

## LEVERAGING ON INTELLECTUAL PROPERTY AS A VERITABLE SYSTEM FOR THE ADVANCEMENT OF CREATIVE INDUSTRY IN NIGERIA

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### Abstract

*Nigeria's creative industry is a thriving industry that propels the country's economy forward. It has a rapidly growing global influence in areas such as film, music, and fashion, and has the potential to become a focal point for showcasing Nigerian culture internationally. In the modern economic climate, intellectual property rights play a critical role in the creative industry and, to a significant degree, dictate its growth. However, the creative industry has been unable to reach its peak, owing to the weak intellectual property protection for the industry and the lack of enforcement of intellectual property legislation. This article aims to examine the scope of the creative industry in Nigeria, particularly the film, fashion and music industry and the nexus between Intellectual Property rights and the creative industry. The research methodology was a doctrinal method of legal research, and the findings indicated that the creative industry is faced with problems such as lack of legal provisions, infringement, lack of enforcement of intellectual property laws, lack of development of the laws and lack of public awareness of the intellectual property right. This article concludes that coherent*

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*policy articulation and execution will enhance the viability of the creative industry and provide a veritable incremental source of employment, revenue and growth. It recommends that proper legislation should be enacted or amended, enforcement agencies should be established, rights management technology should be introduced, a special intellectual property should be established and awareness of intellectual property crimes, infringement and risks should be increased.*

**Keywords:** Creative industry, Intellectual property rights, Intellectual Property infringement

### **1.0 General Introduction**

Innovation is a complex process derived by several factors and the single, most effective approach to achieving the continued creation of new ideas, goods and products is through the protection of Intellectual Property rights. These rights are crucial for innovation and the length to which countries go to protect Intellectual Property will determine to a large extent the growth of the creative industry, in the new economic environment. Black's Law Dictionary defines Intellectual Property (IP) as a category of intangible rights protecting commercially valuable products of the human intellect. This essentially means that a creator has the right to control the usage of a product created by his own idea and intellect.

The Intellectual Property law plays a fundamental role in promoting the economy of a state. It has been indicated that, an all-inclusive intellectual property legislation sustained by effective enforcement mechanisms and an efficient administrative structure can have a significant impact on the Gross Domestic Product (GDP). As such, the growth of the creative industry and the economy as a whole is greatly dependent on the implementation of the intellectual property laws in a country. It is therefore appropriate to describe Intellectual Property as a catalyst for the development of the creative industry. Creative industries characteristically

comprise areas which concentrate mainly on utilizing intellectual property products such as music, books, film and games, as well as areas which emphasize on building creative services between businesses such as advertising, public relations and direct marketing. It is an industry that is based on creations of the mind/intellect<sup>1</sup> in which the ideas of such creators have significant economic value. It encompasses all intellectual productions.

Nigeria's creative industry is a pulsating sector that is driving the Nigerian economy. It has a fast rising global influence ranging from film, theatre, music, dance, literature, fashion, television, radio, arts, sports, information technology, media, advertising and gaming and has the potential to become the center for showcasing Nigeria's culture abroad. A recent report by Jobberman shows the Nigerian creative industry as the country's second-largest employer and has the potential to produce 2.7 million jobs by 2025.<sup>2</sup> The study also finds that the creative industry engages 4.2 million people across five sectors, media, entertainment, beauty and lifestyle, visual arts, as well as tourism and hospitality. This statistics goes to show the potential for the Nigerian creative industry in attaining prominence. While the creative industry has made substantial contribution towards economic growth and the evolvement of creators, such growth has recently been threatened by acts of Intellectual Property infringement especially in the digital space and this is mainly because copying on such platform is easy and cheap, and to this extent, the roles Intellectual Property rights play in the creative industry is critical.

