

Published By	JULIA LAW PUBLISHERS	Peer Reviewed Academic Article Received 13/03/ 2018
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CRANBROOK LAW REVIEW

Volume 8(1) 2018 pp. 64 - 72



Accepted:
12 May 2018

ISSN 2045-8479 (Print) ISSN 2045-8487 (Online)

AN APPRAISAL OF THE CRIMINAL LIABILITY FOR COPYRIGHTS INFRINGEMENTS IN NIGERIA

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ABSTRACT

One of the unique objectives of criminal law is to deter members of a given society from committing certain acts considered inimical to her wellbeing. Copyright infringement is an inimical act. Many copyright owners in Nigeria have been deprived of reaping the fruit of their creative or intellectual endeavour following activities of infringers. The major object of the infringement of copyright is to make quick and fast money as against the copyright owner. Copyright provides a very useful and effective way of exploiting a work economically. Its aim is to check opportunistic plunderers and provide a reward system for someone who has created something. Creativity is encouraged when those who engage in creation enjoy financial rewards. The primary focus of this paper is to critically examine the liability for criminal infringement of copyright under the Copyright Act 2004. The paper evaluates the penalties set out in the Act and argues that they are not stringent enough and cannot deter perpetrators hence the unwholesome business of piracy and other forms of copyright infringement continue unabated in the country. The paper also contends that the provisions of the Act which cast the burden of proof of innocence on the offender runs contrary to the 1999 constitution (as amended) and at variance with what most judges saddled with the trial of offenders for criminal infringement of copyright do as they at most times follow the conventional practice of making the prosecution prove beyond reasonable doubt the guilt of the offender. The paper advocates amongst others for the amendment of the criminal sanction provisions of the Act to provide for stiffer penalties as a way of deterring would be perpetrators. The paper also suggest the amendment of the section of the Act that cast the onus of proof of innocence on the offender since the provision appear to contradict the section 36(5) of the 1999 Constitution (as amended).

Keywords: Patent, Intellectual Property, Criminality, Nigeria.

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1. INTRODUCTION

Piracy and other forms of copyright infringement has become an intractable problem in Nigeria today. The works that are pirated or infringed are usually products of the creative activity of individuals. Creativity is the very basis for the social, economic and cultural development of nations. For any nation to progress economically, it must not play down the development of its intellectual resources. The socio-economic development of a country depends to a large extent on the creativity of her citizens. It is a truism that the greatest heritage of a nation remains the creativity of its citizens and therefore one of these primary functions of law is to project the ingenuity, resourcefulness and innovation of the citizenry.¹ Knowledge and ideas have always been the vital force in human endeavour. The natural resources available today have existed for decades or centuries.

It is only successive waves of intellectual and practical innovations that have enabled mankind to use them productively. Furthermore, all of the constituent natural elements used to build today's most advanced supercomputers or treat diseases have existed for decades or centuries. It took generation of ideas, building one upon another, to turn those elements into technologies and medical methods that can change economic prospects. Hence, the supremacy of human resources over other kind of resources, natural inclusive. Indeed, we live in the world of intellectual property.²

The challenge of the copyright system remains its ability to guarantee the economic interest of right owners as well as balance that interest with the public good of maintaining access to information and knowledge. There is a definite nexus between the efficient functioning of the copyright system and the socio-economic well being of society.³ A strong copyright system guarantees the sustenance of investment in the copyright related industries and assures the creative community their pride of place in the society. It is of significant interest to any nation that wishes to have a solid foundation for domestic innovation and propagation of knowledge to accentuate its strategies for eradication of copyright violations. It is only a sanitized environment that can promote and develop the skills of the population in arts, communication and information technology that would foster economic development of the nation.⁴ A principal objective of the copyright system is to provide a just recompense to creators of certain kinds of works as an incentive for further creativity for the ultimate benefit of society.⁵

It is incontrovertible to assert that the philosophy behind copyright law is the prevention of the unlawful harvesting of another person's intellectual labour.⁶ The concept of copyright is based on the understanding that a labourer is worthy of his wages.⁷ A man should own what he produces, that is, what he brings in to being. If what he produces can be taken from him, he is no better than a slave.⁸ Without protection, there are many who would freely copy another person's work without having to take the trouble to create them for themselves and would be able, as a consequence, to sell the copied item more cheaply than the person who developed or produced the original. If this were to happen, the incentive for investment would be severely

¹ Hemen, Philip Faga Limits of copyright protection in contemporary Nigeria: Re-examining the relevance for the Nigerian copyright Act in today's Digital and Computer Age. Available at www.ajol.info/index.php/naujilj/article/download/82405/72560. accessed 22nd February, 2018.

