

International **Comparative** Legal Guides



Practical cross-border insights into copyright law

Copyright **2023**

Ninth Edition

Contributing Editors:

Phil Sherrell & Rebecca O'Kelly-Gillard
Bird & Bird LLP

ICLG.com



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This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

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From the Publisher

Dear Reader,

Welcome to the ninth edition of *ICLG – Copyright*, published by Global Legal Group.

This publication provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance to copyright laws and regulations around the world, and is also available at www.iclg.com.

This year, there are two Expert Analysis chapters focusing on recent developments in copyright exceptions in UK law, and Cyprus as a tax efficient IP location.

The question and answer chapters, which in this edition cover 18 jurisdictions, provide detailed answers to common questions raised by professionals dealing with copyright laws and regulations.

As always, this publication has been written by leading copyright lawyers and industry specialists, for whose invaluable contributions the editors and publishers are extremely grateful.

Global Legal Group would also like to extend special thanks to contributing editors Phil Sherrell and Rebecca O’Kelly-Gillard of Bird & Bird LLP for their leadership, support and expertise in bringing this project to fruition.

James Strode
Publisher
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1 Copyright Subsistence

1.1 What are the requirements for copyright to subsist in a work?

For copyright to subsist in a work under the Nigerian Copyright Act Cap. C28 Laws of the Federation 2004 (the “Act”), it must come under the six categories of eligible works provided in Section 1 and in case of literary, musical or artistic works, (a) sufficient energy must have been expended on making the work to give it an original character, and (b) the work must be fixed in a definite medium of expression that exists or will be developed in the future, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device. For the other works – cinematograph films, sound recordings and broadcasts – copyright protection is inherent upon creation or fixation.

Further, the author of the work must be a Nigerian citizen, a person domiciled in Nigeria, or a company incorporated in Nigeria and the work must have been first published in Nigeria. Copyright protection is also conferred on works of foreign authors, corporate bodies or agencies or government organisations from countries that are parties to international treaties, agreements or organisations to which Nigeria is also a party, on the condition that on the day the work is first published, at least one of the authors is a citizen or corporate body established under the laws of such country.

1.2 Does your jurisdiction operate an open or closed list of works that can qualify for copyright protection?

Nigeria operates a closed list of works that can qualify for copyright protection. The Act lists six categories of works that are eligible for copyright protection – literary works, musical works, artistic works, cinematograph films, sound recordings and broadcasts.

1.3 In what works can copyright subsist?

Copyright can subsist in the following works: literary works; artistic works; musical works; cinematograph works; sound recordings; and broadcasts.

1.4 Are there any works which are excluded from copyright protection?

Works outside the categories of works referred to in question 1.3

above are excluded from copyright protection. Artistic works which, at the time the work was made, were intended by the author for use as a model or pattern to be multiplied by any industrial process, are also excluded from copyright protection.

1.5 Is there a system for registration of copyright and, if so, what is the effect of registration?

Copyright is conferred on eligible works upon creation, without the need for registration. However, Nigeria operates a notification system, called the Nigerian Copyright e-Registration System (NCeRS) administered by the Nigerian Copyright Commission, under which protected works may be registered to provide evidence of the possible date of creation of the work and other facts stated in the application form in the event of a dispute.

1.6 What is the duration of copyright protection? Does this vary depending on the type of work?

The duration of copyright protection depends on the category of work.

Copyright in literary, musical, and artistic works (excluding photographs) lasts for seventy years from the end of the year in which the author dies, and where the author is a government or a body corporate, 70 years after the end of the year in which the work was first published.

Cinematograph films and photographs are protected for fifty years after the end of the year in which the work was first published. Copyright protection for broadcasts and sound recordings lasts for fifty years after the end of the year in which the broadcast or the recording was first published.

1.7 Is there any overlap between copyright and other intellectual property rights such as design rights and database rights?