In a global information economy, where the creation of new ideas will be the most invaluable economic activity, governments that encourage innovation by providing incentives to the creatives and protecting their

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<sup>1</sup>David Parrish, 'Creative Industries Definition', Department for Digital, Culture, Media & Sport, [2001] < <https://www.gov.uk/government/organisations/department-for-digital-culture-media-sport> > accessed 5 October 2021

<sup>2</sup>Femi Balogun, 'Nigeria's Creative Sector in a Time Warp: The Past, Present and the Future' <<https://www.jobberman.com/blog/nigerias-creative-sector-in-a-time-warp-the-past-present-and-the-future-femi-balogun/>> accessed 5 October 2021

Intellectual Property rights will be the creatives and the creative industry as a whole a huge service. In essence, in order to balance the development, legal certainty is required and this can be implemented through, but not limited to the enforcement of appropriate laws. The protection of Intellectual Property rights will not only develop the nation's non-oil sector but also contribute to its overall economic growth. It is thus evident that with the adoption of effective methods targeted at protecting intellectual property rights, the creative industry in Nigeria will reach the peak of its potential.

As a result, this research makes a modest attempt to examine the roles the present Intellectual Property Rights regime play in the development of the creative industry in Nigeria in a systematic manner. It also presents recommendations that can be applicable to the creative industry.

## **2.0 Overview of Nigeria's Creative Industry**

The creative industry in Nigeria is a vibrant one with global footprints. It has enriched numerous personalities, especially with the emergence of social media which has brought many creative to the limelight. It has become a driver of employment, economic growth and innovation and the interplay of the creative industry, technology, and economics has presented an opportunity for Nigeria to gain a global presence. The creative industries have been recognized in various countries for the vital role they play in economic development. They are high employers of labour and are capable of generating substantial remunerations through trade and intellectual property rights. Many countries now recognize the creative industries as a viable means of gaining international recognition, establishing their national brands and earning much-needed foreign exchange.

### **2.1 Definition of the Creative Industry**

The term 'creative industry' does not lend itself to an exact definition as several attempts have been made by various scholars to delineate exactly what the creative industries entail. The confusion demonstrated by several

researchers is owing to the fact that there are varying suggestions on what activities to include in the concept of 'creative industries', and the name itself has become a disputed issue with substantial differences and intersection between the terms "creative industries", "cultural industries" and "creative economy"<sup>3</sup>. Hesmondhalgh termed the creative industries as "the core cultural industries" and included advertising and marketing, broadcasting, film, internet and music industries, print and electronic publishing, video and computer games in the list of what makes up the creative industry. His description only includes those industries that produce "texts" or "cultural artifacts" and which take part in some form of industrial reproduction<sup>4</sup>. The United Nations Commission on Trade and Development (UNCTAD)<sup>5</sup> conceptualizes the creative industries as the development, production and distribution of goods and services whose main input is creativity and intellectual capital which generate income from trade and intellectual property rights. The UK Government Department of Culture, Media and Sport (UK DCMS) defined the creative industries as "those activities which have their origin in individual creativity, skill and talent and which have the potential for wealth and job creation through the generation and exploitation of intellectual property"<sup>6</sup>. The DCMS identified the sectors that constitute the creative industries, namely advertising, architecture, art & antiques market, crafts, design, designer fashion, film & video, interactive leisure software, music, performing arts, publishing, software & computer services and television & radio<sup>7</sup>. The DCMS list has proven to be significant and so influential that it has been adopted by many nations. As of 2015 the DCMS

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<sup>3</sup> Hesmondhalgh, D.J *cultural and creative industries*. In: *The SAGE handbook of cultural analysis*, (Sage Publications Ltd 2002) 11-14.

<sup>4</sup> Hesmondhalgh, D.J, *cultural and creative industries*. In: *The SAGE handbook of cultural analysis* (Sage Publications Ltd 2008) 553-569.

