By using his moral rights, the author is able to maintain his personal connection to the work. These rights include the ability to claim authorship, the right to have the author's name included when the work is reproduced, and the ability to protest any distortion or modification of the work that would be detrimental to the author's honor or reputation. Moral rights, however, are perpetual and non-transferable (**Section 14 Copyright Act 2022; Jadesola AL. S., 2018**).

### 1.5 COPYRIGHT ADAPTATION

According to *Section 108 of the Copyright Act*, adaptation is the transformation of an existing work into a different type of work or the alteration of a work of the same type to make it appropriate for different exploitation conditions. It may also involve changing the content of the work.

One of the rights that belong to the person who created a work is the exclusive right to adapt a literary work. The term "derivative works" refers to literary and creative works that have undergone adaptation, translation, musical arrangement, and other alterations and modifications. These works are also fully protected by copyright. According to (**What is Adaptation? 2023**), adaptation is typically seen as a change made to an original work in order to produce a new one. For instance, translating a book into a movie or a university-written textbook into one that is appropriate for a lower level. The original work would be violated by the adaptation, even though it might be eligible for copyright protection in its own right, unless either the original work that has been adapted in it is in the public domain or the necessary copyright license has been obtained from the owner of the copyright in the original work (**Nandita S., 2010**).

In other words, in order for anyone to use the work of an original, there must be the express permission of the originator. The right of adaptation gives the copyright owner the power to permit or disallow the creation and use of derivative works (**Apply Trade Mark, 2023**). If a derivative work meets the criteria for protection, such as originality, fixation, and nationality, the author of the adaptation has her own

copyright in that work. Copyright protection for the original materials is unaffected and only applies to the material contributed by the adaptor in a derivative work (**Apply Trade Mark, 2023**). Of course, in order for the new content in the adaptation to be useful on its own and not be wholly dependent on the original work for its existence, it must be able to stand alone and be able to be used individually (**Nandita S., 2010**). So how can we tell if a piece has been adapted?

In the case of *R. G. Anand v. Delux Films*, the issue of how to tell if a work has been modified is addressed (**1978**). When deciding on such dubious infringement, the Supreme Court used the "ordinary-observer test." In the case of *Daly v. Palmer* (1868), an American court first established this test, which states that infringement would happen if a viewer of the film departed with the obvious impression that it was a copy of another work. The *Twentieth Century Fox Film Corporation v. Zee Telefilms Ltd. and Ors* (**2012**) case further developed this approach by stating that each piece of illegal content must first be examined individually, then the entire body of work if the concept is the same. However, it would be difficult to classify it as infringement if the presentation was made in a completely different way. This argument has been heavily employed by the film business because, although a movie's plot may be the same, how it is presented is what is said to be different (**Sharmeen S. K. and Kharuna, 2023**).

The producer could argue in favor of metamorphosis, which is a brand-new work that is based on the unprocessed information in the previous work. The producer would be responsible for copyright infringement unless a movie or film is produced in a transformative manner rather than through adaptation. This is because a transformation would simply employ the original work's raw data, or ideas that are, in any event, not covered by copyright, whereas an adaptation and a derivation would heavily rely and rest on the original work (Balogun O. G. and Ogundele S. A., 2022).

#### 1.6 LEGAL GUIDELINE AND REMEDIES FOR COPYRIGHT INFRINGEMENT

Automatic grant of copyright protection. The author thus gets exclusive exploitation of his work once it is fixed in a concrete form that can be perceived either directly or with the help of a machine or instrument. When a narrative is narrated, written down, or typed onto a computer, it is protected as soon as possible. In other words, the moment a work is copied or recorded, a copyright is established. As a result, copyright can be protected without being registered, however doing so has advantages.

To help authors and other creators in Nigeria better safeguard their works, the Nigeria Copyright Commission has launched an online notification database. The applicant must submit an application together with the necessary supporting documentation to the Nigeria Copyright Commission (NCC) in order to lodge a notification: two copies of the work; a fully filled out registration form; a letter of authorization correctly signed by the author of the work permitting his lawyer or representative to file the copyrighted material or to get the certificate of registration on the author's behalf, as well as documentation of the author's payment of the prescribed fee and the necessary fee. (Eke S., 2023; Balogun O. G. and Ogundele S. A., 2022).

The Copyright Act forbids acts that constitute infringement when they are carried out without the owner's consent. These behaviors must be carried out against the work and do not require guilty knowledge. (**Section 9 - 13 Copyright Act 2022**). These are referred to as primary infringing acts. However, the Act also forbids some additional behaviors. These additional actions apply to all the categories of works that have already been covered in regard to unauthorized copies of the work. These are provided for under *Section 356(1) (h) - (g) of the Copyright Act* as follow:

- a. import or arrange for the any imitation of a work that, if created locally, would be considered an infringement under this Act is imported;
- b. sells, offers for sale, or employs any work in violation of clause (a) of the copyright;
- c. generates or owns any plates, master tapes, tools, or other resources that are only intended for use in making unlicensed copies of the work;
- d. permits the use of a location for public amusement or business for a public performance of the work even if the performance breaches the copyright of the work, unless the person granted permission for the use of the location was uninformed of the violation and had no cause to suspect it;
- e. permits reproduction of the copyrighted work on the property; or
- g. Perform any copyrighted work for commercial or business purposes, or to further a commercial or business, or induce it to be performed.

