

**IMPLICATION OF COPYRIGHT PROVISIONS FOR
LITERARY WORKS IN FILMS AND VIDEOS FOR
LIBRARIES**

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Abstract

The paper appraised the issue of intellectual property with a view to bringing out the subject of copyright as an aspect of property right that subsists in certain specific types of works which bother on an effort and creativity. The emphasis of copyright is on original literary works, films, sound recordings and others. The focus of this paper is to discuss the various provisions of the copyright law as they affect films, video and by extension video CD. The study examines the various interpretations of the provisions of the copyright law as they affect film, video and allied media and concluded that as a result of rapid changes in technology of information communication, copyright laws should be dynamic enough to cover the new media of information communication. This will make it easy for libraries and archives to manage and utilize the works in the new media without necessarily running foul of copyright law.

Introduction

As a result of man's propensity to create and invent property that transcends cultural boundaries and that can benefit the whole mankind, an organization arose out of the dynamism of man to form the World Intellectual Property Organization (WIPO). Arising from the complexity of the interactions, rights, privileges and rewards which may cause

The Rights in Copyright

One can safely say that the issue of copyright dates back to the beginning of civilization when people have been eager to profit from the works of others. In ancient times, the idea that author of a work of literature had economic rights to control dissemination and copying of work was not an issue because it was unthinkable for people to engage in copying others work. However moral rights were mostly emphasized because most authors were teachers. The word 'plagiarist', meaning one who copies the work of another and passes it off as his own. It is derived from the Latin 'plagiarius' meaning kidnapper. The problems of unauthorized copying of works produced by others date back into an antiquity. (Bainbridge, 1999).

Copyright law has a relatively long history and its roots can be traced back to before the advent of printing technology which made the printing of multiple copies easy, quick and relatively inexpensive. The first record of copyright case was *Finnian Vs Columba Bowker* (1912). Two inventions of the late fifteenth century changed everything; the invention of moveable type by Gutenberg in 1455 and Caxton's invention of printing press around 1477 made fundamental landmark in the revolutionisation of human intellectual exposure and adventure.

Copyright is a property right which subsists in various 'works', for example literary works, artistic works, musical works, sound recordings, films and broadcasts. The author of a work is the person who creates it and he is normally the first owner of the copyright, which will last until 70 years after the author's death or 50 years after it was created depending on the type of work. Copyright gives the owner the right to do certain things in relation to the work, which includes making a copy, broadcasting or giving a public performance. Anyone who does any of these things, known as the acts restricted by copyright, without permission of the owner, infringes copyright and may be subject to legal action taken by the owner for that

infringement. Ownership of a copyright is alienable and it can be transferred to another or a license may be granted by the owner to another, permitting him to do one or more specified acts with the work in question.

Copyright does not protect ideas; only the expression of an idea that is, its tangible form, and it is free to others to create similar or even identical works as long as they do so independently and by their own efforts. In other words, copyright does not create a monopoly in a particular work. Certain things may be done in relation to a work of copyright without the permission of the copyright owner such as making a copy of a work, for example for the purpose of research, private study, criticism or review, such acts are known as the 'permitted acts' and limit the scope of copyright protection.

Copyright gives rise to two forms of right:

- (1) the proprietary or economic rights in the work, that is the right to control copying and
- (2) moral rights which leave the author or principal director of a film, who may no longer be the owner of the copyright, with some control over how the work is exploited in the future.

The moral rights are independent of the economic rights hence the importance of the distinction between the author of a work and the owner of the copyright subsisting in it.

International protection of copyright works is effected mainly through two international conventions. The Berne Copyright Convention and the Universal Copyright Convention both of which lay down minimum standards of protection to be attained and for reciprocity of protection between those countries that are signatories to the conventions. The conventions have been largely responsible for the measure of harmony that now exists on the world stage.

International copyright conventions ensure that the authors are accorded the same protection within the countries of the contracting states as are accorded to those in the author's

home country. The United Nations Educational Scientific and Cultural Organization (UNESCO) adopted an international copyright convention in 1952. In 1971 the universal copyright convention administered by UNESCO has revised the rules to accommodate the peculiar problems of developing countries, Nigeria was a signatory to this convention.

The Nigerian Copyright Act

The Nigerian Copyright Act prescribes certain preconditions that have to be fulfilled before a literary, musical or dramatic work will enjoy copyright protection. Some of the preconditions include that;

- (a) sufficient (intellectual input) effort must have been expended on making the work to give it an original character. This is contained in Section (a) of the Act.
- (b) The work must be fixed in a definite medium of expression now known or later to be developed into a form which can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.
- (c) The work enjoys copyright protection if the author is
 - i. A Nigeria citizen domiciled in Nigeria or
 - ii. In case of an incorporated company, if it is incorporated by or under the law of Nigeria .