<sup>5</sup> The United Nations commission On Trade and Development. < <https://unctad.org/>> Accessed December 2021

<sup>6</sup> <https://unevoc.unesco.org/home/TVETipedia>. Accessed on the 21 December 2022

<sup>7</sup> Flew, the UK Government department for culture, media and sport DCMS [2011],9

definition recognized nine creative sectors, namely advertising and marketing, architecture, crafts, design (product, graphic and fashion design), Film, TV productions, TV, video, radio and photography, IT, software and computer services, publishing, museums, galleries and libraries, music, performing and visual arts<sup>8</sup>. Lash and Urry's suggestion, that each of the creative industries has an "irreducible core" concerned with "the exchange of finance for rights in intellectual property" echoed the definition proffered by the DCMS. However, Howkins<sup>9</sup> criticized the definition by the DCMS as being too narrow. His definition of the creative industry comprises advertising, architecture, art, crafts, design, fashion, film, music, performing arts, publishing, R&D, software, toys and games, TV and radio, and video games. He posits that the term 'creative industry' should apply to any industry where brain power is preeminent, and where the product is intellectual property. For him, there are two types of creativity, the kind that relates to people's fulfillment as individuals and the kind that generates a product. creative industries, methods of production of the creative goods and services, the symbolic meaning of these goods and services, their use value, and the intellectual property that enables producers of creative goods and services to derive economic benefits from their works<sup>10</sup>.

The DCMS definition of creative industries, which has been interrogated and expanded by researchers in the field, is foundational because it highlights the key criteria that must be considered in any discussion of the creative industries. These include creativity of the individuals working in the creative industry. This article adopts the DCMS definition of creative industries.

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<sup>8</sup>Scott Lash and John Urry, 'Economies of sign and space'(1994) SAGE 11

<sup>9</sup>John Howkins, 'The Creative Economy: How People Make Money From Ideas' (The Penguin Press, 2001) 88-117.

<sup>10</sup>Susan Galloway and Stewart Dunlop, 'A Critique of Definitions of the Cultural and Creative Industries in Public Policy' (2007) 13(1) *International Journal of Cultural Policy*, 67.

Conversely, while some scholars are also of the opinion that the education industry, including public and private services, should form a part of the creative industries, others are of the view that the approach should be expanded to incorporate activities relating to crafts, tourism, events or the experience economy and digitization of cultural assets. This attempt to widen the nomenclature of the creative industry has increased the challenges and continuous evolution in the definition of the creative industry.

The creative industries generally refer to a variety of economic events which involve the creation or utilization of knowledge and information. In order to ascertain which regimes the sectors of the creative industry could be protected, we first have to identify and analyze the creative sectors in order to have a better understanding of its structure, and the sectors that need to be protected.

## **2.2 The Contribution of Nigeria's Creative Industry to the Nation's Economy**

The creative industries in Nigeria represent an ever-expanding complex of different sectors which have shaped the economic and provided sustenance for a large number of people across the various social and economic strata. The growth trajectory of these sectors is dissimilar as some sectors are more impactful than the others in consideration of their contribution to the growth and development of the economy. However, the impact of the creative industries on economic development is measured through its role in employment and GDP. Regardless, the creative industries are tools for addressing the challenges of poor alleviation; corruption, good governance, and growing insecurity, which have, remain threats to Nigeria's fledgling democracy<sup>11</sup>.

The creative industries in Nigeria have over the years, formed the economy and provided sustenance for a large number of people across the

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<sup>11</sup>Capone Francesco and Luciana Lazzeretti, 'Narrow or Broad Definition of Cultural and Creative Industries' [2015] 2(2) *Journal of Cultural and Creative Industries*.



various social and economic strata catalyzing the process of national cohesion, identity diffusion. For instance, motion picture and music recording accounted for roughly 730 Billion Nigerian Naira (roughly 1.8 billion U.S. dollars) of Nigeria's GDP in 2020<sup>12</sup>. However, despite the large contribution of the movie and music industry to the country's GDP, telecommunications and information services made up some 8.5 trillion Naira (around 20.8 billion U.S. dollars), representing the most valuable sector in the creative and entertainment industry.

The products of the creative industries are abundant, encompassing contemporary human society and are consumed daily by billions of people across the globe. For instance, several people in various parts of the world spend a good part of their days interacting with radio and television contents, video games, consume music through various platforms, watch films and so on. This clearly shows that the creative industries have strong social and economic values with potentials for further growth of the Nigerian nation state. It projects the Nigerian culture and educates Nigerians about their indigenous culture and traditions. Nollywood has offered much to the country politically, socially, educationally, morally and most importantly, economically. Nollywood has been an advocate of adult education in Nigeria as can be seen in various video films.