There is no overlap between copyright and other forms of intellectual property rights in Nigeria. Nigeria is a signatory to the WIPO Copyright Treaty which provides for copyright protection of databases which by reason of the selection or arrangement of their contents constitute intellectual creations. By virtue of Nigeria’s accession to the Treaty, database rights could be construed as coming within copyright protection, provided the elements sought to be protected come within the existing eligible categories. However, the Act may be amended in the future to recognise databases as a unique category of work.

1.8 Are there any restrictions on the protection for copyright works which are made by an industrial process?

There are no restrictions, provided such works are eligible for protection. For instance, artistic works will be ineligible for copyright protection if they were intended by the author at the time of creation to be used as a pattern or model for multiplication by industrial process.

2 Ownership

2.1 Who is the first owner of copyright in each of the works protected (other than where questions 2.2 or 2.3 apply)?

Other than where questions 2.2 or 2.3 apply, copyright ownership is first vested in the author, with the exception of work made by or under the direction or control of the Government, a State authority or a prescribed international body. For these works, first ownership shall vest in that Government on behalf of the Federal Republic of Nigeria, in the State authority on behalf of the State in question, or in the international body in question, as the case may be, and not in the author.

2.2 Where a work is commissioned, how is ownership of the copyright determined between the author and the commissioner?

Ownership is vested in the first instance in the author, unless otherwise stated in the contract between the author and the commissioner.

2.3 Where a work is created by an employee, how is ownership of the copyright determined between the employee and the employer?

Generally, where a work has not been commissioned by the employer, the copyright vests in the first instance in the employee, as the author of the work.

Copyright in literary, artistic or musical works created by employees at newspapers, magazines or similar periodicals under contracts of service or apprenticeship shall, in the absence of any agreement to the contrary, vest in the employer for the purpose of publication in any newspaper, magazine or similar periodical; or for the reproduction of the work for the purpose of publication. In all other respects, the author (that is, the employee) shall be the first owner of the copyright of the work.

2.4 Is there a concept of joint ownership and, if so, what rules apply to dealings with a jointly owned work?

Joint ownership is recognised under Section 11(6) of the Act. A person shall be deemed to be a co-owner of a work if they share a joint interest in the whole or any part of a copyright or if they have interest in the various elements of copyright in a composite production; that is to say, a production consisting of two or more works.

3 Exploitation

3.1 Are there any formalities which apply to the transfer/assignment of ownership?

A transfer or assignment of copyright ownership will only take effect if it is in writing. (Section 11(2) of the Act.)

3.2 Are there any formalities required for a copyright licence?

A non-exclusive copyright licence may be written, oral or may be inferred from conduct. However, an exclusive licence must be in writing.

3.3 Are there any laws which limit the licence terms parties may agree to (other than as addressed in questions 3.4 to 3.6)?

The 2020 Amendment to the 6th Edition of the Nigerian Broadcasting Code prohibits broadcasters and licensees from entering exclusive contracts in respect of broadcasting rights. Any agreement for the sale or acquisition of broadcasting rights that would prevent the acquirer or licensee of the rights from sub-licensing them to other persons is prohibited.

Please note that the Federal High Court recently held that the aforementioned amendment is *ultra vires* the powers of the Nigerian Broadcasting Commission and is therefore void *ab initio*.

3.4 Which types of copyright work have collective licensing bodies (please name the relevant bodies)?

The relevant collective licensing bodies are as follows: Cinematograph films (AVRS – Audio Visual Rights Society of Nigeria); Literary works (REPRONIG – Reproduction Rights Organisations of Nigeria); and musical works (MCSN – Musical Copyright Society of Nigeria).

3.5 Where there are collective licensing bodies, how are they regulated?

Collecting Societies are regulated by the Nigerian Copyright Commission, pursuant to the Copyright (Collective Management Organization) Regulations, 2007 (the “Regulations”).

3.6 On what grounds can licence terms offered by a collective licensing body be challenged?

The Act and the Regulations are silent on specific grounds to challenge licensing terms. The ground on which licensing terms may be challenged may, however, be inferred from Section 13 of the Regulations, which mandates Collecting Societies to make available works to users on non-discriminatory terms and create licensing tariffs for works they represent – where the terms offered are considered discriminatory and in breach of that provision.

