

THE IMPACT OF TECHNOLOGY AND THE USE OF THE INTERNET ON COPYRIGHT ENFORCEMENT IN NIGERIA***

Abstract

The enforcement of copyright, like every other proprietary right, is of great importance in every society. This is because it makes it possible for creators to reap the economic benefits accruing from the works they have created and in turn, gives them the motivation to create more. Among the problems of lack of funds, corruption, poverty, and inefficient enforcement mechanisms, and others, confronting the Nigerian Copyright Commission (NCC), the advent of the internet and digital revolution has posed even more severe challenges to enforcement. Due to the internet and modern technology, it has become easier and faster for a person to gain access to copyrighted works even to the detriment of the right owners. This research examines the extent to which modern technology and the internet have impacted the enforcement of copyright in Nigeria. The research finds that the long lasting-rule concerning copyright protection has been distorted by digital technology and the internet which have defied the traditional Copyright Enforcement Mechanisms. The situation is exacerbated by the state of the laws on copyright enforcement. Though the Copyright Act 2022 has introduced some measures to protect works that are published on the internet, it is still fraught with so many lacunae and far from meeting up with the demands of this internet age with regards to enforcement. The research recommends, among others; the employment by right owners, of some Digital Right Management measures such as encryption and watermarking; and more legislative action to make room for efficient enforcement by both NCC and the Courts.

Keywords: Copyright, Intellectual Property, Enforcement, Copyright Infringement, Digital Technology, Internet.

1 Introduction

Intellectual property laws are set up to protect the rights of creators and inventors in their intellectual works.¹The ability of creators to reap the economic benefit of their work is one of the incentives to create more. Sadly, due to the widespread piracy and duplication of works, creators find it disheartening to create more work for consumption by the public. Piracy became on a rampage leaving the copyright industry frustrated. The Nigerian Copyright Commission (NCC) has since its inauguration, been battling with a plethora of challenges ranging from piracy, poor financing, lack of cooperation or adequate response from the security agencies, among others². In the wake of the internet and technology, the work of the NCC is even more difficult. Modern technology and the internet have made it easier and faster to copy, use, and distribute the work of a person without his consent.³This

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¹ OT Afolayan 'Intellectual Property Rights Protection in Nigeria; Issues and Perspective', *Journal of Information and Knowledge Management* (2022) Vol. (1) P. 5.

² M O Nwogu, 'The Challenges of the Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria', *Global Journal of Politics and Law Research* [2014] Vol.2, No.5, pp.22-34. <<https://www.eajournals.org/wp-content/uploads/The-Challenges-Of-The-Nigerian-Copyright-Commission-Ncc-In-The-Fight-Against-Copyright-Piracy-In-Nigeria.pdf>> Accessed on 09 August 2023

³ U Uguru and MC Umobong, 'Appraising the Impact of the Nigerian Copyright Act and Regulations in Combating Piracy in Nigeria' *Beijing Law Review* (2022) Vol. (2).

development is not entirely new. Copyright enforcement has in the time past, been challenged by the various technical advances such as the arrival of the phonogram, the radio, television, devices for recording works (such as tape-recorders or video-recorders), or reprographic technology enabling the mass photocopying of protected works. Technological advancement and the internet have made it possible to disseminate these works easier and faster at zero cost via the Internet. This work examines the extent to which digital technology has impacted the enforcement of copyright in Nigeria.

2. Enforcement of Copyright in Nigeria; Powers and Functions of the Nigerian Copyright Commission

The Nigerian Copyright Commission in keeping with its functions of administration and enforcement of copyright in Nigeria, has formulated a lot of policies, and initiated legislations in the field of copyright, commendably. One of the laudable policies of the Commission is the Strategic Action Against Piracy (STRAP) initiative of the Commission which was launched on May 3 2005. STRAP represents Nigeria's national policy to combat piracy and a programme of action to ensure that right owners in the copyright-based industries receive full value for their creative works. Former President of Nigeria, Olusegun Obasanjo while launching STRAP declared that Nigeria cannot afford to be a piracy haven.⁴ Under STRAP, the Commission is determined to play the role of enabler, facilitator, and regulator through effective copyright administration, protection, and enforcement to help the private sector to grow, create jobs and generate wealth for the nation. STRAP deploys three basic intervention components, namely: proactive enforcement, administration of rights and public enlightenment. Its core mandate is: to combat all forms of piracy and copyright abuses, create a conducive environment for the management and exploitation of the gains of the copyright system, and evolve a suitable copyright environment that will benefit local and foreign investors as they are encouraged to explore the potentials of the country's copyright-based industries as the largest market on the African continent, and restoration through an awareness campaign, Nigeria's image as a country that upholds the ideals of creativity and innovation. The major components of STRAP were (a) Public Enlightenment (b) Enforcement; and (c) Administration of Rights.⁵

