

## A CRITICAL APPRAISAL OF COPYRIGHT ENFORCEMENT MECHANISMS IN NIGERIA

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### Abstract

*Adequate enforcement of the provisions of Nigerian Copyright Act 2022 is a key to curbing piracy of copyrighted works in Nigeria. Copyright enforcement will discourage infringement of copyright works thus providing benefits to copyright owners in the form of economic and moral rights. The objective of this paper is to do a critical appraisal of copyright enforcement mechanisms in Nigeria. This paper adopted doctrinal methodology through the analysis of existing statute, case laws and opinions of scholars.. In tandem with the objective of this research, the paper found that the Nigerian Copyright Act 2022 overhauled the Copyright Act 2004 and made significant innovations for enforcement mechanism in protection of copyright works on the digital space. However, the provisions of the Act are inadequate and insufficient to protect copyright in the digital space .Criminalization alone is not a viable solution to infringement. The paper found that the Nigerian Copyright Commission itself is bereft of funding to fulfil its functions. The paper recommends that the National Assembly should further amend the Copyright Act 2022 to improve on the digital protection and prevention of copyright infringement in Nigeria beyond what is current provided in section 50 to 56 of the Nigerian Copyright Act 2022.*

**Keywords:** Nigerian Copyright Act 2022; Enforcement Mechanism; Criminalization of Copyright, Jurisdictional Difficulties; Innovative Remedies

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## 1.0 Introduction

Enforcement of provisions of Copyright Act 2022 will encourage dissemination of ideas by protecting the embodiment or expression of an idea in a creative work and reserving the right in it to the creator of the work.<sup>1</sup> What is being advanced here is the optimization of economic benefit of copyright owner in his work. The function of copyright law is to protect from annexation by other people the fruits of another's work, labour, skill or taste.<sup>2</sup> There are two policy objective of copyright protection. The first is that Copyright protection is a means of economic compensation of owners of copyright for their invaluable contribution to the advancement of man's quality of life.<sup>3</sup> Another crucial reason is to balance the public use and reuse of a copyright work with the need to provide protection and incentive.

Thus, lack of adequate legal provisions as well as poor enforcement mechanism will continue to make copying a profitable and lucrative option to the detriment and discouragement of right owner's thereby discouraging creativity.

Piracy is often claimed to be the principal reason why the industry is not currently thriving in the global creative economy.<sup>4</sup> It is necessary to understand the meaning of piracy and its impact on Nigerian films.

## 2.0 Institutional Framework for Copyright Enforcement in Nigeria

i) Federal High Court is conferred with jurisdiction over the enforcement of IP Rights by virtue of Section 251 (1)(f) of the

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<sup>1</sup> Kennedy Ikechukwu Onwusi, 'Intellectual Property Law and Movie Piracy: Call for Vibrant Copyright Protection in Nollywood Industry' (2016)3(1)73 *ESUT Public Law Journal*

<sup>2</sup> Mary.I.O Nwogu, 'The Challenges of the Nigerian Copyright Commission in the fight against copyright piracy in Nigeria', (2010)2(5)22-34 *Global Journal of Politics and Law Research*

<sup>3</sup> Olugbenga Ajani Olatunji, 'Copyright Regulations under the Nigerian Copyright Act: A Critical Analysis' (2018) Internal Review of Intellectual Property and Competition Law.

<sup>4</sup> Chidi Oguamanam, 'Nollywood' and Piracy: In Search of an Intellectual Property Policy for Nigeria' (2011) NIALS *Journal of Intellectual Property Maiden Edition*.

Constitution of the Federal Republic of Nigeria 1999 (as amended) and other federal enacted legislations.<sup>5</sup> Also the Copyright Act in section 103 provides that the Federal High Court shall have exclusive jurisdiction for the trial of offences and civil actions arising from the Act.

ii) TRIPS Agreements requires member states to provide criminal procedures and penalties to be applied at least in cases of wilful copyright piracy on a commercial scale. It also provides for remedies such as imprisonment, monetary fines and seizures, forfeiture and distribution of the pirated films and of any materials used for the commission of the offence.

