**SOURCES OF NIGERIAN LAW**

**COURSE CODE:CPE 505**

**COURSE TITLE: ENGINEERING LAW**

**NUMBER OF UNITS: 2 Units**

**COURSE DURATION: 2 hours per week.**

**COURSE LECTURER:**

**TOPIC: INTELLECTUAL PROPERTY LAW**

**INTENDED LEARNING OUTCOMES**

At the completion of this topic, students are expected to:

1. Know the ambits of intellectual property law

2. Know copyright .

a. know Trade marks

i. know Patent

ii. know industrial designs

iii. Know the demedies that are applicable to thee four ambits

**COURSE DETAILS:**

***Week4: know the remedies available the intellectual property***

*General review of the topics and posers*

**RESOURCES**

**Lecture time:**

Tuesday 10:00 am-12:00 noon.

 Essay on Intellectual Property by J.O. Odion

 Intellectual Property, the Law and Practice Of Copyright, Trade Marks, Patent and Industrial Designs in Nigeria by F.O. Babafemi

**INTELLECTUAL PROPERTY LAW**

Historical Overview.

Protection of intellectual property or ownership of exclusive right can be traced to eighteenth century when the notion that an author should have an exclusive copyright in his creation took a firm stand.

The stationer who are the forefathers of modern publishers, were the chief proponents of exclusive rights against copiers. Being the crown allies, they enjoyed protection against the importation of foreign books. The stationers were further granted a Company charter which gave them the power in addition to their supervisory power to search out and destroy books that were printed in contravention of the statute or proclamation.

The company was further enabled to organise a licensing system that required books that were printed in accordance with the statutes to be entered in the register. Despite its shortcomings and dethronement of the king, parliament refused to renew the licensing right. Hence they resorted to common law which was their only hope for definite substantive right and for effective procedure to enforce them and these were reflected in the Copyright Act of 1710.

INTRODUCTION.

The primary function of intellectual property is to protect the fruit of a person’s work from annexation. This protection relates to almost all facets of life, but in a country like Nigeria where intellectual theft still reigns supreme. Effective law is needed to combat the losses suffered by professionals who are the original owners of works.

Intellectual property law is sub divided into

1. Copyright
2. Trade marks
3. Patents
4. Industrial designs

**COPYRIGHT.**

Copyright is the right to prepare, produce and distribute ones intellectual work without hindrance from others. copyright is aimed at protecting the fruit of people’s intellectual sweat from undue exploitation by other people. The statute that regulates cr is the Copyright Act. Cap C28 Laws of the Federation 2004.

Copyright is another form of property right which falls under the ambit of intellectual property law its major aims it to give protection to the finest of human achievement. The protection of such right is aimed at preventing others from the unauthorised reproduction of an existing work. Lately the scope of copyright protection has been extended beyond the traditional protection of literary work sound recordings, films broadcast and artistic works to now include online resources such as download of software and ringtones, internet based materials are now also protected by copyright.

The rationale behind copyright is to discourage laziness which is evidence in copying and reproducing another person’s work hook line and sinker without making any reasonable input and to encourage diligence and talent. In the landmark case of **University of London Press Limited v. University Tutorial Press Limited**  it was held that what is protected is not the originality of ideals, but with the expression of thoughts in prints or in writing. The originality that is required is the expression of the thought.

S.1(1) of The Copyright Act further provides for works eligible for protection as follows:

1. Literary works.
2. Musical works.
3. Artistic works.
4. Cinematography film
5. Sound recording.
6. Broadcast.

It is not all works that are protected by cr. The category of works protected by cr are called eligible works and a work would not be eligible unless by virtue of S.1(2)

1. sufficient effort has been expended on making the work to give it its original character Offrey v. Chief S. O . Ola & ors the court held that cr would exist in a given product if the product is the result of some substantial or real expenditure of mental or physical energiesof the producer.
2. 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.
3. An artistic work would not be eligible for cr if at the time when the is made, it was intended by the author to be used as a model or pattern to be multiplied by any industrial process.
4. A work shall not be eligible for copyright by reason only that by the making of the work or the doing of any act in relation to the work involved an infringement of cr in some other work.

For a work to be deemed protected, there is a statutory duty imposed on the printers and publishers to keep register of works produced by them for authors.

There are certain features that are unique to copyright

1. Copyright is a choose in action because It is an intangible property.
2. The ownership right of copyright is conferred by statute.
3. Copyright as an intellectual property right is anchored on literary or artistic work of art.
4. Copyright of any work is of fixed duration.
5. The nature of enforcement of ownership right is civil procedure, based on the fact that it is private in nature.

**Duration of copy right works**

First schedule of the Copyright Act provides that in respect of literary, musical or artistic work other than photographs, cr in the work will expire in seventy years after the end of the year in which the author dies. However in respect of government or body corporate cr will expire seventy years after the end of the year in which the work was first published.