The initiative has enabled the Commission to enlist, to a large extent, public-private sector participation in the anti-piracy campaign through a critical buy-in by stakeholders. STRAP has engendered unprecedented, and enhanced anti-piracy enforcement in terms of intensified intelligence gathering and surveillance, raids⁶ and seizures⁷, public destruction of pirated products and prosecution of suspected pirates. Enforcement of copyright is important as without it, the law will be of no use to the persons that it seeks to protect.⁸ Nigeria entered into several international treaties⁹ in a bid to rid the nation of every form of abuse of intellectual work and to better assure the protection of works that enjoy copyright

⁴A Adewopo, 'The Role of IP Administration in Formulating Appropriate IP Legislation, Regulations and Procedures: Nigeria's Experience' (A paper presented at the Inter-Regional Forum on Development and Service-Oriented Intellectual Property (IP) Administration on July 1 and 2, 2008). <https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ipa_ge_08/wipo_ipa_ge_08_theme09_2-part1.pdf>

⁵ *Ibid.*

⁶ See UNCTAD, *Creative Economy: A Feasible Development Option*, Creative Economy Report 2010, UNCTAD/DITC/TAB/2010/3, <http://www.unctad.org/en/docs/ditctab20103_en.pdf> Accessed 15 August 2023.

⁷ Within the African Continent, Nigeria reportedly had, as at 2021, Approximately 144 million internet users, representing 67.5% of the population. See Internet World Stats, World Internet Usage and Population Statistics <<https://www.internetworldstats.com/africa.htm>> Accessed 4 September 2023

⁸ I Ogbah, *Nigerian Copyright Law: In Accordance with the New Copyright Act 2022* (Ota: Legal Jurisprudence Ltd, 2023) P. 169.

⁹ Berne Convention for the Protection of Literary and Artistic Works 1886, Universal Copyright Convention, 1952; WIPO Performances and Phonograms Treaty (WPPT) 1996, WIPO Copyright Treaty (WCT) 1996.

under the Nigerian law. The WIPO Copyright Treaty (WCT) 1996 and WIPO Performers and Phonograms Treaty (WPPT) 1996 are jointly called the Internet Treaties. Both Treaties were finalized in Geneva in December 1996 and have set the framework for the world digital copyright regime.¹⁰ Several subsidiary legislations were also made to simplify the translation of the provisions in the principal legislations into practical terms as well as to regulate the practice of the different branches of intellectual property. The Ministers are also empowered to ensure the fulfillment of a treaty, convention, or other international instrument or agreement to which Nigeria is a party¹¹ According to Umaru¹², the subsidiary legislations in relation to copyright are;

- (a) **Copyright Reciprocal Extension) Order**¹³ which extends protection to copyright works emanating from countries that are signatories, just like Nigeria, to the Universal Copyright Convention of 1952.
- (b) **Copyright (Collecting Societies) Regulations**,¹⁴ to regulate and provide procedures for the formation as well as the functions of the Societies
- (c) **Copyright (Video Rental) Regulations**¹⁵ which regulates video rental activities so as to protect the copyright of the owners in the video from being infringed by those involved in rental services. It also enables the Commission to oversee the activities of the video rental outlets and requires that these outlets be registered. They are also required to register with the Nigeria Film and Video Censor Board.
- (d) **Copyright (Security Devices) Regulations**¹⁶ which prescribes the use of hologram stamps in relation to sound recordings and cinematographic films intended or offered for sale, rental, hiring, etc. for commercial purposes in Nigeria.
- (e) **Copyright (Optical Disc Plants) Regulations 2006**.¹⁷ The Optical Disc Manufacturing Plants Scheme is aimed at monitoring the operations of all local optical discs manufacturers and replicating plants in Nigeria as well as imports of such products in order to forestall any illegal distribution and reproduction of the products. The above subsidiary legislations which were made under the repealed law are still in force having been saved by the transitional provisions¹⁸ of the Copyright Act 2022.

3. Analysis of the Impact of Technology on Copyrightable Works Published on the Internet Space:

The evolution and emergence of the digital world could be attributed to the birth of the internet, its development for e-commerce, development of the digital storage media, the ripping economy, and peer-to-peer file-sharing.¹⁹ Technology and the internet have brought new opportunities for creators and owners to exploit and disseminate copyrighted works. There is a growing market for digital copies of

¹⁰N Itanya & S N Anya 'Mitigating the Nigerian Copyright Law and Policy for Wider Access to Knowledge in the Twenty-First Century', *Journal of Contemporary Law*, (2012) Vol 1, P. 205.

¹¹M J Umaru, 'The Scope and Sources of Intellectual Property Law in Nigeria' *Ahmadu Bello University Law Journal (A.B.U.L.J.)* (2006) Vol. 24 25 P. 37.

¹² *Ibid.*

¹³The Order was made in 1972 but with retrospective effect from 1970 pursuant to section 14 of Copyright Act, 1970. Under section 97 of the new Act of 2022, the Commission is empowered to, with the consent of the Minister, make regulation for the administration of the Act.

¹⁴Made by the Minister in 1993 pursuant to section 32b of the Copyright Act 1970, now 89.

¹⁵Made in 1999 pursuant to Copyright Act 1988, section 37(4), now section 49(6) of Copyright Act 2022.

¹⁶Made in 1999 pursuant to Copyright Act, section 18A, now section 49(1).

