

AN EXAMINATION OF THE PROTECTION OF INTELLECTUAL PROPERTY IN ARCHITECTURE IN NIGERIA

Franca Princess Igwela*

Warebi Gabriel Brisibe**

Abstract

With a primary focus on the Copyright Act 2022, this paper critically analyzed how Nigeria's intellectual property (IP) regime protects architectural works. The paper addressed how architectural works pose peculiar difficulties for IP enforcement because they combine artistic and functional elements, especially when it comes to separating protectable works and expression from unprotected concepts and/or functional elements. The doctrinal research methodology was applied. The paper evaluated Nigeria's legal framework compared to countries like the United States of America and the United Kingdom among others. These challenges include low institutional capacity, lack of awareness, and other impediments. The paper concluded with practical policy recommendations, such as the establishment of digital copyright infrastructure, specialist IP court divisions, and others.

* LL.B (Hons), BL, LLM (RSU), (PhD), Legal Practitioner, Lecturer, Department of Commercial and Industrial Law, Faculty of Law, Rivers State University. Email: franca.igwela@ust.edu.ng

** Professor of Architecture, Department of Architecture, Faculty of Environmental Sciences, Rivers State University. Email: warebi.brisibe@ust.edu.ng,

Keywords: Architecture, Intellectual Property protection.

1.0 Introduction:

It is safe to state that Intellectual Property (IP) plays an important role in protecting creativity and innovation across many sectors and industries and architecture is not left out. In Nigeria, the importance of IP in architecture comes from its ability to protect original designs and architectural works, ensuring that architects receive the credit and compensation for their work that they are due. However, applying IP laws to architectural works gives rise to particular challenges considering the fact that architectural works are usually a sometimes-complex mix of artistic expression and functionality. Nigeria's legal framework for intellectual property protection is mainly governed by three statutes. They are the Copyright Act 2022, the Patents and Designs Act¹ and the Trademarks Act². The Copyright Act expressly protects literary and artistic works, which have been defined in the Act to include architectural plans and design drawings. This protection automatically comes into being once a work has been created but said protection can be strengthened through registration and that registration comes with additional legal advantages³. The Patents and Designs Act makes provision for protection of inventions related to construction techniques or materials and also industrial designs that preserve aesthetic

¹ Cap P2 LFN 2004

² Cap T13 LFN 2004

³ Adekola TA and Eze SC, 'Intellectual Property Rights in Nigeria: A Critical Examination of the Activities of the Nigerian Copyright Commission' (2015) 35 *Journal of Law, Policy and Globalization* 56 - 61.
<<https://iiste.org/Journals/index.php/JLPG/article/viewFile/20899/21200>> accessed 10 April 2025.

aspects like appearance or shape⁴. Furthermore, the Trademarks Act regulates the registration and use of trademarks, including those that relate to architecture. Trademarks help differentiate between construction products and services and the trademarks Act is how the law protects distinctive symbols associated with them⁵. For the purposes of this article, we would focus on the provisions of the Copyright Act.

Nigeria has advanced significantly in modernizing its intellectual property laws in recent years as can be seen with the enactment of the Copyright 2022 Act, which repealed the Copyright Act, Cap C28, LFN 2004. Its provisions improve the protection of authors and also expands the works that are protected under the Act. All while guaranteeing adherence to international agreements such as Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁶ This is a very laudable venture and is proof of the presence of political will to protect copyrights.

In relation to architecture specifically, architects' perception of intellectual property rights is heavily influenced by ethical issues. The question of whether stringent enforcement could stifle creativity or if it would promote innovation by guaranteeing financial benefits is still up for debate. The point of this article is to examine current legal frameworks in Nigeria that deal with intellectual property in architecture, with comparisons to United States of America (US) and United Kingdom (UK) laws. Theories on how

⁴ Afolayan OT, 'Intellectual Property Rights Protection in Nigeria: Issues and Perspectives' (2022) 13(1) *Information Impact: Journal of Information and Knowledge Management* 1-9. <<https://dx.doi.org/10.4314/ijikm.v13i1.1> accessed 10 April 2025.

⁵ *Ibid*

⁶ Andersen Global Publications, 'Intellectual Property in Nigeria: An Overview of Recent Developments' (September 2023) <<https://ng.andersen.com/intellectual-property-in-nigeria-an-overview-of-recent-developments/>> accessed 6 May 2025.

intellectual property affects architectural knowledge will be discussed, along with case studies where IP has been important or disputed. Various difficulties architects have faced while attempting to enforce their rights under Nigerian law as well as possible reforms for protection, recommendations for the future research will also be discussed in this article.

