

COPYRIGHT AND BOOK PIRACY: THE NIGERIAN EXPERIENCE

BY

IORHUNA, TSEGBA THOMAS

**National Library of Nigeria
Benue State Branch, Makurdi**

ABSTRACT

Copyright protects the moral and economic rights of authors/publishers from undue exploitation. A nation in which Copyright materials are effectively protected by copyright is on the right direction towards developing its national culture for further development. Piracy on the other hand is a disincentive to intellectual creativity and productivity and may lead to the collapse of the book industry. This paper discusses the concept of copyright and piracy; copyright ownership; exclusive rights of copyright owners; copyright violations through piracy and causes of piracy. It examines the question of enforcement. Recommendations were made to strengthen copyright machinery and deal with copyright violations in Nigeria.

INTRODUCTION

Unauthorized appropriation of published materials both nationally and across national boundaries has continued to impact negatively on the publishing industry with the creators of these materials being profoundly cheated while the nation is robbed of economic benefits. This is in spite of the existence of national Copyright Laws and International Copyright Conventions. Printing presses and Pirates have continued to aid, abate and sustain piracy. Decrying the level of piracy, Ojo (2009) says piracy is a global phenomenon; it involves manufacturing companies and traders. Nothing can be truer than Ojo's lamentation, manufacturing firms, printing presses, pirates and traders are the sustainers of piracy. The situation has become even more worrisome with Internet usage today.

Both musical products, films and books etc are today being pirated by pirates who incur none of the costs involved in the production of the original or first copy of it. This paper will, however, focus mainly on published materials especially books.

Books are veritable agents for the dissemination of knowledge for the preservation of the creative and cultural heritage of any society. Books play very crucial role in enhancing National integration, co-operation, understanding and change of ideas. Books are necessary instruments for the development of scientific knowledge and technological skills as well as a tool for socio-political and economic awareness.

From few books across the globe, today books are in their millions serving varying needs. However, in spite of their significance, the activities of some individuals (pirates) have continued unabated to impact negatively on the creators of books and book production.

It is to ensure that Authors and Publishers of books are protected from unauthorized exploitation of their works through piracy that copyright evolved. Copyright ensures that authors and publishers works are protected so that they can enjoy maximum benefit from their creative efforts.

Thus to ensure the promotion, development of literary creativity and sustenance of same and to encourage the free flow of knowledge, authors and publishers must be protected from exploitation by pirates through strengthening the instrument of copyright law.

THE CONCEPT OF COPYRIGHT

The Encyclopedia of Librarianship (3rd edition) (1968) defines copyright as the sole right in case of unpublished or published works to produce or reproduce or publish any Literary, dramatic, musical work or any substantial part of a work in any material form whatsoever, provided the author is qualified to hold copyright. This means that copyright is not restricted to only published works but also include unpublished works or a substantial part of it.

According to Okwilagwe (2001) copyright is the exclusive right granted an author and other creative artists to authorize the use of their works in anyway. He further posited that the concept of copyright was devised for the society for two main purpose: to encourage creative people to produce works of culture and to provide incentives for the effective dissemination of these works. He also stated that copyright law is not designed to limit public access to information but to ensure that the public has access to it by protecting the economic and moral rights of the creators. This definition implies that only the author of a creative work has right of use, sale and reproduction of any part of his work repetition reproduction of any part of his work and no other person except with the creators prior consent and permission.

According to Sambo and Ikem, (2006) copyright is a right in Law conferred on authors and owners of creative works. He further identifies such works as literary, scientific or artistic in nature. This definition presupposes that the law recognizes literary, scientific and artistic creations as property, which like other properties entitles the owner to exclusive right of usage.

From the foregoing definitions, a consensus has been established that the concept behind copyright is that the creators of literary, dramatic, musical, and artistic works have rights of ownership of their works, and that those rights should be afforded legal protection in order to prevent unauthorized appropriation. As the Universal Declaration of Human Rights says "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. It does not matter whether he works in a developed or a developing country; he needs such protection to safeguard his livelihood.

However, to enable a work to be made available to a wide public, the person originating it often authorizes other people to publish it, translate it, adapt it, broadcast it and communicate it to the public or reproduce it. In other words, he assigns to people of his choice some of the rights he possesses in his work.

THE CONCEPT OF PIRACY

The Oxford Advanced Learner's Dictionary, 6th edition defines Piracy as the act of making illegal copies of video tapes, computer programmes, books etc in order to sell them. This means that piracy is a criminal act not limited to books alone but extends to non-book materials as well.