¹⁷The regulation was made pursuant to section 37(4) of the Copyright Act, now section 49(6).

¹⁸Copyright Act, section 107(11) expressly provides that – 'Any subsidiary legislation which was in effect immediately before the commencement of this Act shall remain in effect, subject to any necessary modifications, as if it had been made under this Act, and may be added to, amended, revoked or varied accordingly'

¹⁹ A Adewopo, *Nigerian Copyright System: Principles and Perspectives* (Lagos: Odade Publishers, 2012) p. 186.

works which can be copied using some compression software. Young artists who cannot afford the big record companies now have a platform where they can display their works for sale or free access, thereby, bypassing the traditional marketing and distribution channels.²⁰ Digital technology has also enabled the making of high quality copies of works. Sound recordings which were originally recorded in the analogue format and old film prints are increasingly being digitally re-mastered and released. Many academic journals and periodicals are now in digital form and accessible via the internet.²¹

Sadly, the digitalization of work protected by copyright comes with serious implications for the owners as it has made it easy for third parties to access the work without permission. The endemic problem of piracy has been worsened by the emerging impact of digitization on the production, sale and other exploitation of works. This impact is best understood against the background of the crippling effects of piracy on authors, local artists, the entrepreneurs who commercialize their works and the economy as a whole. The problem of piracy is a long-standing challenge that has been a cankerworm undermining the success of the industry. Decades afterward, the problem of piracy has continued to plague the Nigerian State and impacts negatively on copyrightable works. There is however, a new dimension arising from the fact that in the analogue age, pirated works could more easily be identified and distinguished from genuine works, owing to the poor quality of the former²², which was often reproduced from a copy of the latter. Although copy technology has now become prevalent, the poor quality of pirated products offered at least some form of signal and deterrence to members of the public, and perhaps inspired some to invest in genuine copies of copyrighted works. In the same vein, the anti-piracy measures by the Commission,²³ and the sanctions accompanying the infringement of copyright also serve as a caution. Unfortunately, this deterrence factor is no longer that potent, as the development of digital technology has introduced a new dimension to the problem of piracy.

One of the earliest challenges in this direction consists in the activities of optical disc replicating plants, which employ digital technology to produce optical discs in unprecedented quantities. Apart from the high capacities of the machines to churn out thousands of copies in a few hours, the perfect quality of the output is also out of the ordinary. Presently, there is available in the market, different brands of CDs, DVDs and other devices which have an enhanced capacity to store music, film and other digitized content which is unauthorized, and is causing unprecedented and extremely serious damage to creators, who are thus denied the fruits of their labour²⁴. This was despite of the efforts of the Commission and the existing Regulation²⁵. The situation is exacerbated by the fact that the pirated discs are produced internally within the country, rather than outside. The production facilities are now to be found within the country and increasing. Thus, unlike in the past, when emphasis on border control was central to enforcement, the focus now shifted inwards, to monitor and hold accountable replicating disc

²⁰ *ibid.*, p. 187.

²¹ *Ibid.*

²² A O Oyewunmi, 'Towards Sustainable Development of Nigeria's Entertainment Industry in the Digital Age: Role of Copyright Law and Administration', *NIALS Journal of Intellectual Property* [NJIP] (2011), P.83

²³ NCC has been combating piracy under the platform of Strategic Action Against Piracy (STRAP) and Optical Discs Regulations, 2006 as earlier discussed.

²⁴ The fairly recent hunger strike embarked upon recently by Nigerian artists is evidence of their frustration and helplessness at the high rates of piracy in the music sector, and bears eloquent testimony to their desperation. The hunger strike by the Nigerian creative community which took place sometime in 2009, was staged to draw the attention of the world to the intolerable rate of piracy devastating the entertainment industry in Nigeria. (By O Medeme, 'Daily Independent, Lagos', 28 August, 2009) <<https://allafrica.com/stories/200908240174.html>> Accessed 18 August 2023.

²⁵ Copyright (Optical Discs Plants) Regulation 2006.

manufacturers who are operating within the country²⁶. However, border control is still relevant to prevent the exportation of pirated works to the external markets for Nigerian entertainment works that exist in other parts of Africa. Thus, the impact of piracy is felt more than ever before by artists, producers, and other stakeholders in the industry.

The case with literary works seems somewhat irremediable owing to the rate at which people patronize pirated copies of books. Following the crippling economy which has put a larger number of Nigerians in abject poverty, it has become more convenient for people, especially students and their parents, to not only patronize these pirated copies but in some cases, request their production. For the book vendor, the sale of pirated books has become a viable alternative to dealing with publishers as the market for pirated copies is now large and booming. Copyright infringement in the modern age can take the form of file swapping, downloading, uploading, caching, browsing, mirroring, copying and pasting, and scanning.²⁷

4. Copyright Enforcement in the Digital Era; Challenges of The Nigerian Copyright Commission (NCC) the conventional challenges of copyright in Nigeria is detailed in the work of Nwogu²⁸. According to the author, the following are some of factors which pose a challenge to the work of NCC; poor financing, corruption, ineffective enforcement mechanisms, culture, mobility of officials, insecurity, language barrier, favoritism/nepotism, provision on punishment under the copyright act and information and communication technology(ICT).