2.0 Current Legal Framework

In Nigeria's legal framework, the protection of architectural works is primarily governed by the Copyright Act 2022, which brought the country closer in alignment with international copyright standards. Section 2(1)(a) of the Act defines "artistic works" to include "buildings or models for buildings," thereby bringing architectural works under the umbrella of copyrightable subject matter. This recognition guarantees that original architectural designs that have been put in a physical medium are eligible for protection from the moment of creation, without the necessity for registration. It is important to note, however, that registration with the Nigerian Copyright Commission (NCC) is encouraged and it can offer evidentiary assistance in court proceedings.⁷ Since the Act does not define "originality" specifically, Nigerian courts have developed a criteria for its definition based on the use of skill, judgment, and independent effort to create a work or design rather than mere novelty.⁸ This is in line with common law principles and is essentially comparable to the UK's definition of originality, which emphasises the work being the "author's own

⁷ Nigerian Copyright Commission, *Guidelines on Registration and Enforcement of Copyright Works* (NCC, 2023) <<https://www.copyright.gov.ng>> accessed 10 June 2025.

⁸ Adewopo A, *Nigerian Copyright System: Principles and Perspectives* (Odade Publishers, Abuja 2012) 91–92.

intellectual creation", particularly in the wake of the Infopaq case.⁹ In the Infopaq case, customers of Infopaq, a media monitoring and analysis company, received summaries of specific items from Danish daily newspapers and other periodicals by email. The articles were made available through a data collection process after being chosen based on specific subject criteria that the clients had approved. The Danish daily newspaper publishers' professional association, Danske Dagblades Forening (DDF), aids its members regarding copyright matters and they took interest in Infopaq's services. DDF objected to Infopaq about this practice after learning that Infopaq was scanning newspaper articles for commercial use. Infopaq filed a lawsuit against DDF, disputing DDF's assertion that their services required the consent of the newspaper owners since the information in the newspapers were not original. The European Court of Justice ruled that because the newspapers were the "author's own intellectual creation," Infopaq ought to have obtained permission before using their publication. The ruling that the European standard of originality (the author's own intellectual creation) applies to all Berne Convention "works" and not just the specific contexts in which it has been applied in legislation, such as software, photographs, and databases, is thought to have had a significant impact on the fundamental principles of copyright law.

In comparison, the UK has a similar legal framework for architectural works under the Copyright, Designs and Patents Act 1988 (CDPA). It defines "works of architecture being a building or a model for a building" as artistic works according to section 4(1)(a). Due to European Union influence, the UK's originality criterion changed to the "intellectual

⁹ *Infopaq International A/S v Danske Dagblades Forening* (C-5/08) [2009] ECR I-6569, para 45.

creation" test, which UK courts apply more strictly in light of European Court of Justice case law.¹⁰

The US on the other hand, provides specific protection for architectural works in the Architectural Works Copyright Protection Act (AWCPA) of 1990. The AWCPA established a distinct category of protected works for architectural designs and also extended copyright protection to the actual building as long as the design contains unique, non-functional components. Compared to Nigeria, the United States approach offers a more comprehensive jurisprudential framework and a broader statutory basis for protection of architectural intellectual property, particularly with regard to functional features and derivative use.¹¹ Nigeria's framework is less comprehensive, and protection is constrained by real-world enforcement issues as well as architects' lack of knowledge about their intellectual property rights.¹² Another thing that seems clear is that there is a great deal of uncertainty due to the lack of detailed judicial interpretation concerning what qualifies as protected architectural expression (especially when it comes to differentiating between expressive and functional design features). Furthermore, Nigeria has not yet established a strong corpus of case law addressing the applicability of copyright law to architectural works despite the fact that it can be argued that many architects experience

¹⁰ Bently L and Sherman B, *Intellectual Property Law* (4th edn, Oxford University Press 2014) 113–117.

¹¹ Ginsburg JC, 'Copyright in the 101st Congress: Commentary on the Visual Artists Rights Act and the Architectural Works Copyright Protection Act of 1990' (1990) 14 *Columbia–VLA Journal of Law & the Arts* 477–506.

¹² Olubiyi IA, 'A Comparative Analysis of Copyright Enforcement Provisions in Nigeria: Maximizing the Current Legal Regime' (2014) 5 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 1–18.

copyright infringement. It appears majority of the aggrieved parties do not pursue legal action.