In the case of cinematograph films photographs the cr will expire fifty years after the end of the year in which the recording was first made while in the case of broadcast the cr will expire 50 years after the end of the year in which the broadcast first took place.

**Distinguishing copyright from other aspects of Intellectual property.**

Intellectual property has four ambits which are copyright, trademarks, industrial designs and patent they are all interwoven to the extent that the characteristic feature of one can be mistaken for that of the other

**Similarities**

1. They all refer to intangible rights which are only capable of protection by way of cause of action. That is the right of action in intellectual property may be described as a choose in action.
2. These right all protect the owner against such infringing acts like the reproduction of recording of existing work without the copyright owner’s authorization or license.

**Differences**

1. Copyright over an intellectual property needs not be registered while patent must be registered to earn the protection of law.
2. Copyright is for a fixed duration and will elapse by effluxion of time while patent is in perpetuity if not alienated by the donee of the patent
3. Copyright law protects works that have been put to a fixed form not an idea while patent is an exclusive right given to an inventor which guarantees him the exclusive right to use and exploit the industrial process he invented.
4. Copyright protects labour and skill used in the expression of ideas even though they are not entirely novel while patent protects an entirely novel idea.
5. As between copyright and industrial design, design is a sign or signal or a combination of colours which is intended by the maker to serve as a model for subsequent reproduction for the industrial process while copyright is a form of artistic work may be akin to design, they are however distinguishable on the ground of registration formality as well as duration offered by law.
6. For design to enjoy the protection of law, it must be novel or original whereas it is not same for copyright
7. As for trade mark and cr, a trademark is the identifying mark of a product by the manufacturer of the said product. A tm is only an insignia of identification of a product linking the product to the manufacturer. It is not anchored on originality and novelty. It in some respect similar to cr, the major difference between these two are however that while cr protects the expression of ideas, tm protects the sanctity of identified products by preventing third parties from reproducing the mark on a similar product. Registration is needed for tm.

**Eligible works**

It is not all creative works that the **Copy Rights Act** affords protections, eligible works are works of copyrights which the law protects.

**Section 1** provides for eligible works which are literary work, musical works, artistic works, cinematograph, sound recording, and broadcast. Despite the fact that protection has been afforded these class of works, it is important to they would not be eligible for copyright unless

1. Sufficient effort has been expended on making the work to give it an original character.
2. The work has been fixed in a 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 device or machine.

**Proprietorship of Cr:** refers to the ownership of the proprietary right to work covered by cr. Proprietorship status is acquired by virtue of either being the author of the work, originator or creator of the said work covered by cr.

**Authorship with reference to first publication.**

For literary, artistic or musical work, the first author is the person who creates the work

Cinematograph the first author is the person who makes arrangement for the production of the film

Sound recording the person who makes arrangement for the sound recording, however where the recording is for a musical work, the first author is the artist in whose name the music was produced.

For broadcast the ownership is vested on the media house or whoever made arrangement for the broadcast.

For there to be co authorship, there must be evidence that both authors worked together and the extent of their contribution in determining contribution depends on the facts and circumstances of each case.

Cr. Is a transferable specie of copy right it can be done to assignment, by license or by transmission by testamentary documents.

**Infringements of cr.**

**S 15 Copyright Act** Infringement of cr occurs where a person who does not have proprietary ownership of a work protected by cr acts without the authority or license of the cr owner in such a way that is conflicting with the exclusive right of the cr owner.

For cr infringement to be properly established in court, it must be proved that a substantial part of the work has been copied without the cr owners authority or license. It must also be proved that the violation was against the statutory intendment of S.2,3,& 10.

There are two types of infringement namely direct infr. and indirect infr. A direct infr occurs where a person who was not licenced or authorised directly does an act that tempers with the full enjoyment of the cr owner. While indirect infr. arises where a person deals with work that are products of direct infringement.

**Prohibited acts that constitute cr infrg**

1. The act of reproduction in any form
2. The principle of substantial copy
3. The act of publication
4. The act of translation of work
5. The act of public performance
6. The act of adaptation
7. The act of communication to the public through mass media
8. The act of distribution to the public for commercial use.

**Exceptions to the rule of cr infringement.**

To every general rule there is always an exception, so is there exception to the rule of cr infringement. That is to say that a person would not be held liable in the instances that would ordinarily be an infringement. Provided the persons act does not hurt the pecuniary interest of te cr, owner.

1. Research and private study
2. Photograph of works in public places
3. Educational usage
4. Use in judicial proceeding
5. Library and archives
6. Criticism and review
7. Reproduction in braille
8. reproduction for lawful broadcast
9. reproduction or use for public interest

**TRADE MARKS.**

Tm is a mark or a sign designed by a manufacturer or a distributor or a person doing any kind of business to give his product a distinctive or unique feature in order to differentiate it from other products especially his competitors. The major feature of tm is the uniqueness and distinctiveness of the design which over time becomes closely connected to the said product. Often time’s consumers use marks attributed to products as its nomenclature. A tm could comprise of designs, shapes, and colours.

