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Literary Work and Enforcement of Copyright in Nigeria*

Abstract

Creativity is one important gift with which man is endowed. It enhances man's reputation, honour, and socio-economic upward mobility. Yet creativity is man's private intellectual property that needs to be adequately protected. Literary works, among others, constitute instances of such property. This paper seeks to critically examine the criteria and grounds for eligibility of literary works that will qualify for protection under the Copyright Act. It analyses the mode of acquisition, ownership, transfer, life span, infringement, and enforceability of copyrights on literary works. This paper equally harps on the dire need and better ways of enforcing these important rights in Nigeria today.

1. Introduction

Law permeates every stratum of human life. Being an instrument of social control and engineering, law exists for a right ordering of human society. Thus, authors' literary creativity together with all intangible and incorporeal rights attached thereto is a subject of protection by the law. In Nigeria, the Copyright Act, cap C 28, Laws of the Federation of Nigeria, 2004 provides for the copyrights enjoyed by individual authors on their respective literary works, *inter alia*, and their attendant enforceability. The paper is quite aware that literary works constitute only a part of the body of copyrightable works in addition to the rights attached to other aspects of intellectual property. Yet it is particularly concerned with literary works because of the importance of literature in nation building.

The significance of this paper lies in the fact of its relevance in the face of widespread infringement on authors' copyrights in their works

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especially in this era of globalization and information explosion. Hence, cases abound of piracy and plagiarism with the attendant socio-economic losses to the creators. Yet challenges are myriad militating against genuine enforcement of copyright in Nigeria ranging from poor technological advancement, low literacy, poverty, lack of awareness in relation to copyright issues and enforcement, and so on. This paper therefore intends to expose the relevant copyright law and recommend the way forward.

2. Analysis of Key Terms

For a better understanding of our subject matter, it may be *apropos* to analyze, albeit briefly, the basic concepts that are employed in our discourse. Such concepts include 'intellectual property', 'copyright', 'literary works' and 'Copyright Act'. This is all the more necessary for some of these terms have over the years acquired technical connotations.

2.1 Intellectual Property

The expression 'intellectual property' is made up of the two words 'intellectual' and 'property'. Chambers Encyclopedia English Dictionary[1] describes 'intellectual' as "of, involving, or appealing to the intellect". Suffice it then to say that 'intellectual' means pertaining or belonging to one's mind, thinking, reasoning, or understanding. On the other hand, the term 'property' is of Latin *etymol* deriving from *'proprius-a-um'* meaning "what one owns". That is to say, something special, particular, peculiar to oneself or evolving from that person. Hence, the Latin adjective, *proprie*, means "exclusively for oneself". This is surely the origin of another English word, *proper*, which means belonging to, suitable or appropriate to something or somebody.[2] The expression 'intellectual property' will therefore denote the products of one's intellectual genius.

However that may be, the learned authors, Jeremy Philips and Alison Firth[3] observe that 'intellectual property' is viewed in two senses: colloquial and legal. Colloquially, it connotes all those things that

1. R. Allen (ed.), Chambers Encyclopedic English Dictionary, Edinburgh: Chambers Larouse Plc, 1994, p. 647.
2. D. P. Simpson (ed.), Cassell's New Latin- English English-Latin Dictionary, London: Cassell & Company Ltd., 1959, p. 482.
3. J. Philips & A. Firth, Introduction to Intellectual Property Law (2nd ed.), London: Butherworths, 1990, p. 3.

emanate from the exercise of human brain such as ideas, inventions, poems, designs, microcomputers and Mickey mouse. Legally however, intellectual property focuses specifically on rights that are enjoyed in the product of the mind rather upon that product *per se*. According to Ozioko, "in legal terms, we call a piece of land or a painting or a motor car 'property' not because it is a solid, physical thing in itself but because individuals or legal entities can assert a right in it against some or all other persons".[4] Therefore, intellectual property comprises the legal rights that may be asserted in respect of the product of the human intellect. Examples of such rights include the right of an author of a literary work to exclude anybody or everybody from reproducing, publishing, selling, or copying that work. This type of right can equally be attached to a musical, artistic, cinematographic works, sound recording and broadcast. The rights attached to the invention of trade mark, patents and designs are also quite illustrative of ones intellectual property. Each of these rights has been a subject of positive legislation in Nigeria.[5] One common denominator of these rights is that they are paradoxically invisible, intangible and incorporeal. Yet, they are created or inherited which some may enjoy and from which others will be eternally bared.[6]

Interest in the protection of intellectual property has so grown that it carves for itself a separate branch of law, namely Intellectual Property Law, an autonomy it did not have when it was a part of Commercial and Property Law. There is no doubt that the underlying rationale for this growing interest is that proper remuneration and socio-economic security should properly accrue to the individual creators of intellectual property, rights of which are today easily prone to violation by others as a result of rapid growth in science and technology.[7]