3.0 Literature Review

Ofili's research has shown that intellectual property rights play a crucial role in economic development by encouraging innovation and attracting foreign investment and he also emphasises that Intellectual property rights (IPRs) play a crucial role in fostering innovation and creativity within economies. However, he also suggests that tightening IP protection may not always lead to significant economic growth in developing countries like Nigeria. Instead, it can sometimes displace local producers due to high imitation capabilities but weak innovative capacities.¹³

Afolayan identifies a number of difficulties that Nigeria's intellectual property rights protection faces, such as a shortage of qualified personnel, inadequate resources for regulatory bodies, and a high rate of piracy. These problems make it difficult to implement the law effectively and foster an atmosphere where the rights of creators are frequently infringed.¹⁴

Azoro draws attention to the fact that many Nigerians are generally ignorant about intellectual property laws. This covers both consumers who are not fully aware of the consequences of breaking these rights and creators who

¹³ Ofili OU, 'Intellectual Property Rights Protection and Economic Development: The Case of Nigeria' (2014) *European Scientific Journal* (October) <<https://ejournal.org/files/journals/1/books/OnyekaUcheOfili.pdf>> accessed 6 May 2025.

¹⁴ Afolayan (n4)

are not aware of their legal safeguards. He contends that educating both parties could improve adherence to IP regulations.¹⁵

Adewopo has played a significant role in pushing for reforms in Nigeria's intellectual property laws. He suggests broadening the scope of Intellectual Property Rights (IPRs), improving protection criteria, routinely assessing current legislation to account for social shifts and consolidating IP management throughout various industries. His contributions highlight the necessity of flexible strategies that meet local developmental needs as well as international standards.¹⁶

The significance of moral rights, (which are enshrined in Section 14 of the Copyright Act), especially the right of integrity for architects is emphasised by Lauterbach's research. Section 14 provides that an author has the right to "object and to seek relief in connection with any distortion, mutilation or other modification of, and any other derogatory action in relation to his work, where such action would be or is prejudicial to his honour or reputation." Lauterbach points out that architects frequently encounter difficulties when their creations are altered without their permission, prompting them to claim their moral rights under copyright legislation. This viewpoint emphasises how the creative efforts of architects are not just technical but they also have artistic and personal significance.¹⁷

¹⁵ Azoro CJS, 'Rethinking the Meaning, Nature and Scope of Intellectual Property Rights Under Nigerian Law' (2023) 3 *Idemili Bar Journal*.
< <https://journals.ezenwaohaetorc.org/index.php/IBJ/article/viewFile/2641/2758> > accessed 10 May 2025.

¹⁶ Adewopo A, 'The Reform of Nigerian Intellectual Property Law in Perspective' (2022) 71(3) *GRUR International: Journal of European and International IP Law* 195–196.

¹⁷ Lauterbach T, 'Author-architects and the Moral Right of Integrity in Copyright Law' (2011) 26(1) *South African Journal of Art History (SAJAH)* 57–66.

Ghonim and Eweda discuss architectural copyright, specifically mentioning Egypt and its copyright laws. Although they acknowledge that Egyptian laws offer copyright protections that meet international standards, their research illustrates the potential and limitations of current copyright laws in protecting architectural works both domestically and internationally. It also points out that Egypt suffers from the same awareness problems that plague Nigeria's copyright laws. They urge for greater awareness campaigns and offer insights into how other legal systems handle comparable issues in protecting architectural designs.¹⁸

4.0 Idea/Expression dichotomy and its implications

A fundamental principle of copyright law is the idea/expression dichotomy, which maintains that while ideas are not protected by copyright, their expression is. This principle has important ramifications for architectural design because it establishes a difference between the unique, creative way ideas are expressed and more general concepts like spatial arrangements, style elements, or building techniques. In Nigeria, the idea/expression dichotomy is expressly codified in the Copyright Act. According to Section 2 of the act, a work will not be eligible for copyright unless “the work has been fixed in any medium of expression known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device”. Additionally, Section 3 of the act states expressly that “ideas, procedures, processes, formats, systems, methods of operation, concepts, principles” are not eligible for copyright. This means that an architect's copyright only covers the unique expressive elements of the architectural

¹⁸ Ghonim MN and Eweda NM, ‘Architectural Copyright: Potentialities & Limitations with a Special Reference to Egypt’ (2011) 58(3) *Journal of Engineering & Applied Science* 181-196.

design, not broad design concepts or functional requirements imposed by building codes or engineering restrictions.¹⁹ These unique expressions can include distinct ornamental aspects, aesthetic elements or an original arrangement of structural elements, all of which are not determined by function. The difficulty in such an architectural design is separating function from expression. The difference between expression and function is often made difficult by the fact that many architectural elements have both functional and aesthetic purposes. A spiral staircase, for example, could be both visually pleasing and required for structural/spatial reasons. Is it an expression or an idea in this situation? This difficulty reflects larger jurisprudential discussions about the expressiveness and utility of architectural designs.

Nigeria is not the only country practicing this principle. It is practiced all around the world. In the UK, the idea/expression dichotomy is applied and refined by case law. The court highlighted in *LB (Plastics) Ltd v. Swish Products Ltd*²⁰ that copyright protects an idea's expression but not the idea itself.

