**HISTORICAL DEVELOPMENT OF INTELLECTUAL PROPERTY LAWS IN NIGERIA**

With a complex and fascinating history beginning in 500 BCE when Sybaris, a Greek city state made it possible for citizens to obtain a one year patent for creating new luxurious items to the more complicated legal framework seen today, intellectual property has no doubt been accepted as a very important part of the foundation of a successful economy. Over the years, the overarching justification given for the need to protect intellectual property has been to deter others from copying or taking unfair advantage of the work or reputation of another and provides remedies where such situation arises. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such literary and artistic works; discoveries and inventions; words, phrases, symbols, and designs.[[1]](#footnote-1) These works have been institutionally classified into three major headings: copyright, patents and trademarks, though historically they have developed independently until the 20th century.

This article seeks to examine the historical development of intellectual property laws in Nigeria as it is important to preserve our history and ability to track our legal development. Historically, there have been different stages in the development of intellectual property in Nigeria; the pre-colonial or the indigenous history, the classical period, incorporating colonial laws and post-independence period.[[2]](#footnote-2) There has been little to no evidence of a standardized form of intellectual property laws in pre-colonial African society. It has been asserted that the various cultures and traditional practices as expressed in folk songs, sculptures and paintings, designs, marks, woven cloths and textiles, excavations, traditional medical and herbal methods and other innovative practices, would have qualified for modern IP protection, recognized and protected under customary practices and beliefs.[[3]](#footnote-3) In this article we would focus on the development process during the colonial and post-colonial period.

**COPYRIGHT**

Nigeria’s Copyright history and development is deeply connected to that of the United Kingdom due to colonialism,[[4]](#footnote-4) therefore a discourse on the development of Copyright laws in Nigeria necessitates starting with the development of the law in England. The *Statute of Anne 1709* is regarded as the ‘magna carta’ of copyright law in England, as it is an important reference point to the legal expression of copyright and said to be the starting point of copy right law in common law jurisdictions. However, there has been earlier reference to copyright and it is widely accepted that the Declaration of King Diarmund, on the dispute between Finnanin and Columcille in Ireland in the 6th century brought about what is known as copyright.[[5]](#footnote-5) In this case, Finnanin accused Columcille of copying his bible and asked Columcille to return the copied job to him. Columcille pleaded in defense that nothing had been removed from the initial copy by the copy produced from the initial copy and therefore no wrong had been done. King Diarmundin resolving this dispute then proclaimed that “to every cow her calf; and to every book its copy”[[6]](#footnote-6). This occurrence marked the birth of what is going to be an important area of law as we have it today.

In England, the invention of the printing press in the 15th century necessitated the development of copyright law as a result of the need for legal regulation of the publishing of literary works. Although this period is referred to as the beginning of the standardized intellectual property law, the copyright law was in reality a censorship law. It was not about protecting the rights of authors, or encouraging them to produce new works. The English government merely wanted to control the works being produced by writers who were making materials deemed seditious by the government from becoming widely available and to control the flood of print matter. For this purpose, the English Crown found a formidable ally in the guild of “Stationers” with the censorship law, granting a charter to the stationers by the Crown in 1556,[[7]](#footnote-7) which made it unlawful to engage in the act of publishing without a license.

The Statute of Anne 1709 which took effect in 1710 granted sole right and liberty of printing books to authors and their assigns, but this right stems nonetheless from commercial exploitation rather than literary creation[[8]](#footnote-8) . The Act granted a life span of 14 years, subject to extension for another 14 years if the author was alive at the time of the first expiration[[9]](#footnote-9). The Copyright Act progressively evolved, extending the duration of protection and widening its scope to accommodate other types of work, including artistic, musical and dramatic works and sound recordings. These changes were incorporated into the *1911 Copyright Act*, which repealed most of the previous laws in existence and brought a harmonized legislation dealing with the different aspects of copyright. The application of the 1911 Copyright Act was extended to apply to the Protectorates of Northern and Southern Nigeria, by virtue of Order-in-Council (No 912) of 1912. It is significant to note that although a new Copyright Act was passed in England in 1956, Nigeria still continued to apply the 1911 Act until 1970, when the first indigenous Copyright Act was promulgated as Decree No. 61 of 1970, 10 years after independence by the General Yakubu Gowon led military government.