Nigerian Government by virtue of section 8 of the Nigerian Copyright Act has domesticated all international treaties concerning copyright, such as Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

### **3.0 Conceptual Framework for Copyright Enforcement in Nigeria**

Copyright is rooted as an aspect of Intellectual Property.<sup>6</sup> Copyright seeks to protect owners of certain creative works which are classified into six types by copyright.<sup>7</sup> Copyright in its nature protects economic and moral rights in a creative work including a variety of literary and artistic works, paintings, sculpture, prose, poetry, plays, musical compositions, dances, photographs, motion pictures, radio and television programs, sound recordings, and computer software programs.<sup>8</sup>

Okany defines copyright as: 'monopoly right conferred by law on a person or an institution to do or to restrain others from doing certain acts with respect to the authors Original literary, musical or artistic

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<sup>5</sup> S. 46 of the Copyright Act, Section 67 of the Trademark Act, S. 32 of the Nigerian Patents and Design Act.

<sup>6</sup>Bankole Sodipo. 'Intellectual Rights in Nigeria: A Case Study of Copyright' (2002) 1 *Juriscope Materials* 249.

<sup>7</sup> J.O Asien and E.S Nwauche., *A Copyright Law in Nigeria*. (2nd edn Sam Bookman, 2001) 3; H. Olsson, 'Introduction to Intellectual Property Law'( 2nd edn WIPO Publication 2004)489(E) 93.

<sup>8</sup> Olatunji, (n4) 1.

work'.<sup>9</sup> On the other hand Olueze defined copyright as a personal right which is not of a tangible nature.

### **3.1 Concept of Copyright Enforcement**

The concept of Copyright enforcement is to ensure prevention of copyright infringement as well to punish infringers of copyrighted works in Nigeria.<sup>10</sup> An infringement of the rights conferred by the Copyright Act is actionable as a breach of statutory duty owed to the person entitled to the right. In proceedings for infringement of the rights conferred by the Copyright Act, the person whose rights have been infringed shall be entitled to an award of damages, injunction and any other remedies as the court may deem fit to award in the circumstances.<sup>11</sup>

### **4.0 Enforcement Process and Nigerian Courts**

Effective enforcement of Copyright law is a key to curbing piracy, consequently, the position and role of law enforcement agencies like the police, military, customs and officers of other relevant government agencies is crucial. In most developing countries, like Nigeria, these personnel are faced with various challenges such as, poor understanding of the issues involved, poor training, poor funding of enforcement activities, and absence of good working tools either to aid detection or in the conduct of post arrest operations.<sup>12</sup>

### **5.0 Enforcement of Online Infringement in Nigeria**

Enforcement of online infringement will help in discouraging online infringement of copyright. Who and who is liable in the long chain of uploading online ranging from content provider via several service

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<sup>9</sup> M.C Okany, *Nigeria Law of Property*, (2<sup>nd</sup> edn. Fourth Dimension Publishing Company, 2000. ) 368.

<sup>10</sup> Ademola Odetunde, 'Copyright and Related Rights' (2009)1(2) 36 Intellectual Property Digest.

<sup>11</sup> Afam Ezekude 'Nigerian Courts Step Up Against Copyright Piracy: 18 Convicted 'Intellectual Property Watch 21/03/2012<<http://intellectualpropertywatch.com>> accessed on 21 December 2022.

<sup>12</sup> Nwogu (n3) 1,

providers, network operators and access providers to the end user?<sup>13</sup> Olueze<sup>14</sup> stated that where a site operator merely hyperlinks to another website which has obtained the license of the owner of Copyright in respect of a work to post the work on the Internet, it poses some difficulties to ascertain who is guilty for copyright infringement.

Section 52 provides for circumvention of technological protection measures and rights management information.<sup>15</sup> It provides for enforcement of Copyright infringement on the internet by expressly providing that no person shall knowingly circumvent by avoiding, bypassing, and removing, deactivating, decrypting or otherwise impairing a technological protection measure that effectively protects a copyright work.<sup>16</sup> In the event of an online breach of copyright, the Act provides liabilities to the tune of One Million Naira (N1,000,000) only or a term of imprisonment not less than 5 (five) years or liability to both a fine and a term of imprisonment for anyone convicted.<sup>17</sup>

## **6.0 Remedies for Copyright Infringement in Nigeria**

### **a) Damages**

Damages are awarded to restore the injured party as much as is possible, to the same position as he was or would have been, had the infringement not occurred.<sup>18</sup> Before awarding damages, the court must take into account any loss suffered by the plaintiff as a result of the infringement of his copyright as is the case with other tortious actions, such as consequential loss due to reduction of sales and direct loss of profit; such loss must have arisen directly and naturally from the act of the defendants infringement.<sup>19</sup> It must be noted that the Act also permits the court to award additional damages in appropriate cases.

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<sup>13</sup> MVC Ozioko, 'Copyright Provisions Impacting On Access To Knowledge: A Comparative Analysis', (2010) 7 (1) 65 *UNIZIK LAW JOURNAL*.

