

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to Study

The effectiveness of the prevailing regime in any given country that acts to protect Intellectual Property Rights (“IPR’s”) has become a vital factor investors consider before taking investment decisions. The reason for this is not far-fetched, every successful business is a direct and continuous product of innovations, ideas and technical skills and know-how. Furthermore, it is beyond doubt that marks either in the form of trademarks or service marks have evolved over the years, to become an integral part of an institution’s identity and ethos and it is believed that such marks add value to products.

In Nigeria, despite the existence of various legislation that protect the ownership of intellectual property rights from unlicensed exploitation, proprietors of intellectual property rights within the Nigerian system continue to face a myriad of challenges flowing from unlicensed usage of otherwise protected intellectual property rights. This has prompted a research to be undertaken for the purposes of expanding the frontiers of the law in this area.

Therefore, the purpose of this study is to engage in a holistic review of the major intellectual property regimes prevalent in Nigeria that seeks to protect IPR’s vis-à-vis the advancement in technology by which the ease of infringing on IPRs has increased over the years. From the onset, it is right to mention that the provisions regulating the creation, recognition and protection of IPR’s are not contained in a single legislation and as such it is imperative that persons with interest in the intellectual sub-sector of the Nigerian economy are seised with the fact of the existence of these laws, the protections afforded by such legislation and more importantly, the mandatory requirements stipulated under the law for such persons to comply with in order to enjoy the

protection offered by legislation. These regulatory regimes shall therefore be considered in the light of the internet as a tool for infringement of IPRs.

1.2 Statement of the Problem

Protection of intellectual properties is now considered imperative if a country is desirous of experiencing all round growth. This is because, innovations, ideas and resourcefulness are the propelling factors in the race towards a robust development of any country. The above mentioned are but bundles of synonyms for the expression intellectual property rights. It will be correct to posit that the development recorded by man starting from the industrial revolutions of the 18th Century up to the present ICT age are powered by acts of ingenuity by persons that applied their time and resources towards providing their societies with ground breaking innovations. It is imperative to state that these innovations are predicated on assurances that society will in turn recognise and appreciate their acts of ingenuity by granting them exclusive exploitation of their inventions albeit for a definite period. Indeed, Society has over time ensured such acts of ingenuity are appreciated by according wide range of protection to such inventions.

Within the context of the present discourse, it is submitted that the major factor that has militated against the rapid industrialization of Nigeria and indeed most African countries is traceable to a failed system of protection accorded to the efforts and resources employed by inventors. The most glaring of this failure is attributable to the internet. A cursory glance of today's society will reveal a tale of constant breach of intellectual property rights in the form of piracy, plagiarism, trademark infringements , patent infringement and the likes and same is brazenly carried out through the instrumentality of the internet. It is the writer's honest estimation that despite visible efforts made to ensure continued developments of other aspects of society, a system that accords little or no

protection to intellectual property rights brings to naught any such developmental efforts. Some of the identifiable lapses in the system that affords protection to intellectual properties includes:

- i. Inadequate legislative provisions that are largely archaic and have lost touch with recent developments, international best practices and realities that seeks to enthrone a qualitative system for the recognition and protection of intellectual property rights in Nigeria.
- ii. No well-defined procedure for determining when a breach of intellectual property right occurs and the absence of clearly defined and proactive procedures for ventilating a grievance.
- iii. Absence of a viable industry regulator that will help drive and promote the protection of the proprietary rights of owners of intellectual properties.
- iv. Little or inadequate ICT training for industry regulators, thus leading to a knowledge gap and inability to checkmate IPR violations through the internet
- v. Absence of budding civil society groups and pressure groups that will serve as catalyst and watchdogs against unsavoury practices that impacts on the intellectual property sub sector of the Nigerian economy.

A consequence of the above is the fact that there is widespread infraction of intellectual property rights. It is in light of the foregoing that the researcher poses the following questions which captures the problems of this study:

1. How effective is the regime that seeks to recognise and protect intellectual property rights in Nigeria?
2. Presently, is there a need to advance more protection to proprietors of intellectual property rights in Nigeria?

4. What remedies are available to proprietors of intellectual property rights in Nigeria in the event of a breach and are those remedies far reaching?
5. What impact will the WIPO model law have on the extant regime that governs the recognition and protection of intellectual property rights in Nigeria?

It is the researcher's honest estimation that a dispassionate consideration of the foregoing posers advances a platform for further discussions that will engender the much-needed reform of the Nigerian intellectual property regime.

1.3 Objective of Study

Every undertaking should have a purpose and this work is not an exception. The aims and objectives of this research is to examine the legal framework on available for the protection of intellectual property on the internet, and also consider the challenges faced in intellectual property protection due to the ease of accessibility of materials on the internet. Specifically, we shall:

- i. discuss the general framework that regulates and protects the proprietary rights in intellectual properties that currently exist in Nigeria. By so doing, the research aims to deduce the various underpinnings and shortfalls in the Nigerian regime that militates against an efficient and effective system of protection to proprietors of intellectual property rights in Nigeria.
- ii. engage in a holistic review of the potency of the protections that inures in favour of proprietors of intellectual property rights in Nigeria both under the various legislation and by the pronouncements of the courts of the land. This will allow for various deductions on the efficacy of such protections and the institutions established by law to advance the protections.
- iii. engage in a review of (i) the civil remedies that inure in benefit of proprietors of intellectual property rights in Nigeria in the event of a breach of a right; (ii) the criminal deterrence provided by law in the event of disregard for legislation that spells out punishments where a

breach happens and (iii) review of the various developments in intellectual property rights regulations and protection practices and the need for Nigeria to embrace developments identified. Ultimately, suggestions will be made with a view to ensuring an efficient process for the advancement, protection and preservation of the interest of proprietors of intellectual property rights in Nigeria.

- iv. Engage in a discussion and review of the machineries for redressing infringement of intellectual property rights vide the internet and the challenges encountered in protection of those rights in view of modern development in technology.
- v. Finally, and by way of comparative study of various models that protects intellectual property rights that obtains in more developed countries, including the **WIPO Model**. this study aims at advancing more robust protection of intellectual property works and advancing efficiency in the institution that by law is mandated to promote protection of intellectual property works.

1.4 Significance of Research

While it is given that there have been a a lot of works by authors on the protection of IPR, the significance of this research is that it undertakes a review of the present regime that regulates and accords protection (to proprietors of IPRs with particular focus on infringements perpetrated via the use of the internet or other modern technological devices. The research will ultimately conclude that there is an urgent need for reform in this area of our national life.

This work will definitely add value to the growing body of literature on intellectual law practice in Nigeria and more importantly lend a voice to ongoing discussions that proposes reforms in the Nigerian intellectual property sub sector of the Nigerian economy.

1.5 Delineation and Limitation of Research

This work focuses mainly on the legal regime that advances protection to proprietors of intellectual property rights in Nigeria and more importantly the efficacy of such protection that it seeks to advance vis-à-vis the internet. I am of the firm belief that intellectual property right protection is firmly rooted and recognised by the Constitution of the Federal Republic of Nigeria under Section 43. The provisions of the Copyrights Act, Trademarks Act and the Patents and Design Act are the core regulations that seeks to regulate intellectual property rights ownership and protection in Nigeria and shall be used as guideposts to evaluate the efficacy of the protections advanced proprietors of intellectual property rights in today's world.

Also in view of the researcher's intention to engage in a holistic comparative analysis of international best practices and developments in various jurisdictions, we shall engage in a review of the legislative regime that regulates and advances protection to proprietors of intellectual property rights in South Africa, the United States of America and the United Kingdom. we will also consider the WIPO on intellectual property protection.

The primary data to be employed include case laws and legislation. Whilst articles, law journals, newspapers, text books and the internet are the major secondary sources of this research.

However, limitations experienced during the research includes non-availability of research materials and recently decided cases bothering on intellectual property rights in Nigeria.

Also, having to combine my heavy demanding work schedule and the research coupled with being redeployed by my employers during the pendency of this research work was mentally and physically tasking.

1.6 Research Methodology

This essay is a review of the extant regime that protects the proprietary rights of owners/assignees of intellectual property rights in Nigeria. In conducting this research, I shall first attempt an understanding of the current regime that seeks to regulate and importantly accord protection to owners of intellectual property rights in Nigeria and this shall, in turn, inform the various findings and conclusions on the subject matter of the instant research.

In the course of this research, the services of the following institutions were visited and they include, the University of Benin Law Library, Rivers State University of Science and Technology Law Library, University of Lagos Law Library, private law firms, library and resources in Benin, Port Harcourt and Lagos State.

CHAPTER TWO

2.1 INTRODUCTION

Intellectual Property rights recognition and protection in Nigeria is governed by the following:

1. The Nigerian Constitution¹;
2. The Copyright Act²;
3. The Trademark Act³;
4. The Patents and Designs Act⁴;
5. The Common Law; and
6. Decisions of Superior Courts of Records.

It is also important to note that the activities of specialized professional bodies such as the Nigerian Law Intellectual Property Watch Inc.⁵ and the Intellectual Property Lawyers Association of Nigerian⁶ impact on intellectual property practice and procedure in Nigeria. The aforementioned associations through their activities, ensure that a continuous debate is engendered on the need to adequately develop a system that sufficiently recognizes and protects proprietary rights in intellectual properties.⁷

¹1999 Constitution of the Federal Republic of Nigeria

²Copyright Act CAP C28, LFN 2004

³Trademarks Act CAP T14, LFN 2004

⁴Patents And Designs Act CAP P2, LFN 2004

⁵<https://nlipw.com/about>. (accessed on 09/10/2017)

⁶www.iplan.org.ng (accessed on 09/10/2017)

⁷ The Nigerian Law Intellectual Property Watch has included as part of its mandate, promoting awareness about intellectual property rights and deepening discussion on the problem of counterfeiting in Sub-Saharan Africa, track the activities of regulatory institutions and other organisations that are geared towards promoting public health and safety, and deterring product counterfeiting in various jurisdictions. In recent times, the activities of these associations has engendered the promotion of a bill at the National Assembly by Senator Tawa-Umbi Wada which is titled “An Act to provide for the Establishment of the Industrial Property Commission to takeover the function of the Registration of Trademarks, Patents, Designs, Plant Varieties, Animal Breeders and Farmers Rights and Supervise the New Registries created under the Industrial Property Act. See www.Nass.gov.ng/document/download (accessed on 09/10/2017)

It is also pertinent to mention that concerted efforts are made by stakeholders in the intellectual property set up which is aimed at reviewing the laws regulating intellectual property recognition and protection in Nigeria. The Nigerian Law Intellectual Property Watch Inc⁸ and the Intellectual Property Lawyers Association of Nigerian have since lobbied and promoted a bill for consideration by the National Assembly, the Nigerian Intellectual Property Commission Bill, which is aimed at the modernization of both the Nigerian intellectual property legal and institutional framework. In summary, the bill seeks the promotion of effective and proactive frameworks for the recognition , protection, administration and regulation of the intellectual property regime in Nigeria etc.⁹

2.2 Historical Evolution of Intellectual Property Protection in Nigeria

Prior to the colonization of Nigeria by the English, there exist various system that allows for a pseudo recognition of propriety rights over inventions/crafts/artifacts etc. As rightly pointed out by a learned scholar, there are generally two main classes of laws employed to protect proprietary rights in intangible properties, which includes works of inventions. They Ire, royal decrees and taboos and protection of these rights Ire enforced in pre-colonial Nigeria by family, age groups, clan, kings, religious cults and guilds.¹⁰

The Nigerian legal framework for intellectual property recognition and protection is traceable to the efforts of the British Colonial government in 1862 through the instrumentality of the British Court system in the Colony of Lagos. Indeed, the first piece of legislation which seeks to promote the recognition and protection of proprietary rights in intellectual properties is the Trademark

⁸<https://nlipw.com/about>. (accessed on 09/10/2017)

⁹See Nwokocha U. Nigerian Intellectual Property: Overview of Developments and Practice; (2012 NIALS Journal of Intellectual Property @ p. 101

¹⁰Adewopo A., Intellectual Property Rights Protection and Legal Practice in Nigeria: Challenges and Prospects; Being paper delivered on August 27 2008 at the Business Law Session of the Nigerian Bar Association Conference held at the International Conference Center Abuja, p. 8.

Proclamation of 1900 by which the United Kingdom Trade Marks Act was made applicable to the then Protectorate of Southern Nigeria. Worthy of note is the fact that the said proclamation was only extended to the Northern Protectorate after the amalgamation of the Northern and Southern Protectorate in 1914.¹¹

As with the enunciation of the Trade Marks Law, Copyright recognition and protection was sired into Nigeria in 1912 by virtue of the Order in Council proclamation of 1912 which extended the application of the United Kingdom Copyrights Act 1911 to Nigeria. Furthermore, the regime that sets out to recognize and protect patentable discovery was ushered into the Nigerian legal hemisphere by virtue of the Patent Ordinance No. 17 and 27 of 1900 for the Southern Protectorate and the colony of Lagos respectively, whilst the applicable legislation in the Northern protectorate was the Patent Ordinance No. 12 of 1902. Upon amalgamation in 1914, the foregoing proclamations were replaced by the Patent Ordinance No. 30 of 1916 which was in turn replaced by the Registration of the United Kingdom Patent Ordinance No. 6 of 1925.

2.3 Framework for Intellectual Property Recognition and Protection in Nigeria

2.3.1 Introduction

Intellectual property recognition and protection, as already pointed out, is predicated on the provisions of the Copyrights Act, the Trade Marks Act and the Patents and Designs Act. It should be noted that Nigeria practices the depository system of intellectual property registration wherein no plausible effort is made by the regulatory agencies at the various registry to examine the substance of any application. If there is any such examination, it is as to form, i.e. the basic requirements/forms to be met before a right can be advanced in one's favour. The downside to this

¹¹For a detailed analysis of the evolution of the Nigerian intellectual property regime see J.O. Asein, Introduction to Nigerian Legal System, 2ndEdn, Lagos: Ababa Press Ltd, 2005, p. 245

is that a patent that is manifestly defective and ordinarily non-registrable owing to a likely infringement of an existing intellectual property right may be registered.