The decree was largely regarded as defective, as there was no efficient structure under the Decree in the region of administration and Copyright Licensing Panel as well. The decree only made provisions for civil suit in respect of enforcement of the copyright of an artist and criminal sanction was very minimal as the maximum penalty was from 5 Kobo to ₦10, per product seized, with a possible prison sentence of 2 months for a second offence[[10]](#footnote-10). In essence, enforcement was largely left in the hands of copyright owners. It was these lapses and more that led to the repeal of the 1970 Act, by the promulgation of the Copyright Act of 1988, which has, itself been amended by the Copyright (Amendment) Act (No 98) of 1992 and the Copyright (Amendment) Act (No 42) of 1999.

Copyright Act of 1988 (as amended) is the current legislation regulating copyrights in Nigeria. Influence was drawn from the World Intellectual Property Organization (WIPO) in the fashioning of the present Copyright Act making it an important development in the legislative effort to strengthen intellectual property protection in Nigeria. Under the Act, there is a body known as the Nigerian Copyright Commission with a board of directors, serving as the institutional framework for Nigerian copyright administration and regulation. While maintaining the civil enforcement system by individual right-holders, the Act provides for the licensing of Copyright Collective Societies on behalf of right-holders for the collective leadership and implementation of copyright. The 1988 Act is supplemented by a number of subsidiary legislations that covers diverse aspects of copyright law, administration and enforcement. Examples of such subsidiary legislations are the *Copyright (Reciprocal Extension) Order of 1972, Copyright (Levy on Materials) Order, 2012, Copyright (Collective Management Organizations) Regulations*, and so on. Nigeria is also a party to a number of conventions and treaties which bind her internationally; examples of such treaties are, the *Berne Convention for the Protection of Literary and Artistic Works 1886, the Rome Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organizations* and so on. Though, it is important to note that they lack domestic application due to the provisions of *Section 12 of the 1999 Constitution (as amended)*, which require domestication by the National assembly of the Federal Republic of Nigeria.

**TRADEMARK**

The first form of intellectual property protection ever introduced in Nigeria was relating to trademarks. The Trademark Proclamation of 1900 made applicable to the Southern Nigeria protectorate the United Kingdom Trademark Act 1888 and later to the whole colony upon amalgamation of the Northern and Southern Protectorates in 1914.[[11]](#footnote-11) The 1914 Ordinance replaced the application of the 1888 Act with the Trademark Ordinance No. 13 of 1926 to the whole of Nigeria with the aim of facilitating trade with the colonial power. The 1926 Ordinance was not repealed until 1965, five years after independence by the Trademark Act of 1965 thereby making it both the first indigenous intellectual property law in Nigeria and the first post-independence intellectual property law. It was not until about 5 years later that both the Patent and the then Copyright Acts came into force.

**PATENT**

Like the regulation of copyright and trademark before it, Nigeria’s patent laws development is traceable to the British patent regime, because of its historical colonial connection with Nigeria. Patent system was introduced to the Southern Protectorate through *Proclamation Ordinance of 1900* and extended to the Northern Protectorate in 1902.[[12]](#footnote-12) The Ordinance was subsequently repealed in 1916 by the *Patents Ordinance No. 30 of 1916*, applicable to the whole of Nigeria following the earlier 1914 amalgamation. The 1916 Ordinance was repealed 9 years later by the *Registration of UK Patent Ordinance of 1925*, which established a dependent patent regime by which patents granted in the UK were merely registered in Nigeria. This meant that the registration only conferred rights and privileges in Nigeria to the extent to which it was granted by the UK law with an extension to Nigeria.[[13]](#footnote-13) This reflected the lack of independence in the Nigerian patent law regime, as at that time. Thus, an inventor in Nigeria had to first apply to the UK’s Patent Office to be granted a patent for his invention before he could proceed to have it registered in Nigeria. In view of the inadequacies of the Ordinance, the Nigerian Government enacted the *Patents Rights (Limitation) Act No. 8 of 1968*, conferring on Nigerian government and its agencies powers and rights similar to those enjoyed by the UK Government under *Section 46 of the UK Act of 1949*. In 1970, the *Patents and Designs Act 1970* brought an end to the vestige of colonialism in the Nigerian patent system and repealed the aforementioned laws. The fact that the Patent Act has no substantive examination system, by which inventions are examined and granted has been one of the most persistent criticism of the Act. This apparently points to a continuation of the previous dependent patent system that was in operation a century ago, except that patents are now granted in Nigeria, no longer in the United Kingdom for extension to Nigeria. Still, with this the Patent Act is still the applicable patent law since 1970 without amendment or repeal to give way to a new regime which is needed to support the Nigerian drive towards economic development.