<sup>14</sup> I. M Olueze, *Nigerian Copyright Law*, (Maghlink Publishing; 1998) 1-5.

<sup>15</sup> Olueze (n15) 3

<sup>16</sup> S. 56 of the Copyright Act 2022.

<sup>17</sup> S. 50(3) c of the Copyright Act 2022.

<sup>18</sup> *General Tire & Rubber Co. v Firestone Tyre & Rubber Co. Ltd* [1975] 1 WLR 819.

<sup>19</sup> *BIM Bros. Ltd. v Keene & Co. Ltd.* [1918] 2 Ch.281; *Sutherland Publishing Co. Ltd. v Caxton Publishing Co. Ltd* [1936] Ch. .336.

**b) Injunction**

Order of injunction is granted based on trite principles which the applicant must prove to the satisfaction of the court. Interlocutory injunction is granted by the court in order to preserve the status quo until the determination of the suit. For instance, instead of waiting until the end of the trial before actions can be taken, the court may be asked to act at once, and to grant at the onset an injunction against infringement lasting until the trial of the action. Unless the evidence fails to disclose that the plaintiff has any real prospect of success at the trial, the court will consider whether the balance of convenience lies in favour of granting or refusing an interlocutory injunction. Lord Wilberforce in *Hoftman-La Roche & Co. v Secretary of State for Trade and Industry*<sup>20</sup> held that ‘the object of this injunction is to prevent a litigant who must necessarily suffer the law’s delay from losing by that delay the fruit of his litigation’. The whole idea is to freeze the situation before damages can flow, pending a subsequent trial on the merits.<sup>21</sup> Perpetual Injunction is granted at the end of the trial in which the infringement of the plaintiff’s right is established. This injunction protects the proprietary rights or interest of the plaintiff *ad infinitum*.

The Mareva injunction is available to a right holder. It is a freezing order, sought and granted *ex parte*, restraining a defendant from removing his assets from jurisdiction. This ensures that the fruit of the judgment is not tampered with or destroyed.<sup>22</sup> This injunction may be granted pending the determination of the infringement action in court. Injunctions are equitable remedies.<sup>23</sup> The order of injunction is granted based on trite principles, which the applicant must prove to the satisfaction of the court. Where the copyright owner becomes aware of any or perceived infringement, they ought to act fast so as to forestall further damage to their rights. However, before an injunction is

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<sup>20</sup> [1975] AC 295 at 355.

<sup>21</sup> G. I. Uloko, ‘A Critical Appraisal of the Remedies in Intellectual Property Litigations in Nigeria’, 1(1) 270 *Nigerian Journal of Public Law*

<sup>22</sup> *Third Chandris Shopping Corporation v Uniamarine SA* [1979] 2 All ER 592.

<sup>23</sup> S. Asano, ‘Enforcement of Copyright and Related Rights with Reference to the TRPPS Agreement: Border Measures’ (2nd, edn. WIPO Publications 2004) 489 (E) 221.

granted, the applicant must undertake that if in the end their action fails, they will compensate the defendant for the interference to the defendant's business affected by the injunction. Thus, there are several kinds of injunctions that can be sought at various stages of copyright enforcement from the courts.

If an Applicant proves to the court that he has a legal or equitable right which the court is capable of enforcing, the court may issue an injunction restraining an infringer from continuing to carry on with his copyright infringement actions. Once this order is made, the Respondent shall be liable in contempt if he deliberately disobeys the order of Court.<sup>24</sup> In extremely urgent matters, an applicant may bring an application for interim injunction restraining the defendant from further committing the infringement pending the determination of the motion on notice for injunction. The court may also issue a perpetual injunction against the defendant at the end of the case. However, the Act expressly prohibits the granting of an injunction in copyright infringement proceedings so as to require a completed or partly completed building to be demolished or to prevent the completion of a partly completed building.

### **c) Accounts for Profit**

The court usually makes an Order against an infringer who is caught with infringing copies of the plaintiff's works during the pendency of an action, compelling him to account for the profit he made of those infringing copies of the work to the plaintiff. This is to prevent unjust enrichment on the part of the infringer.<sup>25</sup> This order is only made if it is proved or admitted that though an infringement was committed, the defendant was not aware and there was no reasonable grounds for suggesting that Copyright subsisted in the work to which the action relates. However, Accounts for Profit cannot avail any plaintiff who has been adequately compensated in damages for the infringement complained of, or for conversion.<sup>26</sup>

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<sup>24</sup> *Seaward v Paterson* [1897] 1 Ch..545.