2.4 Underpinning the Framework for Intellectual Property Recognition and Protection in Nigeria

2.4.1 Recognition of intellectual property rights in Nigeria

Pursuant to the Copyrights Act, the Trade Marks Act and Patents and Designs Act respectively, there are clearly defined parameters for identifying and clothing an applicant seeking recognition. These parameters ensure that basic standards required to engender a uniform system of proprietary rights identification and recognition is maintained. It is imperative to mention that the court seised with the jurisdiction to entertain matters bordering on intellectual property recognition, infringement and all matters ancillary thereto in Nigeria is the Federal High Court¹²

2.4.2 Copyrights Act

As a preliminary to this discourse, it must be noted that the law does not mandate the registration of copyrights in Nigeria. The law only requires that publishers, printers, producers and manufacturers of works should keep records of all works produced by them showing the name of the author, title, year of publication and the quantity of the works produced. The Copyrights Act provides that copyright shall be conferred on every work eligible for copyright of which the author, or in the case of a joint authorship, any of the authors is at the time when the work is made is a qualified person, i.e. a citizen who is a citizen of Nigeria or domiciled in Nigeria; or a body corporate incorporated by or under the laws of Nigeria. It is apparent from the above that a Foreign Direct Investment (“FDI”) Investor, who has taken steps to incorporate a company or a going

¹²**Section 251** of the Constitution of the Federal Republic of Nigeria and **Section 7 (1) (f) of the Federal High Court Act CAP F12, LFN 2004** and the case of *Omnia (Nig.) Ltd v. Dyktrade Ltd* (2007) 15 NWLR (Pt. 1058) 576 SC

concern in Nigeria, is a qualified person on whom copyright on every work eligible for copyright can be conferred. Recourse can be made to the provisions of Section 1(1) of the Copyrights Act in identifying works eligible for copyright recognition and protection under the Act. The said Section 1(1) has spelt out the various categories of works that are eligible for statutory protection. They include

- i. Literary Works which includes computer programmes, essays, articles, letters, reports, memoranda, lectures, addresses and sermons.
- ii. Musical Works;
- iii. Artistic Works;
- iv. Sound Recordings; and
- v. Broadcast.¹³

Going forward, the Copyrights Act in section 1 (2) lays down the conditions that must be met before a work can be eligible for copyright protection and they are:

- i. sufficient effort has been expended in making the work to give it an original character; and
- ii. the work has been fixed in a definite medium of expression, now known or later to be developed.

Upon fulfilment of the above, an applicant's copyright over his work becomes recognized by law. Proprietary rights over copyrighted works in Literary, Musical and Artistic works other than photographs expires seventy years after the end of the year in which the author dies. If the author is a corporate body, seventy years after the end of the year in which it was first published.¹⁴ In the

¹³Section 1(1) of the Copyrights Act

¹⁴Section 2 of the Copyrights Act

case of cinematographic films, sound recording and photographs, the copyright shall subsist for fifty years after the recording was first made and fifty years after the shot was first taken in case of photographs. With respect to Broadcast works, the copyright will expire fifty years after the end of the year in which the broadcast first took place.

The Nigerian Copyright Commission (the Commission) is the regulatory body for copyright administration in Nigeria.¹⁵ The Commission is an agency of the Federal government under the Ministry of Trade, Commerce and Industry. In furtherance of its powers, the Commission establishes Collecting Societies which are authorized to collect dues, royalties and fees of Copyright owners of the particular specie of work for which they are set up. An example of this is the Musical Society of Nigeria which collects dues on behalf of their members for the use, license and assignment of their works.

It must be stated that the Act provides for Copyright Inspectors whose primary duty is the protection of copyright against infringement in Nigeria and prosecution of copyright infringers.

2.3.4 Trademarks Act

The Trade Marks Act¹⁶ (“TMA”) defines trademark as 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 person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person.¹⁷ A mark includes a device, brand, heading, label, ticket, name, signature, word, letter or any combination thereof. This accords with the reasoning of the court in the American case of *Hanover Star Miling*

¹⁵Section 30 of the Copyrights Act

¹⁶Cap T13, LFN 2004

¹⁷Section 67 Trademarks Act

*Co. v. Metcalfe*¹⁸ where it was held that the primary and proper function of trademark is to identify the origin or ownership of goods to which it is affixed. In *Society Bic S.A & Ors v. Cherzen Industries Ltd*¹⁹, the Honourable Justice Rhodes-Vivour JSC held that trademark is a distinctive mark of authenticity through which the product of a particular manufacturer may be distinguished from those of others by words, name, symbol or device.

It is important to note that the definition of trademark within the Nigerian context is restrictive in that it does not take into consideration the registration of services. Thus, the Trade Marks Act restricts applications for registration of trademark to 34 classes of goods. As a result of the gap created in the Trade Marks Act, the Minister of Commerce and Industry on April 19, 2007, exercising his powers under sections 42 and 45 of the Act, issued a regulation expanding the classification under the Fourth Schedule of the Trademarks Regulation covering 34 classes of goods to include service marks “according to the manner and structure” of the **Nice Classification**.

The **Nice Classification**, established by the Nice Agreement, 1957, is a system of classifying goods and services for the purpose of registering trademarks. It is updated every five years by a committee of experts in which all the contracting states are represented. The latest version (10th version) was updated January 1, 2012. The Nice Classification is based on a multilateral treaty (The Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks).

Most countries in the world employ the International Trademark Classification System. This system classifies trademarks in forty-five (45) broad categories of goods and services (thirty-four goods and eleven services). When filing a trademark application, you must identify which class

¹⁸240 US 403 (1916)

¹⁹ (2014) 2 SC (Pt. 2) pg. 57

or classes of goods or services you wish to cover and pay a separate filing fee for each class. Because the trademark office reviews each class of goods independently.

Furthermore, it is noteworthy to mention that Nigeria is party to the **Paris Convention for the Protection of Intellectual Property** (the “Convention”) and ratified same in 1963. **Article 4A(1)** of the Convention provides that any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority provided that with respect to patents, he files within a period of twelve months, and for industrial design and trademarks, the filing is done within a period of six months²⁰.

The registration of trademark confers on the registered owner the exclusive right to use the trademark in relation to the goods mentioned in the register as well as the right to assign the trademark or grant a license in respect of the trademark to any person. It also confers a right of action on the registered owner. ²¹

Recognition and Protection of International Trademarks

Section 44 of the Trade Marks Act is instructive as it provides that any person who has applied for protection of any trademark in a Convention country, or his legal representative or assignee shall be entitled to registration of his trademark under the TMA in priority to other applicants; and the registration shall have the same date as the date of the application in the Convention country.

²⁰ Article 4A(1) of the Paris Convention for the Protection of Intellectual Property.

²¹ Sections 5 and 6 of the Trade Marks Act, Cap T13, LFN 2004

By virtue of **Section 44(5) of the Trade Marks Act**, a Convention country means a country in the case of which a declaration has been made for the purposes of the provisions of the TMA, and such declaration shall not have effect until published in the Federal Gazette. The implication of this is that before a country can be regarded as Convention country, the President must first make a declaration in that regard. There is however no known Presidential declaration providing for reciprocity of trademark applications with any country under the terms set forth in **Section 44**. In the light of the above, the provisions of **Articles 2 and 3 of the Paris Convention**²² are apt. The said provisions posit that juristic and natural person who are either national of or domiciled in a state party to the Convention, shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws grant to nationals.

Flowing from the foregoing, it is submitted that reliance cannot be placed on the Paris Convention for the protection of international trademarks until such a time that the President of Nigeria makes the declaration contemplated by section 44 of the Trade Marks Act. More so, **Section 12 of the Constitution of the Federal**²³ provides that no treaty shall have the force of law in Nigeria except such a treaty has been domesticated in Nigeria. As at today, the **Paris Convention** is yet to be domesticated even though Nigeria is a signatory to the treaty.

Section 9 and 10 of the Trade Marks Act clearly stipulates the test for determining registrability of Trade Marks in Nigeria. They are:

- a. the name of a company, individual, or firm, represented in a special or particular manner;
- b. the signature of the applicant for registration or some predecessor in his business;

²² The Paris Convention on Protection of Industrial Property, 1883, otherwise referred to as the “Paris Convention”.

²³ 1999 Constitution of the Federal Republic of Nigeria (as amended)

- c. an invented word or invented words;
- d. a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname
- e. any other distinctive mark;

Provided that a name, signature or word or words other than such as fall within paragraphs (a) to (d) of this section, shall not be registrable under paragraph (e) of this section, except upon evidence of its distinctiveness.

In the case of **Ferodo Ltd v. Ibeto Industries Ltd**²⁴, it was held per Niki Tobi JSC thus

“distinctiveness when used in connection with a trade mark means an essential element of its trade mark which distinguishes it from other marks. This element may be a word, symbol, shape or colour in the trade mark. A mark may also be distinctive inherently or may acquire its distinctiveness over time. Conversely, a mark may also lose its distinct nature over time.”

In the case of **TreborNig Ltd v. Associated Industries Ltd**²⁵, the Court held *inter alia* that the trade mark of the defendant (a black elephant) was very distinctive of the defendant’s goods and did not infringe on that of the Plaintiff.

By virtue of **Section 10 of the Trade Marks Act**, for a mark to be registrable under Part B, it must be capable in relation to the goods in respect of which it is registered or proposed to be registered, of distinguishing goods with which the proprietor or the trade mark is or may be

²⁴(2004) 5 NWLR (Pt. 866) 317

²⁵(2004) 5 NWLR (Pt. 866) 317

connected in the course of trade from goods in the case of which no such connection subsists, either generally or where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

Section 11, 12 and 13 of the Trade Marks Act spells out a list of Non-Registrable Marks. They include:

- i. Deceptive or Scandalous Marks;
- ii. Names of Chemical Substances;
- iii. Identical and Resembling Trade Marks that acts to infringe on existing trademarks; and

There is a restraint on the use of the Nigerian coat of arms or of any other state²⁶.

Section 23 (1) of the Trade Marks Act confers the proprietor of a registered Trade Mark with seven (7) years exclusive period for the enjoyment of the registered trade mark. It is important to note that exclusive use of registered trademarks is subsequently renewable for successive periods not exceeding fourteen (14) years at any given application for renewal.

2.4.4 Patent

The grant of a patent is predicated on the need to protect inventions that are novel and add intrinsic value to an existing process or product²⁷. The Patents and Designs Act provides the criteria which an invention must possess before an invention it can be deemed patentable. Some of the criteria are:

²⁶ Section 62 of the Trademark Act

²⁷Nwabachi C. &Nwabachili C., *Challenges to Effective Legal Protection of Industrial Designs in Nigeria* (2015) Vol. 33, Journal of Law, policy and Globalisation at pg, 7

- i. it is new, results from an inventive activity and is capable of industrial application;
and/or
- ii. it constitutes an improvement upon a patented invention and also it is new, results from inventive activity, and is capable of industrial application.

The Patents and Designs Act in **Section 2** recognizes the following categories of persons as eligible for grant of patent:

- i. Statutory inventors, which are persons who, whether or not they are the true inventor, was the first to file or validly claim a foreign priority for, a patent application in respect of the invention;²⁸ and
- ii. Persons who employ or commission others to make an invention.²⁹
- iii. The true inventor³⁰

In addition to the above, a contractual licensee³¹ as well as an assignee of invention³² are also eligible for grant of patent. It must be noted that there is no substantive examination of patent application under the current Intellectual Property regime in Nigeria. Also, patents cannot be validly obtained in respect of:

- i. Plant or animal varieties, or essential biological process for the production of plants or animals (other than microbiological processes and their products);

²⁸Section 2 (1) of the Patent and Designs Act

²⁹Section 2(4) of the Patent and Designs Act

³⁰Section 2(2) of the Patent and Designs Act

³¹ Section 3 (1) (a) Patents and Designs Act

³² Section 2(4) (a) (i) Patents and Designs Act. See also *Arewa Textiles Plc & Ors. vs Fintex Ltd* (2003) 7 NWLR (pt819) 322. Also see *Intellectual Property Law: Copyright, Trade Marks, Patents, Industrial Designs*, J.O. Odion and N. E. O Ogba. Ambik Press, Benin, pg. 101

- ii. Inventions, the publications of or exploitation of which will be contrary to public order or morality; and
- iii. Principles and discoveries of a scientific nature.³³

The Patents and Designs Act regulates the quality of the rights attached to a grant of patent to successful applicants for patent. In this vein, the following must be noted:

- i. Rights granted shall extend only to acts done for industrial or commercial purposes; and
- ii. Shall not extend to acts done in respect of a product covered by the patent after the product has been lawfully sold in Nigeria, except so far as the patent makes provision for a special application of the product, in which case the special application shall continue to be reserved for the patentee.

The Nigerian patent regime boasts of a centralized system of registration for patents. Upon a successful application for registration, the Registrar issues to an Applicant a document, which bears the relevant number, the name and the domicile of the patentee or his successor or assignee if any, the dates of the patent application and grant, the title of the invention and the period of its validity. Furthermore, upon the grant of a patent, the Registrar is required to enter the particulars of the grant in the register of patents and cause to be published in the Federal Gazette a notification of the grant.

The Act provides that the right in a patent subsist for a period of 20 years from the date of filing of the relevant patent application and it is not renewable.³⁴

³³Section 1 (4) of the Patent and Designs Act

³⁴Section 7 Patents and Designs Act

2.4.5 Industrial design

The underpinning of an industrial design is that it seeks to protect the aesthetic appearance of an article. A learned scholar has opined that “industrial designs are primarily those elements incorporated into mass produced product that aim to enhance their attractiveness by their appearance³⁵ -

The Act also provides a unit for determining if a proposed design is registrable. They include

- i. It must be new; and
- ii. It must not be contrary to public order or morality³⁶

The English decision of **Dower Limited v. Numberger**³⁷ illuminates on the definition of the term “New:.. It posits thus

“The word “original” contemplates that the person has originated something that by exercise of intellectual activity he has started an idea which has not occurred to anyone before that a particular pattern or shape or ornament, may be rendered applicable to the particular articles to which he suggests that it shall be applied. If that state of things be satisfied, then the design will be original although the actual pattern or shape or whatever it is which is being considered is old in the sense that it has existed with reference to another article before. The word new or original involve the idea of novelty either in the pattern, shape or in the way in which an old pattern, shape or ornament is to be applied to some special subject matter.”

³⁵ **Intellectual Property in Nigeria**; F.O. Babafemi, Justinian Book Limited Ibadan, 2007, pg 412

³⁶ **Section 13** of the Patent and Designs Act

³⁷ (1910) Ch D 25 @ 29

The right to the registration of an industrial design is vested in the statutory creator i.e. the person who is the first to file or lay a foreign priority for an industrial design whether or not he is the true creator. The true creator is also entitled to be named in the register as such. Also a person who employs or commission others to create a design, a person to whom the design has been assigned to and/or a person to whom a contractual license has been granted proceed to register such a design.³⁸

The Nigerian Patents and Designs Act allows for the registration of two types of designs:

- i. Combination of lines or colours or both (e.g textile designs); and
- ii. Three dimensional designs (e.g. product packaging)³⁹

An industrial design shall be effective in the first instance for five years from the date of the application for registration and may be renewed for two further consecutive periods of five years each.⁴⁰

2.5 Registration Procedure of Intellectual Property Rights In Nigeria

i. Registration Procedure for Copyright

From the onset, it is apposite to mention that registration of copyrightable works in Nigeria is not mandatory. What is required at best is a notice to be given to the Nigerian Copyright Commission. In light of the above, the Nigerian Copyright Commission designed a scheme known as the Copyright Notification and the scheme enables creators of certain copyright works or persons who have acquired rights in these works to give notice of their copyright to the Nigerian Copyright Commission. Such notices forms part of the database of

³⁸Section 14 of the Patents and Designs Act

³⁹Section 12 of the Patents and Designs Act

⁴⁰Section 20 of the Patents and Designs Act

Commission which the Copyright Act mandates it to keep and this is evidence for proof of priority and other facts stated in the notification form.

The following is a step by step procedure for achieving copyright notification in Nigeria:

- a. The applicant fills the form in line with the instructions provided on it, and ensure that the declaration therein is endorsed before a commissioner for oaths or a notary public;
- b. The completed application form together with the work for which copyright is sought is uploaded to the electronic data base of the Nigerian Copyright Commission Website together with evidence of payment of the stipulated notification fee.