Digital technology and the emergence of the internet are one of the major enablers of the activities of copyright infringers. The emergence of digital technology, no doubt, has been largely instrumental to societal advancement through information availability and accessibility. Digital technology and electronic networks present an opportunity to advance public interest by promoting access to online resources for academic, research as well as for leisure purposes. This innovation has exposed copyright holders to new and peculiar challenges with regard to enabling unauthorized upload and dissemination of copyrighted works without the necessary license, authorization, or lawful justification. It is pertinent to state that digital technology through its distinctive features makes it easier for people to manipulate, reproduce, and disseminate copyrighted materials within the digital space without due license or authorization from the owner. Unfortunately, it is always almost impossible, to detect such infringement, the identity, and location of the infringer. Creators who operate in the digital environment have their works under serious threat as more sophisticated technologies evolve, aiding the infringement of works and at the same time shielding the perpetrators.²⁹ According to Marybeth,³⁰ some elements of digital technologies which have affected copyright protection are: ease of reproduction, ease in

²⁶However, border control is still relevant to prevent the exportation of pirated works to the external markets for Nigerian entertainment works that exists in other parts of Africa.

²⁷CC Nwabachili & N Udeoji 'Nigerian Copyright System in the Modern Age and Its Implications' *NnamdiAzikiwe University Journal of International Law and Jurisprudence* (2021) Vol.12 1 pp. 72-73.

²⁸M O Nwogu, 'The Challenges of the Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria', *Global Journal of Politics and Law Research* [2014] Vol.2, No.5, pp.22-34. <<https://www.eajournals.org/wp-content/uploads/The-Challenges-Of-The-Nigerian-Copyright-Commission-Ncc-In-The-Fight-Against-Copyright-Piracy-In-Nigeria.pdf>> Accessed on 09 August 2023.

²⁹K Dawar et al, 'Copyright Protection in Digital Era' *International Advanced Research Journal in Science, Engineering and Technology* (2021) Vol. 8, Issue 6, Pp. 611-616 <<https://iarjset.com/wp-content/uploads/2021/07/IARJSET.2021.86105.pdf>>Accessed 18 August 2023.

³⁰ P Marybeth, 'The Challenge of Copyright in the Digital Age', *Revista La PropiedadInmaterial* (2006) Vol. 9, 59-67 <<https://revistas.uexternado.edu.co/index.php/propin/article/view/1402/1337>> Accessed 25 August 2023.

dissemination or sharing of media contents, the expanded storage capability of digital devices. Another characteristic of digital technology is the inexpensive process of manipulation and duplication of copyrighted work. These characteristics of digital works and the network environment, give users the ability to create, modify, distribute, and present information on a scale that has not been possible before.³¹ Following the high volume of illegal uses and the cost of suing any one individual, the copyright owners tend not to sue those who trade these works over the Internet. Instead, they channel the cause to the direct facilitators like Napster and the developers of the facilitating technologies.³²

Copyright violations in the digital domain occur in the form of downloads, reposting of copyrighted documents, uploading of contents on blogs, sharing of copyrighted works, hot-linking, engaging in circumvention of digitally protected works, use of digital resources without proper acknowledgment and citation, unauthorized use of proprietary software and databases without pay and duplicating CD content for commercial purposes.³³

The global reach of the Internet is a clear indication that the works are readily accessible to a world-wide audience. A tour on the internet reveals that the works of a number of prominent Nigerian artists are recklessly displayed on social media and websites all over the Internet. Some of these infringers make the works freely available for downloading by the internet community, for their personal gains.³⁴ In some cases, people go as far as creating fake accounts in the name of these artists, especially the musicians and skit makers, sharing their works and thereby impersonating them. To most Nigerians, any work that is put on the internet is 'free to use'; the reason it is common to see people, particularly, Nigerians, copying and using the images of celebrities to promote their businesses and brands, both online and offline without any form of restriction or restraint. While some persons might think it is useful, fun, or effective to reference or post photos of celebrities, politicians, or sports figures in their promotional materials or advertising, this creative use could give rise to significant liability. Many public figures are well aware of the worth of their names and likenesses and may wish to license their rights for commercial purposes. Accordingly, when they learn that someone has used their name or likeness without their permission to sell products or services, or otherwise imply that they have endorsed the products or services, they could sue for misappropriation of name or likeness, and violation of their right of publicity. Although in Nigeria, photographs or images of persons do not enjoy protection under the law, the degree of recklessness of most Nigerians in copying and sharing or using every content they find online calls for caution. While the image right is not yet recognized in Nigeria, it constitutes a serious infringement with grave consequences, in some spheres.³⁵

³¹I Atanasova, 'Copyright Infringement in Digital Environment', *The Journal of Law and Economics* (2019) Vol. 1 Issue 1, P. 17, <https://www.researchgate.net/publication/339077032_COPYRIGHT_INFRINGEMENT_IN_DIGITAL_ENVIRONMENT> Accessed 26 August 2023.

³²*Ibid*, P. 18.