<sup>25</sup> *Potten Ltd. v Yorkdose Ltd.* [1990] F.S.R. 11.

<sup>26</sup> *Caxton publishing Co. Ltd. v Sutherland Publishing Co. Ltd* [1939] A.C. 178.

**d) Anton Pillar Order**

The courts usually make an Order for Inspection and Seizure. This takes place in instances where it is alleged that copyright has been, is being or is about to be infringed.<sup>27</sup> This Order was first made in the case of *Anton Pillar K.G. v Manufacturing Processes Ltd. & Ors.*<sup>28</sup> Wherein the plaintiff through an ex-parte application, sought for the permission to enter the defendant's premises to inspect all such documents in its possession relating to the machine or machines and remove them into the plaintiff custody. The Act requires that all infringing copies of any work in which copyright subsists, or any substantial part thereof, and all plates, master tapes, machines, equipment or contrivances used, or intended to be used for production of such infringing copies shall be deemed to be the property of the owner, assignee or exclusive licensee, as the case may be, of the copyright who accordingly may take proceedings for the recovery of the possession thereof or in respect of conversion thereof.<sup>29</sup>

It is also noteworthy that the owner of an infringed copyright has the right if the Court so orders, under an ex-parte order to go onto the premises where the infringement has taken place to take possession of the offending article with the assistance of a police officer of not below the rank of an Assistant Superintendent of Police with a warrant to that effect.<sup>30</sup>

The purpose of this relief is twofold: first, to prevent infringements from occurring, particularly to prevent the entry of infringing goods into the channels of commerce, including entry of imported goods after clearance by customs; and second, to preserve relevant evidence

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<sup>27</sup>Emmanuel Onyedi Wingate 'Copyright Protection of Contemporary Nigerian Literature' (2017)(15)1 *The Nigerian Juridical Review* UNN Enugu Campus Law Journal .

<sup>28</sup> [1976] F.S.R. 129; (1976) Ch. 55.

<sup>29</sup> Wingate (n 28) 1.

<sup>30</sup> S. 38 and 86(4) Nigerian Copyright Act 2022; s. 3,4 and 23 of the Police Act has been upheld by the courts in *Federal Republic of Nigeria v Osahon* (2006) the Supreme Court upheld the power of police officers under Section 23 of the Police Act It thus can be seen that the Police have an important role to play in enforcing copyright in the entertainment industry in Nigeria

in regard to an alleged infringement.<sup>31</sup> Anton Piller order is a conservatory relief.<sup>32</sup> Essentially, the order enables the copyright owner to take the alleged infringer by surprise and obtain evidence which otherwise might be destroyed, hence the alleged infringer must not have prior knowledge of the execution of the order.<sup>33</sup> In some cases, an alleged infringer is compelled to disclose the identity of those who supplied the infringing materials to him and of other parties in the distribution or manufacturing network known to him.<sup>34</sup> The significance of the order in copyright civil enforcement is underscored by its endorsement in The Agreement on Trade-Related Aspects on Intellectual Property Rights, 1994 (TRIPS Agreement). Specifically, Art. 50 thereof stipulates that judicial authorities shall have the powers to order effective measure to preserve evidence, especially where delay may cause irreparable harm to the copyright owner or where there is demonstrable risk of destruction of evidence. The authority for the grant of Anton Piller varies among countries.<sup>35</sup> In Nigeria, the courts derive their power to grant the order under section 251 of the Nigerian 1999 Constitution and section 103 of 2022 Copyright Act and their inherent powers.

Given the nature of the order and the fact that it is obtained *ex parte*, it may be correct to say that it is prone to abuse if not cautiously applied by the courts.

#### e) Other Reliefs

There are other civil remedies awarded by courts aside from the above discussed. This is because the Act empowers the court to award all such reliefs as shall be available to the plaintiff in any corresponding

<sup>31</sup> J. Kiggundu, 'The Development of Modern Copyright Laws in the SADC Region: The case of Botswana,' AIHD<<http://www.atrip.org/Activity/5ecf540c-fa96-451b-a0be-02e889ee6851/annual-congress>>accessed on 17 February, 2022.

<sup>32</sup> WIPO Intellectual Property Hand Book ( 2<sup>nd</sup> edn.WIPO Publication 2004)

<sup>33</sup>G. I. Uloko, 'A Critical Appraisal of the Remedies in Intellectual Property Litigations in Nigeria',1(1)270 Nigerian Journal of Public Law

<sup>34</sup> *Rank Film v Video Information Center* [1981] 2 All E R 76 (House of Lords).