2.2 Copyrights

It may be scandalous that the Copyright Act itself does not give an adequate definition of the term 'copyright'. All it says in its

4. M.V.C Ozioko "International Law and the Protection of Intellectual Property Rights: Present Rrealties and Future Challenges" in Unizik Law Journal, vol. 4 No. 1, 2004, p. 137..
5. See Copyright Act, Cap. C28, L.F.N, 2004, Trade Marks Act, Cap T13, L.F.N. 204; Patent and Design Act, Cap P2 L.F.N. 2004.
6. J. Philip & A. Firth, Op. Cit, p.vii.
7. With the invention of the printing press, information technology superhighway, photoduplicating machines, computers, electronic publishing, and other modern forms of information processing and transmission, more people now have access to knowledge and information and these have made easier the producing and copying of literary materials. See generally M.V.C. Ozioko, Art. Cit., p. 138.

law has come to illumine our understanding of the meaning of 'literary works'. Thus, the meaning of 'poetical work' may be extended to include nursery rhymes. In the same vein, 'textbooks' may encompass pamphlets, booklets or loose-bound publications while treatises may be extended to include research projects or theses. 'Directories' may be construed to include diaries and yearbooks, while dictionaries may accommodate concordances and commentaries. Similarly, 'biographies' surely envisage autobiographies and biodata,[15] where 'articles' will include interviews and translations. The meaning of 'lectures' may connote talks and papers. Besides, the Copyright Act does not make 'literary quality' a condition precedent for qualification as literary works. Hence, works like logarithm and statistical tables may come within the meaning of 'written tables'. In the same vein, examination papers,[16] pool coupons,[17] sales quotation forms,[18] sales catalogues,[19] telegraphic codes,[20] or selections made from earlier works may come under the shade of 'compilations' as literary works.

Moreover, the Copyright Act includes 'choreographic works' in the list of literary works. A choreographic work is defined as "a composition of movements for dancing or any other patterned succession of gestures mostly created to accompany music".[21] This simply means the arrangement of the music of a play or drama reduced to writing.[22] Also *in tandem* with the computer age, the Copyright Act incorporates 'computer programmes' in the definition of 'literary works'. Section 39 (1) of the Act defines 'computer programme' as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result". 'Computer programmes' therefore comprises only the computer soft – wares (data, information or input) used for the operation of computer with a view to getting the requisite outputs. These certainly exclude the computer hardware that is mere mechanical equipment.

15. See Nisbet v. Golf Agency (1907) 23 T.L.R., 370.
16. See University of London Press v. University Tutorial Press (1916) 2 Ch. 601.
17. Ladbroke (football) Ltd v. Williamhill (football) Ltd (1964) 1 All ER 465.
18. Industrial Furnaces Ltd v. Reaves (1970) R.P.C., 605.
19. Davis v. Benjamin (1906) 2Ch. 491.
20. Anderson v. Lieber (1917) 2 K.B. 649.
21. Section 39 (1) of the Act.
22. Tate v. Thomas (1921) 1 Ch. 503.

2.4 Copyright Act

The phrase 'Copyright Act' is not without equivocation. This is because several legislations on the subject matter have come under the title 'Copyright Act'. Without going into its historical imperial antecedents, the first autochthonous legislation on this issue, namely, Copyright Decree 1970 was later christened Copyright Act 1970. Due to its inadequacies, the Federal Military Government amended this to become a Copyright Decree 1988. During the collection of the laws of the federation in 1990, the Copyright Decree as further amended became cap 68 and assumed the name Copyright Act, 1990. On further rearrangement in 2004 of the laws of Nigeria, albeit, alphabetically, the Copyright Act took on the appellation Copyright Act, Cap C28, Laws of the Federation of Nigeria, 2004. This is *in pari materia* with and follows *ipsissima verba* the provisions of the 1990 Act. However, it is the 2004 Act that is in use in the present discourse. Hereinafter, it will be referred to as 'the Act'.

3. Grounds of Eligibility for Protection of Literary Works

It is not to all literary works that copyrights attach. For a literary work to wear the garb of protectability, such works must pass certain tests that constitute the criteria for eligibility for copyright protection. Both the Act and case law are *ad idem* in adumbrating the following criteria:

3.1 Originality

Originality is a special criterion for eligibly of literary, musical and artistic works among other protectable works. Section 1(2) (a) of the Act provides that "A literary, musical or artistic work shall not be eligible for copyright unless sufficient effort has been expended on making the work to give it original character". By express mention of these works, it would seem that other protectable works like cinematographic films, sound recordings and broadcasts are excluded from the demands of originality (*expressio unus est exclusio alterius*). However, our discussion on this issue would pivot around literary works alone.