Under the AWCPA, the US has addressed this issue in great detail. As long as designs are not "functionally required," the Act expressly allows for the protection of the "overall form as well as the arrangement and composition of spaces and elements in the design".²¹ According to US courts, basic features that are deemed practical or limited by functional constraints, like windows, doors, or load-bearing parts, are not protected by copyright.²²

¹⁹ Olubiyi (n12)

²⁰ 1979] RPC 551 (CA)

²¹ Ss 101 and 102.

²² Ginsburg (n11)

However, due to the lack of case law in Nigeria directly applying or interpreting the idea/expression dichotomy as it relates to architectural works, architects are unsure of the extent of their copyright protection. Lawyers frequently have to draw conclusions from broad copyright principles, which can lead to unpredictability²³. For instance, no matter how creatively an architect modifies a structure, its layout is unlikely to be protected if it complies with standard safety requirements or local planning laws. Architects may exaggerate the weight of their rights or refrain from expressing them at all if there are no clear rules or test cases. This means that stakeholder in the architecture industry should approach Nigerian courts for urgent interpretation of the scope of copyright protection for architectural works. this way, there would be clarity on the application of the idea/expression dichotomy in this area. Case law in this area would give more assurance to lawyers and architects while helping Nigeria's practice meet international standards.

5.0 Theoretical Framework

5.1 Intellectual Property Lock-in: The theory of intellectual property lock-in is a phenomenon that happens when creative works become legally and financially "locked" to their creators, thereby impacting both innovation and competition in related markets. This is the foundation of the theoretical framework for comprehending intellectual property protection of architectural works.²⁴ The economic incentives theory (which asserts that

²³ Sharma V, 'An Analytical Study of Relevancy of Idea–Expression Dichotomy under Copyright Law' (2023) 9(5) *Journal of Legal Studies & Research* 205–218.

²⁴ Berardi CW, *Intellectual Property and Architecture: How Architecture Influences Intellectual Property Lock-in* (PhD thesis, Massachusetts Institute of Technology 2017). < <https://dspace.mit.edu/bitstream/handle/1721.1/112005/1006509171-MIT.pdf?sequence=1&isAllowed=y> > accessed 14 May 2025

authors and innovators should be able to recover their investment of creativity, talent, and resources thanks to intellectual property rights) finds great resonance with intellectual property lock-in.²⁵

When it comes to architecture, intellectual property lock-in functions by giving designers the exclusive authority to manage how their ideas are copied and modified for a set amount of time. This safeguard is there to prevent competitors from reusing their work without permission while still allowing them to profit from their creative expression. Nevertheless, if the legal framework overlooks the collaborative and functional parts of architectural practice (which often entail the borrowing, adaptation, and transformation of existing designs, motifs, or structural standards), this type of control may become limiting.²⁶ This tricky policy balance emphasises the need for a framework that safeguards creativity while avoiding overprotection that could stifle future invention.

This theoretical perspective directs the analysis of the legal interpretation and policies that support or contradict this equilibrium in the context of Nigerian architectural works. The goal is to preserve the original expression of ideas while allowing future designers enough latitude to reuse, modify, or combine preexisting elements. This is not to grant a monopoly over ideas or technical innovations, which belong to the public domain and technical knowledge. A policy decision to promote healthy competition, maximise creativity and provide a wealth of architectural expression for future generations is what is reflected in this balance.

²⁵ Landes WM and Posner RA, *The Economic Structure of Intellectual Property Law* (Harvard University Press 2003) 45–47.

²⁶ Craig CJS, ‘Locke, Labour and Limiting the Author’s Right: A Warning Against a Lockean Approach to Copyright Law’ (2002) 28 *Queen’s Law Journal* 1–60

5.2 Intellectual Property Architecture: "Intellectual property architecture" is the term used to describe how legal systems organise incentives and control in order to work together to produce innovative architectural works.²⁷ This theory not only highlights how intellectual property influences the process of creating and developing an architectural expression but in addition, safeguards the final product, that is, the actual building. This means that intellectual property architecture serves as a tool for policymakers to shape incentives for innovation and creativity in the field.

This aligns with the legal realist theory. Legal realism sees intellectual property as a means for policy to maximise social welfare. And so intellectual property architecture encourages innovation and creativity while maintaining enough freedom for up-and-coming innovators to reuse and modify earlier works.²⁸ A country's intellectual property architecture has a direct effect on its creative environment. It influences both the incentives necessary for people to create new architectural designs and the capacity of newer designers to build on and learn from earlier designs.

The legal framework that regulates intellectual property architecture in Nigeria is a combination of common law principles and duties under international treaties, particularly the Berne Convention and the TRIPS Agreement. This combined approach addresses the specific policy objectives, developmental priorities and financial incentives within the

²⁷ MacCormack A and Iansiti M, 'Intellectual Property, Architecture, and the Management of Technological Transitions: Evidence from Microsoft Corporation' (2009) 26(3) *Journal of Product Innovation Management* 248–263.