Any work made in another country is eligible for copyright protection if that country has an agreement with Nigeria for equal protection of works. By reason of the series of international conventions and agreements signed by several countries including Nigeria under the World Intellectual Property Organization (WIPO) Nigeria has copyright agreement with 167 countries.

Jaiyeoba (2005) identified six types of works that were covered by the Nigerian copyright decree No 47 of 1988. The works include literary works, musical works, artistic works, cinematography films, sound recordings and broadcast.

Okwilagwe (2001) also identified the works that are covered by copyright in Nigeria. According to Anjorin and Ijatuyi (2005) the copyright Act chapter 68, Laws of the Federation of Nigeria 1990 identifies works that have copyright protection in section 1 of the Act. The works are the same as those contained in decree No 47 of 1988. The decree of 1988 subsequently led to the establishment of the Nigerian Copyright Council and in recent years led to the setting up of national and state antipiracy committees. This development has brought about the awareness among Nigerians to know the significance of copyright so that they will not run foul of the copyright Act.

One important area that needs effective coverage by the copyright law is in the aspect of new technology media so that it will be convenient for libraries and archives to manage the works in the new media. Libraries and archives should be able to acquire, manage and make available for use by clientele, these new media without running foul of the copyright law.

Copyright laws protect the moral and economic rights of the individual in respect of his or her creative actualized work. The economic right has to do with the power you have to exploit the product for economic reason while the moral right is the right you have to lay claim to the product. Copyright also allows the owner of a work to enjoy the right to give his work out to someone else who may be an individual or an organization. This in essence means that one has the authority to give ones copyright to someone else, in this case you have the right to share from the economic proceed.

Complimentary to the economic right is the moral right which gives an author the authority to enforce that no one has right to alter the product of his creativity however small without first obtaining written permission form him. Even if the owner of the copyright is dead, his copyright cannot be invalidated or changed. If there is going to be any change, the creator of the work who is the copyright owner must have indicated so in a formal and widely publicized way. One important factor is

that the format of the original work must be maintained even though the creator or author had died. If he died in testate, without a provision for inheritance, his relations or non-governmental organization has the right to inherit or administer the copyright on behalf of the dead author.

Another important issue in copyright is the right to copy. Someone can be given the right to copy rightly. This means that an author or a copyright owner can give the right to someone and the fellow given the right has the right to copy rightly. Also, copyright does not protect ideas but ideas already in tangible form. Such ideas must have already been crystallized into tangible forms in fixed formats like books, sound recording, films, video etc. There must be an effort to make it an 'origin conditions' giving it original characteristics. It is also morally binding on any person making use of a scientific, literary or artistic production to give credit to the author. When passages are lifted from a published work, it must be made very clear that one is quoting from another person's work and so credit must be given to the author even when the author has been long dead.

(i) Films And Video

What is the definition of a film? According to Bainbridge (1999) films, and by extension video are a recording on any medium from which a moving image, may by any means be produced.

This covers video, video disc, optical disc and any other new technologies which produce moving images. Film or videos are derivative works. They are usually based on original literary, dramatic, musical and artistic works, films, video, video CD need protection so that the investors and entrepreneurs involved in such works can take direct action in case of infringement. The fact that several different original works may be encapsulated in a single film makes it much, more convenient for the owner of the right to sue directly for any infringement.

(ii) Cinematography Film

This is defined as “the first fixation of a sequence of visual images capable of being shown as a moving picture and being the subject of reproduction as well as the recording of a sound track associated with the cinematograph film”. The Act grants the copyright owner the right to make a copy of the film in so far as it consists of sound and visual images to be seen in public; make any record embodying the recording in any part of the sound track associated with the film utilizing such sound track, distribute in the public for commercial purpose copies of the work by way of rental, lease, hire, loan or similar arrangement.

(iii) Sound Recording or Musical Work

A musical work is one consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music. By sound recording is meant “the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced”. It does not include sound track associated with a cinematograph film.

A song will therefore have two copyrights, one in the music and one in the words of the song which is a literary work. The work must be reduced to writing. The copyright owner is granted the exclusive right to control in Nigeria the direct or indirect reproduction, broadcasting or communication of the whole or a substantial part of the recording either in its original form or in any form recognizably derived from the original; is free to make distribution to the public for commercial purposes of the copies of the work by way of rental, lease, hire, loan or similar arrangement.