³³A O Adetunji & N Okuonghae, 'Challenges of Copyright Challenges of Copyright Protection in the Digital Age: The Nigerian Perspective', *Library Philosophy and Practice (e-Journal)* (2022) (7159) Pp. 9 - 10 <<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=13905&context=libphilprac>> Accessed 18 August 2023

³⁴These works are often used by the infringers to promote their page and generate traffic. For those offering these works for sale, it is not clear whether they have obtained the permission of the owners and royalties are being paid.

³⁵ Images Rights (Bailiwick of Guernsey) Ordinance, 2012; amended in 2017. This legislation enables a personage (a natural or artificial person) to register his personality (and the rights that subsist within that personality). The image right becomes a property right capable of protection under the legislation through registration. Registration enables the image right to be protected, licensed and assigned. <<https://www.ipo.guernseyregistry.com/article/103037/What-are->

5. Technologies that Promote Copyright Infringement

The war against digital piracy seems to be very much on as technologies continue to evolve on a daily basis. A source³⁶ has disclosed that the technologies which promote digital piracy manifest in the form of; illegal streaming of content, cyber lockers, peer-to-peer sites, linking websites, and film release groups.

- (i) **Illegal streaming of content** - - Illegal streaming is a process that allows a user to view unauthorized copyrighted content online without actually downloading the file. A website may either provide links to content hosted on other websites or provide access to streams directly. The act of hosting unauthorized content or providing links to unauthorized content is illegal.
- (ii) **Cyberlockers** – These are third-party online services that provide file-storage and file-sharing services for various media file types, such as photos, videos, and sound files.³⁷ They also offer fast, convenient and anonymous distribution of content, which can be downloaded or streamed. Cyberlockers are among the most harmful piracy sources in the world in terms of converting a mainstream audience to illegal distribution channels, and their activities can lead to several issues for businesses. Very often, these sites generate significant income through subscription services. Cyberlockers often do not have search features, making them unsearchable and as such, infringing content is shared freely on blogs, forums and social media platforms.
- (iii) **Peer-to-peer Sharing (P2P) Sites** – This is a technology that enables a person to share music, video and documents, play games, and facilitate online telephone conversations. The technology enables computers using the same or compatible P2P programs to form a network and share digital files directly with other computers on the network. These platforms allow the sharing of digital files among "peers"; a user allows files stored on his computer to be available for copying by other users. In a peer-to-peer, computers on the network are equal, with each workstation providing access to resources and data. This is a simple type of network where computers are able to communicate with one another and share what is on or attached to their computer with other users³⁸. The technology can enable the transfer of the exact copies of these files from one computer to another. Although it is legal to share large amounts of data or files, it is now commonly used to illegally transfer copyrighted materials.³⁹
- (iv) **Linking websites**– These websites collate thousands of links to pirated content often stored on external cyberlockers. In a website, a hyperlink (or link) is an item like a word or button that points to another location. When you click on a link, the link will take you to the desired destination, which may be a webpage, document or other online content. Websites use hyperlinks as a way to navigate online content.⁴⁰ These sites facilitate copyright infringement because cyberlockers are usually not

Image%20Rights#:~:text=The%20Bailiwick%20of%20Guernsey%20Image,under%20the%20legislation%20through%20registration> Accessed 18 August 2023.

³⁶Sharing of Content Through Online Platforms; Considering Digital Piracy in Nigeria', (A work published by Aelex, January 2021) <<https://www.aelex.com/wp-content/uploads/2021/01/Sharing-of-content-through-online-platforms-%E2%80%93-considering-digital-piracy-in-Nigeria-2.pdf>> Accessed 3 September 2023

³⁷ Margret Rouse, *Technopedia* <<https://www.techopedia.com/definition/27694/cyberlocker>> Accessed 3 September 2023.

³⁸ N J Alpern and R J Shimonski, 'Peer-to-Peer Networks', *Science Direct* (2012) <<https://www.sciencedirect.com/topics/computer-science/peer-to-peer-networks>> Accessed 3 September 2023.

³⁹ '(n. 36)'

⁴⁰ 'What is a Hyperlink (or Link)' (A publication by the University of Northern British Columbia) <<https://www2.unbc.ca/sites/default/files/sections/web/links.pdf>> Accessed 4 September 2023

identifiable. Linking websites are common with Blogs, Affiliate marketing platforms, product marketing sites, company websites, etc.