²⁸ Singleton R, 'Architecture and Intellectual Property' (2011) 15(3) *Architectural Research Quarterly* 294–296.

country's creative industries. It signals a political will to conform to international standards as has been mentioned earlier in this paper.²⁹ What this results in is a regulatory framework that aims to strike a balance between the need to preserve architectural expression and innovation for future generations of architects.

6.0 Case studies (Architectural works and IP Protection in practice)

Practical examples are the most effective way to demonstrate how intellectual property protection is applied to architectural works. The following cases underscore the significance of intellectual property laws in the architectural environment. They shed light on the policy mechanisms at work and draw attention to the practical challenges and disputes that emerge in the application of these mechanisms.

6.1 Case 1: DPA (London) Ltd v Andrea D'Aguanno & Ors (UK)³⁰

This is a claim in copyright and breach of contract brought by a firm of architects (DPA) against two architectural designers who previously worked for it in that capacity (Mr D'Aguanno and Ms Muller), and the firm that they later set up, MUDA Architecture Limited (MUDA). D'Aguanno and Muller had worked for DPA as self-employed contractors. DPA alleged that D'Aguanno and Muller copied substantial parts of their architectural drawings, 3D models, and CGIs to use in a project called Wellington House under MUDA. The court found that there was no substantial copying and that MUDA's design was effectively "redesigned" and did not reproduce a substantial part of DPA's work. DPA's suit failed. This ruling demonstrates

²⁹ Adewopo (n8) 99

³⁰ [2020] EWHC 2374 (IPEC)

the UK's commitment to preserving originality but still allowing future designers to modify or build upon earlier creations.³¹

6.2 Case 2: Nigerian Association of Draughtsmen & Anor v. Architects Registration Council of Nigeria (ARCON) & Ors (Court of Appeal, Ibadan, 2021) (Nigeria).

In this case³², Draughtsmen (through their association) sought to continue preparing and submitting architectural plans, based on an earlier consent judgment allowing them to do so. The Architects Registration Council of Nigeria (ARCON) challenged this arrangement, citing the Architects (Registration, etc.) Act, which reserves such work for registered architects.

While this is not a copyright case, it strictly regulates who may legally prepare architectural drawings, shaping how and by whom such works can be legally created and therefore who can own or enforce any copyright in them. It clarifies that any such work by unregistered professionals lacks legal legitimacy, indirectly solidifying the position of registered architects as the default holders of copyright.

6.3 Case 3: Signature Realty Ltd v Fortis Developments Ltd and another³³ (UK). A property developer, Signature, was granted planning permission for a block of apartments on the basis of its architect C&W's drawings/plans. However, Signature was unable to get funding to purchase

³¹Aplin TF and Davis J, *Intellectual Property Law: Text, Cases and Materials* (2nd edn, Oxford University Press 2013) 289–291

³² Uwaegbulam C, 'Appeal court bars draughtsmen from preparing, submitting architectural designs' *Guardian Nigeria* (27 December 2021) <<https://guardian.ng/property/appeal-court-bars-draughtsmen-from-preparing-submitting-architectural-designs/>> accessed 14 June 2025.

³³ [2016] EWHC 3583 (Ch)

the construction site and finish the project. Later, the site was sold to Fortis. The drawings' copyright was transferred from C&W to Signature so that it could initiate legal action. The development has to be completed in full compliance with C&W's plans in order for the planning clearance to be given. The drawings were then posted on the local government planning webpage with a copyright notice restricting their use to consultation, comparing current applications with earlier schemes and verifying if developments were carried out in compliance with authorised plans. Signature filed a lawsuit against Fortis for copyright infringement in the drawings pertaining to the marketing, promotion, and construction of the property. The court determined that Fortis had violated Signature's copyright by using the drawings for marketing the properties developed on the site, for tendering and estimating purposes, creating altered versions of the drawings, creating AutoCAD versions of the drawings and building a structure in accordance with the drawings. Despite Fortis' claims that the designs were not sufficiently creative due to their reliance on an earlier series of drawings, copyright did exist in them. Therefore, the court determined that the drawings exhibited enough intellectual skill to support copyright. This ruling demonstrates once more how low the bar is for copyright to survive and how "original" does not mean never-before-seen but rather effort and skill.