<sup>35</sup> WIPO Intellectual Property Hand Book ( 2<sup>nd</sup> edn.WIPO Publication 2004)

proceedings in respect of infringement of other proprietary rights.<sup>36</sup> These remedies include: Order for Retention, Stoppage in Transitu, Discoveries, Costs and Interrogatories. Furthermore, because copyright infringement is essentially a tort, plaintiff can maintain any of the traditional actions in tort in addition to the statutory remedies expressly provided for by the Act.<sup>37</sup>

It is worthy to note that no injunction shall be issued in proceedings for infringement of copyright, which requires a completed or partly completed building to be demolished or prevents the completion of a partly completed building.<sup>38</sup> Nigerian Copyright Act 2022 in Section 37 (8)<sup>39</sup> stated that action includes a counter claim, and references to the plaintiff and to the defendant in an action shall be construed accordingly.<sup>40</sup>

It should be noted that in its efforts to effect comprehensive enforcement mechanism, Nigerian Copyright Commission created a department known as copyright Litigation, Assistance and Mediation Programme (CLAMP).<sup>41</sup> Nigerian Copyright Commission has a department on copyright enforcement. This department help in enforcing copyrights infringement through litigation in our courts. Accepted some of these cases have been mentioned above but for emphasis on the litigation department, we need to state further actions taken so far against infringers of copyright by CLAMP department. Over the years the commission has filed cases of infringement of

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<sup>36</sup>S. 38 and 40 Nigerian Copyright Act 2022.; <sup>36</sup>Aniche, Charity Ngozi and Umeh, Samson Obi, 'The Impediments Facing the Court in Copyright Enforcement in Nigeria' (2020) *African Journal of Constitutional and Administrative Law* <[https://www.google.com/search?q=AJCAL+V+\(2020\)+Aniche%2C+Charity+Ngozi+PhD+and+Umeh%2C+Samson+Obi%2C+PhD%3A+The+Impediments+Facing+the+Court+in+Copyright+Enforcement+in&oq=AJCAL+V+\(2020\)](https://www.google.com/search?q=AJCAL+V+(2020)+Aniche%2C+Charity+Ngozi+PhD+and+Umeh%2C+Samson+Obi%2C+PhD%3A+The+Impediments+Facing+the+Court+in+Copyright+Enforcement+in&oq=AJCAL+V+(2020))> accessed 12 March, 2023.; s. 38 Nigerian Copyright Act 2022.

<sup>37</sup>F. O., Babafemi, *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patents and Industrial, Designs in Nigeria* (2006) 109.

<sup>38</sup> S. 37(6) Nigerian Copyright Act 2022

<sup>39</sup> S. 37(8) Nigerian Copyright Act 2022

<sup>40</sup> Copyright Act 2022.

<sup>41</sup> Nigerian Copyright Commission,< <http://www.copyright.gov.ng.net>> accessed on 12 October 2022.

copyrighted works and obtained several convictions.<sup>42</sup> The prosecution department filed copyright cases on the recent nationwide anti-piracy raids conducted in various parts of the country in September 2011.<sup>43</sup> In *Nigeria Copyright Commission v Emmanuel Ogudu*,<sup>44</sup> the accused person was *convicted* of copyright infringement. In *Nigeria Copyright Commission v Oba Okechukwu*<sup>45</sup> constitutes a vibrant illustration of movie piracy. This is a case, where the accused was charged and convicted for being in possession (other than private use) and for the sale of infringing copies of cinematographic film. The Federal High Court sitting in Lagos, on 8 March 2012 in *Nigeria Copyright Commission v Ebenezer Ogundele*<sup>46</sup> convicted the accused person on a four count charges of infringement, and sentenced him to a term of imprisonment for 6 months in each of the counts, without an option of fine.

We are yet to see conviction based on the new Act because most of the cases are still pending in courts<sup>47</sup>. It is important to note that criminalization alone is not enough we need to think outside the box by providing cheaper and affordable means of accessing copyrighted works because copyrighted works are not accessible. Furthermore the provisions are not robust enough to regulate social media. The Act is not specific in addressing issues of online infringement of copy. Rather, it merely prohibited online infringement in general terms without addressing issues arising from the use and/or abuse of social media in copyright infringements.

Furthermore, an owner, assignee or exclusive licensee of copyright is entitled to bring an action for damages, injunctions, accounts, or other

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<sup>42</sup>Nwogu,(n3) 22.

<sup>46</sup>NCC, Notice Board, September 11, Issue No.2, p.4, Available at< <http://www.copyright.gov.ng/noticeboard>> accessed on 20 October, 2021.

