INFORMATION AGE AND COPYRIGHT LAW: FOREIGN BOOKS AVAILABILITY AND AFFORDABILITY IN NIGERIA

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ABSTRACT
The development of analog computer information technology (IT) in 1946 as a back-up to the 15th century printing technology advent had widened the storage processing and dissemination of written print and oral electronic information worldwide. This information age with printing computer discovery had come to be identified with the main indicators as: media revolution, the dominance of market forces, spread of liberal democracies and the astounding growth in trade globalization and consumerism in mobile telephony, fax-machines and internet inter-connectivity websites owned by private and corporate entities for doing daily chores and the integration of most national economies into one high-powered global economy. This information age however had come with it patent merchandise trademarks control and the copyright law as the Ordinances to encourage creativity and literary works production in Africa, Nigeria and across the globe. This paper thus explored the jurisdiction of the copyright law in today’s information age and its challenges on foreign books availability and affordability to third world countries (TWCs) which include the continent of Africa in general and Nigeria in particular. What were the ways forward for robust information dissemination and knowledge-sharing on a global platform without infringing on the copyright laws of nations?

INTRODUCTION
From 1946, three main generations³ of computer systems have emerged, ranging from analog, digital to hybrids. With the mega-byte devices as information storage chips, created web-sites can be reached using private and corporate entities computer, such as: portable laptops, desktops and such other mini or micro- computer systems. A whole lot of articles and textbooks can be downloaded across the globe in a jiffy or within split seconds as between computer systems, using e-mail or g-mail addresses.⁴

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² See: s.27 (b) of 1948 United Nations Universal Declaration of Human Rights (UDHR), collapsed into 1976 UN Bill of Human Rights.
³ Note: Analog computers have become moribund, which generates a lot of heat, without brain box and expensive to maintain. Digital computers were developed with transistors as the internal memory devices with some high level languages compared with analog. Hybrid computers use micro-chips as arc processors (brain-box) and internal memory (e.g. pen-camera computers, et cetera).
can be accelerated and achieved through these electronic devices. The third generation computer has elongated classification based on ‘years of make’ bracket and the inventors of the spreadsheet applications, such as: Micro-soft (ms) disk operating system (DOS), Micro-soft (ms) window (MS/W), micro-soft word, Micro-soft Excel (alphanumeric data computation and tabulation into cells of the spreadsheet package), Desktop publishing (designs), Power-point model, Adobe (PageMaker), Corel-draw (graphic package), et al.

Virus may however affect information stored in the computer system which the users must safeguard from time to time by formatting to remove the virus.

**The Concept of Copyright:** Before the advent of books printing⁵ hi-tech (1512), the process of information dissemination was slow and by ‘hand-copying’ which was the ‘sole reproduction method’ not controlled under any copyright law. But, the copyright law faced its first challenge with the printing development across the globe. These challenges have become more complex with trade globalization and the phenomenal advancement in internet computer networks, aided with telecommunications equipment and media revolution in today’s information jet-age. These new inventions have also made it possible for an author’s work to be exploited in a number of ways not only in his own country but beyond the boundaries of his own State, thus underlying the necessity for the copyright law protection on a global-scale.

This paper is divided into six sub-sections with the introductory segment on the advent of printing and computer discovery and the concept of copyright, literature review, the tenets of the copyright law, the challenges of foreign books availability and affordability in Africa and Nigeria in particular (with some lacunae in legal provisions), conclusion and recommendations.

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5. Kale Thairani (1987:16) – Copyright: The Indian Experience (1st Ed), Published in New Delhi

Note: In same year 1946 of computer discovery, the UNGA Resolution for UNSC membership information and peace enforcement missions re-partitioned the five Continents of the World (Africa, Americas, Asia, Europe including the Middle East, and the Australasia and Oceania) into six zones as the British Commonwealth, Eastern Europe, Western Europe, Asia and Pacific States, Middle East and Africa.

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**LITERATURE REVIEW**

**The Copyright Law:** As a statutory term and universal concept, it refers to the exclusive right to publish and sale, etc of a literary and artistic work. **Exclusive right:** It entails property ownership and the sole rights to produce, re-print, translate, publish or perform, any of the creative works brought out of an original work so authorized by the owner. The scope of copyright law covers creative literary, dramatic, musical and artistic works involving the **writers** as authors, publicists, poets, composers and novelists, the **producers** as printers, publishers, broadcasting organizations, broadcasters, the **marketers**, recording companies, the music and movie film-makers, computer vendors, visual artists, cinema-projectionists, camera – men as paparazzi and photographers, who snap (famous and notorious) people around the world to get interesting printed pictures of them to sell to the electronic and newspaper **proprietors**, promoters and buying media houses, **Guild of editors**, the **performers** as the actors and actresses, (notably the USA Holly-wood, the Indian Bolly-wood and the Nigerian Nolly-wood) **theatre practitioners**, performing artists, stand-up comedians, the musicians, et cetera. Hence, the copyright law is all about the right of multiplying copies of books for commercial interest and other purposes and more so the prevention of all others from unauthorized copying either by printing, reprinting, sound-recording or other means ⁶. **All rights reserved** by the author or the copyright owner implies as a public caveat or warning that ‘no part of this publication may be
reproduced in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or alter, without the prior consent and authorization by the author, who is the copyright owner’

