

INTELLECTUAL PROPERTY LAW IN NIGERIA: THE COPYRIGHT ACT 2022



In a bid to reenergize the Nigerian creative economy and make it more globally competitive in the digital age, on March 17 2023, President Muhammadu Buhari signed the Copyright Bill 2022 into law (“the Act”) which repeals the Copyright Act, Cap C28, Laws of the Federation of Nigeria, 2004 (“the old Act”). The main objectives of the Act are to:

“protect the rights of authors and ensure just rewards and recognition for their intellectual efforts, provide appropriate limitations and exceptions to guarantee access to creative works, facilitate Nigeria’s compliance with obligations arising from relevant international copyright treaties and conventions, as well as enhance the capacity of the Nigerian Copyright Commission for effective regulation, administration, and enforcement.”¹

In this article, we highlight some of the amendments made in the Act and their possible impact on the Nigerian creative space.

Notable Amendments

1. Expansion of the rights of authors

The old Act specified the rights accruable to authors and rights did not expressly include rights in works created and/or disseminated through

digital means. The Act grants copyright holders, the exclusive right of making their work available to the public via wire, wireless or online means in such a way that members of the public can access the work from a place and at a time individually chosen by them.² To this end, the Act further safeguards the work from online threats by expressly providing that no person shall knowingly circumvent by avoiding, bypassing, removing, deactivating, decrypting or otherwise impairing a technological protection measure that effectively protects a copyright work.³ Digital copies of any work are also protected.⁴

An author is also empowered by the Act where his copyright is infringed, to issue a written and executed notice of infringement which may be transmitted electronically to a service provider⁵ requesting the service provider to take down or disable access to infringing content.⁶ The service provider in receipt of such notice following the due process prescribed in the Act is to comply with the notice failing which it may be liable for breach of statutory duty and infringement to the same extent as the person who placed the infringing content online.⁷

2. Stricter sanctions for criminal infringements

The Act amongst other offences, states that, a person who without consent of the author communicates to the public via wire, wireless or online means, a copyrighted work for commercial purposes commits an offence and shall be liable upon conviction to a fine not less than One Million Naira (N1,000,000.00) or to imprisonment for a term not less than five (5) years. Where such an offence is committed by a corporate body, the court may order that its assets

¹ Section 1 of the Act

² Section 6, 26-32 of the Act

³ Section 50 of the Act

⁴ Section 108 of the Act

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⁵ Service providers are defined by the Act as providers of online services/network access.

⁶ Section 54 of the Act

⁷ Section 55 of the Act

and properties be forfeited.⁸ Stricter fines have also been put in place for piracy, circumventing technological protection measures, importation of copyrighted works and other forms of infringement.⁹

Criminal and civil actions may be taken simultaneously in respect of the same infringement. The internet presents a troublesome situation for copyright holders as users are accessing and providing content to consumers at no cost, thereby increasing traffic and advertisement fees for the platform without remitting any revenue to the authors or copyright holders. These stricter fines and penalties may combat such activities online.

3. Expanded Fair Use Exceptions

Fair dealing or fair use are exceptions to copyright law that allow for certain uses of copyrighted works without permission from the copyright owner. The Act replaces a closed fair dealing provision with an open provision as is obtainable in the United States. The old Act provided limited exceptions for fair use, which allows for the use of copyrighted material for specific purposes such as private use, criticism, commentary, and news reporting. In contrast, the Act permits the use of a work for fair dealing and lists examples in that regard. By making clear that the list of permitted purposes are only examples, the provision is more flexible and adaptable to new uses enabled by digital technology.¹⁰

4. Additional powers and functions of the Commission

The Commission has been given the power to block or disable access to any content, link or website hosted on a system or network which it believes to infringe copyright.¹¹ The Commission is also responsible for the investigation and redressing of cases of infringement, and settling disputes that have not been specifically reserved for settlement.

The Commission is also empowered to prosecute, conduct or defend before a court any proceedings arising from the Act and can caution, sanction and institute criminal or civil actions against non-compliant persons.¹²

Other Amendments

The Act also provides specially for the needs blind, visually impaired and print disabled persons to have access to learning and reading materials in accessible formats. It further provides for remuneration for the broadcasting of sound recordings and audiovisual works, to owners of such work and expressly safeguards the moral rights of authors in any work. A Fund has also been established for the Commission towards the promotion of the objectives of the Act.

Works created by Artificial Intelligence

There has been a recent global spike in applications to register works for copyright authored by machines persons. The old Act granted ownership of copyright to a human author or a corporate body. The new Act appears to retain this definition by the use of the word “person” in its interpretation of the word “author”. As defined by the Act, an author does not include a machine or artificial persons other than a company. Therefore, works created by machines remain ineligible for copyright under Nigerian law.

Comparatively, on March 15 2023, the U.S. Copyright Office announced that works created with the assistance of artificial intelligence (AI) may be copyrightable, provided the work involves sufficient human authorship.

Conclusion

The provisions of the Act are a welcome development, it is our hope that the stricter laws and sanctions will lead to a decline in the volume of copyright infringement in Nigeria. However as much as the Act seeks to make the Nigerian creative economy globally competitive, there are topical questions on copyright

⁸ Section 44, 46 of the Act

⁹ Section 49 of the Act

¹⁰ Section 20(1) of the Act

¹¹ Section 61 of the Act

¹² Section 78-79 of the Act

that the Act does not resolve. One of such questions is whether works created by artificial intelligence are copyrightable. As the use of AI continues to grow and evolve, it will be important for Nigeria to adapt its legal framework to address these new challenges and opportunities while also promoting innovation and protecting the rights of all stakeholders.

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Contact persons for this article



Unyimeabasi Pearl Ekong

Associate

pearl@sskohn.com

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Contact us at:

16D Akin Olugbade Street
(Off Adeola Odeku Street)
Victoria Island, Lagos

Tel: +234 1 271 2276; **Fax:** +234 1 271 2277

Email: info@sskohn.com; **Website:** www.sskohn.com