The above notwithstanding, any disagreement in respect of the licensing terms offered by a Collecting Society could be considered a dispute that falls within the purview of the Regulations. Such dispute shall be referred to the Nigerian Copyright Commission, which **may** set up a Dispute Resolution Panel to settle the dispute.

4 Owners' Rights

4.1 What acts involving a copyright work are capable of being restricted by the rights holder?

The following acts are capable of being restricted by the rights holder:

Literary or musical work: reproduction in any material form; publication; public performance; production, reproduction, performance or publication of any translation of the work; the making of any cinematograph film or a record in respect of the work; distribution of copies of the work to the public for commercial purposes; broadcasting or communication of the work to the public by a loudspeaker or any other similar device; adaptation of the work; and the carrying out of any of these acts (save for adaptation) in relation to a translation or adaptation of the work.

Artistic work: reproduction in any material form; publication; inclusion of the work in any cinematograph film; adaptation of the work; and the carrying out of any of these acts (save for adaptation) in relation to an adaptation of the work.

Architectural work: the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or any form recognisably derived from the original, but not the right to control the reconstruction in the same style as the original of a building to which the copyright relates.

Cinematographic film: making a copy of the film; causing the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public; making any record embodying the recording in any part of the soundtrack associated with the film by utilising such soundtrack; and distributing copies of the work to the public for commercial purposes by way of rental lease, hire, loan or similar arrangement.

Sound recording: the direct or indirect reproduction, broadcasting or communication to the public of the whole or a substantial part of the recording either in its original form or in any form recognisably derived from the original; and the distribution to the public, for commercial purposes, of copies of the work by way of rental, lease, hire, loan or similar arrangement.

Broadcast: the recording and the re-broadcasting of the whole or a substantial part of the broadcast; the communication to the public of the whole or a substantial part of a television broadcast, either in its original form or in any form recognisably derived from the original; and the distribution of copies of the broadcast to the public, for commercial purposes. Please note that in television broadcasts, this includes the right to control the taking of still photographs from the broadcast.

4.2 Are there any ancillary rights related to copyright, such as moral rights, and, if so, what do they protect, and can they be waived or assigned?

Moral Rights and Neighbouring Rights are the ancillary rights related to copyright under Nigerian law.

Moral Rights guarantee the author of the work the right to claim authorship of the work and the right to object to and to seek relief in connection with any distortion, mutilation or other modification of and any other derogatory action in relation to the work, where such action would be or is prejudicial to the author's honour or reputation. Moral Rights are "inalienable, perpetual and imprescriptible", and therefore cannot be waived or assigned by the author. Upon the demise of the author, they transfer to the author's heirs or successors-in-title.

Neighbouring Rights describe the rights of performers of musical or dramatic works or reading or recitals of literary works. They include the exclusive rights: to perform the work; to record a performance of the work; to broadcast the performance live; to reproduce the performance in any material form; and to make an adaptation of the performance. Neighbouring rights may be waived, licensed or assigned by the performer.

Further, the authors of graphic works, three-dimensional works and manuscripts have an inalienable right to a share in the proceeds of any sale of that original work, subject to regulations made by the Nigerian Copyright Commission.

4.3 Are there circumstances in which a copyright owner is unable to restrain subsequent dealings in works which have been put on the market with his consent?

Nigeria does not have a well-defined doctrine of exhaustion of rights. However, it is safe to say that a copyright owner may be unable to restrain subsequent dealings in the circumstance where the dealings in question do not offend his moral rights.

5 Copyright Enforcement

5.1 Are there any statutory enforcement agencies and, if so, are they used by rights holders as an alternative to civil actions?

The Nigerian Copyright Commission is statutorily responsible for all matters affecting copyright in Nigeria. Its powers include the appointment of officers responsible for monitoring, reporting, or enforcement of the provisions of the Act. They are called Copyright Inspectors, and they have the same powers, rights and privileges of a police officer as defined under the Police Act and under any other relevant laws applicable to the investigation, prosecution of defence of civil or criminal matters under the Act.