Some films have been used by film makers to create awareness for education by advocating for adult literacy for example, the Adaure/Ada Mbano series, the Nkoli Nwa Nsukka series amongst others. These series are both in Igbo language but subtitled in English. Both films explored this. From the foregoing, it is evident that the Nigerian video film industry has played an active role in the creative industry, particularly the film industry in developing the education sector. Owing to our exposure to videos, keeping<sup>13</sup> film and education separate in the present age might lead to many unfavorable consequences. As a result, by its creation of the

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<sup>12</sup> <https://www.Sunnewsonline.com/tag/creative-industry-contributes-n730bn-to-nigerias-gdp-in-2020/?amp>. accessed 21 December 2022

<sup>13</sup> Nwogu I.O 'The Challenges of the NCC in the Fight against Copyright Piracy in Nigeria' [2014] 2(5) *Global Journal of Politics and Law Research*, 24



aura of reality through audio-visual means, film has a universal power of communication.

Affirming this, Onyeka Uwakwe asserts that over the decades, film has continued to grow as a significant mass medium of education and entertainment. Nollywood has carved out a niche for itself in many spheres ignorance, incongruity and malapropism of the lead actors and further explore for their comic dimensions the undiluted dialects and speech mannerisms of their settings portrayed through the lead actors. The Adaure/Ada Mbanjo series explores the dialect and speech mannerisms of the present day Mbanjo people in Imo state, Nigeria while the NkoliNwa Nsukka series explores the dialect and speech mannerisms of the Nsukka people of the present day Enugu state<sup>14</sup>. The Nigerian video film industry, Nollywood has continued to bring its sociological functions to bear in the Nigerian nation state. This research affirms Nollywood's advocacy of education for human development through the reading of some video films. There are many other Nollywood films that carry this same message, including *Okon Goes to School* and *The Dumeji* series. Ultimately, the effect of the creative industry could be seen in different ways ranging from presenting model of behavior for the viewers, information to viewers that extend far beyond one's personal experiences or environment and lastly to suggesting appropriate values and ideas for particular positions among others<sup>15</sup>.

The contributions of creative industries to the economic development of nations have become strategic, given the global economic viability of the sector. In Nigeria, Ministry of Finance, Budget and National Planning on the 4th of February, 2020 has identified Culture and Tourism Sector as critical to the current Economic Recovery and Growth Plan (ERGP) and preparation of the successor Medium National Economic Plan. Nigeria has taken advantage of the opportunities provided by her creative industry by putting her products on the international stage through music, film,

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<sup>14</sup> Nkemakonam Aniukwu, 'Nollywood And Playwriting: Appraising Theatre And Film Medium To Nation Building' (2021) (8) (2) *Mgbakoigba, Journal Of African Studies*.

<sup>15</sup> *ibid*

literature, and the creative arts, including antiques. A great deal is exported to Europe. Africans are also reawakening their economic senses and becoming more aware of the need of buying locally created goods. Nigeria's contribution to the global economy via the creative industries, particularly in film and music, cannot be overlooked.

The film industry, particularly Nollywood, is one of the country's largest employers after agriculture, generating about \$500 million to \$800 million annually and employing a large percentage of the population, directly employing about million people full-time and indirectly employing about one million. This immediately suggests that the government, entrepreneurs, and artists can form an economic value chain to create jobs and contribute to annual GDP growth<sup>16</sup>.

Clothing and textiles in the creative industry function as a barometer of economic worth. They are extremely profitable once they join a market. Their worth is primarily determined by the buyer's taste and comprehension. Similarly, the customer is drawn to the goods because of its aesthetic features, utility, ritual history, or significance as a souvenir. Yoruba dressing culture has had a significant impact on other cultures through trade, travels, and links, among other things. To transmit and enhance cultural meanings, the Yoruba people have developed various kinds of attire to communicate and to enhance cultural meanings.

