
Copyright: The State of the Art in Nigeria

Being a paper presented at the National Library Senior Staff Seminar in April 1980 by
Olayemi Olubunmi Omolayole (Mrs)

Background

"Whereas printers, booksellers and other persons have of late frequently taken the liberty of printing, reprinting and publishing books without the consent of the authors or proprietors to their very great detriment and too often to the ruin of them and their families: for preventing therefore such practices for the future and for the encouragement of learned men to compose and write useful books, be it enacted"

These were the opening words of the Act of Queen Anne of England in 1709-10. In the days when manuscripts were written out by hand ownership was vested in the author. However, with the advent of the printing machine which made multiple reproduction possible piracy became so rife that it was necessary to pass a law to protect the interest of the writer. This law gave sole right of printing to authors for a period of fourteen years with a second fourteen year period renewal if nine copies were

deposited at various universities and official libraries. Compensations were also provided.

Other European countries enacted copyright laws with varying periods and rights. In 1887 there was an important step forward in the introduction of the Berne Convention. This was an International Union for the Protection of Literary and Artistic Works to which all European Countries were Signatories. The convention offers reciprocal rights and protection to countries within the Union. United States could not join because of the manufacturing clause and formalities of notice and registration contained in its Copyright Law. However they were able to accede to the Universal Copyright Convention in 1955 after an amendment was made in the U.S. law allowing citizens and nationals of member countries of the Union to obtain U.S. copyright protection by publishing their work with brief copyright notice © with the name of author and date without compliance with the previous formalities of registration, deposit, fees etc. Many countries, including Nigeria who were

not members of the Berne Convention joined the Universal Copyright Convention. The Universal Copyright is an agreement to extend to member countries the same protection which such countries extend to works of its own nationals published within its own territory. Although Nigeria became bound by the Universal Copyright Convention in February 1962, it was the United Kingdom Copyright Act of 1911 which was applicable in Nigeria until the Copyright Act was passed in 1970.

The Copyright Act No. 61 1970

The Copyright Act No. 61 1970 confers certain rights on authors who are Nigerian citizens or domiciled in Nigeria when the work is made. It also confers rights on a corporate body established by or under the laws of Nigeria. Works that are conferred with copyright are literary, musical or artistic works or a cinematograph film that are first published in Nigeria and any sound recording that is made in Nigeria. Any work made by or under the direction of the Federal Government, State Government or a prescribed international body will be conferred with copyright. The Act also extends reciprocal protection to any country which is a party to a treaty or other International agreement to which Nigeria is also a party. If the Federal Commissioner for Trade is satisfied that the country in question provides copyright protection for works which are covered by this Act, then the Commissioner may by order in the Federal Government Gazette extend the application of the Act in respect of all works eligible for copyright in Nigeria to citizens and residents of that country. It also extends to corporate bodies established by or under the Laws of that country to works other than sound recording and broadcast first published in that country and to sound recordings made in that country.

Protected Works

The Act protects the following works which must be original, written down, recorded or reduced to material form. In the case of an artistic work it must not be a model or pattern intended for mass production by industrial process. Work here includes translations, adaptations, new versions or arrangements of pre-existing works and anthologies or collections of works which by reason of selection and arrangement present an original character.

- (i) **Literary works** including novels, stories, poetry, plays, stage direction, film senario, broadcasting scripts, textbooks, treatises, histories, biographies, essays, articles, encyclopedia, dictionaries, directories, anthologies, letters, reports memoranda, lectures, addresses, sermons, reports and enactments or other written laws, written tables and compilations.
- (ii) **Musical works** musical compositions and accompaniments.
- (iii) **Artistic works** including paintings, drawings, etchings, lithographs, woodcuts engravings, prints, maps, plans, diagrams, sculpture, photographs not comprised in a cinematograph film. Works of architecture (buildings, model), works of artistic

craftmanship and pictorial woven tissues, artistic of applied handicraft and industrial art.

(iv) **Cinematograph film** including sound track.