Piracy according to Okilagwe, (2001) is an outright disincentive to intellectual productivity in any nation. He further contended that the book publishing industry in Nigeria loses about \$200 million dollars per annum to piracy. Recently, Daily Independent Newspaper, (2009) reported that Nigeria lost 132 billion dollars to piracy in 2008. This means that piracy is increasingly impacting negatively on the book publishing industry sub-sector of the Nigerian Economy.

Okwilagwe, (2001) stated that piracy is theft of copyright, which occurs for reasons of want, scarcity and inaccessibility to books. She further opined that piracy of books in Nigeria is facilitated by the inability of the publishers to serve the market when books are needed and not the toothless-ness of the Copyright Act. This means that reasons of scarcity, want and inaccessibility to books due to publisher inability to serve the market well are factors largely responsible for piracy in Nigeria.

PRECONDITIONS FOR COPYRIGHT PROTECTION

Copyright Laws are national and strengthened by International Laws. Thus individual nations with their copyright Acts may identify works of their nationals that may be covered by their copyright laws in relation to International Conventions.

In Nigeria for instance, the Copyright Act chapter C28 Laws of the Federation of Nigeria 2004 identifies works that have copyright protection in Section (1) of the Act. They are literal works, Musical works, Artistic works, Cinematography films, Sound recordings and Broadcast. Since Literary, Musical and Artistic works can be published in books, we shall concentrate on them. Thus, before a Literary, Musical or Artistic work will enjoy copyright protection, the Nigerian Copyright Act prescribes certain preconditions that have to be met. The preconditions are: -

- a. Sufficient effort must have been expended on making the work to give it an original character, Section 1(a) of the Act. This implies that the work must be original in nature with some intellectual input.
- b. The work must be fixed in a definite medium of expression now known or later to be developed into a form which it can be perceived, reproduced or otherwise communicated either directly or with the aid of a device; (Section 1(b) of the Act.) This also implies that the work must be fixed, written in a book form or drawn in a book or any other material. It may also be in a tape or other tangible form.
- c. An artistic work shall not be eligible for copyright if it was intended by the author to be used as a model or pattern to be multiplied by any industrial process; (Section 1(3) of the Act.)
- d. A work shall not be ineligible for copyright by reason only that the making of the work or doing of any act in relation to the work involves an infringement of copyright in some other work. (Section 1(4) of the Act.)
- e. A work is eligible for copyright protection if the author is: -
 - A Nigerian citizen or domiciled in Nigeria.
 - In case of an incorporated company; it is incorporated by or under the law of Nigeria.
 - If the work was first published in Nigeria, Section 2(1) of the Act.
- F. Any work made in another country is eligible for copyright protection if that country has an agreement with Nigeria for equal protection of works.

EXCLUSIVE RIGHTS OF COPYRIGHT OWNER

The section 5 of the Nigerian Copyright Act unequivocally provides seven (7) exclusive rights reserved for the owner of a copyright. If any person does anything contrary to these reserved rights, he is said to infringe on the right of the copyright owner.

Punishment for this is both civil and criminal. The seven exclusive rights include:-

- (A) Reproduce the work in any material form;
- (b) Publish the work
- (c) Perform the work in public
- (d) Produce, reproduce, perform or publish any translation of the work
- (e) Make any Cinematography film or a record in respect of the work
- (f) Distribute to the public for commercial purposes copies of the work by way of rental, lease, hire, loan or similar agreement (g) Broadcast or communicate the work to the public by a loud speaker or any other similar device; and
- (h) Make an adaptation of the work.

COPYRIGHT OWNERSHIP

Who owns copyright of a work?

Section 10 of the Nigerian Copyright Act vests copyright initially on the Author of the work. This implies that the author is the first and sole owner of copyright in his work. However, in cases where the author is employed under a contract for service to produce intellectual works, the copyright in those works produced in the course of the employment belongs to the employer. For example, the "Library News" is a publication by the National Library of Nigeria. The publication carries write-ups by employees of the institution but the National Library owns the copyright of the publication and not the employees.

The copyright owner is also at Liberty to transfer his rights, wholly or partially to another person provided he does so in writing. The copyright on any work is limited to a certain number of years, depending however, on the nature of the work and the provision of the copyright law of that country.