6.4 Case 4: Hewlett Custom Home Design, Inc. v. Frontier Custom Builders, Inc. (US). In this case which held at the U.S. District Court, Southern District of Texas,³⁴ Hewlett designed and created copyrightable

³⁴ Deeth Williams Wall LLP, 'US District Court Awards \$1.3 Million for Copyright Infringement in Architectural Works' (5 June 2013) <<https://www.dww.com/articles/us-district-court-awards-13-million-for-copyright-infringement-architectural-works>> accessed 16 June 2025.

plans for multiple custom homes. Frontier then went on to build **19** houses using those plans without Hewlett's authorization. Hewlett sued and got favourable judgment. The jury found “substantial copying and access” in Frontier's actions and awarded \$1.3 million in damages. This was an amount equal to Frontier's gross profits from the infringing construction. This decision is a testament of US courts' willingness to provide significant protection for architectural plans under AWCBA. It also shows that courts will impose punitive awards by granting award profits for unauthorised building based on copyrighted designs.

6.5 Case 5: Trek Leasing, Inc. v. United States 2005 (US)³⁵

Trek Leasing designed and built the Fort Defiance Post Office in Pueblo Revival style, using a standard U.S. Postal Service template (USPS 65A drawings). The U.S. government later constructed a similar post office in Kayenta using the same standard drawings plus similar aesthetic elements. Trek Leasing sued, alleging direct infringement of its architectural design. the issue to be determined by the court was whether the Kayenta building infringed Trek's architectural work copyright especially considering that much of Trek leasing's design was derived from standard USPS plans and the Pueblo Revival architectural style. The court, relying in the "thin protection doctrine", found that since the building's design closely followed standard USPS and Pueblo Revival style elements, its copyright protection was “thin”. this means that its protection was limited to only the aspects that were original and not dictated by standard plans. As a result, the court filtered out un-protectable components (i.e., the standard USPS elements and the common Pueblo-style features) and then compared the remaining original elements to the allegedly infringing design. After filtration, it found

³⁵ 66 Fed. Cl. 8, 75 U.S.P.Q. 2d (BNA) 1449, 2005 U.S. Claims LEXIS 198

no substantial similarity between Trek's original work and the USPS-Kayenta building. It reached this conclusion because the overall designs differed in "total concept and feel" once non-original elements were excluded. The court found no infringement and granted summary judgment in favor of the U.S. Government.³⁶ This decision reinforces that architectural works often enjoy thin protection when tied to common styles or standard plans. It also acknowledges that unoriginal elements (ideas, standard specs) are not copyright protected. and finally, it highlights that once un-original features are removed, architects who intend to enforce their copyrights must show substantial similarity to in order to succeed, particularly for thinly protected works.

The cases listed above demonstrate both the expanding acceptance of intellectual property rights in architecture and the legal frameworks that allow for their enforcement across different jurisdictions.

The CDPA, which regulates the UK's intellectual property environment, establishes precise guidelines for both substantial copying and original expression. The UK cases discussed serve as an example of how UK policy mandates prompt and stringent remedies, such as copy delivery-up, fines, and permanent injunctions against future violations. this approach demonstrates a strong commitment to preserving artistic creativity but still leaves enough room for future designers to create their own inventions. The UK's vast body of case law fosters more legal certainty and this helps stakeholders grasp what amounts to substantial copying and how far architectural copyright protection goes.

³⁶ Court Listener
<<https://www.courtlistener.com/opinion/6770957/trek-leasing-inc-v-united-states/>> accessed 16 June 2025.

On the other hand, the United States' intellectual property framework, especially, the AWPA, focuses primarily on economic rights and incentives. These economic remedies, which can include everything from compensatory damages to infringement profits, are an effective way for policymakers to compensate aggrieved designers and help them get their money back or at least, mitigate their loss.

By addressing financial harm while avoiding overprotection, this strategy preserves policy balance and reflects the belief that architectural creations must fully maximise their ability to be used for profit.

Regarding Nigeria, while it can be said that under the Copyright Act and its provisions, there is an opportunity to adhere to international standards in relation to copyright protection, there appears to be an awareness gap among architects and architectural stakeholders. The dearth of relevant decided cases demonstrates a low rate of enforcement measures by copyright holders, particularly architects. It would be more advantageous to architects if they maximised the protection they enjoy under the Copyright Act.

7.0 Challenges and Limitations in the Nigerian legal framework

7.1 Originality Requirements under the Copyright Act 2022

Architectural works, which are classified as buildings or their models, must meet the originality requirement in order to be eligible for copyright protection under the amended Copyright Act 2022. According to Section 10(3) of the Act, drawings and the construction of works that replicate all or a significant portion of another person's design are protected by

copyright. The idea/expression dichotomy can be seen in section 3's exclusion of ideas, systems, methods of operation, and common concepts. In order to be considered original, architects must show that their creations go beyond simple compliance with functional or legal requirements. Instead, they must reflect a significant level of individual skill, labor, and judgment. This is consistent with Olapade's critical analysis, which holds that eligibility for copyright protection is primarily determined by original expression rather than just technical compliance.³⁷ This threshold is a problem for architects, particularly when popular architectural standards or legal restrictions (like building codes) have a big impact on designs. In both the drafting and litigation stages, designers are burdened with the delicate task of distinguishing between expressive aspects that are protected and functional elements that are not.

