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AN OVERVIEW OF THE NIGERIA COPYRIGHT ACT, 2022

The Copyright Act 2022 (Copyright Act) is the regulatory instrument which governs copyright and other ancillary matters in Nigeria. It came into force on the 17th March 2023, and repealed the Copyright Act C28 LFN 2004 (Repealed Act). This article considers a brief overview of the Copyright Act while shedding some light on the significant changes introduced onto the Nigerian Copyright landscape.

Where appropriate, the impact of some of these changes will also be considered. Chief among these significant changes include new provisions aimed at the protection of creative works including works that arose because of technological advancements. Although, the Copyright Act adopts some of the provisions contained under the Repealed Act, it also introduces some notable provisions, which are considered subsequently.

COPYRIGHTABLE WORKS

Section 2 of the Copyright Act outlines the works eligible for copyright protection. This section introduces the concept of 'audiovisual works' as a replacement to cinematography films thereby capturing protected works in the digital space. Other works eligible for copyright protection under the Copyright Act include literary, musical or artistic works, notwithstanding their quality.¹

One shortcoming of the Repealed Act was the absence of provisions governing creative works in the digital space. This shortcoming has now been fixed with the replacement of the concept of cinematography films² under the Repealed Act with audio-visual works in the Copyright Act. Therefore, audiovisual works such as pictures, videos, sound recordings and other productions which can be found in the digital space are now eligible for protection under the Copyright Act.³

1. Section 2(3) Copyright Act 2022

2. Section 51 Repealed Act defines cinematography films (which includes the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction and includes the recording of a soundtrack)

3. Section 2 Copyright Act 2022

SCOPE OF PROTECTION

In respect of its applicability, section 5 of the Copyright Act provides that an author of a work who is a citizen of Nigeria or an individual who has been residing in Nigeria, or a body corporate incorporated by or under the laws of Nigeria can have copyright bestowed on their work. The Repealed Act refers to the term “domicile” which has since been replaced by the concept of “habitual resident” in the Copyright Act.⁴

AUTHORSHIP/RELATIONSHIP WITH INTERNATIONAL AGREEMENTS

Section 8 of the Copyright Act provides that, copyright shall be conferred on a work which on the day of its first publication, at least one of the authors of the work is a citizen of, or habitually resident in Nigeria. The same applies to a corporate entity that has been established under the laws of a country that is a party to an obligation in a treaty to which Nigeria is a party or the work is first published in a country which is a party to an obligation in a treaty to which Nigeria is a party. In situations where there are questions as to whether a country is a party to an obligation in a treaty, a certification from the Nigerian Copyright Commission (the Commission) will be used to show proof of that fact.⁵

MORAL RIGHTS

Section 14 of the Copyright Act is the provision on moral rights. It provides that a person has the right to object to a work being falsely attributed to him. It also states that moral rights will subsist for the duration of the copyright in the work. One interesting introduction under the Copyright Act is the express reference to moral rights unlike the Repealed Act which referred to moral rights as a right to claim ownership. The provisions for moral rights are therefore a bit more detailed under the Copyright Act.

Under the Repealed Act, moral rights are perpetual, inalienable, and imprescriptible. This meant that moral rights subsisted even after the expiration of copyright protection. They never expired. However, under the Copyright Act, moral rights subsist for the duration of the copyright in the work.⁷ Practically, this means that moral rights will expire alongside the copyright protection in a work. Therefore, moral rights in a protected work will subsist for the lifetime of the author and fifty or seventy years after the death of the author or after it was first made public, as appropriate.⁸

4. See section 5 Copyright Act 2022. Though not defined under the Copyright Act, one can infer that “habitually resident” (means persons regularly residing in Nigeria)

5. Section 8 Copyright Act 2022

6. Moral right is the inalienable right of the author to be recognised as the author of the work and in some cases, exercise rights such as the restriction of some forms of modification and destruction. For further reading, see: Adler, Amy M., Against Moral Rights (March 19, 2009). California Law Review, Vol. 97, p. 263, 2009

7. Section 14 Copyright Act 2022

8. Section 19 Copyright Act 2022

GENERAL EXCEPTIONS

Section 20 of the Copyright Act provides for the general exceptions to the use of protected works, a provision which has been broadened under the Copyright Act when compared with the Repealed Act. Some of these general exceptions include:

1. The permission to use protected works for research, private study through different channels on the premises of educational establishments, museums and public libraries, etc.
2. Reproduction of protected works in a technological process, whose sole purpose is to enable transmission between third parties for other lawful use, most especially where such use has no independent economic significance.
3. Contractual terms which restricts the doing of any act permitted under this Copyright Act shall be void.