5.2 Other than the copyright owner, can anyone else bring a claim for infringement of the copyright in a work?

Copyright infringement claims may also be instituted by assignees, exclusive licensees and collecting societies.

5.3 Can an action be brought against 'secondary' infringers as well as primary infringers and, if so, on what basis can someone be liable for secondary infringement?

The Act does not make any distinction between primary or secondary infringement. Therefore, all actions which constitute infringement of copyright as described under the Act (Section 14(1)) are actionable at the suit of the owner, assignee or an exclusive licensee of the copyright, as the case may be.

5.4 Are there any general or specific exceptions which can be relied upon as a defence to a claim of infringement?

Defendants to copyright infringement claims can rely on the specific exceptions from copyright control provided in the Second and Third Schedules to the Act. These include fair dealing, parody, pastiche or caricature.

5.5 Are interim or permanent injunctions available?

Interim and perpetual injunctions are available in copyright infringement actions. However, no injunctions shall be granted in copyright infringement proceedings to authorise the demolition of a completed or partly-completed building, or to prevent the completion of a partly-completed building.

5.6 On what basis are damages or an account of profits calculated?

This will depend on the court as well as the plaintiff.

Where it is proven or admitted that copyright infringement was committed but the defendant was not aware at the time of infringement and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff would not be entitled to receive damages, but shall be entitled to an account of profits in respect of the infringement, without prejudice to any other reliefs.

5.7 What are the typical costs of infringement proceedings and how long do they take?

The cost of infringement proceedings is determined by a number of factors. The filing fees are influenced by the size of the claim, with the maximum filing fees being NGN 50,000, and the professional fees varying depending on the law firm and the experience of the counsel handling the matter. The duration of infringement proceedings is also hard to predict but could take around 18–24 months.

5.8 Is there a right of appeal from a first instance judgment and, if so, what are the grounds on which an appeal may be brought?

There is a right to appeal from the first instance judgment of a trial court. Grounds of Appeal may be brought by an appellant on any issues of fact or law or procedure which, if upheld, would lead to the appeal being allowed. Particulars of the errors made by the court must be supplied, alongside the relevant grounds, and the appellant must also specify the relief being sought on appeal.

5.9 What is the period in which an action must be commenced?

The Copyright Act is silent on this.

6 Criminal Offences

6.1 Are there any criminal offences relating to copyright infringement?

Section 20 of the Act provides for the following criminal offences in relation to copyright infringement:

- (a) making or causing to be made for sale, hire, or for the purposes of trade or business any infringing copy of a work in which copyright subsists;
- (b) importing or causing to be imported into Nigeria a copy of any work which if it had been made in Nigeria would be an infringing copy;
- (c) making, causing to be made, or having in one's possession, any plate, master tape, machine, equipment or contrivance for the purposes of making any infringing copy of any such work;
- (d) selling or letting for hire or for the purposes of trade or business, exposing or offering for sale or hire any infringing copy of any work in which copyright subsists;
- (e) distributing for the purposes of trade or business any infringing copy of any such work;
- (f) having in one's possession, other than for private or domestic use, any infringing copy of any such work;
- (g) having in his possession, selling, letting for hire or distribution for the purposes of trade or business; or
- (h) exposing or offering for sale or hire any copy of a work which, if it had been made in Nigeria, would be an infringing copy.

6.2 What is the threshold for criminal liability and what are the potential sanctions?

An accused infringer would have to prove to the satisfaction of the court that he did not know and had no reason to believe that any infringing copy in his possession or being offered or traded by him was an infringing copy of any such work, or that any plate, master tape, machine, equipment or contrivance in his possession was not being used for the purpose of making infringing copies of copyright protected work.

Potential sanctions are fines varying from NGN 100 – NGN 1,000 per copy of the infringing work, depending on the offence, conviction for a term of imprisonment ranging from six months to five years, depending on the offence, or to both a fine and imprisonment.