7.2 Evidence and Enforcement Issues

According to recent empirical research conducted in Enugu State³⁸, 65% of architects reported some kind of copyright infringement, which is usually the unapproved copying of blueprints. And 60% of those architects reported financial losses as a result of said copyright infringement. This emphasises how prevalent copyright infringement is.

Among the main challenges of evidence issues are:

- a) Proof of Ownership: Although copyright is established automatically at the time of creation, copyright holders have the (voluntary) option to register with the Nigerian Copyright Commission (NCC). Despite the fact that this registration is unambiguous, acceptable proof of ownership of copyright, because it is voluntary, a lot of architects do not register

³⁷ Olubiyi (n12)

³⁸ Igwe AE and others, 'Copyright Infringement, a Menace to the Architectural Profession' (2025) 16 (2) *Journal of Environmental Management and Safety* 256 - 277

their works. And so, if dispute arises, proving copyright becomes more difficult.³⁹

b) Institutional Weakness: Institutional flaws and gaps in policy implementation within the regulatory bodies in charge of protecting intellectual property rights in architecture are among the biggest obstacles to efficient intellectual property enforcement. Ufuoma and Alloh⁴⁰ point out a number of serious problems in the NCC and other regulatory bodies organization, they are listed below:

- i. Limited Capacity and Resources at the NCC: Due to a serious lack of funding and personnel, the commission is unable to maximally perform important duties like processing registration applications, authenticating submissions, and pursuing enforcement measures against suspected infringers.
- ii. Limited Judicial Capacity and Expertise in IP Disputes: There are too many cases in the Nigerian court system, and there aren't enough judges with specialised knowledge of technical architecture and intellectual property matters. This lacuna usually leads to drawn-out legal battles and erratic rulings. These can increase ambiguity and lessen the motivation for designers to assert their rights.

³⁹ Lexology, 'Architectural Designs: Are they Copyrightable?'<<https://www.lexology.com/library/detail.aspx?g=a380f4b5-825f-4d85-b3bf-511bd2f9574a>> accessed 17 June 2025

⁴⁰ Ufuoma OM and Alloh BO, 'The Prospects/Shortcomings of the Nigerian Copyright Act 2022 with Regards to Criminal Liability for Copyright Infringement' (2024) 12 (6) *Global Journal of Politics and Law Research* 20 - 43

- iii. Inadequate Awareness and Public Sector Support: Among stakeholders, and this includes government regulators, policy makers, the legal community, and designers themselves, there is still a lack of knowledge regarding intellectual property rights and their importance for creative sectors, particularly architecture. This lack of awareness leads to low financial investment in intellectual property regimes, poor policy execution, and poor compliance.
- iv. Limited Technological Tools for Digital Protection: Section 43(1) of the Copyright Act prohibits circumventing any technical measures an author uses in order to protect their intellectual property. This can be interpreted to include the use of digital watermarking and imbedded meta data. These provisions are meant to protect emerging technological advances used in creative works. Unfortunately, there is an apparent lack of technical expertise and funding within the NCC and other regulatory bodies tasked with the implementation of these provisions. These inadequacies hamper their ability to monitor and prohibit digital infringement of architectural works.
- v. High Litigation Costs: One major obstacle to the enforcement of intellectual property rights in the architecture industry is how expensive litigation is. Architects, especially individual designers or small firms, are sometimes discouraged from pursuing legal action because of what it will cost them. the expense of obtaining technical experts, paying professional

witnesses, and navigating drawn-out court proceedings make litigation seem like it is not worth the effort. As a result, infringements go un-contested and legitimate claims do not get explored.⁴¹

c) Cross-border Infringement: Studies have highlighted the limitations and discrepancies in harmonizing IP enforcement across borders and as a result, architects may have serious challenges in safeguarding their creations against unlawful use or duplication of their works in international markets.⁴² For architects, cross-border infringement can be a big problem. this can happen when their designs and projects sometimes, maybe through thier clientele, spans across international borders. Where this type of infringement occurs, international enforcement of IP rights can become extremely difficult. Whether is due to navigating different legal systems, different levels of IP protection, and procedural difficulties, it is both a legal and practical headache.