SPECIAL EXCEPTIONS

Section 26 of the Copyright Act creates special exceptions for individuals to use protected works in defined cases. Such special exceptions are granted to the visually impaired or disabled persons. The Copyright Act refers to these set of people as beneficiaries and grants them access to works protected by copyright without requiring any form of authorization from the copyright holder.⁹

INFRINGEMENTS, OFFENCES AND SANCTIONS

The Copyright Act is much broader than the Repealed Act when compared together. According to the Repealed Act, copyright is infringed when a person who without the license or authorization of the owner of the copyright does or causes any other person to do an act, the doing of which is controlled by copyright. Interestingly, the Repealed Act and Copyright Act have similar provisions as regards infringement actions. Under Copyright Act actions can be instituted at the instance of the owner or other rightholder in a court of law located where the infringement occurred. One of the clauses introduced under the Copyright Act is the resolution of disputes through arbitration or any means agreed upon by the parties in dispute.¹¹

Under the Copyright Act, where a person has an infringing copy of a work in his possession, custody or control, the owner of the copyright in the work may apply to the court for an order that the infringing copy or article be forfeited to him or be destroyed or otherwise dealt with as the court may deem fit.¹²

9. Section 26 Copyright Act 2022

Section 16(1) of the Repealed Act provides inter alia that an action can be brought before the Federal High court in the jurisdiction where the infringement occurred, it also made mention of reliefs which the plaintiff shall be entitled to in the form of damages, injunctions, accounts or as is available in any corresponding proceedings

Section 37(7) Copyright Act 2022

Section 40 of the Copyright Act provides that all infringing copies of any work in which copyright subsists shall be deemed to be the property of the owner.

Both the Repealed Act and Copyright Act share similar provisions in respect of sanction, with notable differences relating to fines and terms of imprisonment. For instance, Section 44 of the Copyright Act provides for a fine of ten thousand naira for every copy dealt with and imprisonment for a term of three years or both.¹³

The Copyright Act stated that Where an article is seized by a law enforcement officer in connection with a suspected offence under this Act, a court may on the application of a Copyright Officer or owner of the copyright in the article, order that the article be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may deem fit, notwithstanding that no person has been charged with the suspected offence.¹⁴

REGISTRATION OF COPYRIGHTABLE WORKS

Section 43 of the Copyright Act describes the circumstances in which copyright protection may be presumed. In copyright infringement cases, it is presumed that the infringed work is registered in accordance with the Copyright Act under section 87 which provides for the registration of eligible works. The Copyright Act permits a person to register an eligible work. The register shall at the first instance reveal that the eligible work and the particulars have been entered into the register. Any extract from the register, certified by the commission shall be admissible in evidence in all proceedings without further proof.¹⁵

Subject to registration under section 87 of the Copyright Act, the following presumptions are established under the Copyright Act:

1. That copyright subsists in the work, which is the subject matter of an alleged infringement,
2. That the name appearing on the work is the name of the holder,
3. The name on the work to be published is that of the publisher or producer of the work,
4. Where the copyright holder is dead the work is an original, and
5. That the work is produced on the day and time appearing on the work.¹⁶

The Repealed Act contained the same presumptions except for the presumption that a plaintiff is the owner of the protected work,¹⁷ which is not reproduced in the Copyright Act.

13. Section 20(2)(D) of the Repealed Act provides that any person who 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, is, 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 an infringing copy of any such work, guilty of an offence under the Act and liable on conviction to a fine of hundred naira only, for every copy dealt with in contravention of this section, or to a term of imprisonment not exceeding two years or, in the case of an individual, to both such fine and imprisonment

14. Section 44(6) Copyright Act. On the other hand, Section 20(5) of the Repealed Act provides that where an article has been seized by a police officer or an authorised officer in connection with a suspected offence under this Act, a court may on the application of the Attorney-General of the Federation or owner of the copyright in connection with which such offence is suspected to have been committed, order that the article be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit, notwithstanding that no person has been charged with the suspected offence.