<sup>44</sup> (Unreported) Suit No:FHC/L/181c/2013,delivered on 18<sup>th</sup> June 2013 at Federal High Court (Lagos Judicial Division).

<sup>45</sup> 55NIPJD (F.H.C)2012ABJ/CR/56/2012.

<sup>46</sup> *NCC v Ebenezer Ogundele (Unreported) Suit No:FHC/L/459/2011,delivered on 2011 at Federal High Court (Lagos Judicial Division), NCC v. Tecomy (Unreported) Cited on NCC notice board of 20<sup>th</sup> May 2015.* See also <<http://www.intellectualproperty-watch.com>>accessed on 15<sup>th</sup> October, 2021.

<sup>47</sup> NCC, Notice Board, <<http://www.copyright.gov.ng/noticeboard>> accessed on 20 October, 2023.

such reliefs as are available to owners of other proprietary rights, for infringement of copyright.<sup>48</sup>

The Courts have, in exercising this power, awarded exemplary and punitive damages.<sup>49</sup> As at 2008, the totality of copyright based industries operating in the country contributed just about N1.2 trillion to the Nigeria gross domestic income,<sup>50</sup> a figure publicly made known by Adebambo Adewopo during the 50th anniversary of the Nigerian Copyright Commission.<sup>51</sup> Notwithstanding the above, and especially the enormous benefits which the country has derived from copyright related products, Nigeria still remains the largest piracy destination and market in the world invariably in the same products ostensibly protected by the Copyright Act,<sup>52</sup> particularly computer software.<sup>53</sup>

## 7.0 Jurisdictional Difficulties in Enforcement of Copyright Infringement

Jurisdictional difficulties in enforcing prosecution of online copyright infringers are a nightmare to copyright owners in Nigeria.<sup>54</sup> The nature of the internet is a big challenge when attempting to identify the

<sup>48</sup> Joelle.C. Nwabuze, 'Security Granted to Cultural Audiovisual Performances and Performers Rights under Beijing Treaty of Audiovisual Performances: An Appraisal of Nigeria Cultural Actors' (2013)16 *The Calabar Law Journal*. ; Nkem Itanyi, 'The Concept of Piracy in the Film Industry in Nigeria: Taking a Cue from Other Countries'. *European Journal of Law and Technology*, <<https://www.researchgate.net/publication/321653444>> accessed 23 December, 2022.

<sup>49</sup> Babafemi (n38) 109.

<sup>50</sup> Hemen Philip Faga and Ngozi Chinwa Ole, 'Limits Of Copyright Protection in Contemporary Nigeria: Re-Examining The Relevance Of The Nigerian Copyright Act In Today's Digital And Computer Age' (2011)212(2)1, *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*.

<sup>51</sup> The Director General of Nigerian Copyright Commission. <<http://www.ncc.annivssary of>>accessed on 23 December,2022.

<sup>52</sup> Akinjide and Co. 'Nigerian Computer Software Protection in Nigeria' (2015) 37 *Journal of Law and Globalization* [www document], (Created 2007), available at URL:<<http://www.lawedit.co.UK/viewarticle>> accessed on 15<sup>th</sup> November, 2022.

<sup>53</sup> Olatunji, (n 4 ) HF.Philip and NC Ole,(n 51)1.

<sup>54</sup>Safiyyah Mohammed and Umaymah Yahayya Abdullahi . 'Internet Crimes and Jurisdictional Challenges'(2021)5 (edn)73 Obafemi Awolowo University, Ile – Ife, Nigeria *Ife Journal of International & Comparative Law*.

location where online copyright infringement took place and thereby identify the state which can claim and exercise jurisdiction.<sup>55</sup> The problem of jurisdiction in cyberspace was an issue that made the European Court of Justice to note as follows:<sup>56</sup>

the issue of crime committed on the internet is not a straight forward one in as much as, since the internet is a network which is by definition universal, the location of such crime, be it the casual event or the loss sustained is particularly difficult to determine.<sup>57</sup>

Jurisdiction on the internet is a central issue when dealing with copyright infringement and internet related disputes.<sup>58</sup> Competing claims regarding jurisdiction are also a challenge as it relates to internet infringement crimes. Issues of jurisdiction have generated conflict between National Legal Systems based on the territoriality of jurisdiction.<sup>59</sup> For the purpose of this paper, we can say that copyright infringement jurisdiction covers State sovereignty and designates the power of a State and its agents over the territory, Country, Region, State or Province.<sup>60</sup> It is also the exercise of power and authority of a National Court or Judicial Authority to apply and execute National procedural laws that are within their sphere of competence in order to attract and investigate a particular case based on existing principles, legislation and precedents or jurisprudence in a certain area of law.<sup>61</sup> The internet has created a virtual transitional environment for harmful activities which makes criminal activities flourish and can sometimes fall outside the jurisdiction of the criminal justice process.<sup>62</sup> Crime

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<sup>55</sup> Jeon Baptiste Maillest 'The Limits of Subjective Territorial Jurisdiction in the Contest of Cybercrime' (2019)(19) 380 Academy of European Law Forum.