Trade interests Associated with the Copyright Law: Copyright translation in itself constitutes a ‘separate work’, such that all the afore-mentioned stakeholders have proprietary right of ownership and stake in their works and some in representative character. The right constitutes a considerable trade interest that accord some legal protection on the holder, to prevent the unlawful re-production and counterfeiting of a patented foreign work and the loss of substantial income and economic royalties that may be accruable to the copyright owner.

6 Also see: Copyright DN 47, 1988, Section 31(J) recorded 15 Representatives of Copy Right Trade Associations in Nigeria which are overlapping in classification. Also see the list of 21 associations compiled by the NCC (2008: iv).

7 S.31 (J) recorded fifteen representatives of copyright trade associations in Nigeria, which are overlapping in classification

Copyright Trade Associations: Copyright law associations in Nigeria include major copyright interest groups as follows: the Performing Musicians Association of Nigeria (PMAN); the National Association of Nigerian Authors (NANA); Books Publishers and Printers Association (BPPA); Nigerian Guild of Editors (NGE), the Video-films Producers and Marketers Association (VPMA) and the Nigerian Nolly-wood Theatre Practitioners (NNTP)

Copyright Laws Applicable in Nigeria: The earliest statute or written law, recorded and relating to books copyright were the copyright Acts of 1842 and 1847. However, the law on copyright was codified in England by the copyright Act of 1911, which applied to all dependent entities under the British Crown dominion, including the separatist Northern protectorate and the Southern protectorate that later became known as Nigeria. It is also instructive to observe that the 1956 UK (Revised) copyright Act was not applied to Nigeria until it had Decree Number (DN) 61, 1970, now Cap 68, Laws of the Federation of Nigeria (LFN) 1990, as amended 2004, thus repealing the 1912 Ordinance, No. 912.

Salient Features of the Copyright Law

Works eligible for protection: The earliest copyright law works eligible for protection at inception were contained in the British codified copyright Act of 1911 which was domesticated into Ordinance No. 912 of 1912. Works eligible for copyright include literary works, musical works, artistic works, cinematographic films, sound-recordings and digital broadcasting works.

Registration: Registration of the author’s creative work as the sole right came into existence and only the original works attracted the copyright law protection.

Forms of Expression: Protection was accorded to material forms of work ‘expression’ not to ‘ideas’. Research scholarship and all frontiers of human knowledge were safeguarded, for creative works of original character, definitive medium of expression, pattern not a model for industrial process and work not an infringement of some other copyright works.

Unregistered original work: Non registration of original work for copyright law protection was not also to be a barrier in filing suit on civil proceedings against an infringer.

8 Also Sodipo (1997:27) observed that the 1911 British Copyright Act became domesticated and applicable to Nigeria as a dependent territory from June 24, 1912 by Order-in-Council known as Ordinance (No. 912).

9 Note: the word original work does not mean an ‘expression of original thought’. It means the ‘forms of expression’ or medium of conveyed ideas in the copyright law terminology. Also see Asein, J.O. (2012:85-86) on the dichotomy as between idea and expression with case citation.
This law remained in force until DN 61, 1970 as amended and the Copyright Act in Nigeria now under Cap 68, LFN 1990 as 2004. In other words, the copyright law subsisted in both published work and unpublished manuscripts. All first works published in pre-colonial era were entitled to copyright law protection and the unpublished works of an alien domiciled in the protectorate also enjoyed the copyright law protection.

**Berne Union** and **Paris Union Conventions on Copyright**

Works of nationals of countries signatory to Paris Union on Industrial Property (patents, trademarks and designs) were protected, with the harmonization of the Berne Union and the Paris Union (UCC) conventions in 1970, under the DN 61, 1970 and now Cap 68, LFN 1990 as amended 2004.

**50 years/70 years prescribed periods:** Special periods were prescribed for certain types of work, such as: Joint works, Posthumous works, Government publications and Engravings on wood, stone and metal, et al.

The fixed term of author’s lifetime and extra fifteen (15) years after demise was guaranteed by the copyright law. The Act also prescribed penalty for the unauthorized reproduction by destruction of confiscated infringing copies by court condemnation or delivery to the copyright law owner.