7 Current Developments

7.1 Have there been, or are there anticipated, any significant legislative changes or case law developments?

One recent legislative development in Nigerian Copyright is the passing of a new Copyright Bill in the Nigerian senate titled: "A Bill for An Act to Repeal The Copyright Act CAP LFN 2004 And To Re-enact The Copyright Act 2021." The Bill aims to initiate a holistic review of Nigerian copyright laws and "strengthen the copyright regime in Nigeria to enhance the competitiveness of its creative industries in a digital and knowledge-based global economy".

Some of the noteworthy additions to the new bill include the right of remuneration for some categories of copyright owners, special exceptions for blind, visually impaired and print disabled persons, and provisions for technological protection measures for audio and visual works posted on online platforms such as Facebook, Instagram, Twitter, TikTok and others. Additionally, the bill contains information regarding rights management, an elaborate enforcement mechanism for online infringement, and stiffer sanctions for criminal violations; including a fine and/or prison time for offenders.

7.2 Are there any particularly noteworthy issues around the application and enforcement of copyright in relation to digital content (for example, when a work is deemed to be made available to the public online, hyperlinking, in NFTs or the metaverse, etc.)?

There are currently no noteworthy issues around the application and enforcement of copyright in relation to digital content.

7.3 Have there been any decisions or changes of law regarding the role of copyright in relation to artificial intelligence systems, including the use of copyright in those systems and/or any work generated by those systems?

No, there have been no decisions or changes to the law regarding the role of copyright in relation to artificial intelligence systems.



Olumide Osundolire is a Partner at Banwo & Ighodalo and has excellent experience in Intellectual Property ("IP"), Technology, Media & Entertainment law. He has advised in numerous local, as well as cross-border and multi-jurisdictional transactions involving brand registration, transfer, commercialisation, protection and enforcement in Nigeria and other African jurisdictions.

He currently leads a team that is advising a production company on the production of a film and the negotiation of a distribution licence with a major VOD platform. He is also currently advising a Nigerian fashion and footwear company regarding trademarks protection, as well as licensing and distribution agreements with a US company. He is also advising a Digital Collective Management Organisation services provider on various issues including intellectual property matters. During the recent acquisition of a leading flour mill in Nigeria by an international conglomerate, he led the IP advisory in the cross-border transaction. The team conducted an audit of the target company's IP portfolio and negotiated key contractual and regulatory terms including the IP assignment and licence agreements.

Olumide is a member of several Intellectual Property oriented associations, including the Intellectual Property Law Association of Nigeria ("IPLAN") and the Anti-Counterfeiting Collaboration, Nigeria.

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She routinely provides legal advisory services in the Media & Entertainment space to film producers, content creators, actors and other creatives. Recently, she advised a leading Nigerian film production company in relation to the protection of its IP in film production, from early development to eventual distribution.

She is currently the Editor-in-Chief of the publication desk of the team and is responsible for the publication of several articles (locally and internationally) by members of the team. Temilola belongs to a number of IP associations and groups including the Intellectual Property Lawyers Association of Nigeria ("IPLAN") and the Anti-Counterfeiting Collaboration, Nigeria.

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Banwo & Ighodalo ("B&I") is a leading full-service Nigerian law firm with offices in Lagos and Abuja (the commercial and official capitals of Nigeria). At B&I, the Intellectual Property & Technology Group works closely with local and international clients to attain adequate and effective protection for their brands, intangible assets, concepts, business operating plans and information. Our expertise includes: protection of clients' copyright, trademarks, patents and designs; product registration and regulatory compliance, anti-counterfeiting and anti-piracy; information technology law, advertising law, media law and entertainment law; and IP-focused Legal Advisory services.

We take pride in quickly and efficiently turning over quality work that is legally sound, practical and commercially expedient by leveraging our

creative, innovative and analytical lawyers. We have a well-rounded understanding of the fine details of IP in practice, as applicable to our client's respective industries, and provide legal services across Africa in collaboration with trusted associates in other countries.

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