<sup>56</sup> Maillest(n 56) 380.

<sup>57</sup> J. Kleysen and Pear, *Cybercrime Evidence and Territoriality: Issues and Options*, (edn Netherlands 2016) 157.

<sup>58</sup> Mohammed and Abdullahi .(n 55)73

<sup>59</sup> *ibid*

<sup>60</sup> C. Velasco, Hornle and A, Osula, *Global Views on Internet Jurisdiction and Trans – Border Access in Data Protection on the Move: Current Development in ICT and Privacy/ Data Protection* (Springer Netherlands, 2016) 476.

<sup>61</sup> Hornle and Osula,(n61)

<sup>62</sup> Dominik Zajak, 'Criminal Jurisdiction over the Internet: Jurisdictional links in the Cyber' *Cambridge Law Review* (2019)4(2).

protection may no longer be about surveillance and investigation within the immediate community but instead may cross local, national and international boundaries.<sup>63</sup> Copyright infringement may therefore involve infringers who perpetrate them far away from the copyright owners. This poses serious challenges and requires greater collaboration among the police in different countries, from different jurisdictions with different level of capacity.

The primary jurisdictional problem that arises in relation to copyright infringement on the internet is the application of a single strict law to internet content.<sup>64</sup> The nature of the internet makes it difficult to determine such jurisdiction. A website may be hosted in one country but accessed by users worldwide. Thus, if a dispute arises, it must be decided where the lawsuit will be commenced whether in the jurisdiction where the website is hosted or in the jurisdiction where the owner of the site carries out business, or where the user or injured party resides or where the injury occurred.<sup>65</sup>

At present Nigerian Copyright Act 2022 is not elaborate on its protection on digital infringement. Section 48 of the Nigerian Copyright Act 2022 did not cover digital protection effectively.<sup>66</sup> Also section 49 of Nigerian Copyright Act 2022 on anti piracy measures has no measures for effective protection of digital works.

Apart from the problems stated above the Federal High Court is conferred with the exclusive jurisdiction to hear and determine causes and matters, whether criminal or civil, relating to copyrights in Nigeria. Nigerian Federal High Court lacks requisite knowledge on IP matters.<sup>67</sup>

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<sup>63</sup> UNICEF, *Child Safety Online; Global challenges and strategies* (Innocent publication Italy 2011) 12.

<sup>64</sup> Samuel F Miller, 'Prescriptive over Internet Activity: the need to Define and Establish the Boundaries of Cyber liberty' (2013)10(2)229 *Indiana Journal of Global Legal Studies* (2013) 10 (2).

<sup>65</sup> Akinkunmi Akinwunmi, *The Nigerian Internet Law* (Akinwunmi Akinwunmi 2019) 451

<sup>66</sup>Charles U. Okpe, 'The Opportunities for Effective Digital Copyright Protection in Nigeria'(2022) 2(1) 86 *Renaissance University Law Journal*.

<sup>67</sup>Onwusi, (n2)73.

## **8.0 Summary of Findings**

Summary of findings in this discussion identifies the contentious issues canvassed in this article precisely Copyright enforcement mechanism. Thus we have the following findings:

The Nigerian Copyright Act 2022 overhauled the Copyright Act 2004 and made significant innovations for the protection of Copyright works on the internet. However, the provisions of Nigerian Copyright Act 2022 are inadequate and insufficient to protect copyright works generally in Nigeria. Firstly, we observed that the inadequacy of the Nigerian Copyright Act 2022 is also obvious in section 50 to 56 of Nigerian Copyright Act 2022. The provisions stipulates for digital enforcement of copyright infringement. In the event of infringement the section provides that the owner of a work may send a notice of infringement to the ISP requesting the service provider to take down the work or disable access to the infringing content or link hosted in its system. It also provides liabilities in the event of an online breach of copyright to the tune of One Million Naira (N1,000,000) only or a term of imprisonment not less than 5 (five) years or liability to both a fine and a term of imprisonment for anyone convicted. We observed that this provision is inadequate because the Act is not specific in addressing prevention of online copyright infringement. It ought to provide digital mechanisms to prevent infringement rather than merely prohibiting online infringement in general terms without addressing specific digital methods on how to prevent copyright infringements. This is certainly not a robust enforcement on the digital space to stem infringement.