**Inventions and proprietary right:** Inventions and proprietary rights of intellectual property (IP) trademarks were also guaranteed by the copyright law. (See: the trademark case of Coca Cola Vs. Pepsi Cola, 1932 Canada)

Also see The Copyright Act, Cap 47, 1988. In citing the Copyright Act, CAP c28, LFN, 2004, Adewopo (2012:05) expounds that the Copyright Act of 1970 was promulgated similarly as DN 47, 1988.

**Original literary and artistic works:** Original literary, dramatic, musical and artistic works were also protected, including cinematographic films and records label. The copyright law also provided for the followings: literary works; written lectures, obscene literature; dramatic works, musical works, artistic works, proprietor’s employment of author, commissioned works, apprenticeship works, copyright assignment, exclusive license, et al. **Literary works:** It is not exclusive of literary works, but represents all works expressed in print or written form, such as: fiction, non-fiction, poetry, compilations, directory, catalogues, tables, charts and similar printed matter. **Written lectures:** Copyright law protection also subsisted in amphitheatre written lectures, sermons, addresses, monologues, recordings and scripts for the digital television and radio broadcast programs.

**Obscene literature:** No copyright law protection can be claimed in respect of works which are immoral, obscene or objectionable in content and also go against public policy. He who seeks relief or equity in a court of law must come with clean hands, under the general principles of jurisprudence. Hence, one whose work can be challenged on grounds of public order, decency or immorality cannot claim the protection provided by the law on copyright. The right of freedom of expression and of the Press is subject to reasonable restrictions, under the 1999 Constitution of Nigeria, Cap 4 of the fundamental rights. Similarly, the importation of ‘obscene literature’ is under ban also known as ‘absolute prohibition order’ in Nigeria.

**Dramatic works:** It refers to any written piece for re-citation, chorea-graphic work or entertainment, in dumb-show, scenic arrangement or acting form, which is fixed in writing or otherwise (but does not include a cinema graphic film) plays, dramatic scripts designed for radio and television broadcasts, pantomimes, ballets, musical comedies and opra.
First Copyright Owner’s Registration: The copyright Act provides that a creative work belongs to the first copyright owner, whether registered or not. Joint works: The copyright is generally vested in the Editor-in-Chief, unless otherwise stated in collective works that make-up a book, be it an encyclopedia, anthologies (collection of poems or stories), directories (or trade Enquiry book compilation); et al. It is not treated as a product of joint-ownership under the copyright law. The author who dies last is the Editor-in-Chief under s.2 (4) of the Act, without any prejudice to the mutual assent of the contracting parties.

Commissioned work: The copyright law on creative work is vested in the person who commissioned the work. This is because he pays the price and plays a valuable consideration to the author for executing the work. For instance, a photographer, printer or portrait producer falls under this category. The person commissioning and paying for the creative work in money or in kind, becomes the first copyright owner. Caveat: thus, if a photographer exhibits the photograph already paid for, in his shop window or publish it in a magazine, pamphlet or book, without obtaining the required copyright law consent, legal action may be taken out against him.

Proprietor’s employment of author: The copyright law vested in the proprietor the limited use and extent of publication of the work through his outlet, in case of a proprietor of newspaper, magazine or similar periodicals who employed an author. All other rights such as: the publication of a book, translation rights, cinematographic rights, public performance rights, et al remain vested with the employed author. The caveat here is that the employed writer of articles, story or news report, may not use or send such works to another newspaper or journal for publication, except there is an agreement in writing, enlarging the rights of the employee to do so, as set out in s.17 of the Copyright Act.

Apprenticeship work: Here, the distinction as between a ‘contract of service’ and a ‘contract for service’ must be made and servant trade-learning relationship. Khosha GD (1987) an eminent jurist in his book ‘know your copyright’ writes that the level of control exercised by the employer over his employee counts, as between:

The physicians and surgeons employed in the hospital; a lecturer employed to explain the merits of an air-ship to persons attending an exhibition, a sporting representative on a contract of service. These are not to be under a contract for service and analogous to daily wages and monthly salary. Copinger, also a notable authority on copyright law explained this distinction, upon the degree of control exercised by the employer over his employees. Artistic works: It covers paintings, sculpture and drawing (including a diagram, map, chart or plan); an engraving or photography, architectural works and craftsmanship with artistic quality.

Musical works: It refers to any (composed) combination of melody and harmony, reduced in writing or by notation. It includes all musical composition, with or without words, adaptation arrangements and editing (minus musical lyric), which falls under literary work. Musicians collect royalty from the producers, but not on all the uses of their work (expounds Sodipo, 2010). The publisher or producer negotiates collectively at site and distribute royalty to the copyright law holders. The Nigerian Government is yet to effectively regulate and enforce the use of music.
in the country even though Nigeria had acceded to the Berne Union Convention held in Switzerland on ‘literary and artistic works.