Within Africa and beyond, clothing and textile art are valued for economic empowerment. Many African societies now have thriving cloth and textile markets that cater to both local and international customers. They are places where the many designs and cultures of its creators help to exhibit the people's varied heritage. African fabric and textile designers are frequently observed collecting clothing materials from various sources to be used in garments that are then displayed at local and international fashion shows.

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<sup>16</sup> <https://www.thecable.ng/imf-nollywood-nigerias-second-biggest-employer/amp>.  
accessed 23 December 2022

### **2.3 The Role of Intellectual Property in the Creative Industry**

Over the years, the understanding of intellectual property rights and their contributions to the creative industry has increased significantly. Creativity, innovation and invention have been recognized as the greatest source and foundation of every civilization which will invariably boost the economy of a nation. The aim of the protection intellectual property rights offer in the creative industry ensures that no one reaps the fruits of another man's labour without authorization. The primary function of intellectual property right under the law is to protect from exploitation the rights of a person's work. This protection is of enormous relevance to actors, playwrights, performers and other artists, to musicians, authors, publishers, to broadcasters, to makers of cinematograph films, photographers, and many more personalities in the creative industry. As the world experiences greater advancement in technology, more emphasis is now placed on innovative and knowledge based products. As a result, Nigeria as a nation with huge creative capacity, has witnessed the gradual growth of her fashion, movie and music industries, through these intellectual property rights.

Intellectual property confers certain privileges on creatives which are generally referred to as Intellectual property rights. Simply put, intellectual property rights are intellectual protection for creatives, that is, those who create. Intellectual property rights affect the economic development of a country by promoting healthy competition and encouraging industrial growth and economic growth.

### **2.4 Relevant Intellectual Property Rights in the Creative Industry**

The principal types of IPRs germane to the creative industry are copyright and industrial designs both of which will be discussed below:

#### **2.4.1 Copyright**

Copyright is a set of exclusive rights granted by the law of a jurisdiction to the author or creator of an original work, including the right to copy, distribute and adapt the work. Okoye defines Copyright as the right which

the law gives an author or other originator of an intellectual production whereby he is invested with the sole and exclusive privileges of reproducing and selling copies of his work. Copyright is a branch of Intellectual property which is the product of the mind and has been described as man's only genuine property worthy of protection<sup>17</sup>

However, the Black's law Dictionary, sixth edition, defines copyright as the right of literary property as recognized and sanctioned by positive law. An intangible incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

It has also been defined by Ekpo M.F., Director General Nigerian Copyright Commission (May 1997) as "a right in law conferred on authors and owners of creative works be they literary, scientific or artistic in nature, to control the doing of certain acts in relation to those works. Copyright is the exclusive right given under the law to the owner to control the reproduction of the work which is the subject of copyright. This means that the work is protected against unauthorized use. In Sokefun's<sup>18</sup> view, the law of intellectual property gives the exclusive right to make copies, license and otherwise exploit a musical or artistic work, whether printed, audio, video and so on. This right protects the work for the lifetime of the author(s) and a period of 50 years after his death.

There exists a local legal mechanism providing individual and institutional framework for the regulation and enforcement of copyright. This mechanism is enshrined in the Copyright Act<sup>19</sup> which has over time been amended to conform to international standards on copyright

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<sup>17</sup> Ameh I, 'An Appraisal Of The Role Of The Nigerian Copyright Commission In The Enforcement Of Copyright Laws In Nigeria' (2010-2012) 5(1) *Ahmadu Bello University Journal Of Commercial Law (ABUJCL)*.9

<sup>18</sup> Justus A. Sokefun, 'An Overview of the Protection of Intellectual Property in Nigeria' [2001] *The Nigeria Journal of Private and Commercial Law*.