(v) **Sound recordings** excluding sound track associated with cinematograph film and

(vi) **Broadcasts**

Protected Persons

The first owner of the copyright is the author of the work. The name on a work shall be presumed to be the name of the author unless it is proved otherwise. In case of an anonymous or a pseudonymous work, the publisher whose name appears on the work shall be presumed to be the legal representative of the anonymous or pseudonymous author, unless the contrary is proved, and shall therefore exercise and protect the rights of the author of the work in question.



Olayemi Olubunmi Omolayole (Mrs)

Where a work is commissioned by a person under contract or a work is made in the course of the author's employment then the copyright shall be deemed to be transferred to the person who commissioned the work or to the author's employer unless a previous agreement has been signed limiting the right to the author.

Copyright of works made by or under the direction of Federal Government, State Government or a prescribed international body shall vest in the relevant government, State Authority or the international body and not in the author. Author in the case of cinematograph film and sound recording means the person by whom arrangements for making of the film or recording were undertaken or broadcast transmitted.

Protected Rights

The owner of a copyright has the exclusive right to control the reproduction, communication to the public and broadcasting of the whole or a substantial part of a literary, musical or artistic work and cinematograph film either in the original form or in any form recognisably derived from the original. If the owner of copyright of any of these works authorises

the incorporation of the work in a cinematograph film which is broadcast by a broadcasting authority, the owner of the copyright would be assumed to have given authority for the broadcast unless there is an expressed agreement to the contrary. However, in spite of the foregoing if a musical work is so used in a cinematograph, the owner of the right to broadcast the musical work will be entitled to fair compensation from the broadcasting authority.

The owner of a copyright in a sound recording shall have the sole right to control directly or indirectly the reproduction of the whole or a substantial part of the recording. Copyright in a broadcast confers the exclusive right to record and re-broadcast the whole or a substantial part of the broadcast and to communicate to the public, in places where an admission fee is charged of the whole or a substantial part of a television broadcast either in its original form or on any form recognisably derived from the original, while copyright in a television broadcast shall include the right to control the taking of still photographs from the broadcast.

In the case of architecture, copyright confers the sole right to control the erection of any building which reproduces the whole or a substantial part of the work either in the original form or in any form recognisably derived from the original but it excludes the right to control the reconstruction in the same style as the original of a building to which the copyright relates.

Limitations

There are exemptions from copyright control which affect each work. For literary, musical or artistic works and cinematograph film the control excludes reproduction, communication in public and broadcasting for purposes of research, private use, criticism, review or reporting of current event as long as due acknowledgement or title and authorship is given. Reproduction is also excluded when carried out by or under the direction of government libraries, and non-commercial organisations, a broadcasting authority, where this is done for lawful broadcast and are destroyed within six months reproduction or for longer period as agreed to by the owner of copyright. If this is of exceptional documentary character it may be preserved in the archives of the broadcasting authority. If it is by way of parody or caricature incidental inclusion of an artistic work in a film or broadcast would be exempt from copyright control. So also is publishing of pictures of some work of art when permanently situated in a public place. Certain uses in educational institutions, certain uses in public lectures and newspapers, public reading or recitation of not more than two excerpts for published work. Sound recordings after payment of compensation under licence. Any use of the work made during the course of a legal proceeding is also exempt from copyright control.

Duration of Copyright

- (i) For literary, musical or artistic works other than photographs copyright will expire twenty five

years after the end of the year in which the author dies. In case of joint authorship death means that of the author who dies last. In the case of anonymous or pseudonymous literary musical or artistic work copyright shall subsist for 25 years from the end of the year in which the work was first published. In the event of identity, copyright shall expire 25 years after the end of the year in which the author dies.

- (ii) For cinematograph films and photographs copyright expires twenty five years after the end of the year which the work was first published.
- (iii) For sound recordings copyright expires twenty five years after the end of the year in which the recording was made.
- (iv) For broadcasts copyrights expire twenty five years after the end of the year in which the first broadcast took place.
- (v) For copyright vested in Federal Government, State Government and prescribed organisations rights on films, photographs, sound recording or broadcast shall subsist until the expiration of fifty years from the end of the year in which the work was published made or broadcast as the case may be.