Any of the acts specified in this section shall be performed with respect to all or substantially all of the work, whether in the original form or a form that is clearly distinguishable from the original.

The distinction between primary and secondary infringement is that whereas the former entails manufacturing the infringing copies, the latter entails "dealing" with them by offering the space or the equipment needed to produce the copies. If a secondary violation has occurred, there has almost definitely also been a matching violation of one or more copyright-restricted acts. (**Bainbridge O., 1999; Uguru U., 2018**).





Over the years, there have been numerous truth-dialysiss in that right. However, due to misinformation, poor legislation, lack of access to justice, and indifference, duties to these rights are not secured. The *Oladipo Yemitan v. The Daily Times (Nigeria) Ltd.* and Another case provides the court with an analysis of this issue (Un-reported 1980; Ifeoluwa A. O., 2014). By duplicating it verbatim in "headlines" No. 52 of 1977 without permission, the defendant blatantly violated the copyright in a piece of writing titled "The Day the Lagoon Caught Fire" a publication in the Nigerian Magazine. After receiving written notice of the infringement, the defendants simply stated that they would investigate the matter and took no more action in spite of further correspondence. The accused acknowledged the infringement following the trial. According to the defendants, the claimant was exploited by the defendants who believed that the profit they would earn from the infringement would outweigh any minor damages the claimant would be entitled to because few individuals in Nigeria were conscious of their rights under copyright law. The flagrant infringement, the careless handling of the written letters, the defendants' casual demeanor, and the defense's strategy of disputing obvious facts, asserting the contrary, and only acknowledging the infringement after a thorough trial convinced the court that the defendants should be ordered to pay additional damages. The court increased the Claimant's damages because of the defendant's patronising conduct.

There are a variety of administrative, criminal, and civil remedies that may be offered for the infringement of a copyrighted work. The owner is entitled to relief, including monetary compensation and an injunction, under Section 37 (1) of the Copyright Act, which addresses legal remedies for copyright violations. (including Anton Pillar orders and Mareva injunctions), account rendition, and delivery of the infringing copy in the court with jurisdiction in the location where the infringement occurred and upon proof as specified in Section 37(2) of the Act. Because of the enormous possible damages in an infringement of copyright claim, actual injury need not be proven. (Section 46 Copyright Act 2023). Additional copyright violations result in damage that the claimant is entitled to (Ifeoluwa A. O., 2014).

According to Section 44 of the Copyright Act, anyone found guilty of violating an author's rights faces criminal penalties, including imprisonment and a fine. (Section 46 of the Copyright Act 2022) outlines the process for seizing and returning copies that were made in violation to their rightful owners. The Copyright Act's Section 47 stipulates that the same infringement may be the subject of concurrent criminal and civil proceedings.

Regarding administrative remedies, one may ask the Registrar to prohibit the import of copies that are infringing and request that the owner get the confiscated copies.

Copyright infringement is excused by ignorance. If a copyright infringement is proven or admitted, but Regardless of whether any additional relief is given, the complainant will not be entitled to compensation against the defendant for the violation if the defendant was ignorant of the fact that the work in issue was covered by a copyright or had no reason to assume that it was at the time the violation occurred. (Olusola J. and Idiaru W., 2023; Balogun O. G. and Ogundele S. A., 2022).

### 1.7 CONSTRAINTS OF THE LAW WITHIN THE FILM INDUSTRY

The classification of works and the accompanying copyright expiration are the first issue. For literary, musical, or creative works other than pictures, According to *Copyright Act Section 19(1)(a)*, the work remains confidential for 70 years after the closing of the calendar year in which the author passes away. In contrast, audiovisual works and photos are protected by *Section 19(1)(c) of the Act* for the work is kept secret for 50 years following the end of the calendar year in which the creator dies, in accordance with Copyright Act Section 19(1)(a).

Equal recognition should be given to audio-visual films in order for the copyright in those works to survive the producer's death for 70 years, taking into account the idiosyncrasies in Nigerian filmmaking, which, as we mentioned previously, is generally a one-man show. If we take into account the fact that movie scripts are essentially pure literary works, this claim is quite valid. The discrepancy is that the copyright expiration period for literary works is set at 70 years after the author's death, but for audiovisual films, it is only set at 50 years following the year of the film's debut. It is blatantly unfair to movie producers, especially now that we are working to expand Nigeria's severely underdeveloped film sector.