<sup>19</sup> Cap C28, Laws of the Federation of Nigeria, 2004

protection. However, this Act<sup>20</sup> does not give a vivid definition of copyright. It however recognizes it as a right to debar or refuse others from doing something and to restrain others from printing or interfering with others' work. In Nigeria, a body known as the Nigeria Copyright Commission (NCC) was established to cater for the Administration of Copyright system in Nigeria. The Commission is entrusted with all matters affecting copyright in Nigeria as provided for in Copyright Act<sup>21</sup>. Copyright is concerned with the rights of intellectual creators in their creation. It has been defined as an intangible incorporeal right granted by statute to the author or originator of certain literary or artistic productions, with the sole and exclusive privilege of multiplying copies of the same and publishing or selling them<sup>22</sup>. It should however be noted that there is no universally accepted definition of copyrights<sup>23</sup>. It can be inferred from the various definitions that the ultimate purposes of copyright are to control the copying of the intellectual creations in the field of literature and the arts, and to protect the writer or artist against unauthorized copying of his materials. It should however be noted that there is no universally accepted definition of copyrights<sup>24</sup>.

The Act does not seem to proffer a definition for the term 'copyright.' It merely provides in section 51<sup>25</sup> that the term "means copyright under the Act" and in section 6 that the copyright in a work shall be the exclusive right to control the doing in Nigeria of the acts listed in the section<sup>26</sup>. Essentially, the Act adopts a descriptive approach to definition of the term<sup>27</sup> thereby leaving the proper definition of the term out of the Act. In

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<sup>20</sup> Copyright Act 1988, CAP. 68, Laws of the Federation 2004

<sup>21</sup> Copyright Act 1988; s 34

<sup>22</sup> Bryan A. Garner, Black's Law Dictionary (West Publishing Co. 5<sup>th</sup> edition, 1979).

<sup>23</sup> Olubiye, I.A., 'Definition And History Of Copyright' (Lecture Delivered At Afebablola University January 2020) 45

<sup>24</sup> *Ibid*

<sup>25</sup> Copyright Act 1988; S. 51

<sup>26</sup> Copyright Act 1988; S. 6

<sup>27</sup> (2003-2007) 5 I.P.L.R 53

civil law countries, copyright is considered an inalienable right of the author, a human right in other words.

According to Ghosh, the boundaries of copyright are far from clear and difficult to discern as copyright law lacks analogous limits on the scope of the copyright owner's property interest, except for the boundaries imposed by the limits of fair use, misuse, and express statutory exceptions. Thus, even though it may be difficult for the purpose of quantification to determine the exact extent of copyright owners' property interest, the extent of the right protected by law can be deciphered from the law itself. For instance, the Copyright Act provides<sup>28</sup>

(1) Subject to the exceptions specified in the Second Schedule to this Act, copyright in a work shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is-

(a) in the case of a literary or musical work, to the and authorize the doing of any of the following acts-

(i) reproduce the work in any material form;

(ii) publish the work;

(iii) perform the work in public;

(iv) produce, reproduce, perform or publish any translation of the work;

(v) make any cinematograph film or a record in respect of the work;

(vi) distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement;

(vii) broadcast or communicate the work to the public by a loudspeaker or any other similar device;

(viii) make any adaptation of the work;

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<sup>28</sup>n 26

(ix) do in relation to a translation or an adaption of the work, any of the acts specified in relation to the work in sub-paragraphs (i) to (vii) of this paragraph.

That being said, the Act specifies works that come under its protection and these works form the scope for our present consideration. For the purpose of clarity, the Act defines “work” to include translations, adaptation, new versions, or arrangements of pre-existing works, and anthologies or collection of works which, by reason of the selection and arrangement of their content, present an original character.

Copyright in these works is not the idea but the manner in which the idea is represented. In other words, copyright does not protect ideas but the manner in which the ideas are represented. The creativity protected by copyright law is creativity in the choice and arrangement of words, musical notes, colours, shapes, etc. and not the notion of the work itself. Considering this, copyright is only available for works that have been set in a fixed and tangible form.

The Nigerian Copyright Act provides six categories which will be eligible for copyright protection and they are: literary works, musical works, artistic works, cinematograph works, sound recording and broadcasts. Thus, any work which does not fall under either of the provided categories cannot vest copyright in its creator.