**Copyright assignment:** s.18 of the copyright Act dealt with the assignment of copyright, which comprises of a ‘group of rights’, not just a single right. These assignable rights include: publication right; translation right; cinematographic right and public performance right; et al. This is necessary to differentiate different persons and corporate entities which may exercise them independently based on their business interest, from the 1st copyright owners, wholly or partially as parties deem fit.

For instance, ‘Things Fall Apart’ novel written in the English language by Chinua Achebe (in 1958) has enjoyed translation assignment into fifty languages and co-extensive rights to other business interests across the globe. Assignee thus only acquires partial-copyright which may be exercised independently of each other, from the 1st copyright Agreement. Assignment of copyright is often for a specific purpose and limited period of time and terms of usage by the assignee. The author retains the co-extensive or vast rights of usage and subsequently may publish his article, in book form. He may also modify or adapt his articles for use in some other forms as he deems fit.

The author, as the 1st copyright law owner may restrict the assignment of copyright to a particular year, country or as between countries, who acquire independent rights of choice or business interest. On caveat, deeds of assignment drafting requires a great caution in the author’s own interest to avoid vague terms and ensuring that his right of lien is incorporated in the agreement to avoid the effect of transferring All rights unwillingly that he is entitled to in the copyright deeds of assignment.

**Exclusive license:** Closely related to copyright assignment is license issuance which may emanate from the 1st copyright law owner, for the holder to publish under patent license. A license merely confers the authority to perform certain acts to exclusive licensee as spelt out and specified in the licensing Agreement. For instance, a license to print and publish a certain number of books or copies of the contracted work may be arranged in a specific language, within a specified period of time, in a country or region by parties to make books available and affordable in third world countries (TWCs). Exclusive license to publish or translate or perform, et al is done if the copyright law holder does not wish to execute an instrument of Assignment. But, a non-exclusive license or assignment shall have the effect of fees received by the grantors being divided equitably between all the co-owners, as set out in s. 10 (6) a & b, 1988 No. 47.

**Justifications for Copyright Law Protection in Nigeria**

The significance and reasons for copyright law protection include:

To encourage talented persons to produce creative works; to produce, make sale and get paid and where the supply equates the demand, book prices will stabilize in the market overt, to prevent the unlawful reproduction of protected work’s copies by unauthorized impostors and pirates, to identify the classes of acts which constitute infringement on the IP rights and safeguard them, to expand the copyright law scope to cover all types of written intellectual property (IP) creativity, other than books, films, records and broadcasting; et al., to create incentives for the dissemination of the knowledge of those original works, to enable the least developing countries (LDCs) be granted compulsory licenses, for the reproduction and translation of essential works of foreign origin in TWCs, to also enable LDCs obtain licenses under trade reciprocity principle provided for in the Multi-lateral Copyright Conventions (MCC).

To ensure that the harmonized Berne Union Convention (on literary and artistic works) with the universal copying convention (UCC) done in Paris (on industrial property) embracing several
States with set minimum standards of copyright law protection are provided in the national copyright laws of member States, to ensure that the National treatment principle which imposes an obligation on each member state be universally adopted and accorded the same copyright law protection, to ensure the availability of printed works of foreign origin and their affordability to LDCs through ‘local content’ reproduction at prices reasonable in their own context was also justifiable for the copyright law protection in Nigeria.

WTO/TRIPS Agreement, under the UNESCO: At the inception, Nigeria’s membership of the Paris (France) Universal Union of Copyright (UUC), the UNESCO and other main specialized agencies of the United Nations (UN) include: the traditional big five as UNESCO, FAO, WHO, UNICEF and UNIDO; the specialized agencies as technical organizations include: UPU; ITU, IMO, WMO; ICAO; WIPO and IAEA; and the economic Bretton-wood’s institutions as: the IMF; World Bank Group (IBRD; IFC; IDA; MIGA and ICSID); the WTO (fmr. GATT); UNCTAD, et al. Nigeria is a member of ALL the outlined Inter-Governmental Organizations (IGOs) and the specialized agencies of the UN, except the Berne Union (Switzerland) of the world intellectual property organization (WIPO).

The Paris Union (1883): The Paris Union of intellectual property is officially known as ‘International Union for the Protection of Industrial Property’ (IU/PIP), which came into being as a result of the Convention concluded in Paris (France) in 1883 and revised in 1967. It was domesticated in Nigeria by the National Office of Industrial Property (NOIP), which is now known as the ‘National Office of Technology Acquisition and Promotion (NATOP).’

