

Myths About Copyrights

Elementaries of Copyright

Copyright ownership and protection only covers and protects works that are in a fixed form ; it does not cover ideas that have not been reduced to a fixed form.

Unfortunately, the Copyright Act in Nigeria does not sufficiently define what is a copyright as it states, 'copyright' means copyright under this Act?. It however defines 'copy' as ' a reproduction in written form, in the form of recording or cinematograph film, or in any other material form, so however that an object shall not be taken to be a copy of an architectural work unless the object is a building or model?.

Brad Templeton in his beautiful article on copyrights defined a copyright as 'basically the legal exclusive right of the Author of a creative work to control the copying of that work?. Underlinings are mine. His full article, which I recommend, can be found at <http://www.templetons.com/brad/copymyths.html>.

Copyright has as its principal purposes the right of the Author to derive maximum commercial benefit from his work and to also exercise control over its reproduction in any form or medium.

In Nigeria , unlike in some other countries, there is no formal requirement that a copyright must be registered before ownership right is conferred on its Owner. Also, copyright does not vest in perpetuity as in some cases, ownership rights ceases after 50 years from the year in which for example, the sound recording was first made.

Some of the rights of the copyright Owner include (I) control over the reproduction of the work; (II) publication of the work; (III) performance of the work in all places; (IV) reproduction and distribution of the work; (V) adaptation, translation or communication of the work in any form, etc.

Exceptions To Copyright Owner's Rights

- Fair dealing for purposes of research, private use, criticism or review, reporting of current events, etc. An acknowledgement of the Author of the work is however recommended for this and other exceptions.
- Imitation by way of parody (satirical imitation), pastiche (a jumble of other works) or a

caricature.

- Reproduction and distribution of conspicuous works of arts in public places.
- Educational use including educational broadcast, etc. It is expected that the Broadcasting Commission would have accredited the program as an educational one before broadcast.
- Public recitation.
- Use for public interest or under government control or direction.
- Judicial reporting; this does not confer copyright of the judicial decision on the Reporter.
- Use for blind or disabled persons.

Like other rights, the rights of a copyright Owner can be transferred by assignment, testamentary disposition or other operation of the Law.

Other Copyright Myths

Brad Templeton in his above article mentioned some copyright myths, which are false and can lead to civil and criminal liability in the event of any infringement. They include:

- ?If it does not have a copyright notice, it is not copyrighted?. Notice is no longer required; registration on the other hand is only required in some jurisdiction for purposes of commencing a litigation.
- ?If I do not charge for it, it is not a violation?. This is also false as a charge only affects the amount of damages that will be paid in the case of an infringement.
- ?My posting was just fair use?. Fair use is meant only for the enhancement of certain social values and not for profit/infringement.
- ?If I make my own stories, but base them on another work, my new work belongs to me?. Derivative works, which is what this is, require the permission of the original Owner before use.
- ?Oh, so copyright isn't a crime or anything??. Section 18 of the Nigerian Copyright Act makes it a criminal offence to infringe an Owner's copyright.

Constraints To Copyright Compliance & Enforcement

Nigeria is a signatory to many Copyright and intellectual property rights, conventions and organisations amongst which are: (1) Universal copyright Convention; (2) the Berne Convention for the protection of literary and artistic works; (3) Rome convention for the protection of performers, producers of photographs and broadcasting organisations; (4) World intellectual

Property Organisation, etc.

The enforcement of copyright however remains largely unsuccessful for many reasons amongst which are:

- Sophistication in piracy technology so that recognising the difference between the original and the pirated copies is becoming more difficult if not in some cases, impossible.
- Low per capita income vis-à-vis the high costs of the original works against the low cost of the pirated works has not assisted compliance and enforcement.
- Under funding of the regulatory bodies charged with copyright enforcement and outdated untested Laws are also inhibiting factors. Where support has come from large multinational copyright Owners, the regulatory body has been held to act as agent provocateurs in trying to effect compliance with the Copyright Laws.
- Insufficient regulatory offices in areas outside the federal and economic capitals of the country, which in most cases is where most of the pirated works are copied.

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