(v) **Film Release Groups:** These groups upload and share content on private torrentsites that rely on donations from members. The materials eventually make their way onto public torrent sites, where they can be downloaded by unauthorized persons.⁴¹ Apart from the above forms of digital piracy, the sharing of media files and books through other technologies or platforms such as WhatsApp, Facebook, YouTube, LinkedIn, Telegram and other social media platforms has promoted online piracy a great deal. Once a work; book, image or drawing is uploaded to the web, it can be infringed upon in several different countries simultaneously with just a couple of clicks.⁴² In fact, many Netizens have a strongly misguided idea that copying and posting of copyrighted material to the Internet is allowed, and that they have implied license to do with the works as they please.⁴³ Nigerian being a developing country is plagued with even more severe challenges, owing to its level of technological awareness and exposure of the citizens. The unique challenges posed by digitalization are as follows:

a. **Tracing the infringer (Problem of Evidence):** One of the greatest challenges in enforcing online infringement of copyright is the difficulty in tracing the identity of the infringer and his exact location. The issue remains that due to the virtual and anonymous nature of the Internet, infringers can usually go about their illegal business with impunity.⁴⁴ There is more incredible difficulty in detecting infringers due to privacy concerns. Traditionally, identifying an infringer has not been as daunting a task as in the context of the Internet. All that is required is diligence on the part of the enforcement. Once a copy of any work is identified as pirated, all that is required is to trace the source to an individual, company or premises for the arrest of the infringer. The process of enforcement is more complicated under the internet regime. The larger problem of whether there is adequate protection against infringement remains. There should be a more defined means of linking each identified account with an act of infringement in a particular location or jurisdiction⁴⁵

There is a dire need to devise a technological means of identifying the real persons or individuals behind every activity on the internet. This issue has great implications on the success of cases that are taken to the court for determination. Naturally, the court in dealing with cases of infringement committed over the internet will be confronted with issues such as the real identity of the infringer, the subject matter of infringement, date, location, and so on. The proof of any of these facts will require digital evidence. Digital evidence is always in the digital form until perhaps printed or presented in a way that can be demonstrated to the court.⁴⁶ In fact, the situation transcends the issue of copyright infringement and cuts across the length and breadth of the activities on the internet. In Nigeria, a certain blogger that goes by the name 'Gistlover'⁴⁷ has now been termed, by Netizens, 'The Faceless Blogger'. At a point, a

⁴¹ '(n. 36)'

⁴² J C Ginsburg, 'Copyright Without Borders? Choice of Forum and Choice of Law for Copyright Infringement in Cyberspace, 15 *Cardozo ARTs & ENT. L.J.* (1997) 153, 155

⁴³ T J Smedinghoff, *ONLINE LAW: The SPA's Guide to Doing Business on the Internet* (2nd Edition, Boston: Addison-Wesley Publishing Co., 1996).

⁴⁴ B A Lehman, 'Intellectual Property and the National Information Infrastructure', The Report of the Working Group On Intellectual Property Rights 131 (1995).

⁴⁵ WIPO, 'The Impact of Technology on Copyright Enforcement' WIPO Seminar for Asia and Pacific on the Internet and the Protection of Intellectual Property Rights 1998

⁴⁶ O B Ayodele and O E Uchechukwu, *Electronic Evidence and Digital Transaction Law* (Zaria: Ahmadu Bello University Press Limited, 2022) P. 87

⁴⁷ Gistlover is a popular blogger who runs accounts on almost all the social media platforms available in Nigeria. The blogger shares stories about the private lives of Nigerian celebrities.

rumour made the rounds that the ghost blogger had been unmasked. Many people have been wondering who the ghost blogger on Instagram is. A Netizen, Belinda, has this to say about the blogger: -

Gistlover has been faceless since it started operating on the social media page. Kemi Olunloyo has uncovered the name, and photos of the person behind the blog disclosing that the person behind the faceless blog is not a man as purported but a woman ... The former IGP Adamu reportedly used GPS technology to locate her as based in Abuja then she vanished underground. Her lawyer wrote me a cease and desist letter claiming I'm endangering her. I REFUSED to take my post down. Ultimately she wrote a post telling her followers that she's not going to waste her time with a "mad" woman.⁴⁸

The Nigerian celebrities who have allegedly, been defamed by 'Gistlover', cannot possibly ventilate their grouses in court since the *torfeasor* or suspect, as the case may be, is yet unknown and at large. This is the sad reality of the digital technology the world over, which tends to resist the attempts by NCC to eradicate copyright abuse in Nigeria.

- b. **Evolving Nature of Technology:** The ever-evolving internet-based technology which is usually in software and codes is one of the greatest nightmares of the copyright enforcers. Due to the recent advancement in digital technology, copyright laws are becoming increasingly difficult to enforce. With the advent of the digital era, users of digital technology are being provided with more and more options to record, download, and transmit data of higher quality in less time, as compared to the analog system which requires a lot of time to download and transmit data. Thus, the result would be that more and more copyrighted work would be prone to infringement, at less cost and it will be more difficult to prevent.
- c. **Cross-border Violation of Copyright:** A recurring issue concerning copyright infringement on the internet is with respect to the exact location in which the breach can be said to have occurred and the appropriate court to assume jurisdiction over the matter. This issue raises the question of which law and court should have jurisdiction to entertain a case of online infringement of copyright. Which law applies? Which court has the competence to adjudicate over the case? The answers to these questions are almost as infinite as the Internet itself. International copyright law does not provide a consistent and satisfactory resolution for such issues. The first thing to note concerning copyright enforcement is that there is no Unified Copyright Court in the world to adjudicate over copyright related disputes. So, when it comes to disputes about, say, an unlawful use of a photo on the internet or social network, or unlicensed streaming of football matches, or downloading of a pirated copy of a movie, that dispute has to be brought before domestic courts.⁴⁹ From this, the issue arises as to which of the domestic courts, among the courts of the several countries that may be involved with the dispute, has jurisdiction over the matter. And given that the internet is versatile and accessible by all, then the countries involved may be many.⁵⁰

⁴⁸Belinda, ('Kemi Olunloyo Uncovers Name and Face of Ghost Blogger 'Gistlover', 5 September 2022) https://www.ghbase.com/kemi-olunloyo-uncovers-name-and-face-of-ghost-blogger-gistlover-photos/?expand_article=1 Accessed 18 August 2023.