15. Section 87 Copyright Act 2022

16. Section 43 Copyright Act 2022

17. Section 43(b) Repealed Act

RECORD KEEPING

Section 48 of the Copyright Act stipulates that every person in the business of production or reproduction of protected works shall maintain records of all works done during their businesses. Failure to maintain said records or falsification of such records could attract a fine or imprisonment or even both. It becomes an infringement when a person bypasses any protective measures of protected works. Any person who produces/tenders or causes any false entry to be produced or tendered in evidence is liable to a fine of at least one hundred thousand naira only or imprisonment for at least a year or both. A right-holder or any person having interest in a protected work shall on written demand be furnished with information relating to the protected work as per the records kept.¹⁸

IMPORTATION OF PROTECTED WORKS

Section 53 of the Copyright Act outlines the processes on restrictions regarding importation of protected works. The right holder of a protected work may by a written notice inform the Commission to notify the Nigerian custom service to restrict the importation of infringing works.¹⁹ This is a clear deviation from the provision of the Repealed Act which restricted the importation of printed copies.²⁰ However, the language of the Copyright Act broadens this restriction to all protected works. Under the Copyright Act, the copyright holder can seek the prohibition of the importation of the infringed work. This would apply to printed and non-printed works alike.

FUNCTION AND POWERS OF THE COMMISSION

The Copyright Act empowers the commission to take full responsibility on all matters relating to copyright, including administration, regulation, and enforcement in Nigeria. The functions and powers of the Commission are elaborated upon in Section 78 of the Copyright Act. Some of these function and powers include:

1. The Commission shall monitor and advise the government on issues relating to bilateral and multilateral agreement.
2. The Commission shall enlighten and inform the public on matters in relation to copyright.
3. The Commission investigates, seeks redress on infringements of copyrights and settles copyright related issues.
4. They implement measures to promote protection of copyright.
5. They exercise any other functions and duties as the Act provides for.

18. Section 48 Copyright Act 2022

19. Section 53 Copyright Act 2022

20. Section 44 of the Repealed Act.

Under the Repealed Act it was the responsibility of the commission to monitor and supervise Nigeria's position to international conventions,²¹ and also advice and regulate the conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country.²² While under the Copyright Act the function of the commission has been modified to capture monitoring and advising the Nigerian government in relation to bilateral and multilateral agreements between Nigeria and other countries.²³

COPYRIGHT OFFICERS

Section 86 of the Copyright Act describes the roles of copyright officers who are saddled with responsibilities of enforcing the provisions of the Act. Copyright officers have investigative and prosecutory powers like the police.²⁴ The Copyright Act also prescribes sanctions for anyone who breaches, prevents, or assaults a copyright officer in the performance of his duty. While the Repealed Act referred to copyright inspectors, this has been replaced with copyright officers under the Copyright Act.²⁵ One major distinction in the roles of copyright inspectors in the Repealed Act, and copyright officers in the Copyright Act is highlighted in section 38(f) of the Repealed Act. This provision stipulated that copyright inspectors can “carry out such examination, test or analysis within or outside the premises as is required to give effect to the provisions of the Act. The copyright inspectors also had the powers to make instant photographs where an examination, test, analysis, or photograph is carried out within the premises. However, section 86(2) (f) Copyright Act provides among other things, that the copyright officer has the power to seize, or take into custody any infringing copy, contrivance, material, equipment used or suspected to be used in committing an offence under this Act.

Section 38 of the Repealed Act provides that any person who obstructs a copyright inspector in the performance of his duties is guilty of an offence and liable on conviction to a fine not exceeding five hundred naira only or to imprisonment for a term not exceeding three months or to both such as fine and imprisonment. On its own part, the Copyright Act states that anyone who prevents the arrest of any person by a copyright Officer or rescues any person arrested, commits an offence and is liable on conviction to a fine not more than one hundred thousand naira only or imprisonment for a term or at least one year or both.

21. Repealed Act Section 34 (3)(b)

22. Repealed Act Section 34(3)©

23. Section 78(1)(b) Copyright Act 2022

24. The language of the law suggests that copyright officers have similar powers to those granted to the Nigeria Police force under the Police Act. Section 86(4) Copyright Act 2022

25. Section 38 of the repealed Act

COLLECTIVE MANAGEMENT ORGANISATIONS (CMO)

Section 88 of the Copyright Act provides for Collective Management Organizations (CMO) which are also known as right owners. Their principal objectives include the negotiating and granting of licenses, collection, and distribution of royalties, etc.