Upon receipt of the form, the Commission processes same and issues the applicant with a notification acknowledgement certificate.⁴¹

ii. Registration Procedure for Trademark

Registration of trademark is the exclusive preserve of the Registrar of Trademark in the Trademark, Patents and Designs Registry of the Commercial Department of the Federal Ministry of Industry, Trade and Investment.

The registration process commences when a prospective applicant for trademark registration conducts a search on the mark sought to be registered in order to ascertain that it does not infringe an existing mark. Upon verification of the above, the mark is presented for filing. After filing, the trademark registry issues an acknowledgment letter for filing of the mark and soon after an acceptance letter, where the application is successful. Upon acceptance, the mark is published in

⁴¹See Generally the Nigerian Copyright Commission's website- www.copyright.gov.ng or www.eregistration.copyright.gov.ng accessed 12/10/2017 @ 10.00 pm

the trademark journal which is a quarterly publication of the Federal Ministry of Industry, Trade and Investment and a trademark certificate is issued accordingly.⁴²

iii. Registration Procedure for Patent

An application for patent is made to the Registrar of Patent and Design in the Trademark, Patents and Designs Registry of the Commercial Department of the Federal Ministry of Industry, Trade and Investment.

The registration process commences when a prospective applicant for patent recognition conducts a search on the patent sought to be registered in order to ascertain that it does not infringe an existing patent. Upon verification of the above, the application is submitted for filing and must contain:

- a. The applicant's full name and address. If the applicant's address is outside Nigeria then a service address will be admissible;
- b. The description of the relevant invention along with any plans and drawings where appropriate;
- c. A claim that defines the particular protection or rights sought by the applicant;
- d. Declaration by the inventor requesting that he be mentioned as such in the patent with his name and address;
- e. A signed power of attorney, where a legal practitioner makes the application on behalf of the applicant; and
- f. Evidence of payment of prescribed fee.

⁴²See generally www.iponigeria.com accessed 12/10/2017 @ 3.00 pm

Upon a successful application, the Registrar of patent and design shall grant a certificate of patent in favour of the successful applicant.⁴³

iv. Registration Procedure for industrial design

An application for recognition of industrial design is made to the Registrar of Patent and Design in the Trademark, Patents and Designs Registry of the Commercial Department of the Federal Ministry of Industry, Trade and Investment.

The registration process commences when a prospective applicant for design recognition conducts a search on the design sought to be registered in order to ascertain that it does not infringe an existing design. Upon verification of the above, the application is submitted for filing and must contain:

- a. A request for the registration of the design;
- b. The applicant's full names and address or an address for service in Nigeria where the creator lives outside Nigeria;
- c. A specimen of the design or a photograph or a graphic representation of the design;
- d. An indication of the kind of product for which the design can be used and such other matters as may be prescribed;
- e. Six set of formal drawing;
- f. Priority application where applicable;
- g. A signed power of attorney, where a legal practitioner makes the application on behalf of the applicant; and

⁴³See generally www.iponigeria.com accessed 12/10/2017 @ 3.00 pm

- h. Evidence of payment of prescribed fee.

Upon a successful application, the Registrar of patent and design shall grant a certificate of design in favour of the successful applicant.⁴⁴

2.6 Powers and Functions of Statutory Agencies that Regulates Intellectual Property Registration and Protection

2.6.1 Statutory agency that regulates copyright in Nigeria

Perhaps the most important introduction to the Copyrights Act of 1988 is the establishment of an administrative body, the Nigeria Copyright Commission (NCC) which is by law tasked with the general purpose of ensuring the effective and efficient administration, regulation and enforcement of copyright under the Act.⁴⁵ This introduction has aided a robust system of copyright administration, recognition, and management.

The Nigerian Copyright Commission (NCC) and the Administration of Copyright

It is beyond argument that legislation without a veritable instrument for the enforcement of same brings to naught the intention of the drafters of such a legislation no matter how laudable such intentions are. It is in light of this that institutional frameworks always accompany legal frameworks whenever the legislature seeks to regulate the conduct of its citizenry with respect to any given subject matter. It is the writer's opinion that any meaningful effort at recognizing and protecting copyrightable works will only be achieved within the circumference of an effective legal framework coupled with an efficient institutional framework that regulates the conducts of individuals and corporate entities. Adewopo⁴⁶ opines that the administrative system can be

⁴⁴See generally www.iponigeria.com accessed 12/10/2017 @ 3.00 pm

⁴⁵Section 30 of the Copyrights Act

⁴⁶Adewopo A., "*Legal Framework for Copyright Protection in Nigeria*" (1995) Lagos State University Law Journal @ pg 82

viewed from two broad perspectives viz – the institutional framework and the private machinery for the collective administration of rights- Collecting Societies which are authorized to collect dues, royalties and fees of Copyright owners of the particular specie of work for which they are set up. An example of this is the Musical Society of Nigeria which collects dues on behalf of their members for the use, license and assignment of their works. Such institutional framework for administration is in the form of a statute-empowering regulatory body, while the private machinery is a collection of individuals instituting actions for infringement of their copyright.

The institutional framework created by the Nigerian state for the administration of copyright in Nigeria was established on 19th August, 1989 as the Nigerian Copyright Council and has undergone various metamorphosis into what is now known as the Nigerian Copyright Commission. The Commission is an agency of the Federal government under the Ministry of Trade, Commerce and Industry.

The Commission is s a body corporate with powers to sue and be sued in its corporate name, perpetual succession and a common seal⁴⁷. **Section 34(3)** of the Act reads out the statutory functions of the Commission to include:

(3) The Commission shall –

- a. *be responsible for all matters affecting copyright in Nigeria as provided for in the Act;*
- b. *monitor and supervise Nigeria’s position in relation to international conventions and advise the government thereon;*

⁴⁷See **Section 30 (2)** of the Copyrights Act

- c. *advise and regulate conditions for the conclusion of bilateral and multilateral agreement between Nigeria and any other country;*
- d. *enlighten and inform the public on matters relating to copyright;*
- e. *maintain an effective data bank on authors and their works;*
- f. *be responsible for such other matters as relating to copyright in Nigeria as the Minister may, from time to time, direct.*

A review of the above statutory provision makes it crystal clear that the functions of the Commission, and by necessary deductions its powers, are considerably far reaching. This allows for the Commission to effectively monitor and regulate all matters on copyright and matters relating thereto in the country. Also, a very important duty of the Commission which is achieved through the instrumentality of copyright inspectors which is recognized by the Act is promotion and the protection of copyright against infringement in Nigeria and prosecution of copyright infringers.⁴⁸

The Commission also monitors and supervises Nigeria's bilateral and multilateral relationships and obligations entered with other countries and organizations on copyright. It also acts as the primary adviser to government on the formulation of Nigeria's policy on copyright and matters related thereto. By implication, it could be said that the Commission is in charge of all bilateral and multilateral international agreements contemplated by the Act which includes but is not limited to treaties and Conventions such as:

- (i) *the World Intellectual Property Organization (WIPO) Copyright Treaty;*

⁴⁸See Appointment of Copyright Inspectors Notice of 1997 made pursuant to the Copyrights Act LFN 2004

- (ii) *the Universal Copyright Convention of 1952 for the Protection of the Right of Authors and Copyright Owners;*
- (iii) *the Trade-Related Aspects of Intellectual Property Rights (TRIPS) which reinforces the Berne Convention.*
- (iv) *the Berne Convention of 1886 for the Protection of Literary and Artistic Works; and*
- (v) *the Rome Convention for the Protection of Performers, Producers of Photograms and Broadcasting Organizations of 1961*

2.6.2 Administration of trade marks in Nigeria

The administration of trademarks in Nigeria is as provided for in the Trade Marks Act. **Section 1** of the Act provides for the creation of the office of the Registrar of Trademarks. A review of the Act shows that there are two principal officers tasked with the administration of trademarks in Nigeria. They include the Minister for trade, investments and industry and the Registrar of Trade Marks.

Section 45 (1) of the Trade marks Act spells out the powers and duties of the supervising minister which essentially allows the said minister make regulations for the following purposes:

- i. Regulating the practice under the Trademarks Act, including the service of documents;
- ii. Making regulations for the classification of goods;
- iii. Requiring duplicates of trademarks and other documents;
- iv. For securing and regulating the publishing and selling or distributing in such manner as the minister thinks fit to make, copies of trademarks and other documents;
- v. Prescribing the fees payable in respect of registration and renewal;
- vi. Imposing restrictions as regards registration under the Act;

- vii. Generally for regulating the business of the office of the Registrar and all things and all things by this Act placed under the direction or control of the Registrar or the Minister.

The Act also makes copious provisions with respect to the duties and powers of the Registrar of trademarks. They include:

- a. The register of trademarks shall continue to be kept under the control and management of the Registrar at the Registrar's office;⁴⁹
- b. Registration in respect of particular goods and classes of goods and the class within which any goods shall be determined by the Registrar and it shall be final;⁵⁰
- c. The Registrar may permit the registration of trademarks that are identical or nearly resemble each other in the case of honest concurrent use;⁵¹
- d. The Registrar may refuse the registration of trademarks that are identical or nearly identical⁵²
- e. Renewing upon application by the registered proprietor;⁵³
- f. Requiring a variation or dissolving an association of trademarks;⁵⁴
- g. Registering the title of an assignee on a trademark;⁵⁵
- h. Removing, on application a trademark from the register;⁵⁶
- i. Removing a trademark for non-payment of renewal fees⁵⁷

⁴⁹See **Section 2 (2)** of the Trademark Act

⁵⁰See **Section 4** of the Trademark Act

⁵¹See **Section 13 (2)** of the Trademark Act

⁵²See **Section 13(3)** of the Trademark Act

⁵³See **Section 23** of the Trademark Act

⁵⁴See **Section 27** of the Trademark Act

⁵⁵See **Section 30 (1)** of the Trademark Act

⁵⁶See **Section 31** of the Trademark Act

⁵⁷See **Section 23** of the Trademark Act

- j. Rectifying the register;⁵⁸
- k. Striking out or varying registration for breach of condition;⁵⁹
- l. Receiving applications for registration;⁶⁰
- m. Give preliminary advice as to whether a trademark should be registered under Part A or Part B;⁶¹
- n. Publication of acceptance of an application in the Trademark Journal maintained by his office⁶²; and
- o. Issue to a successful applicant a certificate of registration⁶³

2.6.3 Administration of Patents and Designs in Nigeria

As with trademark administration in Nigeria, the administration of patents and designs is provided for in the Patents and Designs Act. **Section 28** of the Act establishes the office of the Registrar of Patents and Designs. A review of the Act shows that there are two principal officers tasked with the administration of trademarks in Nigeria. They include the Minister for trade, investments and industry and the Registrar of Trade Marks.

Section 30 (1) of the Patents and Designs Act spells out the powers and duties of the supervising minister which essentially allows the said minister make regulations for the following purposes:

- a. Prescribing anything requiring to be prescribed for the purposes of the Act;
- b. Regulating the manner in which the Registrar shall maintain and make entries in the register;

⁵⁸See **Section 38** of the Trademark Act

⁵⁹See **Section 19** of the Trademark Act

⁶⁰See **Section 18 (1)** of the Trademark Act

⁶¹See **Section 17** of the Trademark Act

⁶²See **Section 19 (1)** of the Trademark Act

⁶³See **Section 22 (3)** of the Trademark Act

- c. Containing such administrative or procedural provisions as appear to him to be necessary or expedient in order to facilitate the operation of the Act; and
- d. With the view to the fulfilment of a treaty, convention or other international arrangement or agreement to which Nigeria is a party, declare by Order in the Federal Gazette that any country specified in the order is a convention country.

The Act also provides for the duties and powers of the Registrar of trademarks. They include:

- a. The register of patents and designs shall be kept under the control and management of the Registrar at the Registrar's office⁶⁴;
- b. The Registrar shall examine every patent application to ensure conformity with the Act⁶⁵;
- c. Registering the title of an assignee or licensee on a patent or design⁶⁶;
- d. Rectifying the register⁶⁷;
- e. Receiving applications for registration;⁶⁸
- f. Publication of acceptance of an application in the Patent and Design Journal maintained by his office⁶⁹; and
- g. Issue to a successful applicant a certificate of registration.⁷⁰

2.7 Summary of Review

This chapter has attempted a review of the historical evolution of intellectual property rights recognition and protection in Nigeria. This was achieved with the aid of a review of the various

⁶⁴See **Section 5 (2)** and **17 (2)** of the Patent and Designs Act

⁶⁵See **Section 4** of the Patent and Designs Act

⁶⁶See **Section 10 (1) & (2)** and **23 (2)** of the Patent and Designs Act

⁶⁷See **Section 28 (2)** of the Patent and Designs Act

⁶⁸See **Section 3** and **15** of the Patent and Designs Act

⁶⁹See **Section 28 (6)** of the Patent and Designs Act

⁷⁰See **Section 5 (3)** and **17 (3)** of the Patent and Designs Act

laws that hold sway in this area of our national life instant, amended and repealed. I have also sought to examine the core components of instant legislation and how they impact on the administration of intellectual property right practices in Nigeria, the role of various professional bodies and their several attempts to engender legislative reforms of intellectual property rights recognition, protection and practice in Nigeria. What is more, the various types of intellectual property rights together with their regulatory regimes have been largely considered and this lays an ample platform for an in-depth analysis in the next chapter.

CHAPTER 3:

ROTECTION OFFERED BY ENABLINGS STATUTES TO PROPRIETORS/OWNERS OF INTELLECTUAL PROPERTY

INTRODUCTION

The various regimes that regulate intellectual property recognition and protection advances various heads of protection in favour of proprietors of intellectual property rights. Also, the Nigerian courts have made sleping pronouncements that puts to rest the issue of recognition and protection of proprietary rights in intellectual properties. In this vein, I shall also engage in review of the judicial construction of the wordings of the regimes to ascertain the purport of such legislation within the Nigerian context.

Protections under the Copyrights Act

As a preliminary, it is apropos to mention that the court will by and large delve into the question as to whether a work is entitled to copyright protection. The observation of the noble Odunowo J. in the case of **Masterpiece Investments Ltd &Anor. V. Worldwide Business Media Ltd &Ors.**⁷¹resonates in the premise. He posits thus:

“Before dealing with the question of liability, it is desirable to determine if the article in question is entitled to copyright protection. There is no doubt in my own mind that the said article is a literary work which is eligible for copyright under Section 1 of the Copyright Act 1977, as amended in 1992. The uncontradicted evidence adduced before me is that the original article which is in permanent form

⁷¹(1997) FHCR 477

.... shows that sufficient effort has been put into the work to give it its original character. Consequently, within the purview of the Copyright Laws, Exhibit D clearly enjoys copyright protection and ownership in this work rest in the Plaintiff.”

Section 6 of the Copyrights Act is instructive on the extent of the rights which the law confers on proprietors of copyrightable materials. It reads thus:

Subject to the exceptions specified in the Second Schedule to this Act, copyright in a work shall be the exclusive right to control doing in Nigeria of any of the following acts, that is-

- (a) In the case of a literary or musical work, to do and authorise the doing of any of the following acts:
- i. Reproduce the work in any material form;
 - ii. Publish the work;
 - iii. Perform the work in public;
 - iv. Produce, reproduce, perform or publish any translation of the work;⁷²
 - v. Make any cinematograph film or a record in respect of the work;
 - vi. Distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement;
 - vii. Broadcast or communicate the work to the public by a loudspeaker or any other similar device;
 - viii. Make any adaptation of the work;
 - ix. Do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-paragraphs (i) to (vii) of this paragraphs.