Unfortunately, the Act does not define 'originality'. But Charlesworth Mercantile Law Dictionary[23] defines it to mean that "the work must be

23. 14th ed., p. 627.

the product of the independent skill and labour of the author and must not have been slavishly copied or derived from some pre-existing work". This definition received a judicial blessing in **Ladbroke (Football) Ltd v. Williamhill (Football)[24] Ltd** where the court held that to determine whether a work is seized with the originality required by the English Act which is on all fours on this criterion with our own Act, it would be trite to take into account the considerable skill, judgment and labour expended by the author on the work. Note however should be taken that the intendment of the Act is not that copyright relates to the ideas themselves. No! It is only to the *expression* of those ideas. The originality required is the originality of expression and not that of the ideas expressed.[25]

Be that as it may, the originality in question is not to be understood in absolute terms. Thus it has been decided by the courts that the fact that a literary work contains portions derived from pre-existing work does not, *ipso facto*, foreclose it from copyright protection. Copyright would certainly inure once it is proved that a sufficient independent skill, labour or judgement has been expended on the literary work. Similarly, a literary work that contains some unoriginal matters may, nonetheless, be subject of copyright. In **Warwick Film Productions Ltd v. Eisinger & Ors**,[26] the plaintiff company claimed to be the exclusive licencee of the copyright in a book titled "*The Trials of Oscar Wilde*" and also to be entitled to rights in an anonymous book called "*Oscar Wilde: Three Times Tried*".

In dismissing the action, the court held that while both books contain much 'unoriginal matters", they were both literary works in their own rights and ones in which copyright subsisted. In the same vein, a literary work is not disqualified from protection merely because it derived from an existing work that did not enjoy copyright protection. This issue was judicially considered and stamped in **Macmillan & Co Ltd v. Cooper** [27] in which a publication consisting of reprint of passages selected for use in schools from a work that in itself did not

24. (1964) 1 All E.R. 465.
25. See University of London Press v. University Tutorial Press (supra).
26. (1969) 1 Ch. 508.
27. (1923) 40 T.L.R., 186.

enjoy copyright was adjudged entitled to copyright. In all these instances, the paramount facts guiding the court would consist in whether or not there is a considerable degree of independent labour, literary skill, sound judgement, and scientific knowledge spent on the work. It is quite immaterial, as section 1 (4) of the Act provides, that the literary work in question is itself an infringement of copyright in some other work. It is based on this ground of the degree of independent labour that a mere copyist or an amanuensis who takes down *verbatim ad literatim* the language of an author without more is held by the courts as not being an owner of the copyright on the resulted literary works.[28]

However, it has to be noted that the quantum of skill, labour and judgement required to invest a work with copyright is not of any mathematical precision. It is all a matter of fact garnered from the peculiar circumstances of each case. But no matter the amount of skill or judgement involved, copyright may not inure in the 'title' of a literary work. This is anchored on the Herculean task of having to prove the originality and peculiarity of the title.[29]

3.2 Fixation

Just as originality, fixation is a special criterion of eligibility for protection that is demanded of literary, musical and artistic works alone. As we are concerned with only literary works, the Act in section 1 (2) (b) requires that for a literary works, to be imbued with copyright, there must be an "evidence that the work has been fixed in any definite medium of expression now 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". In this case, the literary ideas must have been committed to a paper, a slate, a board, a wall, on the ground, etc. This principle of fixation, no doubt, further consolidates the fact the copyright subsists in expression of ideas rather than ideas *per se* as enunciated by Lord Farwell, J in **Donohue v. Allied Newspapers Ltd**.[30] Certainly the jurisprudence subterranean to the requirement of fixation is largely evidentiary and of probative value.

28. Donoghue v. Allied Newspapers Ltd (1938) Ch. 109.
29. See I. M. Olueze, Op. Cit., p. 29. But see also Brommel v. Meyer (1913) 29 T.L.R. 148.
30. Supra.

The difficulty encountered by an author who has not fixed his ideas to a definite medium to lift the burden of proof (onus probandi) that his work has been reproduced or otherwise communicated with regard to copyright litigation can only be imagined. Besides, one cannot, without observing the fixation principle, conceive of a 'literary work' in the first place.

3.3 Author's Citizenship of, or Domicile in Nigeria

This is colloquially referred to as "author connection". This is one of the general criteria for protection of every eligible copyrightable work. By virtue of section 2(1) of the Act, "copyright is conferred on every eligible work of which the author or, in the case of a work of joint authorship, any of the authors is at the material time the work was made a 'qualified person'". Paragraph (a) & (b) of the same subsection adumbrates the qualified person. He is either (a) an individual who is a citizen of, or is domiciled in Nigeria; or (b) a body corporate incorporated by or under the laws of Nigeria. Under this dispensation, three conditions, read albeit disjunctively, are necessary for the conferment of copyright. They are (i) citizenship; (ii) domicile; or (iii) corporate status.