Section 67 of Trade Marks Act defines tm as

Trade Marks means except in relation to a certification trade mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods, and some persons having the right either as proprietor or a registered user to use the mark, whether with or without any indication of the identity of that person, and means in relation to the certification trade mark, a mark registered or deemed to have been registered under section 43 of this Act.

From the definition above, it can be inferred that there are two parameters for identifying tm and they are

1. The existence of a product or services that arising from a course of business
2. The use of a mark for identifying the product and services.

**Registrable and non registrable marks**

**Tm** is invariably for special identification of a product through the unique mark of its proprietor like every intellectual property Trade Marks Act afford a proprietor the exclusive right to use or transfer of a product by registering its tm. The tm to be registered must be a word or combination of words, any sign or logo or even a signature provided the marks does no offend the provisions of tm

Meanwhile not all tm are registrable, because the law categorises some marks as not capable of being registered

1. Deceptive or scandalous marks
2. Scientific or chemical names
3. Identical or resembling tm
4. Nigeria coat of arm

The proprietorship of tm is based upon a successful registration of tm. Any person who presents application for registration of tm and it is successfully registered is the proprietor.

**PATENTS**

**A** patent is a right granted under the law to protect an invention that is novel or basically an improvement over some existing processes. The Patent and Designs Act grant patents to inventions that are novel and applicable to industrial application, it is not all such innovation that would be qualified for the grant of patent. For an invention to be patentable, it must meet the following conditions:

1. It must be new, resulting from inventive activity and its capable of industrial application.
2. It constitutes an improvement upon an patented invention and also its new, result from inventive activity and is capable of industrial design.

Novelty or originality of invention is fundamental to its being patentable. For an invention to be said to be novel the conditions bellows are important to note

1. Oral publication
2. Publication by documents
3. Prior use

**INDUSTRIAL DESIGNS**

Are elements or designs incorporated into mass-produced or goods that have different varieties to enhance their appearance or make them more attractive.

Designs have become the most distinguishing factor in influencing the choice of customers. By virtue of **section 12 of Patents and Designs Act** an industrial design consist of any combination of lines or colours or both or any three dimensional form, which if intended to be protected under the industrial design statute must be registered before the proprietor can lay claim to any benefit of protection offered by the law. This was the position as held in the case of **F.O. Ajibowo & co ltd v. Western textile mills ltd** where the court held that the scope of industrial design was construed to the effect that it is any combination of lines or colors or both and any three dimensional form which itself constitute the design.

The conditions for registration of industrial design is newness and it must not be contrary to public policy.

**Remedies**

**Injunction:** an injunction is a is a court order restraining a party from a suit from acting or doing things in a certain manner and a violation of an injunctive order is amounts to contempt of court which will result to summary trial.

An injunction could be interim, perpetual and interlocutory.in **Harman picture NV v. Osborne** the court ordered for interlocutory injunction so as to maintain to maintain the status quo and protect the plaintiffs’ property pending the final determination of the case.

**Damages:** the aim of damages is to compensate the plaintiffs for the loss he occasioned while the infringement lasted the remedy of damages is the monetary restoration of the plaintiff in the position he would have been before the infringer violated his cr. The award of damages is strictly punitive because the court more often award damages that are beyond compensation in cr. Matters in order to discourage the act. In **OLadipo Yemitan v. The Daily Times of Nigeria ltd** the court after awarding general damages still went ahead to award the sum of #15,000. as exemplary damages.

**Account of profit: an** award of account of profit would entitle the plaintiff to the profit made by the defendant in the course of infringing. This is as a result of the rule tha**t** an infringer should not unduly enrich himself to the detriment of the plaintiff.

**Delivery up:** in the cause of litigation, where the cr owner properly proves infringement, the court may order that all the infringing materials and the machines be delivered up to the court or better still destroyed depending on the fact and circumstances of each case. In **America Motion Pictures Export co v. Minnesota Nig ltd.**  The plaintiff had sought the delivery up of infringing materials which was granted by the court to prevent the cr violator from continuously benefiting from his wrong.

**Conversion right:** this remedy protects the cr owner from suffering huge loss by demanding that all the infringing copies of his work which are deemed his properties by virtue of the provisions of the act are returned back to him **Onojovwo v. Daily Times of Nigeria Ltd.** The defendants news magazine published the defendants article without his requisite consent, the court held that though thoughts and words were not capable of conversion, the article that contained the words and thought was capable of conversion hence conversionary right waSDR[s granted the plaintiff.