NIGERIAN EXPERIENCE

NIGERIAN COPYRIGHT COMMISSION

The Nigerian Copyright Commission formerly known as the Nigerian Copyright Council was established by Decree No.7 of 1970. This decree was replete with inadequacies such as light personal sanctions against defaulters; inadequate remedial measures etc and was subsequently replaced by copyright decree No. 47 of 1988. This is the law by which the Nigerian Copyright is governed. Thus, the copyright law administration and

enforcement in Nigerian is vested in the Nigerian Copyright Commission. The commission is statutorily charged with the following responsibilities:-

- Enforcing the copyright law.
- Enlightening and informing the general public on matters relating to copyright.
- Ensuring that those who use works of Nigerian artists, writers, Publishers, Musicians, Performers, Photographers, Architects, Film makers, Sculptors and others pay adequate royalties.
- Representing the interests of all Nigerian artists in International Copyright matters.
- Keeping records of all Nigerian authors.

COPYRIGHT VIOLATION IN NIGERIA

In Nigeria, just like in many other Countries of the world, the right of owners of copyright is violated in various ways. These may include: Reprography, Plagiarism, Counterfeiting and Piracy. Thus for the purpose of this paper, piracy as a form of copyright violation would be discussed.

Piracy according to Okwilagwe (2001), cited by Thomas, (1991) and popular (1991) defined piracy as "The unauthorized or illegal reproduction of the work of an author for sale without payment of royalty or other compensation for the owner of the intellectual property so exploited", Popoola similarly defines piracy as: "the illegal reproduction and distribution, on a commercial scale of published work without the authorization of the copyright owners". From these definitions, piracy can be seen as criminal activities of pirates which clearly undermine the copyright provisions and a vicious attack on the ship of development of the country.

It can be deduced from the foregoing that piracy is with us in Nigeria and is aggressively ravaging the publishing industry of the Nigerian economy. It has been labeled the publishers' nightmares and must be tamed.

VIOLATION OF COPYRIGHT THROUGH PIRACY:

Piracy and the activities of pirates have assumed a frightening dimension as nothing that is reproducible is spared by pirates; Musical records, Radio cassettes, Video tapes and indeed all paper based materials are pirated. Concerns by individuals, institutions and stakeholders are increasingly being expressed about the ravaging effect of piracy on the publishing industry sub-sector of the Nigerian economy. Decrying this situation, Ojiji,

(1985), quoting Okwilagwe, (2001), the president of the Nigerian Publishers Association (NPA) in 1985/86 and 1987/88 period respectively stated that virtually all the Nigerian Publishers had fallen victims of piracy, pointing out that out of the more than 30 publishing companies in Nigeria, about 50% had one or more of their titles pirated, while about 20% of annual turnover was lost to the pirates by affected publishing houses. Also Adesanoye (1992), cited in Okwilagwe, (2001) described book piracy as one of the greatest problems facing the publishers. He noted further that the best selling titles are usually the target of pirates, who send copies of the titles to far Eastern Countries where identical copies are reproduced and transported back to Nigeria for sale at very low prices. Similarly the activities of the unscrupulous printers have continued to enhance piracy in Nigeria. They have criminally perfected the act of reproducing copies of original works of Authors in a manner that one can hardly differentiate between the pirated copy and the original copy except for their colour illustrations which appear in black and white which are then sold at give away prices, while the original copies with high price tags appear at stand still. Nigerian pirates have perfected their nefarious activities by printing Nigerian published books abroad; and importing them into the country. Sometimes the quality of what they import is better than the quality of the original. In those days the way you identify pirated books was by their poor qualities.

CAUSES OF PIRACY IN NIGERIA

A number of factors are largely responsible for the promotion of piracy in Nigeria. Fundamental among them is the economic factor. Pirated copies are cheaper and sold at give away prices thus attracting high level of patronage at the detriment of the original copies. The pirates therefore reap bountifully where they did not sow.

Advances in Science and Technology, leading to the on-going ICT revolution especially the development of the Internet have significantly created room for easy flow of books across national frontiers and thus enhanced piracy.

Yet another cause of piracy, in Nigeria can be situated in the copyright law itself. The law does not provide adequate sanctions for defaulters of copyright. Besides, the enforcement Mechanism is not strengthened enough to ensure effectiveness. Corroborating this view, Ifidon (1990) cited in Okwilagwe (2001) says the copyright law does not offer much protection to copyright owners because the law allows the photocopy of two or more copies of a publication.