The idea of citizenship everywhere is a matter of legislation. In Nigeria, it is given a constitutional status. Chapter 3 of the Constitution of the Federal Republic of Nigeria, 1999 covering sections 25-32 thereof deals with citizenship. Thereunder, citizenship can be acquired by birth, registration, or regularization. A citizen of Nigeria for the purpose of the protection of his copyright need not be resident in Nigeria. It is sufficient that at the material time the literary work was created the author was endowed with Nigerian citizenship. Subsequent change or renunciation of his citizenship does not affect the copyright. Again, a person who is domiciled in Nigeria whether or not he is a citizen is a qualified person for the purpose of copyright. Domicility like citizenship is also an idea of law. One's domicile is the "place in which a man has his fixed and permanent home, and to which, whenever he is absent, he has the intention of returning"[31] (animus

31. See Mosley and Whiteley's Law Dictionary, 8th ed., p. 119.

revertendi). In other words, a person's domicile is that country in which he has or is deemed by law to have his permanent home.[32] Thus, two conditions must be satisfied for one to claim a place as his domicile: fixed and permanent home, and the person's intention to remain permanently there at (animus manendi). Acquiring a domicile can be by birth, choice, or operation of law. No doubt, the jurisprudence of domicile is based on the trite common law principle of individual freedom of choice of the legal system that will govern his domestic life. Care should however be taken not to confuse domicile with residence. Residence is a person's temporary home provided there is intention to return to his permanent home.[33] Hence, a foreigner who is only resident in Nigeria does not fall within the meaning of 'qualified person' under section 2 (1) of the Act.

Furthermore, a body corporate incorporated by or under the laws of Nigeria constitute the second limb of 'qualified person' under the Act. Statutory co-operations, registered companies, incorporated trustees, co-operation soles are quite illustrative of such a body corporate.

Finally, to utter a word on 'work of joint authorship', it may be enough to say that to constitute a work of that sort, the work must be produced by the collaboration of two or more authors wherein the contribution of each is inseparable from that of the other or others.[34] The collaboration must emanate from the collective efforts of the authors and not by mere co-incidence or improvement by one author with or without the nod of the other.[35] It is not however mandatory that each of the joint authors must qualify as 'qualified person' within the meaning of section 2(1) of the Act for a copyright to inure on the work of joint authorship. This is indicated by the expression "any of the authors" in the phraseology of the said subsection.

3.4 Connection of the Literary Work to Nigeria

Copyright on a literary work is not restricted to the issue of 'qualified

32. See Halsbury Statutes of England, 3rd ed., vol. 7, p. 131.
33. See R.v. St. Leonard Shoreditt (inhabitants) (1865) L.R.IQB. 21.
34. Section 39 (1) of the Act.
35. Levy v. Rutley (1871) L.R. 6 C P. 523.

person' under section 2(1) of the Act. Thus, even if one is not qualified under the said section, section 3(1)(a) thereof still goes further to bestow copyright on a literary work, if it is 'first published' in Nigeria. In this understanding, a literary work shall be ineligible for copyright protection if it was first published in a country other than Nigeria but subsequently published in Nigeria. However, the work, by virtue of section 39 (2) (c) of the Act would still be deemed first published in Nigeria if the two publications took place within a period of not more than thirty days. A work is said to have been published if copies of it have been made available and accessible to the public.[36] Again, where only a part of a work is published, in the first instance, section 39 (2)(b) of the Act states that that part should be treated as separate work

The issue of whether or not copyright inures on manuscripts and unpublished works has been a matter of controversy. The Act offers no definition of the term 'manuscript'. But in ordinary parlance, manuscript means the original document embodying a work whether written by hand or not. However, section 12(1) of the Act in which the word manuscript appears seems to confine the interest thereon only on the economic and pecuniary interests of the author. This is further reinforced by subsection (2) thereof, which deals only with rights to the sale of the original of such manuscript. With regard to unpublished works, the author in order to enjoy a copyright protection must prove that he is a 'qualified person' under section 2(1) of the Act.[37]

3.5 Relationship of the Work to Governmental or Institutional Framework

This criterion is also called 'government or official connection'. Copyright is conferred by section 4(1) of the Act on literary works made by or under the direction or control of the Government, a state authority or a prescribed international body. 'Government', as used here refers to the Federal Government while 'state authority' denotes State Government. Section 9(5) of the Act specifically confers copyright under this head on Government on behalf of Federal Republic of Nigeria, or in the state authority on behalf of the State in question, or in

36. Section 39 (2)(a) of the Act; Merchant Adventures Ltd v. M. Grew & Co. Ltd (1972) 1 Ch. 242.
37. See Merchant Adventures Ltd. V. M. Grew & Co. Ltd (Supra).

the international body concerned, and not in the author.