⁷²See **Adenuga v. Illesanmi Press** (1991) 5 NWLR (Pt.

(b) In the case of an artistic work, to do or authorise the doing of any of the following acts, that is:

- i. Reproduce the work in any material form;⁷³
- ii. Publish the work;
- iii. Include the work in any cinematograph films;
- iv. Make any adaptation of the work;
- v. Do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-paragraphs (i) to (ii) of this paragraphs.

(c) In the case of a cinematograph film, to do or authorise the doing of any of the following acts, that is:

- i. Make a copy of the film⁷⁴;
- ii. Cause the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;
- iii. Include the work in any cinematograph film;
- iv. Make any recording embodying the recording in any part of the soundtrack associated with the film by utilizing such soundtrack;
- v. Distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement
- vi. Make any adaptation of the work;

⁷³See **Joseph Ikhuoria v. Campaign Services Ltd & Anor.** (1986) FHCR 308

⁷⁴See generally the case of *American Motion Picture Export Co. (Nigeria) Ltd v. Minnesota (Nigeria) Ltd* (1981) FHCL at 64

- vii. Do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-paragraphs (i) to (ii) of this paragraphs.

Section 7 of the Copyright Act is also instructive as it confers the following protection to owners of sound recordings. It provides thus:

Copyright in a sound recording shall be the exclusive right to control in Nigeria:

- i. The direct or indirect reproduction, broadcasting or communication to the public of the whole or a substantial part of the recording either in its original form or in any form recognisably derived from the original;⁷⁵
- ii. The distribution to the public, for commercial purposes, of copies of the work by way of rental, lease, hire, loan or similar arrangement.

Section 8 recognises and protects the usage of copyright in works of broadcast in the following terms:

“Subject to this section, copyright in a broadcast shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is:

- i. The recording and the re-broadcasting of the whole or a substantial part of the broadcast;
- ii. The communication to the public of the whole or a substantial part of a television broadcast, either in its original form or in any form recognisably derived from the original; and

⁷⁵See generally the case of *Island Records Ltd. &Ors. V. Pandum Technical Sales & Services Ltd. &Anor.* (1993) FHCL at 318

- iii. The distribution to the public, for commercial purposes of copies of the work, by way of rental, lease, hire, loan or similar arrangement.”

Subsection (2) posits that the copyright in a television broadcast shall include the right to control the taking of still photographs from the broadcast.

In view of the above provided protection, **Section 15** of the Copyright Act spell out when within the contemplation of the law, an infringement can be said to have occurred. They include when someone is guilty of the following:

- i. Does or causes any other person to do an act, the doing of which is controlled by copyright;
- ii. Imports 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 under this section of this Act.
- iii. Exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this subsection;
- iv. Distributes by way of trade, offers for sale, hire or otherwise or any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a) of this subsection;
- v. Makes or has in his possession plates, master tapes, machines, equipment or contrivances used for the purpose of taking infringed copies of the work;
- vi. Permits a place of public entertainment or business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and

had no reasonable ground for suspecting that the performance would be an infringement of the copyright;

- vii. Performs or causes to be performed, for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

It is imperative to note that the Copyrights Act has also made copious provisions that recognises a right of action by way of a criminal proceedings in advancing robust protection to proprietors of works subject of copyright protection. **Section 20** of the Copyright Act is instructive in this regard. It reads thus:

Any person who:

- (a) Makes or cause to be made for sale, hire, or for the purposes of trade or business any infringing copyright of a work in which copyright subsists, or
- (b) Imports or causes to be imported into Nigeria more than two infringing copies of such work;
- (c) Makes, causes to be made, or has in his possession, any plate, masterplate, machine, equipment or contrivance for the purposes of making any infringing copy of such work, shall unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was not an infringing copy of any such work, or that such plate, mastertape, machine, equipment or contrivance was not for the purpose of making infringing copies of any such work, be guilty of an offence under the Act.

Such a person shall be guilty of a criminal offence and on conviction, an accused will be liable to a fine of an amount not exceeding N1,000 (one thousand naira)⁷⁶ for every copy or to a term of imprisonment not exceeding 5 years, or to both such fine and imprisonment.

Also under **Section 20 (2)** of the Copyrights Act, any person involved in the following activities may be prosecuted for copyright infringement. They include:

- (a) Sells or lets for hire or for the purposes of trade or business, exposes or offers for sale or hire any infringing copy of any work in which copyright subsists or;
- (b) Distributes for the purpose of trade or business any infringing copy of any such work or
- (c) Has in his possession other than for his private or domestic use any infringing copy of any such work
- (d) Has in his possession, sells, lets for hire or distribution for the purposes of trade or business, or exposes or offers for sale or hire any copy of a work which, if it had been made in Nigeria, would be an infringing copy.

Such a person shall be guilty of a criminal offence and on conviction, he will be liable to a fine of an amount not exceeding N100 (one hundred naira) for every copy or to a term of imprisonment not exceeding 2 years, or to both such fine and imprisonment.

Also, **Section 38** creates the office of the copyright inspectors and occupiers of the office is granted a range of powers such as:

⁷⁶It is posited with the greatest respect that this provision is out of tune with the times. It does not in any way act as a deterrent to a prospective beach of the Act in this regard.

- a. To enter, inspect and examine at any reasonable time any building or premises which he reasonably suspects is being used for any activity which is an infringement of copyright under this Act;
- b. To arrest any person who he reasonably believes to have committed an offence under this Act;
- c. To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with;
- d. To require the production of the register required to be kept under **Section 14** of this Act and to inspect, examine or copy it; to require any person who he finds in such building or premises to give information as it is in his power to give in relation to any purpose specified in this Act;
- e. To require any person who he finds in such building or premises to give such information as it is in his power to give in relation to any purpose specified in this Act;
- f. To carry out such examination, test or analysis within or outside the premises as is required to give effect to any provisions of this Act and to take instant photographs where such examination, test, analysis or photograph is carried out within the premises and such examination, test, analysis or photograph is required to be endorsed by the occupier of the premises or his agent, but a refusal by an occupier to endorse any document containing the result of an examination, test, analysis or photograph shall not invalidate the result or findings of the examination, test, analysis or photograph; and
- g. To exercise such other powers as the commission may delegate to it.

Section 38 (3) recognises the power of the Copyright Inspector to prosecute, conduct or defend before a court any charge, information, complaint or other proceedings arising under the Act. This power was restated by the court in the case of *Nigerian Copyright Council v. Musical Copyright Society of Nigeria & Ors*⁷⁷. Where the court held thus;

“.....Section 13 of the Copyright (Amendment) Act 1999 gives to the Copyright Inspector powers of the police in respect of offences created by the Copyright Act (as amended). I do not agree with the learned counsel for the applicants that the said Section 32 of the Copyright (Amendment) Act is in direct conflict with Section 174(1) of the 1999 Constitution. The power conferred on the Copyright Inspectors do not in any way conflict with the provisions of Section 174(a) of the 1999 Constitution.”

PROTECTION UNDER THE TRADEMARKS ACT

Our jurisprudence does not by any stretch recognise a trademark as a juristic person and as such, an action cannot be maintained or sustained by or against such a trademark. As rightly decided by the Apex Court of Nigeria in the case of *Maersk Line & Anor. V. Addide Investments Limited & Anor*⁷⁸. The court held that a person who is made a party to an action either as a plaintiff or as a defendant must be a legal person or, if not, a body vested by law with power to sue or be sued. Thus, if it is successfully shown that a party to an action is not a legal person, that party should be struck out of the suit, and if such party was expressed to be the plaintiff the action should be struck out. An action cannot be commenced by or against a trademark as it is not a juristic person. It is its proprietor that can sue or be sued.

⁷⁷(1999) FHCL, 419

⁷⁸(2002) 11 NWLR (Pt. 778) 317

Section 5 and 6 of the Trademarks Act sets the length and breadth of rights/protection accorded proprietors of registered trademarks in Nigeria. Whilst **Section 5** pertains to Part A, **Section 6** accords protection to proprietors registered under Part B.

Section 5 reads thus:

Sub-section 1 Subject to the provisions of this section and Sections 7 and 8 of this Act, the registration of a person in Part A of the register as proprietor of a trademark (other than a certification trademark) in respect of any goods, shall if, valid, give or be deemed to have given to that person the exclusive right to the use of that trademark in relation to those goods.

Sub-section 2 without prejudice to the generality of the right to the use of a trademark given by such registration as aforesaid, that right shall be deemed to be infringed by any person who, not being the proprietor of the trademark or a registered user thereof, using it by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either:

- a. As being used as a trademark; or
- b. In a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or as registered user to use the trademark or to goods with such a person as aforesaid is connected in the course of trade.

Section 6 provides as follows:

Except as provided by subsection (2) of this section, the registration of a person in Part A of the register as proprietor of a trademark in respect of any goods, shall if, valid, give or be deemed to have given to that person the like in relation to those goods as if the registration had been in Part A of the register, and Section 5 (2) to (4) of this Act shall apply in relation to a trademark registered in Part B accordingly.

The provisions of **Section 44** of the Trademark Act is also worthy of extensive consideration. It applies to trademarks the subject of registration in a convention country. It reads thus:

“Any person who has applied for protection for any trademark in a convention country, or his legal representative or assignee, shall be entitled to registration of his trademark under this Act in priority to other applicants; and the registration shall have the same date as the date of his application in the Convention country”

Protection under the Patents and Industrial Design Act

Section 6 (1) is instructive on the degree/extent of rights conferred by law upon a proprietor of a registered patent. They include the following rights:

- a. Where the patent has been granted in respect of a product, the act of making, importing, selling or using the product, or stocking it for the purpose of sale or use and;
- b. Where the patent has been granted in respect of process, the act of applying the process or doing, in respect of a product obtained directly by means of the process, any of the acts mentioned above.

It is important to mention the caveat placed by **Section 6 (2)** of the Patents and Designs Act. It provides that the scope of the protection conferred by a patent will be determined by the terms of the claims and the description (and the plans and drawings if any) included in the patent shall be used to interpret the claims. Furthermore, **Section 6 (3)** provides the applicability of a patent granted. They include:

- a. The right under a patent will extend only to acts done for industrial or commercial purposes; and
- b. It will not extend to acts done in respect of a product covered by the Patent after the product has been lawfully sold in Nigeria, except in so far as the patent makes provision for a special application of the product, in which case the special application will continue to be reserved to the patentee.

His Lordship Ezekiel J. in the case of **Sumal Food and Confectionary Ltd v. Wholesome Processing Co. Ltd**⁷⁹ held that the question of whether an alleged infringed design is or not an infringement of the registered design is a question of fact. Hence the question of the right/protection which can be accorded a proprietor of a registered industrial design is in the writer's opinion a concatenation of available facts applied *vide* the lens of the law.

The extent of the permissible rights enjoyed by a proprietor of a registered industrial design in Nigeria is the subject of legislative declaration. In this vein, **Section 19 (a)-(c)** outlines the quality of protection/rights which enures in favour of the said proprietor. They include:

- a. Reproducing the design in the manufacture of a product;

⁷⁹(1990) FHC IB 143

- b. Importing, selling or utilizing for commercial purposes a product reproducing the design;
and
- c. Holding such a product for the purpose of selling it or of utilizing it for commercial purpose.

Section 19 (2) of the Patent and Designs Act is instructive in that it provides that any reproduction that differs only in minor or inessential ways from a registered design will be deemed an infringing material, hence unlawful. Also, a necessary deduction from the said **Section 19 (2)** is that irrespective of the application of a registered design on a product different from the type for which the design is concerned, such will still be regarded as an infringement on the proprietary rights of the registered user and as such declared unlawful.

It is apropos to mention that the aforementioned rights extend only to acts done for commercial or industrial purposes.

PROTECTION UNDER THE CYBERCRIME ACT 2015

The Cybercrime Act 2015 is the latest piece of legislation in the Nigerian legal system that impacts on the quality of protection advanced to owners of intellectual property rights in Nigeria. The Act proscribes as criminal various acts that negatively impacts on the proprietary rights of owners of intellectual properties in Nigeria. It also advances punitive measures to ensure that detractors of the Act are adequately punished.

The objectives of the Act are worthy of extensive quotes. It reads thus:

- a. Provide an effective and unified legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria;
- b. Ensure the protection of critical national information infrastructure; and

- c. *Promote cybersecurity and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights.*

Of critical importance to the present discourse is the provision of **Section 6** of the Act. It prescribes as an offence unlawful access to a computer. It reads thus:

“Any person, who without authorisation or in excess of authorisation, intentionally accesses in whole or in part, a computer system or network, commits an offence and liable on conviction to imprisonment for a term of not less than three years or a fine of not less than N7,000,000.00 or to both fine and imprisonment.”

Subs section further provides thus:

*“where the offence provided in subsection (1) of this section is committed with the intent of obtaining computer data, securing access to any program, **commercial or industrial secrets or confidential information**, the punishment shall be imprisonment for a term of not less than three years or a fine of not less than N7,000,000.00 or to both fine and imprisonment.*

The provision of **Section 8** is also apposite and worthy of extensive quote. It provides thus:

“Any person who directly or indirectly does an act without authority and with intent to cause an unauthorised modification of any data held in any computer system or network, commits an offence and liable on conviction to imprisonment for a term of not less than 3 years or a fine of not less than N7,000,000.00 or to both fine and imprisonment.”

Subsection 2 further provides *“Any person who engages in damaging, deletion, deteriorating, alteration, restriction or suppression of data within computer systems or networks, including data transfer from a computer system by any person without authority or*

in excess of authority, commits an offence and liable on conviction to imprisonment for a term of not less than 3 years a fine of not less than N7,000,000.00 or to both fine and imprisonment”.

Protection by the Court

The Nigerian judiciary has severally made pronouncements in favour of the protection of intellectual properties. This becomes a veritable tool in the recognition of the proprietary rights in intellectual properties and more importantly in the quality of protection advanced to proprietors of intellectual properties in Nigeria.

Some of the most applicable principles/tools adopted by the judiciary include:

- a. Award of Damages
- b. Award of injunction
- c. Anton Piller Orders
- d. Order of Account for Profit
- e. Delivery Up

Award of Damages

As a general rule damages flow from irreprehensible conduct that affects the right of another. The Courts will as a matter of course grant damages where the proprietor of intellectual property can prove infringement flowing from the defendant’s conduct. Damages can come in the form of Special or general, exemplary or punitive and or nominal damages.

In Masterpiece Investments Ltd &Anor v. Worldwide Business Media Ltd &Ors.⁸⁰, the Court held thus:

⁸⁰(supra)

“On a claim for exemplary or punitive damages the trend of both judicial and juristic opinion is that the court may award additional damages for such matters as the author’s reputation or feeling, the vulgarisation of the work, economic loss, unjust enrichment by the defendant as a result of the act of infringement, the conduct of the defendant and the means of the parties etc. Nonetheless, the amount to be awarded must not be excessive, the only qualification is that the discretion vested in the court in this regard must, as usual, be exercised both judicially and judiciously in the interest of justice.....”