² Robert J. Shapiro and Kevin A. Hassett, 'The economic value of intellectual property' October, 2005.

³ Adebambo Adewopo; Nigerian copyright system. Principles and perspectives, Odade publishers, 2012, p. 176.

⁴ Ibid.

⁵ Ibid p. 200.

⁶ Agboola M. J., Criminal sanctions for copyright infringement: The half of a yellow sum copyright piracy, journal of law, policy and globalization, vol. 31, 2014, p. 49.

⁷ Okeke G. N. and Uzor K., An appraisal of the protection of copyright under international law, journal of law and conflict resolution, vol. 6 (1), April 2014, p. 7.

⁸ David Bainbridge, Intellectual Property (4th edition). financial Times Pitman Publishing 1999, P. 18

limited thereby hampering sustainable development. Inadequacy of appropriate criminal sanction is a major factor that has contributed to the unending and reckless infringement of copyright in Nigeria. This paper seeks to analytically appraise the liability for criminal infringement of copyright in Nigeria. Comparison shall be made with other jurisdictions and useful suggestions made to remedy the situation.

2. ADVENT OF COPYRIGHT LAW IN NIGERIA

Adewopo⁹ opined that there seems to be two views on how copyright evolved in Nigeria. The two views represent different sides of the same coin which any discussion on the evolution of the concept of copyright in Nigerian cannot discount.¹⁰ The first school traces it to the influence of foreign political and economic forces. By this, reference is made to the extension of the English.

Copyright Act of 1911 to Nigeria under the colonial arrangement. This initiative was in a bid to make provision for the growing local dependence on foreign books, music and later cinematograph works, with the requirements of western education and evolving cultural influence of the colonial power.¹¹ The other school believes that copyright is part of our traditional concept and has been in existence for as long as the culture of the people.¹² The proponent of this school draw their support from the practice where dancers and singers pay tribute to their predecessors in the trade before they commence performance. The belief is that those who originated the dances or songs about to be performed must be acknowledged if the upcoming performer aspires to greatness.¹³ The first attempt to introduce legislation on copyright in Nigeria was the extension in 1912 of the English Copyright Act of 1911 to the Southern Protectorate of Nigeria.¹⁴ Nigeria copyright law therefore has its root from the imperial UK copyright system.¹⁵ By order-in-council the application of UK Copyright Act of 1911 was directly extended to the jurisdiction of Nigeria.¹⁶ Prompted by the need for a domestic legislation, the Federal Military Government in 1970 promulgated the first indigenous copyright law known as the Copyright Decree.¹⁷ Section 18 of the Decree repeated the imperial copyright Act 1911. In 1988, the Federal Military Government again promulgated a new copyright Decree¹⁸ which was subsequently amended in 1992.¹⁹

3. NATURE OF COPYRIGHTS

Copyrights Law in Nigeria is governed by the copyright Act.²⁰ The Act simply defines the term “copyright” as copyright under the Act.²¹ This definition is grossly inadequate and imprecise. Notwithstanding the shortcoming of the above definition, a painstaking surgery of the length and breadth of the Act offers the exact scope and nature of the subject matter of

⁹ Adebambo Adewopo, *Nigerian copyright systems, principles and perspectives*, op. cit. p. 4.

¹⁰ *Ibid* P.5

¹¹ *Ibid*. P. 4

¹² *Ibid*. P. 4

¹³ *Ibid*. P. 5

¹⁴ Adebambo Adewopo, “Legal framework for copyright protection in Nigeria” *Developments and Reforms; Nigeria’s commercial law Essays in Honour of Chief Chris Ogunbanjo Fagbohun & Adewopo* (ed), Lagos. 1988.

¹⁵ Greg Uloko, *Modern Approach to Intellectual Property Laws in Nigeria*, Princeton Publishing Co. Lagos, 2010, p. 3.

¹⁶ *Ibid*.