The Berne Union (1886): The Berne Union on the other hand, was officially known at inception as the ‘International Union for the Protection of Literacy and Artistic Works’ (IU/PLAW), which was composed of States party to the Convention concluded at Berne (Switzerland) in 1886 and later revised in 1971. The UN Declaration of Universal Human Rights (1948) also had Berne Convention position reflected under S.27, sub-section b, for the protection of ‘Literacy and Artistic Works,’ by its member-states, which includes Nigeria at the time as a British Colony.

The two Conventions on Industry Property (Paris Union 1883) and Literacy and Artistic Works (Berne Union 1886) got harmonized in 1971. Nigeria’s participation (on Nov. 1960) in the workings of the United Nations Educational Scientific and Cultural Organization (UNESCO) established in 1946 began shortly after her political independence on 1st October 1960. The UNESCO currently co-ordinates the World Trade Organization TRIPS (WTO/TRIPS) Agreement as ‘Trade Related aspects of Intellectual Property Services’ Agreement. Western Europe led then by the United States (US) after the WW 2 were worried that the LDCs desired for a new world information and communication orders (NEWICO).

The least developing countries (LDCs) had sought the adoption of a new world information order, because of their concerns about the distorted and unbalanced Western world media information and the scenario being depicted about 3rd world countries (TWCs) in the Western controlled media. But, the Western countries opposed this attempt because they saw the NEWICO as harmful to the free flow of information and believed that some aspects of this
demand could lead to press censorship. So, this brought about the initial politicization of the UNESCO Agency.

**Nigeria’s Membership of UNESCO:** Nigeria in Africa actually joined the UNESCO because of its strategic relevance, which derives from her perception of education as a dynamic vehicle and factor to economic and social development, not only in Nigeria but the entire Continent of Africa and the TWCs.

Due to the LDCs agitation for NEWICO (new world information and communications order), the United States, United Kingdom and Singapore subsequently withdrew from the UNESCO (in 1971) ostensibly attributable to the following reasons: **Administrative incompetence and financial extravagance** (seen by LDCs as the persecution of the then Director-General, DG of UNESCO, Mr. Ahamadou M’bouw, a Senegalese national); the question of human rights violation in LDCs, and the possible erosion of ‘individual rights’ by ‘Group rights’, as contained in the 1981 African Charter of Human and Peoples Rights (ACHPR).

Nigeria’s position on NEWICO was that it deserved the full support of the international community and that membership withdrawal by the afore-mentioned States was derogatory from the universality of UNESCO in promoting global information and communications understanding amongst States and the opportunity of the LDCs to benefit from the UNESCO activities. UNESCO. Nonetheless, in association with the UNICEF (UN children’s fund) organized programmes for schools rehabilitation and supplied educational and other instructional materials, information and research communications shortly after the Nigerian civil strife that lasted for thirty-months (1967-69). Today, the UNESCO handles the copyright law matter, in collaboration with the United Nations World Trade Organization (established in 1994).

**Tenets of the Copyright Law**

*Plagiarism, Books Piracy, Fair Dealing Exceptions and the Exclusivity Right*

**Unacknowledged works:** In conceptualizing the word ‘copyright’, it does not connote a right or license to copy freely or the freedom to copy without acknowledgement, which amounts to **plagiarism.** On the contrary, copyright is an exclusivity right and a negative right to prevent others from copying the physical material existing in the broad spectrum of written science, literature and arts work. Paradoxically, copyright connotes the ‘right to withhold or control copying of a duly registered work and even unpublished manuscripts.*

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16. ibid, pp. 133 – 35

Note: This highlight is not intended to be a comprehensive coverage of Nigeria’s participation in the workings of the UNESCO and the UNICEF vis-à-vis the voluntary donation of books to Nigerian Schools, Colleges and Universities as specialized educational agencies of the UN.

**Counterfeiting:** It refers to books and products fakery as identical unauthorized re-production of a validly registered copyright or patented product (e.g. Made in-Taiwan, Hong Kong). Similarly, photo-copying a textbook other than the original work for sale and profit-making is counterfeiting in violation of the copyright law. **Forgery:** Unlike counterfeiting, forgery means a similar but inferior quality production of duly registered original work (e.g. ‘Aba-Made’ of substandard quality). Here, a curious observer can always spot the differences, if the original copy is known before hand. But, like counterfeiteers, the aim is to cheat the copyright owner or holder for a profit or pecuniary gain. **Mimicry:** It refers to similarity in composed musical sound, onomatopoeia or the unwholesome skill in imitation and sending God’s creative ability to sleep (e.g. music wordings copy-cats, other than lyrics)
Books Piracy: The origin of the term piracy could be traced to high-seas banditry by the sea-pirates of the old, who rob victims then with swords as the first internationally recorded and acknowledged crime which could be tried and sentenced in any criminal law court of the State where the culprits were caught in the act. On books theft, the six major areas of printed work piracy include: the piracy of printed words, the piracy of composed sound recordings; the piracy of films and movie scripts; the counterfeiting of books, local and foreign works, the piracy of intellectual property (IP) inventions as trade secrets; counterfeiting of products, food and drugs label as trademarks. Piracy is treated as an illegal activity and theft in Nigeria.