The second restriction of the current copyright law relates to Section 7 of the Copyright Act stipulates that for literary, musical, artistic film, photographs, sound recordings and and visual works made by or under the guidance or authority of a government, a division of the government, or a recognized international organisation, copyright shall be given by this section broadcast under Section 19 of the Act, copyright exists until the expiration of 70 years. According to this, films produced by the Nigerian Film Corporation, a parastatal of the government, will get 70 years of copyright, whilst independent film producers will only have 50 years. This apparent discrimination does not bode well for the healthy growth of Nigeria's film industry.

The third issue relates to the question of who should profit from copyright infringement in film and video given their various authors in terms of creation. Who is responsible for the script: the editor, the director,

the actor, the producer? As we have often noted in this article, Nigerian film makers are typically one-man shows due to financial limitations in the growth of our film industry. In terms of copyright law, that is hardly the best scenario. A one-man production may be easily compensated, just like a published book or an artistic or musical piece might be. However, if multiple people made equal contributions to the production of a single artistic entity, we are no longer certain who deserves to receive sole credit for its creation and, by extension, who should be compensated in the event that such a work's copyright is violated. It is obvious that the current copyright laws are insufficient in this area. Even more so, given the current level of knowledge among both producers and audiences, the situation calls for a closer examination.

The fourth constraint is the amazing development of communication technology and how it affects the harmonization of copyright rules. Modern methods of reproduction through home video have become more prevalent in recent years, resulting in a violation of the legitimate royalties due to creators and producers of intellectual property that are protected by copyright laws. Such methods were not thought to be feasible when the majority of modern copyright laws were drafted.

The situation appears bleak as piracy, one of the impacts of current reproduction methods, has significantly increased. The nature of the copyright legislation and a lack of effective enforcement are both contributing factors in this. The video boom lasted from 1974 to 1986, during which time there was a significant increase in the importation of video cassette recorders and foreign cinema video cassettes (there was also a significant increase in the illicit commercial duplication of Lps on cassettes during this time). These foreign films enter our country through the cracks in our port and film control board, which encourages the growth of video dubbing studios that frequently reproduce movies without permission. Additionally, as a result of this, video films created for home viewing are publicly broadcast in flagrant violation of the copyright regulations governing their use.

There are a number of reasons why there aren't more severe penalties for violators of copyright laws that apply to the film and video business. The first is obvious: despite the significance of various film industry professionals, there are no challenges in identifying the true author of a film. Who is eligible for those benefits and why is seen as the second factor. What compensation component will be considered in this decision-making process? The copyright law is simply one of many laws that are frequently passed but rarely enforced, necessitating a shift in public opinion regarding the enforcement of these laws as a whole. Once more, the majority of Nigerian writers and creators of intellectual property are not completely aware of the advantages of the protection provided by copyright law. This predicament is brought on by ignorance of both the laws themselves and the legal procedures for breaking them.

The continued infringement of intellectual property rights through piracy, bootlegging, illegal replication, and reproduction is largely the result of the aforementioned causes acting together. The nation's expanding film industry as well as its overall intellectual and cultural development are both immediately and significantly impacted by this. People will become increasingly estranged from their cultural values as a result of ongoing illegal importation and copying of foreign movies and music, which will have the terrible result of creating monstrous cross-cultural monsters. In addition to feeling nervous, authors will be unwilling to undertake any creative project due of their sense of uneasiness. (Ojiji C. O., 1972).

### 1.8 CONCLUSION

A limited-time executive legal right to use and disseminate an author's creative work as he sees fit has been awarded to him. Even if every author normally gets protection for all works created, whether registered or not, registration nonetheless establishes a certainty of ownership in case of any disagreement involving a similar work and makes it simpler for authors to safeguard their works against any future infringement. (Olusola J. and Idiaru W., 2023). Understanding rights is essential for obligation. But disregard ought to be dealt with in accordance with the law (Balogun O. G. and Ogundele S. A., 2022).

The article discovered that the current copyright law is toothless, senile, and without bite. By highlighting specific flaws in the Nigerian copyright law with regard to the film and video industries, it exposes the law's ineffectiveness and suggests remedies that should be put into place to make the law stronger and more effective. Thus:

- i. It is urgent to evaluate the law and update it to reflect the contemporary necessities of living that it either overlooked or took for granted.
- ii. the urgent necessity for the enforcement of sanctions for copyright law violations.
- iii. People need to be made aware of how piracy and other types of infringement affect society as well as the author.
- iv. There should be a lot of focus on the effects of modern technologies. Technology and copyright both need to have a chance to thrive and advance in ways that benefit both. This is so because there are significant political and economic interests at stake.

- v. The government will undoubtedly make measures to ensure strict adherence to copyright rules surrounding the importation of films in the benefit of society since the Nigerian film company would have or one of the sources of earning money from censorship.
- vi. Filmmakers or a group representing them should investigate who receives what compensation in the industry. Only if it is necessary will there be a subsequent period of harmonisation. Because each job is distinct in importance, there might be a requirement for compensation that is appropriate for the work performed.

If any serious good intention toward the copyright law is to be accomplished, all the elements must be taken into account. Traveling after one at the expense of the other can only lead to going in circles and accomplishing nothing.

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