The dictum of Belgore J, in **O. Yemitan v. The Daily Times (Nig.) Ltd v. Anor**⁸¹ is instructive. He held thus:

“...I have no doubt that the defendants flagrantly infringed the copyright of the plaintiff taking advantage that few artists in this country are aware of their rights under copyright law, and the defendants believing that the profit to be realised from the infringement, Ire litigation is to be undertaken, would outligh any nominal damages to which the plaintiff would be entitled. The flagrant way the plaintiff’s work was infringed; the apathetic manner his letters and those of officers, connected with the Nigerian Magazine Ire treated and the nonchalant attitude in which the defence was prepared by denying obvious facts and making unfounded assertions and only conceding brazenly, liability after a full trial, to my mind, is a clear evidence of the view of the defendants that “it would not cost more than money.” I have no doubt that the defendants Ire motivated by glitter of profit in infringing the copyright of the plaintiff and perhaps they Ire intoxicated by actual profit in treating him so contemptuously afterwards.”

⁸¹(1980) FHCLR, 186

With respect to trademark infringement, the case of **GbadamosiTokunboh&Anor v. J. T. Chanrai&Anor**⁸²illuminates. The court having found the Defendants culpable, awarded damages in favour of the plaintiffs.

The law is settled with respect to patent infringement in the case of **Pfizer Inv. Ltd v. Polyking Pharmaceutical Limited &Anor**.⁸³ Where Olomjobi J. held thus

“where the patentee manufactures the invention for profit, the measure of damages is the actual loss caused to the plaintiffs.”

INJUNCTION

Injunction will always be a veritable means to prevent a person from doing or continuing in his act of infringement. It is also plausible to obtain an injunction to prevent the commission of a threatened infringement.

With respect to infringement of copyright, the court in the case of **O. Yemitan v. Daily Times of Nigeria**⁸⁴, granted a perpetual injunction against the defendants from any further sale, use or dealings in the plaintiff’s work.

In the case of **Soul Publications Ltd. V. Sweet hearts Publication Ltd. &Anor**⁸⁵, the court granted an order of interim injunction restraining the defendants from publishing, selling, offering for or advertising any magazine or publication under or in the name of and or title of “HEARTS” or “SWEET HEARTS”.

⁸²(1978) FHCLR, 55

⁸³ (1998) FHCLR, 13

⁸⁴supra

⁸⁵(1997) FHCLR, 369

With respect to an infringement of patent, in the case of **Agbonrofo v. Grain Haulage and Transport Limited**⁸⁶, the court having found an infringement of the Plaintiff's patent, granted an injunction restraining the defendant whether acting by its directors, officers, servants or agents or otherwise from further infringing the plaintiff's registered patent.

ANTON PILLER

An Anton Pillar order targets the inspection, photographing and delivery up of an infringing material which is still in the possession of the infringer. In the case of **Musical Copyright Society Nig. Ltd v. Details Nigeria Limited**⁸⁷, it was held that "it is now well recognised that interlocutory remedies available in intellectual property actions include Anton Pillar Orders.

In **Ferodo Limited v. Unibros Stores**⁸⁸, an Anton Pillar order was granted against the defendant.

ORDER OF ACCOUNT FOR PROFIT

Section 16 (3) of the Copyright provides for this head of remedy. It reads thus:

"where in an action for infringement of copyright, it is proved or admitted that an infringement was committed but that at the time of the infringement, the defendant was not aware and had no reasonable grounds for suspecting that copyrights subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement, whether or not any other relief is granted under this section"

⁸⁶ (1998) FHCLR, 236

⁸⁷ (1996) FHCLR, 473

⁸⁸ (1999) 2 NWLR (Pt. 509)

In the case of **Plateau Publishing Co. v. Adophy**⁸⁹ was thoroughly considered albeit the hesitation of the court to grant same. Also, in the case of **Agbonrofo v. Grain Haulage & Transport Limited**⁹⁰, the court upon a review of the facts presented by parties, granted the remedy of account for profit, having held that the plaintiff was not entitled to damages.

Delivery Up

In deserving cases, the court may order that the infringing materials in his possession, custody or control for destruction. This was the position canvassed and upheld by the Honourable Court in **Agbonrofo v. Grain Haulage & Transport Limited**⁹¹. Also, in the case of **Beecham Group Limited v. Esdee Food Products Nigeria Ltd**⁹², the court having found that the defendant's product was an infringement of the plaintiff's trademark, held that the defendant's should deliver the infringing materials for destruction. Also, in the case of **Sumal Foods v. Wholesome Foods Processing Co. Ltd**⁹³, the court ordered the defendant to deliver up offending materials for destruction.

Protection under International Treaties & Conventions

The 1999 Constitution of Nigeria recognizes the power of the Federal Government of Nigeria to enter into treaties with other governments and bodies on behalf of the people of Nigeria. This is however subject to ratification by the Senate of the Federal Republic of Nigeria.⁹⁴ Nigeria is signatory to various treaties that borders on intellectual property recognition and protection. Some of these Agreements include:

⁸⁹(1986) 4 NWLR, 205

⁹⁰supra

⁹¹supra

⁹² (1980) FHCLR, 177

⁹³supra

⁹⁴Section 12 of the 1999 Constitution of Nigeria

- a. The Berne Convention of 1886
- b. The Universal Copyright Convention of 1952
- c. The Rome Convention
- d. WIPO Copyright Treaty

The Berne Convention

This convention seeks to protect proprietary rights in literary and artistic works. It also advances protection to musical works, cinematograph films and analogous audio works. The Convention also enthrones the principle of national treatment. It also approves and directs minimum standards of engagement on its members, i.e it requires a minimum term of the author's life and 50 years thereafter.

The Universal Copyright Convention 1952

This convention enthrones and requires that member states provide adequate and effective protection of the rights of authors and other copyright owners. It also enthrones the principle of national treatment.

Rome Convention

This convention specifically advances protection to proprietors of rights in performers, record producers and broadcasting organisations. It requires that member state take steps toward advancing robust protection to proprietors of the above mentioned classification of copyrightable works. It also enthrones the principle of national treatment.

T.R.I.P.S

This is an abbreviation for the term Trade Related Aspect of Intellectual Property Rights. This convention extends the obligation to protect copyrightable materials to computer programmes which are to be regarded as literary works under the Berne Convention. This convention also extends protection to performers, sound recording, producers and broadcasting organisations.

WIPO Copyright Treaty

The World Intellectual Property Organisation is an international intervention that seeks to proffer a platform for the recognition and protection of copyrightable works globally. It advances recognition +and protection to online digital services.

CHAPTER FOUR

MODELS OF INTELLECTUAL PROPERTY RECOGNITION AND PROTECTION

4.1 Introduction

As with most academic exercise, I shall review the present state of the law in jurisdictions that have evolved with best practices in this very important area of our human endeavours. The intention is to deduce cutting-edge processes and procedure for recognising and protecting proprietary rights in intellectual properties. For the purpose of this chapter, I shall review the intellectual property legal regimes that holds sway in South Africa, the United Kingdom and the United States of America. I believe that upon conclusion of the review exercise I shall be able to advance a world view of procedures and processes for the recognition and protection of proprietary rights in intellectual properties.

4.2 Overview of Intellectual Property Rights Recognition and Protection in South Africa

The South African Agency that is legally tasked with the process and procedure for intellectual property recognition and protection is the Companies and Intellectual Properties Commission under the Department of Trade and Industry (CIPC). The CIPC was established pursuant to Companies Act 2008⁹⁵. The Department provides the framework for registration of Intellectual Property rights and their adjudication. Some of the enumerated functions of the CIPC include the following:

- a. Registration of companies, co-operatives and intellectual property rights (trademarks, patents, designs and copyright) and maintenance thereof
- b. To promote education and awareness of company and intellectual property legislation
- c. To promote compliance with relevant legislation; and

⁹⁵Act No. 71 of 2008

- d. Efficiently and effectively enforce relevant legislation.

The legal regime that regulates intellectual property recognition and protection in South Africa includes the Patents Act 57 of 1978, Trade Marks Act 194 of 1993, Designs Act 195 of 1993, Copyright Act 98 of 1978, Plant Breeders' Right Act 15 of 1976, the Merchandize Marks Act and the Counterfeit Goods Act.

The year 1979 marked a paradigm shift by the South African government from reliance on British Legislation on the subject matter. Developments in indigenous laws have ushered in an era of autochthonous policies and laws which seek to stimulate indigenous interest and participation in intellectual property growth and development. South Africa is also a signatory to various treaties that impacts on the quality of rights advanced to owners of proprietary interest in intellectual property. Some of the treaties which South Africa is signatory to include, TRIPS, PCT and Berne Convention.

It is apropos to mention that whilst the South African intellectual property regime and more importantly the legislation that impacts on the recognition and protection of the proprietary rights of owners of intellectual properties are quite similar to the Nigerian system, there have been a conscious effort by South Africa to over time, to broaden the scope of accruable rights and interest that it advances to takers of innovative steps. A ready example of this is the fact that South Africa is signatory to the Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the Purposes of Patent Procedure. Furthermore, the Sought African Patent Act provides for the disclosure of the use of an indigenous biological resource, genetic resource or traditional knowledge in the claimed invention. It has been argued that the aim of these provisions

is to protect against bio-piracy, the abuse of traditional knowledge, and the patenting of known or existing biological resources and traditional knowledge⁹⁶.

It is important to mention that there is presently a bill under consideration by the South African National Legislature as it relates to Intellectual Property Rights from Publicly Financed Research Bill. One of the aims of the draft bill is to stimulate the development of locally sourced and produced technologies. This bill, seeks to address the issues surrounding Intellectual property rights that is generated from publicly financed research at higher education institutions. The draft legislation makes provision for the establishment of a National Intellectual Property Management Office (NIPMO) and intellectual property management offices (IPMOs) at institutions of higher learning. The IPMO is mandated by the Act to receive, analyse and notify grants of intellectual properties rights to deserving applicants. The IPMO is also vested with the mandate to develop policies for intellectual property rights identification, protection, development and commercialisation within any such institution. An important underpinning of the draft bill is that it is prescriptive with respect to grant of royalty payments, the form of licence agreements, the duration of exclusive licence period and broad-based black economic empowerment and small, medium and micro enterprise partnerships.

Also, the effort of the South African court in enthroneing and protecting proprietary rights in intellectual properties is worthy of mention. A case worthy of extensive consideration is the case of **Laugh it off Promotions CC v. The South African Breweries Int'l (Finance) BV Ha Sabmark Intl (Freedom of Expression Institute as Amicus Curiae)**⁹⁷. In this case the South

⁹⁶ **J. Garcia**, Fighting Biopiracy: The Legislative Protection of Traditional Knowledge, *18 La Raza L.J.* 5. (2015), available online at www.scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1215&context=blrl accessed on November 4, 2017

⁹⁷ (2006) 1 SA 144 (CC)

African Constitutional Court held that the right to freedom of expression (enshrined in Section 16(1) of the South African Constitution) and Intellectual Property rights (more especially trademark rights) which are the subject matter of the case) enjoyed equal status under the Constitution.

The ratio decidendi of the Supreme Court of appeal⁹⁸ (a court below the Constitutional Court in the South African judicial System) is worthy of extensive quote. The court held thus:

“trademarks are property, albeit intangible or incorporeal. The fact that property is intangible does not make it of a lower order. Our law has always recognised incorporeals as a class of things in spite of theoretical objections thereto.

Also in the *Gidani’s Case*, the Defendant’s contention that its unauthorised use of the copyright works that are the subject matter of the case was excused by reliance on the right of “freedom to receive or impart information or ideas” provided for in Section 16 (1) (b) of the Bill of Rights, was jettisoned by the High Court. The court held the contrary view (and by so doing reasserting the poignancy of the decision of the court in **Laugh it off Promotions CC v. The South African Breweries Intl (Finance) BV Ha Sabmark Intl (Freedom of Expression Institute as Amicus Curiae)**). The court held that the freedom of expression must be weighed up against the copyright owner’s right to intellectual property. The court further held thus:

“...the defendant’s conduct is not a form of freedom of speech or expression identified for protection by the Constitution. On the contrary all indications or pointers point or lead to the appropriation of an intellectual property asset belonging to the plaintiff, not for the purpose of parody or lampooning or for other

⁹⁸ (2005) 2 SA 46 SCA

social purposes, but instead for no other purpose other than to generate commercial gain for itself. Section 16 (1) (a) or (b) of the Constitution or any construction does not permit commercial exploitation of another's intellectual property under the guise of supposedly informing the public."⁹⁹

4.3 Overview of Intellectual Property Rights Recognition and Protection in the United Kingdom

The agency that regulates intellectual property related issue is the United Kingdom Intellectual Property Office. Intellectual property recognition and protection emerged under the Elizabethan era in the form of royal favours granted by the King or the Lords of the land. Those royal favours always come in the form of royal charters, letters which granted monopoly to produce particular goods or provide particular services. In view of the need for Legislature to check the arbitrary and reckless grant of monopolies by royals, the statute of monopoly was enacted in 1623 to render illegal monopolies unless those granted for a defined term of years. The statute of Anne 1709 is seen as the precursor to a modern system of intellectual property grant and protection, as it explicitly recognises an author as the owner of copyright.¹⁰⁰

The present legislation that regulate intellectual property right recognition and protection in the United Kingdom are the Copyrights Designs and Patents Act 1988, the Digital Economy Act, Copyright and Trademarks (Offences and Enforcement) Act 2002, Plant Varieties Act 1997. It has been argued that in every intellectual property law, it is necessary to decide which steps in the chain of production and distribution of goods require the license of the right-owner. The Author further argues that in many cases both

⁹⁹ *supra*

¹⁰⁰ <http://www.ipo.gov.uk/pro-home.htm> accessed on 7th November 2017

in Britain and in foreign laws, the rights are exhausted after first sales by the right-owner or with his consent.¹⁰¹

With respect to the enforcement of intellectual property rights, it is generally accepted in the UK that Intellectual property rights by their nature are rights that depend for their effectiveness to a peculiar degree, upon the speed and cheapness with which they can be enforced.¹⁰²

As applicable in Nigeria, the UK law relating to each form of intellectual property defines the nature of the exclusive right in terms of content and business activity it advances. In this wise, a person who performs such an infringing act is liable in respect of it and anyone else who collaborates with him will be held liable as a joint tortfeasor as held by the court in the English case of *MCA Records v. CharlyRecords*¹⁰³. In the case of *Unilever v. Gillette*¹⁰⁴, it was also held that where a person who in supplying an infringing article or some essential component of it, acts solely outside the jurisdiction, he will not be held to be infringing a British intellectual property rights. However, if he collaborates with a person who acts within the jurisdiction, he becomes jointly liable for the latter's infringement.

With respect to deterrence to breach of intellectual property rights, the United Kingdom laws provide for both civil and criminal remedies. The Criminal remedies include set of offences known as secondary infringements and also certain offences which are

¹⁰¹ W. Cornish, D. Llewellyn and T. Aplin, "Intellectual Property: Patents, Copyright, Trade Marks And Allied Rights, Sweet & Maxwell, 7 edn, at 45

¹⁰² See Harms (2004) E.I.P.R 483

¹⁰³ (2002) FSR 401 CA

¹⁰⁴ (1989) RPC 583

considered serious and may allow for summary indictment provided for under Section 107-110 of the Copyrights, Designs and Patents Act. Also the Trademarks Act provides for similar provisions against the counterfeiting of registered trademark. In *R v. Johnstone*¹⁰⁵, a conviction for counterfeiting of registered trademark was upheld by the House of Lords.