8.0 Recommendations for Improvement of Architectural copyright protection in Nigeria.

Admittedly, the Copyright Act 2022 is a major step in the right direction toward enhancing intellectual property protection for creative works in Nigeria. that being said, there are still a number of legislative

⁴¹ Ufuoma OM and Alloh BO, 'The Prospects/Shortcomings of the Nigerian Copyright Act 2022 with Regards to Criminal Liability for Copyright Infringement' (2024) 12 (6) *Global Journal of Politics and Law Research* 20 - 43

⁴² Goldstein P, *International Intellectual Property* (Foundation 2001) 416–419

amendments and policy reforms that can help to further protect the rights of architects and architectural designers.

8.1 Capacity-Building for the Nigerian Copyright Commission (NCC)

Improving the NCC's operational capability is among the most pressing improvements. This can be accomplished by providing more funds and resources for expert personnel, equipment, and training. This will allow the commission to effectively manage a larger backlog of complaints and disputes while still registering and verifying new works.⁴³ Additionally, the commission should consider establishing specialist intellectual property sections to handle just architectural works and associated issues. such capacity-building initiatives can result in quicker case processing as well as increased trust in the commission's ability to defend intellectual property rights.

8.2 Establish Specialised Intellectual Property Benches in Nigerian Courts

The Federal High Court, which is currently vested with jurisdiction regarding IP law matters⁴⁴, should have specialist IP division (not at all dissimilar to Nigeria's Family Court which is a division of both the High Court and the Magistrate Court). This IP division will comprise of judges well-versed in intellectual property and its related, technical matters in order to facilitate thorough, expert resolution of intellectual property disputes. This strategy would increase the predictability of intellectual property litigation by reducing delays brought on by huge caseloads and improving the uniformity and depth of judgments. this would also

⁴³ Ufuoma and Alloh (n40)

⁴⁴ S 251(1)(f), Constitution of the Federal Republic of Nigeria, 1999 (as amended)

encourage more architectural practitioners to pursue court proceedings in order to enforce their copyrights.

8.3 Boost Awareness and Public Sector Support

The Nigerian Bar Association, Architectural Association of Nigeria, and policy makers can all play a role in boosting awareness and educating stakeholders about their rights and the ways they can enforce those rights. These organizations can, both collaboratively and on their own, organise awareness campaigns, workshops and training sessions. During these events, stakeholders can learn about their rights, the extent of those rights and their significance to their practice. They can also provide clarity on the provisions of the Copyright Act, alongside all other relevant laws. Such initiatives would help create a culture of information, compliance and respect for intellectual property and the rights it avails to its owners.

Furthermore, since our legal framework does not mandate the creation of digital databases for copyright verification, organizations like ARCON or the NCC itself can advocate for legal reforms that will make this part of Nigeria's law.

8.4 Implement Digital Tools and Databases

Technological innovations can aid regulatory bodies like NCC in protecting intellectual property and making its administration more effective. The fact that there is no official national registry or database specifically for architectural works is not a good sign. Establishing such a database of architectural works would provide a centralised platform for verification of authorship, ownership timelines, and original design authentication. A database like this would be very helpful in settling conflicts and discouraging infringement. furthermore, this database can be searchable and available to regulatory agencies, industry stakeholders, and potential

clients. These databases would promote trust in the origin of architectural designs, assist in preventing unintentional infringements, and enhance due diligence procedures. The architectural profession as a whole will enjoy greater accountability as a result.

8.5 Facilitate Cross-Border Cooperation and Dispute Resolution

In order to solve the growing number of cross-border intellectual property disputes in the architectural industries, Nigerian law makers should give priority to a more internationally integrated legal framework. Creating bilateral and multilateral agreements with other jurisdictions, like the US, the UK, and countries in Economic Community of West African States (ECOWAS) and the African Continental Free Trade Area (AfCFTA), would be a crucial tactic. The reciprocal recognition and enforcement of arbitral awards and judgments pertaining to intellectual property rights should be covered by these agreements. The jurisdictional and procedural barriers that frequently impede or delay the enforcement of rights internationally would be lessened through such collaboration. Implementing training and capacity-building initiatives for judges, regulators, and law enforcement personnel that is focused on IP law is also essential. The TRIPS Agreement, the Berne Convention, and other important regional treaties, which all make up the international IP legal framework should all be covered in these initiatives. Private international law principles like jurisdiction, applicable law, and recognition of foreign judgments should definitely be covered as well. Developing this knowledge will guarantee that the enforcement agencies and the judiciary are prepared to manage complicated cross-border conflicts involving foreign parties or violations committed abroad.

In conclusion, while the Nigerian framework for intellectual property protection in architecture is forward-thinking and growing, much can be learned from comparative jurisdictions. If these recommendations are implemented, they would significantly improve the scope of architectural copyright protection, strengthen creativity and innovation in the industry, facilitate quicker and more effective dispute resolution, improve general architectural practice and deter infringements. All round, Nigeria intellectual property system can become more robust and equitable, locally and internationally.

AJLR(2025) Vol.3, No.2