The Act provides that the Federal High Court shall have exclusive jurisdiction for the trial of offences and civil actions arising from copyright infringement. Federal High Court alone is not adequate to hear and determine copyright infringement. The Federal High Court is not a specialised court like the Industrial Court of Nigeria.

Further findings are that diverse domestic legislations and other international conventions govern and protect copyrights in Nigeria. Particularly, the work found that section 8 of the 2022 Copyright Act has domesticated the international conventions Nigeria has ratified including the TRIPS – Agreement on Trade-Related Aspects of

intellectual Property Rights, WIPO Performances and Phonograms Treaty (WPPT 1996) and Beijing Treaty on Audiovisual Performances (2012). By virtue of the domestication there are no conflicts in the application of the different laws especially the International Treaties in Nigeria. For example, the paper found that although the Nigerian Copyright Act does not define the term 'piracy', the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, to which Nigeria is a signatory, defines pirated copyrighted works.

The following findings are worthy to be stated here: Copyright enforcement is territorial in nature and therefore, the owner of copyrighted works may find it difficult to safeguard his right in countries outside his own due to issues of court jurisdiction to hear and entertain the case. The Copyright protection accorded afforded to a work depends on the national laws of the country in which protection is sought. By virtue of section 103 of the Nigerian Copyright Act 2022, Federal High Court of Nigeria has exclusive jurisdiction in the enforcement and prosecution of copyright infringement in Nigeria. This means that if a copyrighted work is infringed outside the borders of Nigeria, the copyright owner may find it difficult to seek redress on the issue of enforcement of online infringement through take down notices. This mechanism of enforcement is quite vague and very difficult to implement. This is so because first, the Internet Service Provider (ISP) may not be physically present within the jurisdiction in which the infringement takes place and this may bring up issues of jurisdictional conflict in the implementation of such notices. Secondly, apart from the fall out of the jurisdictional conflict, which may result in the inability of the copyrighted holder to compel internet service providers to comply with take down notices, there is no actual mechanism in the Act to compel compliance by ISPs even within the same jurisdiction.

## **9.0 Conclusion**

This paper is a critical appraisal of copyright enforcement mechanism in Nigeria. The paper respectfully posits that the present enforcement mechanism as enshrined in the Nigerian 2022 Copyright Act is not sufficient and conclusive in preventing infringement because criminalization alone will not stop infringement of copyright. The

work acknowledges the fact that our domestic legislations and institutional enforcement mechanism are not adequate. Nigerian copyright holders need seamless enforcement mechanism that will discourage infringement. Nigerian Copyright Commission should adopt adequate administrative measures that will help in holistic enforcement of the provisions of the Nigerian Copyright Act. It is important to note that Copyright should not be territorially circumscribed rather we should have universal jurisdiction for copyright prosecution. The efficacy of enforcement and prosecution can be tested if we have universal jurisdiction for the prosecution of copyright infringement.

## **10 Recommendations**

Based on the above findings, we make the following recommendations:

- i) We recommend that the National Assembly further amend the Copyright Act 2022 to improve on the digital protection and prevention of copyright infringement in the Nigeria beyond what is current provided in section from section 50 - 56 of the Act. The Act must clearly provide mechanisms to circumvent online infringement of copyright work.
- ii) Nigerian Copyright Commission should adopt adequate administrative measures. Vigorous machinery for the enforcement of the provisions of the Act should be set into motion and this should include representatives of the direct beneficiaries of the Act, and other professional bodies like Nigerian Bar Association that is the voice of the masses. The Nigerian government should work assiduously with various organizations concerned with Copyright works like the market authorities and trade unions to ensure that any infringing copies are confiscated and adequate punishment as approved by law meted out to all who contributed in the infringement.
- iii) Furthermore on the nature of copyright enforcement. Nigerian Federal Government should set up an administrative tribunal or even a separate Court that would be saddled with the responsibility of discharging urgently issues relating to copyright infringement.
- iv) Appointment of judges with intellectual property training and knowledge to the administrative panel will be of benefit.

Specialisation on Intellectual Property law should also be a pre-requisite during the appointment of judges to the specialised court or division to entertain copyright and related disputes. This will address technically complicated disputes in the fields of Intellectual Property law.

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