Infringement and what constitutes copyright law violations include the unauthorized right to produce and re-print or to publish and sell to the public for a profit, the unauthorized right to adapt and modify as suitable for new-use or situations, the unauthorized right to translate, express in different languages or style and more so, the unauthorized right to perform or carry out the work in public for profit maximization.

Any person that does any of the above listed acts without authorization from the 1st copyright owner contravenes the co-extensive or vast rights of the copyright holder(s). In other words, the copyright owner or holder enjoys the right to produce and re-print, publish and produce for sale to the public for profit, the right to adapt and modify as suitable for new use and situation, right to translate and express in different languages and style as well as the right to perform the work in public. Apart from the assignor as the copyright owner, his assignee or licensee, any infringement by an impostor renders the violator liable to prosecution and punishment under the civil and criminal law proceedings. It is therefore instructive that public performance of a musical piece of another for profit is a violation of the copyright law provisions. Thus, infringement may be direct or indirect, by the unauthorized performance and by the proprietor of the showbiz venue or business premises.

Some Lacunae in Copyright Legal Provisions

Unpublished manuscripts: Some lacunae subsist under unpublished manuscripts, in that no protection is accorded a copyright owner for unpublished works in the harmonized Act (1971). More so, where the author cannot be located or where the author is demised and unknown or the researcher whose whereabouts are untraceable. The difficulties associated with books availability and affordability in Africa and Nigeria in particular may be linked to these exceptions to the copyright law violations.

Fair dealing concessionary regimes: These exceptions and modifications are provided for in the copyright law, to ensure the sustainability in the availability and affordability of books and other reading printed matter, in Nigeria’s educational institutions and to the general public in the Continent of Africa. Fair dealing, for educational research purposes, official use, broad-casting reproduction rights, performing rights society, limited private use, et al all affect the copyright law safeguard to exclusive proprietary right. Copyright law protection when not infringed covers all these concessionary issues as follows:


18. Also see: Copyright DN 47, 1988
Copyright enforcement entails creative works registration with the copyright law Board and civil remedies pursuit on quantum meruit or valebant as measure of damages, for criminal liability as contained in s.18 of the Act.

**The Exceptions:** The copyright law provided exceptions not in breach of printed matters meant for official use not for sale, limited private uses for local entertainment of protected creative works **dually acknowledged**; broadcasting reproduction right, performing right societies and fair dealing in materials for educational research purposes.

‘**Fair use**’ clause: The fair use clause for protected works subsists under today’s information jet age but the basic principle of copyright is vested in the author. In practice, this principle does not confer an absolute right on the first copyright owner or holder otherwise foreign books will not be affordable and available in Africa and Nigeria in particular. International conventions stipulate exceptions, modifications and exemptions from the rule of copyright owner’s exclusive right of control. Exclusivity to advance books availability at affordable prices and multi-cultural development over rights exclusivity would be safe-defeating. Hence, a national copyright law will always contain a list of special cases where use may be made of works protected by copyright law without having to obtain permission from the copyright owner. These categories are further outlined below.

**Educational research purposes:** Books not available in Africa for sale, in which passages are required to be reproduced for the purposes of study and instructions also fall under the copyright exceptions. The author of the original work will suffer no loss by limited reproduction of his work not meant for sale.

**Official use:** Copies prepared for official purposes also come into the exceptions category. For instance, the translation of legislative rules into local languages is permitted, if no such translation has been made available by Government. Conversely, there is no infringement of the copyright law if a certified true-copy is made in accordance with any existing law in force made by Government (e.g. Publications in the Official Gazettes).

Fair dealing extracts: Also exempted are literary criticisms as a literature review by a research-scholar to a literary dissertation prepared as extracts from a published and unpublished works for illustrative examples or from other works relevant to the study as a reference-point. These would be considered fair – use or dealing, which are not for sale or profit-making. Newsreel, radio and television broadcasts of news and current events are also permitted to quote passages from protected works.

Broadcasting reproduction right: It is an infringement of the right to rebroadcast the program under the copyright law without obtaining a franchise use or license from the broadcasting regulatory authority, for doing so. Written application and approval must be sought from the copyright Board and also when relinquishing such rights. Where a story is sold to the broadcasting outfit or corporate entity, the buyer becomes the copyright law owner of the story and also has the reproduction right in the sound recording.