3.6 Reference to International Agreements

As part of her effort to meet up with her foreign policy objectives as enshrined in section 19 of her 1999 constitution, Nigeria belongs to many multilateral copyright treaties and international organizations. Some of these include Universal Copyright Convention of 1952, the Berne Convention of 1886, the Rome Convention of 1961, and the World Intellectual Property Organization, an agency of the United Nations founded in 1970. "A treaty", according to Article 2 of the Vienna Convention on the Law of Treaties of 1969, "is an agreement where two or more states establish or seek to establish a relationship between themselves governed by international law". The operating principle of treaties is based on the maxim "*pacta sunt servanda*" (parties to a treaty are bound by the pact they have entered into). But it is good to note at this juncture that in Nigeria there is a constitutional restriction with regard to the observance of treaties. Treaties entered into by Nigeria and other countries do not by mere conclusion thereof, have the force of law in Nigerian. By virtue of section 12(1) of the said constitution, a treaty must have been enacted into law by the National Assembly for it to assume the force of law.

Be that as it may, section 33 of the Act outlines the conditions for reciprocal extension of the provision of the Act to any country. Under the section, the country must first be a party to a treaty to which Nigeria is also a party. Secondly, the minister in charge of culture must be satisfied that the country in question provides for protection of copyright in works which are protected under Act. Then, the minister may by order in the Federal Gazette extend the application of the Act in respect of the literary works created by individuals who are citizens of or domiciled in that country, or by bodies cooperate establish by or under the laws of that country, or to literary works 'first published' in that country. Note that by the use of the word 'may', the minister enjoys discretion either to so extend the application of the Copyright Act thereto or not. It is pursuant to section 14 of the Copyright Decree 1970 which is *in pari materia* with section 33 of the present Act that the federal commissioner of Trade made the Copyright (Reciprocal Extension) Order 1972 which scheduled a number of specified

countries which are all parties to the Universal Copyright Convention 1952 to which Nigeria is also a party. This 1972 Order is saved under the Copyright Act, Cap C28 L.F.N. 2004 by virtue of section 40(3) and paragraph 3(3) of 5th schedule to the Act. This saving provision is also given a judicial blessing in **Liberty Records & Emi Records Ltd v. M.Y. Ow[illegible] Enterprises.**[38]

4. Ownership, Duration and Transmissibility of Copyright on Literary works

Ownership of a copyright is vested in the person with the right to control the doing of any of the restricted acts in relation to the copyright work. Ownership of copyright has nothing to do with registration. Registration is not required for a conferment of copyright in Nigeria. Conferment thereof is automatic upon the author's due compliance with the requirements set out in the Act.[39] It is equally noted that although ownership of copyright is not synonymous with authorship, as a general rule, ownership vests initially in the author subject however to certain exceptions that will be considered *anon*.

Section 9(1) of the Act vests ownership of copyright conferred under sections 2 and 3 in the author in the first instance. That is to say copyright on a literary work created by a Nigerian citizen, or one domiciled in Nigeria, or by a body corporate incorporated by or under the laws of Nigeria, or by virtue of the fact that the work was 'first published in Nigeria', is vested first and foremost in the author. Within this context, 'author' includes 'joint-authors'.[40]

The Act also holds at section 9(2) in respect of copyright in commissioned works and works made pursuant to the author's employment, that the ownership vests in the author in the first instance unless the contrary is stipulated in writing under the contract. Therefore, for ownership to vest in the commissioner of the work under

38. (Unreported) Suit No. FHC/L/116/86 delivered on 16/3/90.
39. This is contrasted with the position in some jurisdictions like the United States of America where copyright is registrable. See Wheaton v. Peters 33 US (8 Peters) 591 (1834). Note however that in Nigeria, by virtue of section 197(2)(i) of Company and Allied Matters Act, 1990, any change on a copyright or a licence under a copyright created by a company is registrable by the Corporate Affairs Commission.
40. The "survivor-take-all" (jus accrescendi) doctrine does not apply in the case of joint-authoship for the purpose of copyright. See the dictum of Lord Rowlatt, J. in Cescinsky v. George Rutledge & Sons Ltd (1916) 2KB. 325,330.

contract of service or apprenticeship, or the employer of the author, there must be a 'vesting clause' in the said contract. That can also be done in separate vesting agreement supplemental to the main contract. The idea of commission of a work presupposes that the person so commissioned to author the work is an independent contractor and that the commission is for consideration. Hence, it appears that in the case of an independent contractor, hired for valuable consideration, the ownership may vest in the hirer. This industrial attitude underscores the very important and traditional distinction between 'contract *of* service' and 'contract *for* service'.[41]

The Act makes, by virtue of section 9(3), a further special provision for literary works, among others, created by an author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship. By the provisions of the subsection, any copyright thereof vests, in the absence of any express agreement, in the said proprietor provided it is only in relation to Newspapers, magazine or 'similar periodical' which expression should always be interpreted *ejusdem generis*. But beside the proprietors' right to publication or the reproduction of the work, all other rights in the work belong to the author.[42] This is because such 'balance of copyright' belongs to the author as an independent contractor notwithstanding that he is under a contract of service or apprenticeship.[43] In the case of literary works made pursuant to the direction or control of the Government, a state authority or an international body, the ownership of copyright is vested, by combined provision of sections 4(1) and 9(5) of the Act, in the respective bodies.