The Act further provides that a literary, artistic or musical work will not be eligible for copyright unless it satisfies the requirements of originality and fixation. Therefore, once a literary, artistic or musical work has been fixed in a definitive medium of expression, as examined in *Yeni Anikulapo Kuti & Ors v T. M Iseli & Ors*<sup>29</sup> and sufficient effort has been expended on it to make it original, it will qualify for copyright protection. A sermon, lecture or speech delivered by someone and recorded by another would still have copyright, while a mere amanuensis does not, by taking down word for word, the language of the author, become in any sense the owner of the copyright’, as examined in *Donoghue v Allied*

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<sup>29</sup>n 27



*Newspaper Ltd*<sup>30</sup>. Originality is in the skill and labour involved in selecting or arranging existing subject matter to create a new work, as highlighted in *Ladbroke Football Ltd v William Hill Football Ltd*<sup>31</sup>.

Still, works do not have to pass a test of inventiveness to be eligible for copyright protection as it is granted to a work irrespective of its value, quality or even purpose because the usefulness of a work has no contribution to its protection. Besides ideas, copyright protection also does not extend to procedures, methods of operation, facts, information, or mathematical concepts. Once a work has been conferred with copyright in Nigeria, the author would be vested with the exclusive right to exploit his economic rights with regards to their work and this includes the right to reproduce the work, the right to make an adaptation of the work, the right to perform the work in public and to distribute copies of the work to the public by lease, rental, hire, loan, or similar arrangement. The economic rights basically mean the right<sup>32</sup> of the author to make financial profit from his/her work.

The Copyright Act also acknowledges the moral rights of an author and provides that such rights are “perpetual, inalienable and imprescriptibly.” Essentially, this means that the work belongs to the author of the copyright work and no other. The author includes his heirs and successors-in-title. It cannot be transferred even by agreement. Unlike the economic rights, moral rights may last forever even after the economic rights have lapsed since the Act does not specify its duration. Notably, once a work is created, copyright is automatically conferred on it and its enjoyment and exercise is not subject to any formalities. This requirement for conferment of copyright protection is provided for by Article 5(2) of the Berne Convention. Therefore, an author need not go through any

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<sup>30</sup>(1938) CH 106

<sup>31</sup>(1964) 1 WLR 273

registration process before his/her work is approved of copyright protection. However, certain countries practice some form for copyright but none of them make it a prerequisite for the conferment of copyright.

Having said this, for an author to be qualified for copyright protection in Nigeria, there must be some connection between the author and Nigeria. This could be in respect of the nationality or domicile of the author, place of first publication, government works and by virtue of international agreements.

The duration of copyright protection varies depending on the type of work. Literary, musical, and artistic works other than photographs last until seventy (70) years following the death of the author and where the work is owned by a government or corporate body, it will expire seventy (70) years after first publication; for films and photographs, sound recordings and broadcasts, copyright will expire fifty (50) years after it was first published, recorded, and broadcasted, respectively<sup>33</sup>.

The Copyright Act presented a different class of works falling under copyright protection. These works are characterized as neighboring rights. According to Adewopo, neighboring rights concept was introduced into the Nigerian copyright law in keeping with the international intellectual property architecture in the context of extending protection to related rights such as live performances. The protection of these rights was captured in international instruments such as the Rome Convention for Protection of Performers, and Producers of Phonograms and Broadcasting Organizations. Other aspects of copyright are regulated by a number of international treaties such as the Beijing Treaty which controls copyright for audiovisual performances and expands the rights of performers; the Marrakesh Treaty whose goal is to create a copyright system that permits the reproduction, distribution and availability of published works in formats designed to be accessible to visually impaired person.

#### **2.4.2 Industrial Design**

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<sup>33</sup> The copyright Act(title 17 of the United States Code)

Industrial design is a type of Intellectual Property right which protects the graphical design of an object. It protects the visual appearance, shape or aesthetics of a product. It consists of the creation of features of shape, configuration, pattern, ornamentation or composition of lines or colours applied to any article in two or three-dimensional form or a combination of one or more features<sup>34</sup>. A product is qualified to be protected under industrial design, only where the model or pattern is intended to be used for multiplication by an industrial process and not to obtain a technical result<sup>35</sup>.