Bankole, (1988) quoting Okwilagwe, (2001) identified want, scarcity and inaccessibility to books as reasons for piracy in Nigeria. She further opined

that piracy of books in Nigeria is facilitated by inability of the publishers to serve the market, when books are needed and not by the toothlessness of the copyright Act. Her argument is that to avoid piracy, the copyright owners should not create a vacuum but should serve the market regularly and should be in close touch with their outlets. In his own contribution, Nwafor, (1991) cited in Okwilagwe, (2001) advanced the following reasons for piracy in developing countries including Nigeria as follows:-

- a. Very high cost of books in relation to average income.
- b. The scarcity of publishing materials like paper, machinery, ink etc.
- c. The infant state of the publishing industry, which has resulted in the over-dependence of developing countries on their industrialized counterparts for meeting their educational and research needs.

It can be deduced from the foregoing that piracy is with us in Nigeria and it is aggressively ravaging the publishing industry of the Nigerian economy. It has been labeled the publishers' night mares and must be tamed.

VIOLATION OF COPYRIGHT: The Question of Enforcement.

The violation of copyright is undoubtedly a crime punished in many countries of the world including Nigeria. The infringer is regarded as a thief because he deprived the copyright owner of his full economic benefits as a result of his actions. The on-going ICT revolution have brought about the ease of perfect reproduction and manipulation of material in the digital form used by our communication systems and the ready flow of material across national frontiers. Thus unauthorized reproduction of material is taking place both in industrialized and developing nations on a massive scale.

This development is a big challenge to the question of copyright enforcement. How can these issues be resolved?

1. The ease of perfect reproduction and manipulation of material in the digital form used by our communication systems?
2. Given the unhindered flow of material across national frontiers, how can copyright infringements be addressed effectively?
3. Will the copyright law be revisited in the light of the new technology to redefine what constitute a publication?

To me, these are issues, which today present great challenge to enforcement of copyright violations.

CONCLUSION

The copyright law is not designed to limit public access to information but to ensure that the public has access to it by protecting the economic and moral rights of authors/publishers. Copyright law is predicated on the assumption that the author is more likely to be motivated to embark on continuous production of intellectual products, if there is the assurance that another individual can claim neither the credit nor the profit economically from the author's efforts.

Thus it is very important for a nation to protect the intellectual property of her citizens from undue exploitation within and outside the country. In other words of Ekpo (1991) cited in Okwilagwe, (2001),

This means that a nation in which copyrighted material are effectively protected by copyright is on the right direction towards further development of its national culture. Piracy is therefore a monumental disincentive to intellectual creativity and productivity and may lead to the collapse of the book industry.

RECOMMENDATIONS

1. The Nigerian Copyright Commission which is the administrative machinery for copyright protection and enforcement must be strengthened with more enforcement powers to be able to deal effectively with manifestations of copyright violations in Nigeria.
2. The copyright law should be revisited with a view to redefine the relevant provisions of the law vis-à-vis the new information technology so that copyright violations through the new technology can be dealt with effectively.
3. Similarly, adequate punishment with heavy fines should be meted to defaulters of copyright as opposed to light personal sanctions against defaulters at present.
4. Furthermore, government has a duty to ensure that incidences of copyright violations are significantly reduced to the barest minimum by providing adequate incentives for the production of educational materials. This will reduce the cost of these materials which are pirated at the level of internal use by lecturers, teachers and students of Institutions of higher learning.

REFERENCES

1. Copyright and Publishing Agreements: Reproduced by the National Library of Nigeria with permission from Commonwealth secretariat from their booklet "Copyright in the Developing Countries, 2nd edition 1996". Nigerian Libraries, vol. No. 11980 P.38-40.
2. Laws of the Federation of Nigeria (2004) vol. 4 Nigeria: LexisNexis Butterworth Ltd cap. C28.
3. Nasri, W. Z. (1986) *Ala World Encyclopedia of Library & Information Science* 2nd ed; London: Adamantine Press Ltd; P. 223-226.
4. Ojo, M. (2009) NCC Confiscate 500 million copies of pirated Materials; Daily Independent; Jan. 29 2009 P.A3.
5. Okwilagwe, O.A. (2001:153) *The book publishing in Nigeria*; Ibadan: Stirling-Horden publishers (Nig) Ltd.
6. Sambe, S.A. & D.A. Ikem (2006) *Book Publishing & the Law*; Makurdi: Starix Communications.