But at this juncture, it may be good to ask a very important question. Does ownership of a copyright inure in perpetuity? What is the life span of a copyright on a literary work? This brings us to the question of duration of copyright. It is trite law that copyright does not inure in

41. The employer – employee relationship is that of contract of service, while the employment of an independent contractor is under contract for service. In Collins v. Hertfordshire County Council (1947) K.B. 598, 615, Lord Hilbrey said that in the latter case, the master can order or require what is to be done, while in the former, he can in addition require how it shall be done. See other cases like Cassidy v. Minister of Health (1951) 1 All E.R. 579; Stevenson, Jordan & Harrison Ltd v. Macdonald & Evans Ltd (1952) I T.L.R. 101, 111.
42. See Copinger & Skone James On Copyright, 10th ed, p. 124.
43. Byrene v. Statist Co (1914) IKB. 622.

perpetuity. Generally, copyright ceases to subsist in a work by effluxion of time. The respective durations of copyright granted to eligible works under the Act are set out in the first schedule to the Act. In the case of a literary work, the duration is the lifetime of the author and seventy years after the end of the year in which the author dies. With regard to the literary work created pursuant to the direction of the government or international body, the duration is fixed for seventy years after the end of the year in which the work was first published. This also applies to the case of an anonymous or pseudonymous literary work, that is to say, seventy years. If however the anonymity or pseudonymity leaves no doubt as to the identity of the author, the term shall be the lifetime of the author plus seventy years calculated from the end of the year the author dies. Whether or not the identity of the author of an anonymous or preudonymous work is known during his lifetime is immaterial for the computation of the term of copyright. Let it be noted, however, that on the expiration of those durations, the literary work goes into "public domain". The legal implication is that any person may use it, copy or publish it without any qualms.

Yet another important question to the asked is: Is this ownership of copyright transmissible in any way at all? The answer is yes and by three ways: assignment, testamentary disposition, and operation of law.[44] The Act in section 10(3) requires that in the case of assignment or exclusive licence, the transmission must be evidenced in writing. In the case of transmission by testamentary disposition, if a copyright owner makes a valid will, the devolution of his copyright will be governed by his will which is certainly ambulatory. Instances of transmission by way of operation of law include where the owner becomes bankrupt, dies intestate, vests his copyright on another by way of written contract, and by effluxion of time. In the case where the owner of a copyright is adjudged bankrupt by a court of competent jurisdiction, the copyright will be vested in the trustee of the estate of the bankrupt or official receiver. If the owner dies intestate, the copyright in his work devolves according to the rules of intestate succession, which may be statutory or customary depending on the deceased personal law. If it is by written vesting order, the copyright belongs to the person to whom it is vested,

44. Section 10(1) of the Act.

while in the case of effluxion of time, the copyright is consigned into public domain.

5. Infringement of Copyright on Literary works

Infringement of copyright takes place when anyone without the licence or authorization of the copyright owner, does or causes any other person to do any of the restricted or prohibited acts in relation to a copyright work. *Ex facie*, this presupposes that the alleged infringer not only copies the literary work even if not verbatim but also that there is a substantial objective similarity between the copyright work and the alleged infringing work. Thus, there must be a *causal* and not just *casual* connection between the two works. The issue of substantial similarity is a question of fact and it is immaterial whether or not the alleged infringer is aware that his act constitutes an infringement for *ignorantia juris non excusat* (ignorance of the law is not an excuse).

Under the copyright Act, infringement can be civil or criminal. Section 14(1) of the Act provides for civil infringement. Hence, one commits a crime when, without licence or authorization of the copyright owner, he does or causes anyone to do an act, the doing of which is controlled by copyright, or import or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy, or yet exhibits in public any article in respect of which copyright is infringed. Other instances of this infringement include the distribution by way of trade, offer for sale, hire or for any purpose prejudicial to the owner of the copyright, or to make or has in his possession the machines, equipment or contrivances used for the purpose of making infringed copies of the work.

Moreover, for the purpose of clarity, scholars classify civil infringement on literary works into primary and secondary. While the former consists in another person reproducing, publishing, performing, translating, distributing, communicating, or adapting a copyright work without the licence or authorization of the copyright owner (s.14(1)(a) of the Act), the latter occurs where one imports into Nigeria, exhibits in public, sales or hires, possesses infringing contrivances, permits performance in place of public entertainment, and performs to promote business or trade, any literary work on which a copyright inheres S.

14(1)(b-g).