**CONCLUSION**

It is clear that intellectual property protection in Nigeria has a rich history, though like most part of our legal jurisprudence, it is heavily influenced by our colonial history. There has been controversy as to the legacy of the laws, as an International IP Index ranking done in 2017, by the U.S Chambers of Commerce Global and Intellectual Property Centre placed Nigeria at number 35 out of 45 countries, with regard to their strength of copyright protection.[[14]](#footnote-14) With the laws governing intellectual property in Nigeria, the question then becomes- what has made Nigerians so prone to copyright infringement? Numerous answers have been given for this, such as poverty, corruption, illiteracy, lack of understanding on the importance of protection of intellectual property, cultural factors that affect the view people have about the importance of a person’s intellectual property where people see creative work as adding little to no value to the economy to justify the rights claimed. This controversy led Cory Doctorow to state that beating copyright infringement in third world countries could be as simple as making products affordable.[[15]](#footnote-15) In light of the difficulties experienced by artistes in protecting their intellectual property, the issue of the effectiveness of the intellectual property laws comes into the spotlight.

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2. Adebambo Adewopo, “*According To Intellectual Property: A Pro-Development Vision Of The Law And The Nigerian Intellectual Property Law And Policy Reform In The Knowledge Era*”. Available at: <http://www.lalegalconsultants.com/ver1/wp-content/uploads/2017/07/NIALS-5th-Inaugural-Lecture.pdf> [↑](#footnote-ref-2)
3. Adebambo Adewopo, “*Nigerian Copyright System, Principles & Perspectives*”, Odade Publishing, 2012, 4-5. [↑](#footnote-ref-3)
4. Kunle Ola, “*Evolution and Future Trends of Copyright in Nigeria*” Available at: <https://ojs.law.cornell.edu/index.php/joal/article/download/26/38/> [↑](#footnote-ref-4)
5. Gurry Francis, “*Re-Thinking the Role of Intellectual Property*”, WIPO (2013) Available at: <https://www.wipo.int/export/sites/www/about-wipo/en/dgo/speeches/pdf/dg_speech_melbourne_2013.pdf> [↑](#footnote-ref-5)
6. Royal Irish Academy, MS 24, 25. See also, Thomas Cahill, How The Irish Saved Civilization, Anchor Books, Doubleday, New York, New York, 1995, p.14. 170. [↑](#footnote-ref-6)
7. K Fogel, “*The Surprising History of Copyright and the Promise of a Post-Copyright World*,” Available at: <https://questioncopyright.org/promise> [↑](#footnote-ref-7)
8. Ibid [↑](#footnote-ref-8)
9. Section 1 of the Statute of Anne, 8 Ann C. 19. [↑](#footnote-ref-9)
10. O.F.Babafemi, “*Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patents and Industrial, Designs in Nigeria”* (Ibadan: Justinian Books, 2006) p.5 [↑](#footnote-ref-10)
11. A. Zunia, “*Review of the Nigerian System of Intellectual Property*”, available at <<http://zunia.org/post/a-review-of-thenigerian-system-of-intellectual-property>> [↑](#footnote-ref-11)
12. Umar Abubakar Dubagari & KabiruGarba Muhammad “*Legal Regime Of Intellectual Property Rights Protection In Nigeria: An Appraisal*”, Journal of Political Science, Law and International Relations (JPSLIR) Vol. 1, Issue 1, Jun 2015, 13-26. Available at: http://www.tjprc.org/publishpapers/--1438951302-3.%20Political%20Sci%20-%20JPSLIR%20-%20LEGAL%20REGIME%20OF%20INTELLECTUAL%20PROPERTY.pdf [↑](#footnote-ref-12)
13. Adebambo Adewopo, “*According To Intellectual Property: A Pro-Development Vision Of The Law And The Nigerian Intellectual Property Law And Policy Reform In The Knowledge Era*”. Available at: <http://www.lalegalconsultants.com/ver1/wp-content/uploads/2017/07/NIALS-5th-Inaugural-Lecture.pdf> [↑](#footnote-ref-13)
14. Ufuoma Akpotaire, “*2017 International IP Index Nigeria ranked 35 out of 45 Countries*”, NIgerian Law Intellectual Property Watch, February 10th 2017. <https://www.nlipw.com/2017-international-ip-index-nigeria-ranked-35-45-countries/> [↑](#footnote-ref-14)
15. Cory Doctorow, “*Why Poor Countries Lead the World in Piracy*” The Guardian May 3rd 2011. <http://www.theguardian.com/technology/2011/may/03/why-poor-countries-lead-world-piracy> [↑](#footnote-ref-15)