Assignments and Licences

Generally, copyright shall be transmissible. The owner of a copyright may assign his right wholly or partially limited to a particular country or geographical area, for part or the whole of the period of copyright. Exclusive licence can only be granted in writing while a non-exclusive licence may be oral or written. A licence granted by one copyright owner is binding on all co-owners (such as in a composite production) of the copyright and fees received shall be equitably shared among them subject to any agreement between them. A licence can be granted in respect of future work or an existing work in which copyright does not yet subsist. The prospective copyright in any such work shall be assigned by law.

The Federal Commissioner for Trade is responsible for setting up a competent authority which should consist of three members to supervise the granting of licences in respect of copyright. The Commissioner would lay down rules and procedures including scales of costs and fees which should help the competent authority to carry out their functions effectively. Any matter not satisfactorily settled by the authority may be referred to the Commissioner for final settlement by any of the negotiating party. The Commissioner may also make regulations concerning copyright vested in Government and State Governments, prescribe officers or competent authority by whom licences may be granted for reproduction of the works in question and a scale of fees to be charged in respect of any such licence.

Infringement

Infringement of copyright occurs when any one, without the consent of the owner of copyright, does or causes any other person to do what should be done by the owner by right, apart from the exemptions

already mentioned above. Infringement includes importation of infringed copies into Nigeria other than for private use but for purposes of trade, hire, and exhibition.

Civil Remedies

Upon infringement, the owner of the copyright can file a suit in a High Court in the jurisdiction where the infringement occurred. All relief by way of damages, injunction, accounts of profit or otherwise shall be available to the plaintiff. If it is proved that an infringement was committed out of genuine ignorance of the subsistence of a copyright then the plaintiff will not be entitled to any damages against the defendant but will have accounts of profits in respect of infringement whether or not any other relief is granted.

However, the court may award additional damages depending on the flagrancy of infringement and the benefit shown to have accrued to the defendant by reason of the infringement. In the case of an infringement of architecture, no injunction shall be issued which requires the demolition of a completed or partly completed building or prevents completion of a partly completed building.

Restriction of importation of printed copies

This applies to any printed copy made outside Nigeria which if it had been made in Nigeria would have been an infringement. The owner of a copyright of such a published literary, dramatic or musical work may give notice in writing to the Board of Customs and Excise requesting that copies of the work should be treated as prohibited goods for a specified period not more than five years and not beyond the subsistence of the copyright. Such copies will be so treated unless they are imported for private and domestic use. However, the Board is not liable for any act of omission on its part unless as a result of this omission the owner suffers a loss and a fee has been paid or is payable to the Board. In which case, an amount equal to the loss or the fee payable for one year which ever is the lower, will be paid to the owner by the Board. Where no fees had been paid yet, it shall be waived.

Transitional and Saving Provisions

Although Act 61, 1970 repeals the Copyright Act 1911 provision is made for transition in relation to works made before this Act.

1. If copyright in a work subsisted for a longer period than provided for in this Act, the longer period shall be applicable.
2. Proceedings can be taken for infringement even if it occurred before the commencement of the Act.
3. Proceedings commenced before this decree may be concluded even if it is not an infringement of copyright under this Act.
4. An act done before this Act shall not be considered an infringement of copyright when it was done.

Contracts for licensing shall continue in force. Disputes can be referred from licensing authority by

any party to the competent authority. Notices shall also be in force provided it is not beyond five years or the end of the period of copyright to which it relates.