In the United Kingdom, the range of civil remedies that enures in favour of the owner of intellectual property that enjoys protection includes:

- a. Injunction¹⁰⁶
- b. Account for profit¹⁰⁷
- c. Delivery up¹⁰⁸
- d. Damages¹⁰⁹

Also worthy of mention and consideration is the United Kingdom Digital Economy Act 2010. This Act seeks to regulate digital content in the United Kingdom. The UK DEA provides the government broad power to limit, suspend, or terminate Internet service to copyright infringers. The UK DEA also requires ISPs/OSPs to notify copyright owners of potential infringement.¹¹⁰ Also worthy of mention is the power granted the Secretary of

¹⁰⁵(2003) 3 All ER, 884 HL

¹⁰⁶ Intellectual Property practitioners always apply for this class of remedy which is prohibitory as it negates the threatened commission or continuance of wrongful acts. See the case of *Microsoft v. Plato Technology* (1999) FSR 834

¹⁰⁷ This remedy was judicially endorsed by the English court per Lord Eldon in *Hogg v. Kirby* (1803) 8 Ves. Jun 215 at 223. In *Attorney-General v. Observer* (1990) 1 AC, 109 at 262, the court held that it is a personal remedy against unjust enrichment.

¹⁰⁸ The Court may order delivery up of infringing articles for destruction as was held and applied in *Peter Pan v. Corsets Silhouette* (1963) 3 All ER, 402

¹⁰⁹ In *General Tire v. Firestone* (1976) RPC 197, it was held that the measure of damages will likely be what the claimant would have charged for a licence on the basis of the user principle.

¹¹⁰Section 3-16 of the Digital Economy Act

States to obtain a court order to block an internet location that is being used in connection with copyright infringement¹¹¹. The Act also advances further penalties for copyright infringements.¹¹²

4.4 Overview of Intellectual Property Rights Recognition and Protection in the United States of America

The United States Patents and Trademarks Office together with the United States Copyrights Office are the regulatory agencies empowered to develop and strengthen both domestic and international intellectual property protection. They advise the president of the United States of America through the Secretary of Commerce and indeed all federal agencies on national and international intellectual property policy issues, including intellectual property rights protection in other countries.

Some of the legislation that regulates intellectual property right in the United States of America includes, the Trade Secrets Act 2016, U.S Patent Law, 35 U.S.C, U.S Trademark Law: Rules of Practice in Trademark Cases; Plant Variety Protection Act, U.S Copyrights Act 1976, Intellectual Protection and Court Amendment Act, Digital Theft Deterrence and Copyright Damages Improvement Acts of 1973, the Digital Performance Right in Sound Recordings Act and the Digital Millennium Copyright Act.

Worthy of consideration is the provision of the Digital Performance Right in Sound Recordings Act which provides for permissible conducts with respect to the digital transmission and retransmission of protected sound recordings. It limits the transmission

¹¹¹Sections 17 and 18 of the Digital Economy Act

¹¹²See Section 42 of the Digital Economy Act

of protected works for certain usages which is termed fair use and prohibits any other conduct that interferes with the enjoyment of protected works.

The Intellectual Property Protection and Courts Amendment Act provides for a broad spectrum of civil remedies where there is an infringement of intellectual property rights.

Section 2318 provides for remedies which includes, injunctions, order impounding infringing articles, award to the injured party of reasonable attorney fees and cost, actual damages and additional profits of the violator. An important concept/remedy that the Act provides for is statutory damages, which is a sum an injured party may elect, at any time before final judgment is rendered to recover instead of actual damages and profits. Such sum cannot be less than \$2,500 and not more than \$ 25,000.

Also, the provisions of the Digital Millennium Copyright Act (DMCA) is worthy of extensive consideration. It provides a mechanism for copyright holders to protect their online content. The intentment of the DMCA is providing a platform for an author once he becomes aware that his work is being infringed upon to notify the Internet Service Provider (ISP)/Online Service Provider (OSP) that contains the material about the alleged infringement. If the ISP/OSP has created a mechanism that enables copyright holders to request that infringing work be removed and the process is followed by the ISP/OSP, the DMCA generally provides the ISP/OSP with a safe harbor from liability. Under Section 512(c) of the DMCA, a service provider must act "expeditiously" to remove copyrighted work after it has been notified. However, the DMCA does not define "expeditiously" and no controlling case law provides a definitive time frame that an ISP/OSP must abide by.

The US Courts have been involved in the recognition, protection and enforcement of proprietary rights in intellectual properties.

In *Playboy Enterprises v. Frena*¹¹³, the Defendant distributed unauthorised copies of Playboy's copyright-protected photographs from his BBS. The court found evidence of direct infringement and stated that the fact that Frena may not have known of the copyright infringement was irrelevant.

Another interesting case is the case of *Recording Industry Association of America (RIAA) v. Napster*¹¹⁴. The Plaintiff filed the action contesting the distribution of copyrighted music files over the internet using a popular program called Napster. The program allowed users who have installed the Napster software on their computers to share MP3 music file with other users who have the Napster software. The court held that Napster's action amounts to an infringement of copyrightable material and such an injunction was issued to stall its further usage.

In the *Viacom Int'l Inc. v. YouTube, Inc*¹¹⁵, Viacom sued YouTube because YouTube's website housed, without Viacom's authorization, more than 100,000 of Viacom's copyrighted video clips. Viacom sent YouTube one mass DMCA take down notice to remove the infringing material and YouTube complied with Viacom's request and removed virtually all of the videos within one business day of being notified. Although the Viacom court did not define "expeditiously" in its ruling, due to the viral nature of online activity it is recommended that commercial entities take no longer than one business day after they are notified to remove infringing material.

¹¹³839 F. Supp. 1552 (M.D. Fla. 1993)

¹¹⁴239 F. 3d 1004 (2001)

¹¹⁵ S.D.N.Y. June 23, 2010

CHAPTER FIVE

THE INTERNET USER: CHALLENGES AND NEED FOR REFORM

5.1 Introduction

Advancement in technology and the widespread use and recognition of the internet is one of the highpoints of the 21st century. It is arguable that the landmark achievements made by man is traceable to technological advancements and more importantly an unprecedented accessibility to the internet. However, as with every good thing, these advancements recorded are now the subject of abuse especially as it relates to intellectual property right protection. Infringers can now mass reproduce works subject of intellectual property protection. This in turn has affected the pecuniary benefits that owners of proprietary rights in intellectual properties can enjoy. As rightly captured by a learned writer, “once it became possible to produce works (such as literary, and musical works, and films) in digital form, to the extent that the original work could not be distinguished from a copy and the copy would not deteriorate, the value in purchasing an authorised copy declined. Consumers have been given technology that allows them to make perfect a copy for themselves and distribute it to others. Producing a perfect reproduction of many works is no longer the domain of a specialist counterfeiter.”¹¹⁶

The internet has even exhibited more dangerous dimensions in the infringement of intellectual property rights. Materials subject of intellectual property protection can be infringed on a wide scale basis and with unprecedented speed, despite the fact that there is no implied consent for such

¹¹⁶ David Ibber, “Intellectual Property- Challenges For the Future” @ www.austlii.edu.au

works to be uploaded to the internet system and more importantly to be accessed without any form of benefit to the interest owner. More worrisome is the fact that even where there may be legislative and judicial remedies in the event of a breach, there is always the challenge of identifying and perhaps effecting the necessary reprimands on defaulters. A case worthy of consideration is *Universal Music Australia Pty Ltd & Ors. V. Sharman License Holding Ltd*,¹¹⁷ where the court identified the fact that it has become clear that even if an injunction is granted to prevent use of the Kazaa software client, there are already a number of other versions of the Kazaa client being used that allow the Kazaa network to flourish even if the authorised client is somehow extracted from all its users, which is largely impossible to enforce in any event.

With respect to trademarks and other industrial properties, the emergence of domain names and the fact that it attracts trademark protection may be tricky. For instance, a business owner in Nigeria may own establish a trademark over its business and perhaps own a domain name for the purpose of visibility on the internet. However, in view of the fact that yet another organisation may have a similar domain page, the issue of trademark infraction may be considered. In view of the global nature of businesses and more importantly the fact the national boundaries are being lifted to facilitate trade and development, there becomes the likelihood of skirmishes. The World Intellectual Property Organisation is presently reviewing this challenges and hopefully in the nearest future a pronouncement will be made by it in this regard.¹¹⁸

In the Nigeria, the closest to any legal regime that seeks to regulate internet infringement of intellectual property rights is the **Cybercrime Act 2015**. As already highlighted in the preceding chapter 3, this legislation seeks to advance protection advanced to owners of intellectual property

¹¹⁷ NSD 110 of 2004, FCA; J Davidson, quoted in The riddle of the digital world, Finance Review, 14/12/2004 at 26

¹¹⁸ Being a text from the slides from Prof Oppenheim's presentation at "Facing the Legal Challenges of Providing Internet Access in HEIs" organised by the JISC with support from UKOLN. At www.ukoln.ac.uk

rights in Nigeria against infringement vide the internet. It makes criminal certain infractions vide the internet that impacts on proprietary rights in intellectual properties. Whilst this is laudable, more effort is desirable as the provisions of the Act are not tailored suited to extensively provide for the recognition and protection of intellectual property rights in Nigeria.

The objectives of the Act are worthy of extensive quotes. It reads thus:

- d. Provide an effective and unified legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria;
- e. Ensure the protection of critical national information infrastructure; and
- f. Promote cybersecurity and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights.**

Of critical importance to the present discourse is the provision of **Section 6** of the Act. It prescribes as an offence unlawful access to a computer. It reads thus:

“Any person, who without authorisation or in excess of authorisation, intentionally accesses in whole or in part, a computer system or network, commits an offence and liable on conviction to imprisonment for a term of not less than three years or a fine of not less than N7,000,000.00 or to both fine and imprisonment.”

Subs section further provides thus:

“where the offence provided in subsection (1) of this section is committed with the intent of obtaining computer data, securing access to any program, *commercial or industrial secrets or*

confidential information, the punishment shall be imprisonment for a term of not less than three years or a fine of not less than N7,000,000.00 or to both fine and imprisonment.

The provisions of **Section 8** is also apposite and worthy of extensive quote. It provides thus:

Any person who directly or indirectly does an act without authority and with intent to cause an unauthorised modification of any data held in any computer system or network, commits an offence and liable on conviction to imprisonment for a term of not less than 3 years a fine of not less than N7,000,000.00 or to both fine and imprisonment.

Subsection 2 further provides “Any person who engages in damaging, deletion, deteriorating, alteration, restriction or suppression of data within computer systems or networks, including data transfer from a computer system by any person without authority or in excess of authority, commits an offence and liable on conviction to imprisonment for a term of not less than 3 years a fine of not less than N7,000,000.00 or to both fine and imprisonment.

Subsection 3 explains instances when a modification of data would be held that have taken place. They include:

- a. Program or data held in it is altered or erased
- b. Program or data is added to or removed from any program or data held in it; and
- c. Act occurs which impairs the normal operation of any computer, computer system or network concerned

Aside the intendment of the aforementioned Act, the Nigerian Copyright Commission has severally taken steps to curb the menace of piracy in Nigerian. For a starter, the Commission has initiated various programmes geared towards the elimination of piracy in Nigeria. One of such

program is the Strategic Action against Piracy (STRAP) and the Copyrights Litigation and Mediation Program¹¹⁹ which are geared towards a clamp down on piracy in the industry.

Also it is worthy to note that the NCC has in exercise of its prosecutorial powers commence the prosecution of the following cases:

- a. NCC v. John Bright*¹²⁰
- b. NCC v. Obisam Ltd & Ors*
- c. NCC v. Tecomy & Ors.*
- d. NCC v. Paragon Technologies Ltd & Ors.*

Also, it is proper to mention that the Commission has secured convictions against prosecuted individuals. One of the cases worthy of extensive consideration is the case of *NCC v. Godwin Kadiri*¹²¹. In this case, the accused was charged with selling and distributing to about 100 subscribers the whole or substantial part of HiTV broadcast channels in which copyright exist without the consent of the said HiTV. The accused was also found to be in possession of equipment and contrivances including decoders, smart cards and splitters for the purpose of illegal rebroadcasting of HiTV channels contrary to S. 20 (1) (c) of the Copyrights Act. The accused was convicted by the Federal High Court sitting in Abuja upon conclusion of trial.

Although the above efforts and convictions secured by the NCC are commendable, however a major failure of the NCC remains with respect to infringement of copyright carried out via the internet. Thus, this paper shall now focus on copyright protection via the online channel.

¹¹⁹This program I initiated pursuant to powers granted the Commission by its enabling Act

¹²⁰Details available at <http://www.copyright.gov.ng/noticeboard>, accessed on 8th November 2017

¹²¹(2010) 53 NIPJD (FHC)

5.2 Focus on Copyright Protection in Modern Digital Space:

5.2.1 Copyright challenges in the face of the internet and computer age

In Nigeria, the Nigerian Copyright Commission (NCC) is vested with the statutory duty to administer the provisions of the Copyright Act and ensure protection of copyrighted works. By virtue of the provisions of Section 34 of the Copyright Act, the NCC is established as a body corporate with perpetual succession, and a common seal. The Commission has an Inspectorate unit which sees to the inspection of copyright and prosecution of infringers. By the combined provisions of Sections 34 and 38 of the Act, the Copyright Inspector is empowered to enter into any building and inspect same for violation of copyright as well as arrest and prosecute the offenders. By Section 39, the Commission has power to register Collective Societies with a bid to protection of copyright.

While the traditional modes of protection and enforcement of copyright in Nigeria has been fairly successful as shown above, there is a sharp contrast when the protection of copyright via the internet is concerned. Protection via the internet has hardly witnessed any remarkable feat.

Copyright protection across the world has become more difficult in recent years due to the technological advances that make content sharing, storage and reproduction extremely easy and inexpensive. Internet and internet related social media such as Facebook, Twitter, Youtube, etc.

In response, legislators around the world have been trying to identify ways to balance the need to protect an author's intellectual property from unauthorized dealing via the internet, without distorting creativity and innovation¹²². There is therefore a need for understanding of electronic copyright.

¹²² Bradley, S. Shea *Copyright Protection in the Digital Age; Quick counsel*. Available online at <http://acc.com/legalresources/quick/counsel/icpitusaefm> accessed on August 1, 2016.

Electronic copyright refers to copyright in machine readable materials. It includes use of software, internet, offline electronic database such as diskette, or CD-Rom.¹²³

Copyright right law is subject to international treaties.¹²⁴ The Berne Convention gives reciprocal protection for citizens from different countries who are the member states. Thus, an author of a copyright work in Nigeria enjoys the same protection of his work in the USA as if he was a US citizen. Therefore, a copyright work created in Nigeria automatically has protection in the US. Same applies to all countries in the world who are signatories to the Convention. Thus, the focus of the Convention is not the country where the protected work was created but the country where the infringement occurs.

A pertinent question begging for answer in relation to infringement of copyright over the internet is this:

If an individual in Nigeria downloads some data held on a computer in the USA, which law should apply in protecting the copyright in the work unlawfully downloaded via the internet?