Authorship

Authorship and ownership of copyright are two distinct concepts and it is quite common for copyright to be owned by artificial legal persons such as corporations. Author is defined by the British Copyright, Designs and Patents Act 1988 in terms of a ‘person’ that is, the person who makes the work or

the broadcast, or provides the service, but in relation to these work. It would seem that all forms of legal persons, including artificial person such as corporation can be the author of the work. The producer and the principal director qualify to be addressed as authors. It is however presumed that all films have both producers and principal directors and therefore all films as treated as having joint authorship unless these two functions are performed by the same person. This definition applies only to film made on or after 1 July 1994. Before this date the author is simply defined as "the person" responsible for making the arrangements necessary for making the film.

Ownership of Copyright

A film normally has many copyright elements and this means that ownership will depend on the contracts between the various people who made the film. For example a filmed interview with a song writer contains several performances of the song writer's songs and an extract of film containing performance of some of the songs.

On the issue of extended copyright, such would be owned by the person who owned the copyright on 31st December, 1995 but the reviewed copyright in film will be owned by the principal director or his personal representative. They cannot own any revived copyright in the various elements of the film and will need to negotiate with the owner of the copyright of these elements, if they are still in copyright, for rights to exploit the revived copyright in the film as a whole.

Duration of Copyright

Copyright in films lasts for seventy years from the end of the year in which the last of the following died. The principal director, the author of the screenplay; the author of the dialogue and the composer of music specially created for and used in the film. It is not always easy to find out who all these authors/owners are or when they died but we can use the identify of at least one of them who was known. In a case where the identity of none of them can be ascertained, then

the copyright expires 50 years from the end of the year in which the film was made and was not made for public; otherwise the copyright runs for 70 years from the end of the year of the death. The notion of "made available to the public" and "published" are not quite the same.

In the context of a film, the former means being shown in public or included in a broadcast or cable television programme and the soundtrack of a film counts as part of the film and therefore gets the length of protection of the film. The act of lending of films or video does not infringe on the rights of performers in the medium of film or video.

Copying of Films

Copying a film onto a video is just like copying a disc to tape/cassette which represents sound recordings. When a medium is old or obsolete and the medium is to be transferred to a usable type of equipment or media you can do this if no copyright infringement is committed.

Fair Dealing

There is fair dealing in films or videos for research or private study, for reporting current events, for criticism and review.

For libraries and archives copying of films and videos in their custody, it is emphasized that special provisions apply only to literary, dramatic or musical work but not to other works. If a researcher needs a copy or part of a film or video, he can only be supplied on the condition that the copyright in the material is owned by the library or archive or the original copyright owner has permitted that copies can be made. Libraries and archives cannot make copies for similar institutions unless they have agreements with production companies which allow this.

Educational Copying

Films and videos cannot be copied for classroom use except in the training in the making of films or films sound tracks

and only by the teacher or pupils themselves. The class can play or view the films or videos as they are being broadcast. Copyright subsists as for educational copying in the following; copying as a condition of exports, copying as a material open to public inspection, copying as material for public administration.

Multimedia

In a situation whereby a publication contains material in several different forms such as a booklet, computer program and video, the copyright will subsist separately in each item and the rules for each format will apply. The copyright in the entire package could run out at several different times.

In a situation whereby mixed media packaged is the issue and the author is to be determined for copyright reason, the rules for ownership and authorship are the same for each of the components, however the publisher will most certainly own copyright in the format of the whole package. The owner has the exclusive right to issue copies of his work to the public, he also has the right to perform the work or to adapt the work or cede copyright for adaptation to a producer or publisher.

Lending and Rental

Owners have exclusive right on the material, however prescribed. Libraries are allowed as long as any charges made cover no more than the administrative cost of making the loan. Public libraries can lend films and videos by having special agreements with the production industries to allow rental/lending facilities under agreed terms. It is best to check the conditions of purchase for particular materials in the library. Public libraries are excluded from lending services for films and video because they are covered by specific provisions of the copyright law which covers, materials that are: (a) purchased before December 1996 or (b) are covered by the Public Lending Right Scheme or (c) are covered by special agreements with the industry at large or with specific production companies or their agents. The act of lending of

films or video does not infringe on the rights of performers in the medium of film or video.

Publication Right

A film or video or video disc is subject to publication right in the same way as literary, dramatic and musical works.

Conclusion

In the matter of intellectual property, the issue of copyright comes on the fore because a copyright can be considered to comprise a bundle of rights, associated with the acts restricted by the copyright. These are the rights that only the copyright owner or his proxy is allowed to do or authorize. These acts include copying, issuing copies to the public, performing, playing or showing the works in public and broadcasting the work. These can be exploited separately and a copyright owner by this means will maximize his income.

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