Performing rights society: The copyright Act also regulates the activities of the performing rights societies functioning in Africa and Nigeria in particular, for the public performance of the copyright law works in their repertoire (or in all composed songs, plays, pieces of music used in stage performance). The caveat here is that the proliferation of mechanical means of
broadcasting music and sound recordings, growing popularity of films and musical performance have created a situation where it becomes cumbersome to protect the rights of song-writers and composers and those who reproduce recorded music. So, performing rights societies were setup to act as intermediary or agents to collect appropriate fees in respect of such performances and pay adequate sum to the copyright law owner.

**Limited private use:** To make books as reading materials available and affordable by reproduction for limited private use has become imperative under the copyright law. More so for rehearsal and entertainment of a small body of persons in a literature review not involving profit-making is allowed by the copyright law.

20 Note: The performer shall have the exclusive right to control the following acts in relation to his/her performance such as: recording, broadcasting live, performing and reproducing in any material form and the adaptation of the performance. A replay of musical work under the copyright law for the entertainment of members of a club or for the residents of an area, as part of social activities provided will not constitute a copyright law infringement.

**The Challenges of Foreign Books Availability and Affordability in Nigeria**

There is no protection accorded a copyright law owner for unpublished work in the harmonized Act (1971) and the difficulties associated with books availability and affordability in Africa and Nigeria in particular can be x-rayed as follows: printed-words piracy; composed sound-recordings piracy; films and movie scripts piracy; home video shops and rental piracy; products trademarks counterfeiting; piracy of the intellectual property (IP) trade secrets; books counterfeiting, on current bestseller books; et al.

**Printed-words piracy:** Piracy or the act of making illegal copies of written books, composed video-tapes and computer (CD/VCD) programs in order to make sale for profit poses a major threat to genuine books availability and affordability in Africa and Nigeria in particular. The same may be said for their unauthorized translated versions into tapes and computer programs in which buyers were often warned not to patronize such organized crimes. With printed-words piracy, the stability of world book trade is distorted and also local books trade-fair or foreign exhibition is affected, which holistically hinders the development of a result-oriented and economically viable book publishing industry in Africa. Printed-words piracy also obstructs the availability of reprint materials and translation right, particularly in third world countries (TWCs) to which Nigeria is not insulated.

**Films and movie scripts piracy:** Cinema houses close-shop because of the illegal activities of pirates and counterfeiters in Africa and Nigerian entertainment markets in particular. The process of copying films with the advent of video hi-tech had taken away the shine in the exhibition of films in cinema houses and public theatre houses across the globe. Also, the private homes and video-eatery houses and restaurants entertain their clients as they eat and drink in such leisure places, across the length and breathe of the continent of Africa. Script-writers are denied this legitimate means of livelihood.

**Books counterfeiting:** The nature of books piracy in different parts of the world consists in counterfeiting by photo-copying or reprinting of the book, to look exactly like the original. This makes it difficult to distinguish or identifying the original, as different from the forged, which a curious observer or buyer may spot the differences or mimicry similarities which are not identical. The counterfeiters, infringers and pirates indulge in current best-seller books, which are always quick to produce in paper-back instead of the hardcover back for the books market, before the legitimate paper back cover must have been published anywhere else in the world. It is amazing and seemingly unstoppable with the artificial scarcity and high cost of foreign books
and notable indigenous books published abroad. Books importation is duty-free in Nigeria, but the types of foreign books pirated are often voluminous, up-dated revised versions, expensive and unaffordable to indigent students compared to indigenous books. Scarce books include best-seller books and thoroughly researched foreign books, popular love-story fiction and non-fiction books and biography story of VIP’s life.

**Piracy motives:** The motives behind the cases cited in this work are as follows: quick profit maximization, turnover motivation; circumventing legitimate administrative fees to the Government, denial of royalty payment to copyright owner. Piracy affects intellectual creativity, books trading business and threatens the livelihood of printing and publishing industry as a whole. Other challenges to talent creativity include:

**Composed sound-recordings piracy:** Composed sound mimicry, onomatopoeia, imitation or even counterfeiting of music without authorization and acknowledgement for a profit is a crime. So aside from written books, recorded music and video cassettes of films and radio, including television programs, are composed by copyright owners, but reproduced by unauthorized persons and given widest circulation and sold on a massive-scale in many parts of the world. The practice meant a huge loss to the originators, without any remuneration or compensation from faceless pirates, as to the song-composer in writing, the performing artists and the producer concerned.