⁴⁹A Bennett & S Granata, 'When Private International Law Meets Intellectual Property Law: A Guide for Judges' (*Hague Conference on Private International Law; Geneva: World Intellectual Property Organization*) (2009) P. 15.

⁵⁰*Ibid.*

Again, the activities of the online service providers⁵¹ in looking in the other direction, when accounts hoisted in their network are being hacked into and the copyright in the works published therein infringed upon is regrettable. Unfortunately, the latest Nigerian Copyright Act⁵² does not expressly make any imposition of crime on any person other than a direct infringer. The Act expressly exonerates service providers from liability on a minimal conditional of expression of good faith.⁵³ It does appear therefore, from the generality of the provisions relating to the provision of works published online, that the bulk of the task is shoved on the owner,⁵⁴ as there are no dire consequences or criminal sanctions against the service providers in the likely event of their non-compliance. The procedure for filing a report to the service provider under the Act⁵⁵ is rigorous, cumbersome, and discouraging, especially given the likelihood that the copyright owner will resort to the court for redress. A more proactive approach in this regard would be to set up a special committee within the Commission, of professionals in the area of digital technology, to carry out an oversight function over the service providers. In the alternative, the Minister, in his oversight function, can constitute a special agency for this purpose.

The Cyber Crimes Act⁵⁶ appears to offer a kind of reassurance. Section 29 (1) Act makes it an offence for any person or organization who being a computer based service provider and or vendor does any act with intent to defraud and by virtue of his position as a service provider, forges illegally used security codes of the consumer, with the intent to gain any financial and or material advantage or with intent to provide less value for money in his or its services to the consumer. It is believed that with adequate collaboration with other security agencies, the NCC can, under the regime of the Cyber Crimes Act, gain access to the evidence needed to prove copyright infringement.⁵⁷

This work advocates for owners of copyright to devise personal measures such as Digital Right Management (DRM) such as encryption system⁵⁸ and digital watermarking.⁵⁹ The level of advancement in Digital Right Management technologies (DRM) has moved to the stage that it can track the length of time a user might spend online or offline. Therefore, the online secrecy of users cannot be guaranteed. Decryption of encrypted material and other forms of circumvention of DRM is punishable

⁵¹The term service provider is defined under section 108 of the Act to mean - a provider of online services or network access, or the operator of facilities and includes an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

⁵²Copyright Act 2022.

⁵³ Section 55(5) of the Act provides thus – '(5) A service provider shall not be liable to any person for any action taken under this section in good faith.

⁵⁴ *ibid*, sections 53 to 61.

⁵⁵Copyright Act 2022, sections 54, 55 and 56.

⁵⁶ Cyber Crimes (Prohibition, Prevention, Etc.) Act, 2015.

⁵⁷Cyber Crimes Act 2015, Section 45 provides that (1) authorizes a law enforcement officer to apply ex-parte to a Judge in chambers for the issuance of a warrant for the purpose of obtaining electronic evidence in related crime investigation. By the provision of sub-section (2) the law officer has the authority to seize, remove and detain anything which is, or contains evidence of the commission of an offence under this Act; use or cause to use a computer or any device to search any data contained in or available to any computer system or computer network; use any technology to decode or decrypt any coded or encrypted data contained in a computer into readable text or comprehensible format and also to require any person having charge of or otherwise concerned with the operation of any computer or electronic device in connection with an offence under this Act to produce such computer or electronic device.

⁵⁸This system is based on a formula whereby a secret key is used to access a message and the secret key is sent from the sender to the recipient securely. The secret key will be used to access the work by authorized users.

⁵⁹Digital watermarking is a security system that is used to envelope a content that is streamed in digital form so that permission is sought and obtained before authorization is granted to access a protected work

under the Act⁶⁰ It is not arguable that digital management technologies definitely will create a slight privacy threat however, the technology is determined to control the proliferation of digital content, and also to ensure that the dividends of creators are secured. A watermarked work is in the form of an enveloped message designed to be difficult to access without authorization. When a work is concealed, the technology will indicate as such thereby helping you to determine if the original has been tampered with.⁶¹ Watermarks may be perceptible or imperceptible to a human observer.⁶² Most watermarking algorithms generate imperceptible watermarks that can only be detected by a machine. Imperceptible watermarks are less damaging to the host object, and are more secure against attackers wishing to destroy or manipulate the watermark.⁶³ It facilitates easy access to the copyright owners for those genuine users that would want to reach the original copyright owner.