On the other hand, some of the acts constituting civil infringement as outlined above have also been criminalized under the Act. That is to say, they now constitute offences against the State. By virtue of section 40(2) of the Act, these offences, formally enacted under sections 491, 492 and 493 of the Criminal Code and now repealed have been re-enacted in section 18 of the Act. Section 18(1) provides as follows:

Any person who:

(a) makes or causes to be made for sale, hire, or for the purposes of trade or business any infringing copy of a work in which copyright subsists; or

(b) imports or causes to be imported into Nigeria a copy of any work which if it had been made in Nigeria would be an infringing copy; or

(c) makes, causes to be made, or has in his possession, any...machine, equipment or contrivance for the purposes of making any infringing copy of any such work;

Is guilty of criminal infringement of copyright. Further, it shall be an offence under subsection (2) of section 18 for any person to:

(a) sell or let for hire or for the purposes of trade or business, expose or offer for sale, or hire any infringing copy in which copyright subsists; or
(b) distribute for the purpose of trade or business any infringing copy of any such work; or
(c) have in his possession other than for his private or domestic use any infringing copy of any such work, or
(d) have in his possession, sell or let for hire or distribution for the purposes of trade or business or expose or offer for sale or hire any copy of a work which if it had been in Nigeria would be an infringing copy.

A cursory look at the above provisions reveals that consent of copyright owner does not afford any defence for the alleged infringer since the

two subsections are quite silent about consent. The defendant can however rely on the fact that he did not know and had no reason to believe that a copy of such works is an infringing one. This is called the defence of innocent infringement.[45] However, consent by virtue of section 18(3) can be a complete defence from criminal liability if the infringement of copyright on a literary work is by distributing to the public for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement. The difference in the copies of works mentioned in subsections 1 and 2 on the one hand, and subjection 3 on the other hand is that while the former is already an infringing copy, the latter is an original copy. But in both scenarios, both the natural and corporate persons can either be guilty. By virtue of section 24 of the Act, action for both civil and criminal infringement can be taken simultaneously.

6. Remedies and Redress of Copyright Infringements of literary works

There is no gainsaying that in spite of the increasing interest in intellectual property within the field of legal studies, the lay man in Nigeria is least concerned with the infringement on the copyrights attached to his literary work. This is evident from the fact that most of the case law cited in this area is foreign. Yet the socio-economic effect on the authors of literary works in the face of numerous instances of plagiarism is quite enormous. The reason for this may range from lack of awareness, insufficiency of financial resources to seek redress in court, to general delay by or lack of trust on Nigerian judiciary. Be that as it may, the need for the enforcement of one's copyright on his literary work is quite urgent in view of the importance of literary creativity and socio-economic implications not only on the author but also on national development generally.

The copyright law in Nigeria makes copious provisions for remedies and enforcement of copyrights. Copyrights infringements attract civil remedies as well as penal sanctions. By section 38 of the Act pursuant to section 25 (1)(f) of 1999 constitution, the Federal High Court is

45. Cf. I. M. Olueze, Op. Cit, p. 110.

conferred with the exclusive jurisdiction to try copyright offences and disputes.

Therefore, anyone who is the owner, the assignee, or the exclusive licencee of a copyright may approach the Federal High Court for the enforcement of his rights and consequent remedies. Some of these remedies include the following.

6.1 Damages

These constitute the monetary satisfaction awarded by the court to the plaintiff for the financial loss occasioned by the infringement of his copyright by the defendant. No doubt, the primary reason for the award of damages in this regard is to discourage the appropriation of the socio-economic proceeds from the literary work on one person by another. In this understanding, the court is guided by the principle of restoring the plaintiff as much as practicable to the position he would have been but for the infringement (*restitutio integrum*).

6.2 Injunction

Blacks' Law Dictionary defines an injunction "as court order commanding or preventing an action".[46] In this case, injunction, either interim or interlocutory, is aimed at preventing or stopping the infringement and maintaining the *status quo* pending trial. Subject to relevant conditions for granting of injunction and certain exceptions to infringement under the Act, an injunction will readily be granted in cases where the plaintiff's copyright has been infringed even though no peculiar damage is occasioned.

6.3 Stoppage *in Transitu*

This concerns infringement by importation *inter alia*. A copyright owner, on hearing that infringing copies of his works are pending arrival at a named port, may apply to the court to stop the consignment of the infringing copies *in transitu*. Stoppage *in transitu* is only a remedy *in limine*. For it to be effectual, it must be accompanied by other reliefs such as claims for conversion, delivery up, inspection and seizure, etc.

46. B. A Garner, (ed.) Op. Cit. p. 788.

6.4 Anton Piller Order

This is a special type of injunction enunciated in the English case of **Anton Piller KG v. Manufacturing Processes Ltd & Ors,**[47] and provided for in section 22(1) of the Nigerian Act. It is a relief or order given to the plaintiff to enter a house or premise at any reasonable time of the day accompanied by a senior police officer to seize, detain and preserve any infringing copies or contrivance, and inspect all or any document in custody or under the control of the defendant relating to the action. This order can be given only if there is a reasonable cause for suspecting that there is in that house or premise any infringing copy or contrivance intended to be used for making infringing copies, or capable of being used for the purposes of making copies in relation to which any infringement under the Act has been committed.