In a legal sense, industrial design refers to the right granted in many countries, pursuant to a registration system, to protect the original ornamental and non-functional features of an industrial article or product that result from design activity<sup>36</sup>. Essentially, it is important to note that the law does not use industrial design to protect a product<sup>37</sup>. It uses patent to protect a product, which is why patent is not listed in this body of work as a relevant intellectual property right to the Nigerian creative industry. The subject matter of the legal protection of industrial designs is not articles or products, but rather the design which is applied to or embodied in such articles or products<sup>38</sup>.

Industrial design protects the original, ornamental, and non-functional features of an industrial article or product that results from design activities. Industrial design brings together the aesthetics and the usability of mass produced products which are intended to improve their commercial appeal and gives the intellectual creator the exclusive right to prevent unauthorized commercial exploitation of the design by third

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<sup>34</sup>Subodh Asthana, 'All You Want To Know About Intellectual Property' <https://Blog.Ipleaders.in/Iprdescription/> Accessed 21 February 2022 .

<sup>35</sup>Patents and Designs Act 1970: s12

<sup>36</sup>WIPO, WIPO Intellectual Property Handbook: Policy, Law And Use (WIPO Publication, 2004), 124

<sup>37</sup>Olubiyi, I.A., 'Definition And History Of Copyright'(Lecture Delivered At Afe Babalola University January 2020) 6

<sup>38</sup>WIPO, WIPO Intellectual Property Handbook: Policy, Law And Use (WIPO Publication,2004), 125

parties. The requirement that a design must be applied to utilitarian articles in order to be protected is one of the principal matters which distinguish the objectives of industrial design protection from copyright protection, since the latter is purely concerned with aesthetic creations.

Industrial design law can be said to be influenced by copyright, trademark and patent laws. It is linked to copyright because the design in itself is an artistic work, trademark plays a role in industrial design as the design serves as a means of identification of the product and distinguishing it from others while it is related to patent because there are scientific and technical considerations involved in the creation of the product.

For a design to qualify for legal protection, it must be new or original and capable of reproduction by industrial means, that is, large scale production. The Act includes that the design must also not be contrary to public order or morality. A design will be deemed to not be new or original if it does not significantly differ from known designs or combinations of known design features or if it has previously been disclosed to the public.

Designs which are dictated essentially by a technical or functional purpose will not qualify for protection as provided by Article 25.1 of the TRIPS Agreement. In other words, if the given function of the product cannot be achieved after the design is altered, then the design will not qualify for protection as the design performs a solely technical role. Industrial design protection is usually granted after the design has been approved for such through the registration and examination process. The procedure for examination is detailed in the Act. Chapter 1 of the Hague Agreement also provides the procedure for international application and registration of an industrial design. The duration of an industrial design is five years from the date of application for registration and two further consecutive periods of five years. An example of an international treaty that regulates industrial design is the Locarno Agreement which establishes an international classification for industrial designs into which goods that constitute the industrial designs belong.

### **3.0 Conclusion**

This article has examined Nigeria's creative industry, the intellectual property rights germane to the creative industry, existing literature on protection of intellectual property in the creative industry as well as the opinions of learned scholars, the legal framework for the protection of intellectual property rights in the creative industry in Nigeria. Currently, Nigeria protects the rights of the players in the creative industry through some intellectual property rights. The major Acts used under intellectual property rights protection of the creative industry are Copyright Act and Patents and Design Act. An examination of the effectiveness of these means of protection in the course of this long essay revealed that the protection is inadequate as it offers limited protection and ineffective protection.

Finally, it is evident that Nigeria, a nation with large creative capacity has witnessed exponential growth in the movie, fashion and music industries and is a potential beneficiary of the emerging global economy. Consequently, to address the lapses and optimize the potentials of our creative industries, a fundamental re-orientation and re-conceptualization of the economic value of our creative assets should be consciously pursued by individuals, groups, and government. Nigeria's creative industries already play at the global level, but need a formal governmental intervention to map the sector and articulate a coherent policy to develop, deepen, support and promote them. To do this, the challenge of intellectual property protection will need to be tackled head-on.