**Home video shops and rental services piracy:** Libraries dealing in films-hiring and pirated cassettes (CD/VCD) from the Asian Tigers have sprung up worldwide, in which Africa and Nigeria in particular is not exempted.

**Products trademarks counterfeiting:** This is also a major challenge or problem in the intellectual property rights protection as between nations. Labeling falls under printed matter. The case as between Niblett Limited Vs. Confectioners materials Co. Limited\(^{21}\) was a classic example, where ‘Nissly label’ was used as a label to confuse the unsuspecting buyers as ‘Nestle’ product, a renowned registered beverage producing company based in the United kingdom. The label was stripped with quantum of damages paid in favour of Nestle Co UK through action for trade-marks infringement.

**Piracy of intellectual property (IP):** Piracy in relation to IP rights law and enforcement refers to the unlawful reproduction and unauthorized distribution for sale and profit-making, of a duly registered patent\(^{22}\) right and intellectual property work, protected by the copyright law of a state. It is also in violation of copyright law on industrial property patents and trademarks; trade secret law, competition law (i.e. Anti-dumping law); industrial designs protection; principles of reciprocity standard and other legal regimes; et al. Also see Coke Vs. Pepsi: The twenty-two ‘Cola wars’

**Summary:** The Nigerian Copyright Council (NCC) and the Commission shall liaise with the copyright-holders and be responsible for all matters affecting registered copyright in Nigeria. It shall revise all International Conventions and advise the Federal Government of Nigeria on the provisions thereof for copyright global partnership. The Council shall also enlighten the public on copyright laws subsisting in Africa and Nigeria in particular to maintain an effective data-bank on authors and their works, local and foreign. Piracy is a phenomenon international-in-character and ushered-in in the 1980s with the rapid expertise in printing and computer internet hi-tech. It heralded the cable satellite telecommunications, as well as printed matter posting at websites, through personal and corporate entities computer devices with email and g-mail boxes, information jet-age and thus the need for the copyright law safeguards.

\(^{21}\) (1921) 3 KB 387

Conclusion

The copyright law with the exclusivity right required a comprehensive review and widened in scope to avoid monopoly (sole seller) or *monopsony* (sole buyer) in intellectual property (IP) hoarding across the globe. International cooperation was required amongst major publishing companies between the twenty seven (27) European Union (EU) States and the African (54) States to make thoroughly researched essential textbooks available and affordable, particularly in Africa. This synergy must involve the five Continents of the World, viz: Africa, Americas (North, South and Central); Asia (including China and India); Australasia and Oceania, and the Continent of Europe (including the Middle East, 37 Islamic and 22 Arab States). Translation into the six languages used by the United Nations if necessary were the Arabic, China, English, French, Russian and Spanish, in a single original six languages. The need for Nigerian publishers in global partner with major textbooks publishers in India, USA; The Netherlands; Australia and other English speaking states across the globe with translated versions from China, Russia and France may no longer be over-flogged in today’s information age. Giving franchise right to notable University Press across the globe would also strengthen textbooks availability and affordability in Africa and Nigeria in particular. The idea was to invent, produce, work or make standard textbooks and assign or give franchise right for a re-sale across the globe to the publishers to reach the ultimate consumers as book-readers and researchers to break new grounds on knowledge-sharing to the benefit of humanity.

Recommendations

African States signatory to the copyright treaties and publishers in notable States such as the group of eight (G8) like the USA, UK; Canada; France, Italy, Germany, Japan and Russia plus China should make books available and affordable in the Continent of Africa and Nigeria in particular. The Federal Government of Nigeria (FGN), for instance, should accede to all the international copyright laws and ratify all the Conventions with domestication as a follow-up action into the municipal law of the State. The World Trade Organization (WTO) Trade Related aspects of Intellectual Property Service (TRIPS) Agreement was yet to be fully ratified by Nigeria and most African States, even though Nigeria had been implementing certain aspects of the Tokyo (Japan) Convention of 1990 without acknowledging it. From this paper, there was no such thing as the exclusivity of copyright in practice, depending on the perception of the researcher. Monopolies as set out in the Monopolies Act (1953) as amended refer essentially to the sole-right of an object or commodity (goods and services) to either give franchise right or *monopsony* as sole-right to buy, for home-use, re-sale or consumption. Hence, the sole-maker and seller refers to a monopolist or buyer as a *monopsonist* in trade globalization. Monopoly (sole-seller) and *monopsony* (sole-buyer) are therefore two-sides to a coin in any trade transaction beyond national frontiers. The copyright assignment and licensing may be adoptable to make textbooks available and affordable in Africa, Nigeria and across the globe. Decentralized cross-country monitoring units on copyright law violation should be established forthwith in Nigeria, Africa and across the globe.
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