Implementation

During diplomatic conferences to revise the Universal Copyright Convention and the Berne Convention, it became obvious that it was not enough to make special provision for the developing countries, that practical assistance was necessary to give them access to protected works. The General Conference of Unesco finally approved a resolution to set up an International Copyright Information Centre to facilitate access of developing countries to protected works and in particular; to educational, scientific and technological works and works for culture promotion. The functions of the ICIC are as follows:-

- (i) to collect copyright information on books that can be made available to developing countries on terms as favourable to them as possible, as well as the methods of use of certain or all of the enumerated titles;
- (ii) to arrange for the transfer to developing countries of rights ceded by copyright holders;
- (iii) to help in the development of simple model forms of contracts for translation, reprint and other rights required by developing countries;
- (iv) to study ways and means of securing copyright and other rights as well as methods of financing the rights required where foreign currency is not available;
- (v) to promote arrangement for the adaptation and publication of works, particularly those of a technical and educational nature;
- (vi) to encourage the formation of national copyright information centres in both developed and developing countries where such centres do not exist and, where necessary, act as a link between them;
- (vii) to provide assistance to developing countries for the organization of training courses for translators and covering all aspects of the publishing industry, for the provision of fellowships and equipment, for the joint publication of technical works, and for bringing together pedagogical authorities to develop adaptations of works.

In order to benefit from Unesco's CIC programme it would be ideal for the countries concerned to have a copyright law. In the case of Nigeria, there is a Copyright Act although the Federal Ministry of Trade which has responsibility to implement the law has not done much. There are no guidelines for effecting the law. On enquiry, it was learnt that there was not much pressure for protection for literary works. However, in spite of the great pressure from musicians who claim that bootleggers reproduce and adapt their compositions at will, the Ministry of Trade could do nothing to protect their rights. The non-effective state of copyright in the country notwithstanding, the Ministry of Education, the National Library and other interested institutions are involved in international developments in the area of

copyright. Nigeria has been represented at conferences on the subject and has participated in studying and recommending amendments to the copyright Modern Law for Developing Countries proposed by Unesco and World Intellectual Property Organisation. The model law was completed in 1976 and has since been in circulation.

The National Library as the bibliographic centre for the nation is concerned that Nigeria should take advantage of the International Copyright Information Centre facilities. As a developing nation, conscious of the technological revolution going on around the world, Nigeria is anxious to have technology transferred. Learning materials are needed to support educational aspirations. One of the ways in which that can be achieved is by having current literature on the subjects available in the country. It would be a step in the right direction to have access to protected works either translated or adapted for publishing here in the country. Therefore, the National Library took the initiative to ask for a Unesco survey. This was carried out by a Unesco representative Miss Susan Wagner and a report has since been made recommending that a Copyright Information Centre be set up at the National Library. The functions of the Centre would include the following:-

- (i) to publicise the Copyright Act 1970;
- (ii) to maintain a data file on owners of copyright;
- (iii) to assist in negotiation for transfer of right for reproduction of translation;
- (iv) to assist in drawing up of contracts;
- (v) to exchange information about activities of the centre with other centres;
- (vi) to contribute to the promotion of Nigerian works outside Nigeria with a view to stimulate application for licences;
- (vii) to make efforts to eliminate piracy and infringement;
- (viii) to liaise with the Federal Ministry of Trade;
- (ix) to publish bulletin of activities;
- (x) to record national publications;
- (xi) to record and publicise all legislation and court holdings in the country relating to copyright;
- (xii) to encourage training in specialist areas of the literary arts.

Plans are now underway to set up an Advisory Committee comprising the various interest groups which create and make use of intellectual works. These are:-

- (i) National Library of Nigeria;
- (ii) Federal Ministry of Trade;
- (iii) Federal Ministry of Justice;
- (iv) Federal Ministry of Education;
- (v) Federal Ministry of External Affairs;
- (vi) Nig. Book Development Council;
- (vii) Nig. Writers Association;
- (viii) Nig. Publishers Association;
- (ix) Nig. Translators Association;
- (x) Sound and Video Recording Association;
- (xi) Film Makers Association;
- (xii) Nig. Library Association;
- (xiii) Nig. Educational Research Council.