6.5 Account of Profit

By section 15(1) of the Act, the plaintiff may ask the court to order the defendant to account for profit accruing from his invasion of the plaintiff's copyright. By this order, the court takes away from the infringer all the profits he has made by his infringement and gives same to the plaintiff as compensation *in debito justitiae*.[48]

Apart from the above civil remedies, it is good to note that in view of the constant need to discourage infringement on people's copyright, the legislative attitude is always to provide for conversion and moral rights that should attach to copyright owners. Thus, section 16 of the Act states, among other things, that all infringing copies, machines, equipment or contrivances used or intended to be used for the production of infringing copies "shall be deemed to be the property of" the owner, assignee or exclusive licencee as the case may be.

Similarly, the Act guarantees the protection of the author's rights of personality and protection from prejudice to his honour or reputation. It is for this reason that section 1 thereof safeguards the author's perpetual, inalienable and imprescriptible right to claim authorship of his literary work. This is also called a moral right that is *dehors* the

47. (1976) 1 Ch. 55.
48. See Colburn v. Simms (1843) Ha. 543, 560. See also the Nigerian case of Plateau Publishing Co Ltd & Ors v. Chie Chuks Adophy (1986) 4 NWLR (pt 34), Pp 224-225.

economic right in the work and inures even after the author has ceased to be the copyright owner.

Finally, in case of actions for criminal infringement, section 18 of the Act has provided for penal sanctions ranging from fines, imprisonment, destruction, or delivery up of infringing copies and contrivances to the copyright owner. Again, to curb the excesses of erring publishers, printers, producer and manufacturers of works subject to copyright control, section 13 of the Act asks publishers and printers, in the case of literary works, to make entries with regard to the name of the author, the title, year of publication and quantity of the work produced. False information with regard to these entries attracts, by the provision of section 20 of the Act, a fine not exceeding N10, 000.00.

7. Conclusion

It is a matter of fact that author's copyright on their literary works should enjoy protection. Where this protection is lacking, the socio-economic and moral incentives to undertake the important task of writing will be at its low ebb. Yet writing and literature generally are indispensable for the development of any nation. The articulation of culture, the graphic presentation of history, the systematization and shaping of attitude and indeed proper education of a people are always achieved through literature and literary works among other factors.

Therefore the need for proper protection of copyrights on literary works cannot be overstated in a developing country like Nigeria. The Nigerian law fortunately does not lose sight of this urgent need. In the course of this paper, we have tried to briefly and simply delineate the provision of the Copyright Act on the issue of copyright on literary works. Yet, in the light of the present computer realities and possible future challenges, some of the aspects of the Nigerian copyright law still need to be reviewed.

For instance, in view of the transient mobility of authors nowadays as a result of globalization and ease of transportation, it is suggested that residence be incorporated in the interpretation of 'qualified persons' under section 2(1) of the Act. Accordingly, an individual who is neither

a Nigerian citizen nor domiciled in Nigeria, but had had habitual residence in Nigeria may for the purposes of protection of the copyright on his literary work be included as a 'qualified person'.

Furthermore, with the emergence of cyber technology and the Internet, the consumer in a very consumerist posture now has almost an unlimited access to many copyright materials at the lowest possible cost and in many cases even free access.[49] This changing global arrangement has certainly encouraged and become leverage for piracy even on the worldwide scale. It is therefore necessary that in the face of these novel literary organogramme, a corresponding new legal regime should be inaugurated to tackle the possible legal fallouts with regard to copyright matters.

Again, the Nigerian statutory provisions on copyright need to be further tightened. Can it really be imagined in a country that hopes to compete with the developed nations vide vision 20:2020 that there are no clearly spelt out statutory remedies for infringement on authors' copyrights. The above stated remedies are mere common law remedies. Further, the concept of fair dealing has to be defined and refined in order to eliminate ambiguities in relation thereto.

It also goes without saying that the government should properly fund the Copyright Commission to enable it discharge its important role in a country that is bedeviled with corruption and general lack of sense of honesty.

Proper awareness should also be created in the citizens of the issues in copyright. This can be done through advertisement in the media, organizing seminars, symposia, conferences, workshops, and publication of books and journal articles in the area of copyright law.[50] People should equally be encouraged to marry their knowledge with the courage to enforce their copyrights.

49. M. Elsmore, Intellectual Property Right within the International Community <http://www.solent.ac.uk.
50. C.C. Nwabachili, "The Challenges Affecting the Protection of Copyright in Nigeria", Benin Journal of Public Law, vol.5-7, 2007-2009, p.126.

It is hoped that the ongoing legal reform in Nigeria will consolidate the highly cherished aspects of the copyright law and take into adequate consideration the problems raised in this paper in relation to literary works.