The Commission may approve the operation of a CMO once they are satisfied that the CMO has met certain criteria stipulated under section 88 of the Copyright Act. The Commission will not approve another CMO if it is satisfied that the existing one protects the interest of copyright holders, a person or group of people shall not perform the duties of CMO without the approval of the commission as required under the Copyright Act.

The name was expanded under the Copyright Act as Collective Management Organisation as against what we have under section 39 of the Repealed Act where it was referred to as collecting societies. The Copyright Act also includes right to issue licenses which permits the use of copyrightable works. The Copyright Act also defines those who can apply for approval to operate as CMOs.²⁶ The section also gives provision for offences and fines for an individual to the tune of One Million Naira Only or imprisonment for a term of at least 5years or both. For corporate bodies a Five Million Naira fine is stipulated.²⁷ The commission is also empowered to revoke, suspend, review, approve and make regulations specifying the conditions pertaining to effective management of CMOs.²⁸

DISPUTE RESOLUTION PANEL

Section 90 of the Copyright Act provides that the Commission may establish a dispute resolution panel. If constituted, the major function of the said panel will be to resolve any dispute which may arise from the payment of royalties, terms of licenses and any other matters that might be referred to the panel by the commission. The Act also provides under section 90(2 and 3) for the composition and appointment of the panel, the commissioner with the approval of the minister makes regulations providing for the operations of the panel, the Act also stated that a dissatisfied person may apply to the court for a review of the panel's decision. Under section 37 of the Repealed Act the panel was referred to as Copyright licensing panel.²⁹ Under the Repealed Act the commission shall have the power to grant compulsory licenses in accordance with the provisions of the Act.³⁰

26. Copyright Act Section 88(4)

27. Copyright Act Section 88(5)

28. Section 88 Copyright Act 2022

29. Section 90 Copyright Act 2022

30. Repealed Act Section 37(1)

This section have been expunged from the Copyright Act, another distinguishing feature under the Repealed Act was that the Panel consist of five persons, at least three of whom were members of the Governing Board of the commission, and one of whom shall be designated as the Chairman.³¹ However, under the Copyright Act a Panel established under subsection (1), shall comprise of three persons knowledgeable in Copyright matters, one of whom shall be designated as the Chairman.³² The Repealed Act stated that in instances, where an individual is aggrieved by a decision of the panel such individual has a right of appeal to the Federal High Court.³³ However, the Copyright Act provides that any individual dissatisfied with a decision of the panel may apply to the Court for a review of the decision.³⁴

SUBSIDIARY LEGISLATION

Section 97 of the Copyright Act has empowered the Commission to make regulations with the consent of the minister. This marks a departure from the Repealed Act under which the Minister is authorised to give directives in relation to any function and the commission is under a duty to comply with such directives.³⁵

There are a plethora of other new introductions to the Copyright Act particularly those which help in the implementation of copyright regulation in the digital space. Some of such provisions include: prohibition of the circumvention of technological protection measures aimed at protecting eligible works;³⁶ information location tools which relieve the service provider of liability for leading end users to copyright infringement; restriction³⁷ of access to infringing online content;³⁸ etc.

31. Repealed Act Section 37(3)
32. Section 90 (2) Copyright Act 2022
33. Repealed Act Section 37(6)
34. Copyright Act Section 90(6)
35. Section 50 Repealed Act
36. Section 50 Copyright Act 2022.
37. Section 59 Copyright Act 2022.
38. Section 61 Copyright Act 2022.

Conclusion

This article has considered an overview of the Copyright Act of 2022 while making comparisons with the Repealed Act and singling out changes introduced under the former. The protection of copyright in the digital space is arguably the most important introduction of the copyright Act. Based on some of the considerations in this article, the Copyright Act 2022 was introduced at the right time, especially judging by the technological advancements being recorded in Nigeria. Some of the significant changes introduced under the Copyright Act have the potential to address some of the challenges faced by rightsholders in Nigeria. These rightsholders must also take necessary steps to ensure that their works are protected, this can be done by registering their works with the Commission, especially pertaining to their works in the digital space which might not have previously enjoyed copyright protection. The engagement of relevant subject matter experts (including lawyers) whenever legal guidance is necessary or relevant rights are infringed remains a necessity.

It is expected that the Commission will provide supporting guidance documents to support some provisions of the Copyright Act that might need further interpretation. This will ensure for further robustness of the Nigerian copyright jurisprudence while strengthening enforcement.

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