6. Conclusion and Recommendations

This research finds that the advent of technology and the internet has great implications for both the creators and society at large. The far-reaching Internet access no doubt, comes with a huge price for creators whose rights in their works are interfered with just with a punch of the keyboard. Digital technology has made it easy for works to be copied and shared with multiple persons, at the same time and without the permission of the owner. The work of NCC becomes tougher as more technologies evolve daily. The work recommends as follows:

(i) **Legislative Action:** Copyright law should be changed to solve existing problems and also anticipate those that may arise in the future. The National Assembly should enact a law that encompasses the whole spectrum of technology; that can quickly respond to technological changes, and provides some mechanism of protection and compensation for authors of copyrighted materials. This would encourage authors to create original works. The government should also embark on the domestication of international treaties especially, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Berne Convention for the Protection of Literary and Artistic Works, and the Paris Convention for the Protection of Industrial Property.

Beyond the law reform, however, institutional support to combat online piracy needs to be put in place through training and other forms of capacity building for those charged with the administration and enforcement of copyright. Adequate training is the best way to equip them for the task of detecting crimes, including online piracy. There should be adequate logistic, technical, and financial support for NCC to assist them in discharging their duties. Putting in place some of these measures will go a long way in implementing the letters and spirit of the law.

(ii) **Establishment of a special Court for IP Matters:** Intellectual property rights are unique and in a class of their own. It is, therefore, important that a special intellectual property court or tribunal should be established for copyright matters, just like in the case of labour law, for which the National Industrial Court is created. The judges of the court or tribunal should be composed of persons who are ICT-inclined and interested in keeping pace with the development in technology. The same criteria should also be made applicable to the staff of the court to achieve a more effective

⁶⁰ Copyright Act 2022, Sections 50 – 52.

⁶¹N Rani, 'Digital Watermarking', *Global Journal of Computer Science and Technology Graphics and Vision*, (2012) (12) 7.

⁶² *Ibid.*

⁶³ N P Sheppard et al, 'Digital Watermarks for Copyright Protection', *Research Online - Faculty of Engineering and Information Sciences, University of Wollongong*, (2002) (12) (1) 2021
<<https://ro.uow.edu.au/cgi/viewcontent.cgi?referer&httpsredir=1&article=9495&context=infopapers>>
Accessed 21 August 2023.

adjudication on copyright matters in the face of today's digital revolution. This advocacy is borne out of the fact that copyright like other branches of Intellectual property law is a hazy legal concept, being an area of law that regulates intangible property of the mind. It is viewed by some persons as a concept that is purposely to promote the progress of knowledge and learning, while others see it as just an idea to protect authors against those that would want to tamper or steal the fruits of their labour. In this digital era, lawyers and judges will be confronted with the issues of admissibility and interpretation of evidence, some of which may appear in digital form. Establishing a special court (and Rules) for copyright matters will also dispense with some of the challenges experienced in the prosecution of copyright matter, such as congested court lists and inexperience of judges and clerks. A viable alternative, while awaiting the establishment of a special court (which will require a legislative action) is for the Chief Judge of the Federal High Court, to issue 'Copyright Enforcement Rules', as in the case of 'Fundamental Rights Enforcement', to set clear modalities for ensuring a speedy dispensation of copyright cases. This is so because, any undue delay in the enforcement process will, as always, discourage the victims from pursuing their causes in court. The infringers will leverage the situation and plunge the creators into untold hardship.

(iii)Sensitization: There should be increased public awareness through conscious sensitization and advocacy. The high rate of illiteracy in Nigeria can be attributed to ignorance and illiteracy among the teeming public. The public consumption of pirated materials is the major reason that piracy is gaining ground in our society. The stakeholders should embark on aggressive public enlightenment and campaign to acquaint the public with the reasons they should not patronize pirated materials. The public must be made to understand both the civil and criminal implications of patronizing pirated copies as well as the negative impacts of piracy on both the creators and the larger society. While some copyright infringers patronize pirated works because they are cheap and sometimes free, others do so out of ignorance.

In doing this, there should be a deliberate collaboration between rights holders, collective associations representing them and the government. This collaboration is required to achieve the development and progress of the industry through a more focused and organized approach to the management and enforcement of copyright.

International cooperation among nations is also necessary, given that copyright piracy like terrorism, is a trans-border problem. The collaboration will create the necessary platform for reform and engender cooperation among nations. Harmonization and implementation of global policies and treaties on copyright enforcement will help curbing online infringement of copyright, as it will help to reduce border limitations on enforcement.

(iv)Technological Intervention: NCC should partner with relevant experts to develop flexible technologies to match harmful technologies as they evolve. This will help to give effect to the provisions of section 50 of the Copyright Act 2022 which prohibits the importation of any technology which is intended to circumvent any online protective measure. The cyber squatters in cyberspace operate without identification and leaving the NCC officials in a helpless situation. Technological intervention is necessary to unmask the real faces behind the fake accounts and impersonations on the internet; and reveal their exact locations for ease of arrest and prosecution or any other administrative action that it may deem necessary. In addition to the above, the owners of copyright are encouraged to devise personal measures such as Digital Right Management (DRM) to protect their work.