Secondly, if a Nigerian sends instruction to a computer in the USA to copy machine-readable data over to a computer in Ghana, what law should apply?

In today's world, there is the ease with which machine readable items can be placed on the internet and thereby pass it to millions of people. Materials loaded on the internet enjoy copyright protection. There is no implied license to copy a work freely because it is put on the internet. That it is widely available for free does not change the fact that it is protected. As such, any act of download,

¹²³ Charles Oppenheim *Facing the Legal Challenges of Providing Internet Access in HEIS*, Joint Information Systems Committee available online at <http://www.ukoln.ac.uk/souvoices/elib/papers/other/copyright/session1/index/html>. accessed on Aug 1, 2016.

¹²⁴ See for example the Berne Convention; World Intellectual Property Organization (WIPO) Copyright Treaty. (adopted in Geneva on December 20, 1996), etc.

reproducing or distributing for profit which results to loss of income for the copyright owner amounts to infringement on the electronic item. In the Scottish case of *Shetland News Vs. Shetland Times and Zetnews Ltd*¹²⁵ a newspaper also owned a website sued another newspaper having its own website seeking to prevent the latter newspaper's website from displaying headlines in hypertext links on their own site.

The court held that the latter website in copying the headlines and using hypertext links to refer to the former's website had committed an infringement thereby.

Posers:

The questions raised by this case therefore is

- (1) Does placement of hypertext links from one website to another represent infringement of the former's website?
- (2) Does placement of copyright works on the internet impliedly give others right to copy, reproduce or distribute such works?
- (3) Does merely browsing and downloading internet materials, without more, amount to infringement of copyright?

5.2.2 Copyright protection and piracy from online sources

Copyright piracy is the illegal reproduction or duplication and distribution of copyright works. The *Black's Law Dictionary*¹²⁶ defines piracy as the unauthorized and illegal reproduction or distribution of materials protected by copyright, patents and trademarks law.¹²⁷

¹²⁵ 1997, F.S.R. (Cf. Session O. Hamiton J.,) Oct. 24, 1996 also available online at www.netlitigation.com/cases/shetland/html

¹²⁶ B.A. Garner, *Black's Law Dictionary* 8th edition

¹²⁷ *ibid*

Copyright piracy is a global epidemic affecting both developed and developing countries alike. Nigeria has been ranked among countries with high prevalence of piracy. For example, in 2007 Nigeria was ranked as having 82% of pirated works; 83% in 2008; 83% in 2009; 82% in 2011; 83% in 2012.¹²⁸ This therefore underscores the need for a better regime of copyright enforcement to prevent and/or reduce incidence of piracy in Nigeria.

5.3 Analysing the Nigerian Position with the Position in the United Kingdom and the United States of American

In Nigeria today, a common feature of copyright violation via the internet is the illegal or unauthorized download of music or video for storage on CD-ROM for distribution as pirated CDs¹²⁹. There are presently little or no modalities in place for the NCC to track piracy and other copyright violations arising from the use of the internet.

The reasons for this may include:

1. Lack of proper funding: The Commission is not adequately funded. As such there may be the need to prioritize cases which the Commission can handle. The limited resources available are therefore concentrated on exploring the more traditional ways of copyright protection and enforcement.
2. Lack of proper Information and Communication Technology skills: The internet is a global network of computers networks and contains vast information. Copyright protected works are daily uploaded on the internet without the consent of the copyright owners and same are also

¹²⁸ See Mary Imelda ObianujuNwogu, "The Challenges of the Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria", *Global Journal of Politics and Law Research*, 2, no. 5, (December 2014) 25; Available online at www.eajournals.org accessed on August 1, 2016

¹²⁹ See S. Osanyintunyi, "Effect of Piracy in Nigeria" Available online at <http://www.ccsenet.org/jp> accessed on August 1, 2016. See also Mary Imelda ObianujuNwogu, "The Challenges of the Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria", *supra*. 22

downloaded and distributed for profit by others. The NCC inspectors and officials are poorly trained on ICT skills and as such find it difficult to compete with the more trained and technologically advanced infringers.¹³⁰

3. Another reason is the general ignorance and inadequate understanding of intellectual property rights in Nigeria, even by the authors and society alike. Although technology and creative arts pervades the modern Nigerian society, yet few people actually realise the legal rights and regime of copyright protection available in the country today. This ignorance cuts across government, legislature, policy makers, authors and stakeholders in the realm of intellectual property, and even legal practitioners.¹³¹
4. Copyright protection (and indeed intellectual property as a whole) is dynamic in nature and evolves continuously. Thus making it difficult for practitioners to master and stick to a set of solutions to tackle problems relating to piracy.¹³² For example, between late 1990s and 2014, piracy in the movie industry was mostly done through the analogue system by media houses and video houses which specialized in renting out movie CDs for profit, without getting the consent of the copyright owners. Today, however, these renting houses have almost gone extinct and have been replaced with online piracy. Thus, while the NCC may have mastered the art of dealing with the media houses and renting houses, it would seem unprepared for the current challenges of online enforcement via the internet.

5.3.1 Electronic Copyright Protection in Other Jurisdictions

¹³⁰ For this and other challenges of enforcement of Copyright faced by the NCC see M. I. O. Nwogu, "The Challenges of the Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria", *supra*.

¹³¹ AdebamboAdewopo, "Intellectual Property Rights Protection and Legal Practice in Nigeria: Challenges and Prospects." 11. Being a paper delivered on August 27, 2008 at the Business Law Session of the Nigeria Bar Association National Conference held at the International Conference Centre, Abuja.

¹³² AdebamboAdewopo, *supra*.

5.3.2 U.S. A Copyright Law

The American constitution gives the federal government the authority to protect an author's original work.¹³³ Article 1, Section 8, Clause 8 of the U.S constitution states that the congress has power to promote the progress of science and useful arts, by securing for limited time to authors and inventors, the exclusive right to their writings and discoveries.¹³⁴ Accordingly, the U.S Federal Law¹³⁵ defines the nature of works that may be protected by copyright. The law allows authors and creators to monetize their original works and thereby protect copyright holders against unauthorized commercialization of their work.

Furthermore, the Digital Millennium Copyright Act (DMCA)¹³⁶ provides for protection of copyright works from online contents. By the Act, once an author becomes aware that his work is being infringed upon, he should notify the internet service provider (ISP)/ Online Service Provider (OSP) of the alleged infringement. By S. 512 (1) of the DCMA, a service provider must act "expeditiously" to remove the copyright protected work from the site after it has been notified.¹³⁷

However, the DCMA does not define the meaning of the word "expeditiously." In *Viacom International Incorporated V. YouTube, Incorporated*,¹³⁸ YouTube website housed thousands of videos belonging to Viacom without Viacom's authorization. The plaintiff sent notice to YouTube to remove the infringing materials from its site. This was complied with by YouTube within one business day of being notified. Notwithstanding this, Viacom sued YouTube. The court gave

¹³³ See Article 1, section 8, Clause 8 of the USA constitution

¹³⁴ Ibid.

¹³⁵ Federal Law 17 USA section 102 (a)

¹³⁶ The US Digital Millennium Copyright Act, 1998. The DMCA repealed and replaced the Act amended the US Copyright Act of 1976

¹³⁷ See Bradley S. Shear, supra

¹³⁸ No. 07 CIV, 2013 pr Judge Louis L. Stanto (S.D.N.Y. June 23, 2010) also cited in Bradley S. Shear Supra.

judgment in favour of YouTube after it found that YouTube was not aware of the infringing materials and that it had, upon becoming aware, removed nearly all the materials within one business day.

5.3.3 The United Kingdom

In the United Kingdom, the UK Digital Economy Act, 2010 (UKDEA)¹³⁹ regulates electronic or digital contents. The UKDEA gives the government powers to limit, suspend or terminate internet service to copyright infringers. The Act also requires ISPs/OSPs to notify copyright owners of potential infringement. Thus, while in the US the onus is on the copyright owner to notify the ISP/OSP, in the UK the onus is on the ISP/OSP to notify the copyright owner of the alleged potential infringement.

Sections 3 to 16 of the UKDEA contained copyright infringement provisions. These provisions established a "code" to be created which would define a system of procedures covering notifications to ISPs/OSPs to notify their customers when an allegation is made of downloading copyright-infringing content online. The ISPs/OSPs would then identify the subscriber. The Code also contains the conditions for disconnecting persistent infringers. The objective of these provisions is to provide evidence that copyright holders could use in court action against subscribers who repeatedly infringed. A second element of the provisions comprises the 'technical measures', whereby sanctions would be applied against the subscriber directly via the subscriber's ISPs/OSPs.

¹³⁹UK Digital Economy Act (UKDEA), 2010.

Under DEA Section 3 the allegations of infringement are to be transmitted to the Internet Service Providers (ISPs) by the copyright holders. The ISPs would then be obliged to transmit notifications to their subscribers, informing them of the allegation. The DEA Section 4 mandated the ISPs to keep a list of repeat offenders (a "copyright infringement list") who had reached a pre-determined threshold in terms of the number of infringements committed, and the data should be anonymous. The aim is that copyright holders could later seek a court order to identify subscribers against whom they want to take action

5.4 The Use of User Generated Content

One of the ways of protecting copyright works available online is the use of User Generated Content Ownership (UGC). The UGC means any form of content such as blogs, wikis, discussion forums, posts, chats, tweets, podcasts, digital images, video, audio files, advertisements and other forms of media that was created by users of an online system or service or website. It often relates to contents made available via social media websites. It is also called user-created content (UCC).

By this UGC, a website is required to clearly state who owns a UGC and how the website may utilize the UGC. This operates like the terms and conditions of a site which a user is required to agree to for the site to use his contents, otherwise the user will not have access to the site. For example, an intending Facebook user may be required to agree to terms and conditions that give Facebook the right to use any picture or information about the Facebook user.

The UGC may also put the blame for the publication of any infringing article uploaded by the user on the user, such that the website is either not liable or is indemnified.

A classic example of UGC ownership of contents shared on public websites by users is the recent craze on Facebook whereby Facebook users pasted a notice to Facebook management and other authorities stating that they do not authorize Facebook to use any contents uploaded by them on the Facebook Website, for any purposes whatsoever, without their express consent.

In the light of the present discussion, Website users who copy and paste copyright protected literary or other works on the Website maybe personally liable to the copyright owners. Thus, this UGC where available enables the Website owners to free themselves of potential or actual liability for infringing articles on the site.

It is imperative at this point to review developments in other jurisdiction with infractions on intellectual property rights vide the internet. The challenges faced by the Nigerian society with respect to the management of proprietary rights in view of the activities of infractions conducted via the internet is experienced by all nations of the world. Without argument, copyright protection across the world has become more difficult in recent years due to technological advances that make content sharing extremely easy and inexpensive. Legislation by various countries of the world strive to discuss this problem and more importantly seeks a balance in view of the need to protect an author's intellectual property from unauthorized use without hampering innovation.

The U.S. Constitution provides the federal government the authority to protect an author's original work. According to 17 U.S.C. Section 102(a), "copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."

Federal law enables content creators to monetize their original work and protects copyright holders against the unauthorized commercialization of their material. One of such laws is the Digital Millennium Copyright Act (DMCA) which provides a mechanism for copyright holders to protect their online content. The intendment of the DMCA is providing a platform for an author once he becomes aware that his work is being infringed upon to notify the Internet Service Provider (ISP)/Online Service Provider (OSP) that contains the material about the alleged infringement. If the ISP/OSP has created a mechanism that enables copyright holders to request that infringing work be removed and the process is followed by the ISP/OSP, the DMCA generally provides the ISP/OSP with a safe harbor from liability. Under Section 512(c) of the DMCA, a service provider must act "expeditiously" to remove copyrighted work after it has been notified. However, the

DMCA does not define "expeditiously" and no controlling case law provides a definitive time frame that an ISP/OSP must abide by.

In the *Viacom Int'l Inc. v. YouTube, Inc*¹⁴⁰, Viacom sued YouTube because YouTube's Website housed, without Viacom's authorization, more than 100,000 of Viacom's copyrighted video clips. Viacom sent YouTube one mass DMCA take down notice to remove the infringing material and YouTube complied with Viacom's request and removed virtually all of the videos within one business day of being notified. Although the Viacom court did not define "expeditiously" in its ruling, due to the viral nature of online activity it is recommended that commercial entities take no longer than one business day after they are notified to remove infringing material.

The U.S. Copyright Office¹⁴¹ provides guidance on how to protect frequently updated online content. According to the U.S. Copyright Office's Circular 66¹⁴², Websites, blogs, and other original work that is uploaded to electronic media and updated on a constant basis should be registered every 3 months within the same calendar year. Registration is a procedural requirement that must be satisfied before an infringement action may be commenced, and it enables rights holders to obtain statutory damages along with attorneys' fees and costs.

In addition to the Copyright Office, the Librarian of Congress is also involved in copyright rulemaking. Every three years the Librarian of Congress is required under Section 1201(a)(1) of the copyright law to determine if there are any classes of works that will be subject to exemptions from the statute's prohibition against circumvention of technology that effectively controls access

¹⁴⁰ S.D.N.Y. June 23, 2010

¹⁴¹ See <https://www.copyright.gov> accessed on 7th November 2017

¹⁴² (supra)

to a copyrighted work. The Librarian of Congress makes its determination based on the recommendation of the Register of Copyrights.

In the case of *Sega Enterprises Ltd v. MAPHIA*¹⁴³, Sega which contended that the Defendant copied its game to its electronic bulletin board system was able to prove infringement as it showed that the Defendant sometimes charged users a direct fee for downloading privileges, or bartered for the privilege of downloading the Sega game. The court held that because Sega's game was protected by copyright, the Defendants above highlighted act amounts to an infringement.

Also, in *Playboy Enterprises v. Frena*¹⁴⁴, the Defendant distributed unauthorised copies of Playboy's copyright-protected photographs from his BBS. The court found evidence of direct infringement and stated that the fact that Frena may not have known of the copyright infringement was irrelevant.

Another interesting case is the case of *Recording Industry Association of America (RIAA) v. Napster*¹⁴⁵. The Plaintiff filed the action contesting the distribution of copyrighted music files over the internet using a popular program called Napster. The program allowed users who have installed the Napster software on their computers to share MP3 music file with other users who have the Napster software. The court held that Napster's action amounts to an infringement of copyrightable material and such an injunction was issued to stall its further usage.

¹⁴³857 F. Supp. 679 (N.D. Cal. 1994)

¹⁴⁴839 F. Supp. 1552 (M.D. Fla. 1993)

¹⁴⁵239 F. 3d 1004 (2001)

THE UK DIGITAL ECONOMY ACT 2010 (UK DEA)

The regime that regulates digital content in the United Kingdom is the United Kingdom Digital Economy Act 2010. The UK DEA provides the government broad power to limit, suspend, or terminate Internet service to copyright infringers. The UK DEA also requires ISPs/OSPs to notify copyright owners of potential infringement.

REFORMS TO HIGHLIGHTED CHALLENGES

Having highlighted the various challenges that beset intellectual property protection in Nigeria as it concerns infractions conducted vide the internet, there is no gain reiterating the fact that the present Nigerian regime that seeks to advance protection in this regard is in dire need of reform. Whilst the writer recognizes the efforts of the various pressure and professional groups/association which is geared towards achieving further enthronelement of recognition and protection for owners of proprietary interest in intellectual property rights, it is submitted that more extensive reforms are required to bring our intellectual property regime in line with present day realities and in tune with international developmental strides recorded in the industry. To this end, what is proposed are both institutional and substantive reforms. This contention stems from the view that it is foolhardy to seek a change to the system even with substantive reforms, if the institutions which administer the procedures are not reformed.