The CIC VS Copyright Office

The Copyright Information Centre requires certain data about copyright operations to be able to carry out part of its functions and would rely on the information from the Copyright Office. As it is, it is doubtful whether the Ministry of Trade has any records of any copyright transactions since the Act had been promulgated. The Ministry ought to have set rules and regulations for registration of copyright including number of copies to be deposited, fees etc., indexes of registration and catalogue of entries, contracts and licences issued should be available at the Ministry. The Ministry is expected to carry on with these responsibilities in spite of the existence of the C.I.C. However, it may be more convenient for the National Library to take on the responsibilities for the following reasons:-

- (a) All records would be centralised, there would be no duplication.
- (b) The National Library Act 29 1970 includes provisions for legal deposit therefore it would not be necessary to deposit twice. In addition, the publisher may find it more psychologically acceptable to deposit his materials willingly if by the same token he receives protection of his work from the same source. This should boost the legal deposit collection.
- (c) Both the Copyright Office (Min. of Trade) and the C.I.C. should have a catalogue of materials deposited. Already the National Bibliography of Nigeria is compiled from legal deposits made to the National Library.

From the foregoing, it is apparent that the National Library already carries on and would carry out (when the CIC is established) most of the activities that the Copyright Office is expected to carry out. It is therefore ideal to designate the library the Copyright Office. Since both the National Library Act 1970 and the Copyright Act 1970 are separate laws, ways should be found to amend the laws to make the Director of the National Library the competent authority for copyright.

Implications of Copyright for the Library

Generally, the library is exempt from copyright control in the sense that materials are put at the disposal of readers for private study and research purposes. It is in the area of reprography that the library is not so much on firm ground since one is not sure to what use the client is going to put a photocopy of an article. In order to avoid being an accessory to infringement the Reference Department of the National Library of Nigeria has included on the photocopy request form a declaration by applicant that the material would not be used for any other purpose than study and research with a reference to the Copyright Act section 5 schedule 2. This is to make the client aware of the copyright requirements. With regard to new techniques of electronic document storage and computerized information retrieval systems some people are not so sure of the application of copyright laws to libraries. If the author is the only person who has the right to reproduce a part or the whole of his work is it not an infringement

to feed a book into a computer? or put it on microfilm? Society requires rapid information retrieval. It is also important to encourage creators and make it worthwhile for them to create. Therefore, if the normal rules are followed there should be no difficulties.

Conclusion

It is hoped that with the establishment of the CIC, more Nigerians would be informed about copyright. It is hoped that the publishing output would increase. It is anticipated that there would be an increase in creativity. At the same time it would be possible to protect the rights of Nigerians whose works are able to earn foreign currency. Nigeria would gain and contribute to the general flow of world knowledge.

References

1. **Bogsch, Arpad.** The Law of Copyright Under The Universal Convention. New York, R. R. Bowker Co., 1970.
 2. **Clapp, Vernon W.** Copyright - A Librarian's View. Washington, D.C. Copy Committee Association of Research Libraries. 1968.
 3. **Commonwealth Secretariat** - Copyright In The Developing Countries. London, Commonwealth Secretariat, 1976.
 4. **Marke, Julius J.** Copyright and Intellectual Property. New York, The Fund for the Advancement of Education, 1962.
 5. **Nicholson, Margaret.** A Manual of American Copyright Practice for Writers Publishers and Agents. New York, Oxford University Press, 1956.
 6. **Patterson, Lyman R.** Copyright In Historical Perspective. Nashville, Vanderbilt University Press, 1968.
 7. **Pilpel, Harriet F. and Goldberg, Morton, D.A..** Copyright Guide. New York, R. R. Bowker, 1966.
 8. **Russel - Clarke, A. D.** Copyright In Industrial Designs. London, Sweet & Maxwell Ltd., 1968.
 9. **Thomas, Denis.** Copyright and the Creative Artist. London, Institute of Economic Affairs, 1967.
 10. **International** Copyright Information Centre Information Bulletin, No. 1, October, 1973.
 11. **Copyright** Act No. 61, 1970 (Laws of Nigeria, Lagos, 1970).
-