With respect to substantive reforms, it is submitted that there is need for a total overhaul of our legislative system that regulates intellectual property in Nigeria. The Cybercrimes Act is neither here nor there in advancing robust protection to intellectual property rights. This is because the focus of the Act is not on the protection of intellectual property but on protection of designated national assets. Indeed there is a need for a dedicated legislation that stretches to a possible extent in compelling agreed and regulated codes of conduct with respect to usage of intellectual properties

vide the internet and other similar platforms. It is rather horrendous that despite the prevalence of widespread acts of infringement on intellectual properties subject of protection by the relevant regime vide the internet, the legislature is yet to deem it fit to institute reforms and make necessary amendments in this regard. To say the least, the present legislation that regulate intellectual property rights recognition and protection do not sufficiently envisage infractions vide the internet. Invariably, the laws do not provide for steps to proscribe conducts in the internet that infringes on intellectual property rights. Furthermore, it is the writer's honest estimation that the punishment spelt out where the relevant intellectual property laws are honoured in breach does not act to deter prospective breaches. An example of this highlighted problem is the provision of Section 20 (2) of the Copyrights Act which provides thus:

Any person who-

- (a) Sells or lets for hire or for the purpose of trade or business, exposes or offers for sale or hires any infringing copy of any work in which copyright subsist or;
- (b) Distributes for the purposes of trade or business any infringing copy of any such work; or
- (c) Has in his possession, other than for his private or domestic use, any infringing copy of such work; or
- (d) Has in his possession, sells or lets for hire or distribution for the purposes of trade or business, or exposes or offers for sale or hire any copy of a work which, if it had been made in Nigeria, would be an infringing copy.

Unless he/she proves innocent infringing, is guilty of an offence and liable on conviction to a fine of N100 for each copy dealt with, or to a term of imprisonment not exceeding two year or in the case of an individual, to both such fine and imprisonment.

Also, it is the writer's earnest estimation that in view of the speed with which infractions via the internet allows and the extent of damages which such infractions may occasion within a short period of time, there is the need for a judicial solution that matches such speed with timeous remedies where a prima facie case is established. In this wise, it is recommended that judicial reforms are necessary in this regard. Aside the need for dedicated courts to hear and dispense of cases of infractions, it is also imperative that distinct and unique procedures be put in place by the authorities to fast track infringement cases and also bring judicial solutions in line with present day realities. It is beyond argument that intellectual property practice requires simple and proactive systems, procedures and structures to function optimally. The present judicial procedures and systems that holds sway in our judiciary consist of hurdles that reduce the effectiveness of intellectual property practice. An example of the above is the fact that a defendant to a writ of summons (which is the generally acceptable mode of commencing an action in Nigeria) filed enjoys between 30-45 days within which he can enter his appearance and/or file his defence.

Fundamentally, there is the need to fully embrace and adopt the WIPO model intellectual property legislation via the domestication of international treaties on intellectual property. In this regard, the recent ratification of the WIPO Copyright, Performances and Phonogram Treaties (1996), Beijing Audio-visual Treaty (2012) and Marrakesh Treat (2013) are clap-worthy achievements. This will usher in a new regime that is predicated on international best practice and more importantly ensure intellectual property practice in Nigeria is viewed from a world view/perspective. What is more, Nigeria will be rightly positioned as a country with a robust intellectual property rights protection regime which will in turn see Nigeria emerge as a preferred destination for conducting businesses as there is an assurance that in the event of an infraction of proprietary rights, our system advances adequate remedies and deterrence.

It is further submitted that there is need to create a single regulatory body backed by statute that regulates the entire spectrum of intellectual property rights. The proliferation of registries and authorities has ensured certain genres of intellectual property rights suffer neglect. Also, there is the need for proper funding of regulatory agencies that are involved in intellectual property registration and protection. As with the case of the Nigerian Copyright Commission, proper facilities and trainings are not presently in place. This lack of funding militates against the optimal functioning of these agencies. The training and re-training of the personnel of relevant agencies of government in the intellectual property rights sector is non-negotiable and should as a matter of urgency be considered. Personnel should be sent on foreign trainings to understudy nascent and cut-edged developments put in place by more developed climes to curb the menace of infractions of proprietary rights on the internet and similar platforms.

Also, as a matter of cause, intellectual property recognition and protection should be included as a compulsory subject in our educational curriculum, this will ensure that there is widespread enlightenment on intellectual property rights recognition, infractions and punishments. Also, relevant agencies of government must continue to engage in publicity, seminars, outreaches and events that promotes the dissemination of knowledge of intellectual property rights recognition, protection, infractions and punishments.

Also, in view of the widespread infraction of intellectual property rights committed vide the internet, there is the need to put in place sophisticated ICT systems and procedures to help with the supervision, monitoring and enforcement of legislation that deters certain conducts. Also there will be the need to train personnel on the operations of such systems and procedures.

Furthermore, there is the dire need to engender reform in the institutions of government that participate in intellectual property rights enforcement proceedings. Our court system is in need of urgent reforms. As it relates to intellectual property practice and procedures, there is the immediate need for Nigeria, to review and formulate new policies that govern institutions whose actions impacts on intellectual property practice and procedures. There may be the need to create new courts or train existing judicial officials on modern intellectual property practice and procedures. The Various regulatory agencies such as the Nigerian Copyright Commission must understand that as key players in the Nigerian intellectual property sector, they must take prompt steps to partner with other stakeholders such as the Nigerian Law Intellectual Property Watch Inc and the Intellectual Property Lawyers Association of Nigerian practitioners and seek ways of resolving or removing bottlenecks that stands in the way of an efficient discharge of their duties.

CHAPTER SIX

CONCLUSION

6.1 SUMMARY OF FINDINGS

The analytical review of the state of intellectual property recognition and protection regime adopted by the writer, clearly pinpoints the various limitations experienced by the Nigerian intellectual property regime and indeed intellectual property protection. An important finding arrived at is that there exists a paucity of viable laws that supports our intellectual property protection. In most cases, existing laws are out-dated, redundant and are yet to embrace/adopt recent trends/developments in intellectual property recognition and practice. Also an attempt has been made to explicate the performance of the regime that governs infractions of intellectual property rights committed over the internet and other similar platforms. This is because of the overwhelming indulgence allowed by the internet and the attendant speed and accessibility which the internet affords. It is my firm believe that in view of the issues highlighted, cognisance must be taken of the need to regulate internet usage of intellectual property which is the subject of protection within the bounds of the acceptable legal regimes made for this purpose.

It has also been demonstrated that there is no viable regulatory body that sets in motion regulations and minimum acceptable codes of conduct of intellectual property usage thereby enthroning efficient systems that safeguard intellectual property rights in Nigeria. The National Copyright Commission and other sister agencies are plagued with various limitations that militate against their effective and effectual functioning. The writer has emphasized that a robust, viable and empowered regulatory body is essential to the protection of intellectual property rights in Nigeria, as it will ensure proper checks are put in place against arbitrary and unlawful practices that infringes on the right of intellectual property owner.

Also, as revealed in the course of this academic exercise, the legal regime regulating intellectual property recognition and protection is yet to be codified into a single piece of legislation. It is the writer's estimation that a codified intellectual property regime will allow for clarity, enthrone more certainty and act as better deterrence against possible infractions. Fundamentally and whilst applauding the recent ratification of the WCT by the Nigerian government, there is need to better the present protection offered by the Cybercrimes Act of 2015 against infractions on intellectual property rights committed over the internet. This is because the Cybercrimes Act is only concerned with criminal matters and not necessarily infringement of intellectual property vide the internet. The present protection accorded intellectual property rights owners under the said Act is neither here nor there and this acts to limit the quality of intellectual property protection against possible infractions committed vide the internet.

In conclusion, it is the writer's argument, that a reformed intellectual property regime offers the much needed fulcrum through which businesses and individuals in the innovative industry can attain their potentials.

6.2 RECOMMENDATIONS

It is trite that the sole purpose of delving into any academic exercise is to expound the law as it stands vis-à-vis the problems inherent in a system and proffer solutions to the challenges faced by society. It is on this note that, an extensive recommendation aimed at promoting an effective and efficient intellectual property regime in Nigeria will be advanced. It will be in two folds; a proposal for the reform of the legal frame work that governs the recognition, management and protection of proprietary rights in intellectual property and the creation of an independent regulatory body which primary mandate will be the review of acceptable code of conducts in the usage of materials/articles the subject of intellectual property recognition and protection in Nigeria. It is

also intended that a proposal be made calling for an overhaul of the extant legal regime that regulates intellectual property rights recognition and protection in Nigeria.

Some of the recommendations are pertinent and it is hoped that it addresses the challenges faced by intellectual property right owners in Nigeria. The recommendations include the following:

- i. A review and restructuring of intellectual property law and practices in Nigeria with the aim of codifying the various provisions of the Copyrights Act, the Trade Marks Act, The Patents and Designs Act and the relevant provisions of the Cybercrimes Act into a single piece of legislation ‘IntellectualProperty Act’. The proposed Intellectual Property Commission Bill is worthy of mention. It has as its major objective the establishment of a Commission with the mandate to:
 - a. Supervise the administration of the law relating to intellectual property rights and ensure rapid and coordinated development of intellectual property rights;
 - b. Do all such things as are necessary to carry out the provisions of all laws relating to intellectual property matters

Also, it is proposed that all extant provisions that are out-dated, redundant, and problematic which acts as impediments to the advancement of robust protection to owners of intellectual properties in Nigeria be totally expunged or reviewed to bring them in line with modern practices and also ensure they accord with international best practices.

- ii. An urgent adoption of all conventions and treaties that further enhances the protection of intellectual property rights in Nigeria. The proposed adoption will help cure some of the anomalies that currently exist in our system. It will also afford for a system of

collective efforts across national boundaries on infractions that negatively impacts on the rights of owners of intellectual properties.

- iii. It is also proposed that a system that makes it compulsory for ISPs/OSPs to notify copyright owners of potential infringement¹⁴⁶ as is provided by the United Kingdom's Digital Economy Act be implemented in Nigeria. This in our estimation will reduce the incidence of infractions committed vide the internet, as ISP's will be on the alert to ensure it does not incur liability owing to its failure to promptly notify as required by law.
- iv. It is pertinent that organized bodies and associations such as the Nigerian Law Intellectual Property Watch Inc and the Intellectual Property Lawyers Association of Nigeria engage both the public and private sector towards ensuring that the necessary development in the intellectual property sector is fast tracked. Furthermore, it is now important that the Intellectual Property Lawyers Association of Nigeria be accorded statutory recognition as this will ensure that it has the vires to coordinate the activities of practitioners in the intellectual property sector of Nigeria. It is also important that these organized associations insist on programs that will promote improved intellectual property practice amongst its members, promote discipline, fair dealings and practices amongst its members. This can be achieved through organization of training programmes, seminars, articulation of opinions in literatures and dissemination of such literatures to interested persons and persons of interest. These associations act as pressure groups and influence government decisions that impact on the intellectual

¹⁴⁶Section 3-16 of the Digital Economy Act

property industry. It is imperative that government as a matter of urgency conduct capacity building programmes/courses for all officers of agencies and arms of government involved in the recognition, management and protection of intellectual property rights in Nigeria. Part of the proposed training will include the underpinnings of intellectual property management and protection, the need for urgency in acting where a case of infraction is established, and investigative and prosecutorial skills/techniques whilst conducting cases of infraction. Presently, the courts in Nigeria are characterized by tardiness, inexperience, lack of knowledge and procedural inefficiencies. The system will benefit from a specialized, fast track procedure for resolving intellectual property related issues in order to preserve value at a critical time.

- v. There should be an introduction of special rules and guidelines that will ensure a speedy resolution of intellectual property proceedings. Also additional powers should be accorded the court system to enthrone a fast track procedure if the facts of the case permits. In this wise, speed may arrest a rather outrageous case of infraction whilst docility may enthrone an irreparable loss to the interest of the owner of intellectual property.
- vi. It is submitted, that any such created or enabled government agency should create a division which should take charge of the regulation of infractions committed vide the internet. The division should play an oversight role at investigating, curbing and punishing infractions committed vide the internet. It should have a clear mandate to monitor the efficacy of existing laws, reviews, and spearhead reforms in this regard. It should also liaise with, and coordinate the activities of the courts and other key agencies or associations i.e. Intellectual Property Lawyers Association of Nigerian, Ministry of

Commerce and Trade, SON and NAFDAC etc. It may create rules that complement existing rules regulating infractions committed vide the internet to mitigate inconsistencies if any. Also, it is proposed that such an agency will employ officers saddled with the responsibility of monitoring distress calls, investigation and prosecution of infractions committed vide the internet etc. The feedback received from these officers would help to reform and facilitate intellectual property protection system.

- vii. It is also proposed that a specialized court be created that handles only intellectual property related matters. This will allow for a speedy resolution of intellectual property related matters and also engender a speedy development of this area of the law. It is beyond argument that it is through the instrumentality of judicial pronouncement that the law comes alive and is further developed. A clue can be taken from what is obtainable in the United States of America, where there exist tribunals established to attend specifically to Intellectual property related matters.

6.3 CONCLUSION

The essence of this academic exercise is to engage in a holistic review of the legal regime that impacts on the enjoyment of materials/articles subject of intellectual property protection in Nigeria. This has been achieved by engaging in an exhaustive review of the legislation (the Copyrights Act, Trade Marks Act, Patents and Designs Act, the Cybercrimes Act and judicial authorities) that recognises, manages and advances protection to intellectual properties in Nigeria. I have also engaged in an analysis of recent international developments in intellectual property rights protection and specifically as it concerns infractions that are committed vide the internet. This has informed the conclusion that that the Nigerian intellectual property regime requires

extensive reforms to bring it in line with recent developments in the regimes that protects the enjoyment of proprietary rights in intellectual properties. I have also, considered the various challenges faced by both owners of intellectual property rights and regulatory agencies in general and believe that the various challenges stems from lack of institutional and legislative structures that offers and effective platform for intellectual property rights protection. In conclusion, it is the writer's opinion that the present state of the regime that regulates intellectual property recognition and protection does not allow for an efficient and effective platform that reduces the risk of infractions of intellectual property rights. It is further stated that the extant provisions that spells out the powers, duties and whatsoever of regulatory agencies involved in the protection of intellectual property rights are archaic and in need of urgent reforms. Indeed, to state that reform is needed in the regime that seeks to protect proprietary rights in intellectual properties in Nigeria is to state the obvious. Genuine efforts must be made to review and implement international best practices. All critical players in this industry must as a matter of urgency seek mediums and engage in conversations that will ultimately lead to the much touted reforms required. Specifically there is need to come up with a legislation that targets infraction of intellectual property rights committed over the internet and other similar platforms, as the provisions of the Cybercrimes Act in this regard are generic and does not afford comfort.

It is the writer's hope that the various recommendations outlined in this academic exercise be considered and ultimately accepted as part of the necessary reforms that the Nigerian intellectual property regime must experience.