¹⁷ No. 61 of 1970.

¹⁸ No. 47 of 1988.

¹⁹ No. 98 of 1992.

²⁰ The Copyright Act Cap C28, LFN. 2004.

²¹ Section 51 (1) of the Act.

copyright.²² For instance Section 6 of the Act, under the title ‘general nature of copyright’ provides that copyright in a work shall be the exclusive right to control the doing in Nigeria of certain acts in relation to a work.²³ Such acts include reproducing the work in any material form, publishing or performing the work in public, translating, adapting, distributing or communicating the work to the public.²⁴ This description of the nature of copyright is in line with definitions proffered by legal writers. For example, Bryan Garner defines copyright as a property right in an original work of authorship (such as literary, musical, artistic, photographic, or film work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display the work or the body of law relating to such work.²⁵ Adebambo Adewopo, on his own part posit that copyright can simply be defined as the exclusive right of the creator of certain kinds of creative works to control acts that may be done in relation to such work by a third party.²⁶ The underpinnings of this protection are both economic and moral. It is believed that the author’s exclusive right to control the exploitation of his work places him in good stead to derive economic benefit therefrom.²⁷ David Bainbridge on his own part describes copyright as a property right which subsist in various works, for example literary works, artistic works, musical works, sound recordings and broadcast.²⁸

In the words of Clerk and Lindsell, copyright has been used by the legislature to refer both to the rights given to the authors of literary works and the creators of other works of arts and also the very different rights which may be secured by the registration of an industrial design.²⁹ Copyright has also been defined as the exclusive right to publish or sell and otherwise control a book, play, poem, picture or piece of music or other original work that can be reproduced by printing, playing or stamping granted by a government for a certain number of years.³⁰

From the above definitions, it is clear that copyright is a personal right which is not of a tangible nature. Secondly, it is a creation of statute. Thirdly, it is vested in the author or originator of the protectable work. Fourthly, the right does not enure in perpetuity. Lastly, it confers exclusive right in relation to an eligible work.³¹ It must be pointed out that copyright does not seek to establish a system of monopoly as patents espouses the negative right of preventing the copying of physical material.³² The crux of the whole issue of copyright, therefore hinges on the economic loss to the owner.³³

²² Olueze I. M., *Nigerian Copyright Law*, Magna Press Ltd., Lagos, 1998, p. 2.

²³ S. 6 (1) of the Act.

²⁴ *Ibid.*

²⁵ Bryan A. Garner, *Black’s Law Dictionary*, West Publishing Company, (7th edn.) p. 337.

²⁶ Adebambo Adewopo, *Nigerian Copyright Systems, Principles and Perspectives*, op. cit. p. 234.

²⁷ *Ibid.*

²⁸ David Bainbridge, *Intellectual Property*, Financial Times Pitman Publishing, 14th edn., 1999, p. 3.

²⁹ See Clerk and Lindsell on tort, Sweet and Maxwell, (15th edn), 1982, p. 1306.

³⁰ *The World Book Dictionary*, 1976 Edition, Volume 1, p. 460.

³¹ Olueze I. M. op. cit. p. 3.

³² Adebambo Adeirope, *Nigeria Copyright Systems, Principles and perspectives*, oficit p.e/

³³ Jadesola Akande, *International Dimensions of Nigerian Copyright Law*, in Professor E.E. Uvieghara (ed), *Copyright Law and Administration in Nigeria*, Associated Book- Makers Nigeria Limited, 1992, P.66

³⁴ Section 1(1) of the Copyright Act Cap 28 LFn 2004.

4. INFRINGEMENT OF COPYRIGHT

Section 1 of the Act List works eligible for copyright protection to include: Literary works, musical works, artistic works, Cinematograph films, sound recordings and broadcast³⁴ The Act enumerates certain criteria for the grant of copyright to literary, musical or artistic works. These include:

- (a) Sufficient effort has been expended on making the work to give it an original character; and,
- (b) The work has been fixed in any definite medium of expression now known or to be developed, from which it can be perceived, reproduce or otherwise communicated either directly or with the aid of any machine or device.³⁵ Generally rights that accrue to the owner of a work in which copyright subsist include Reproduction, Adaptation, Distribution to the public, public performance and public display³⁶ A person who deals with a work in which copyright subsist without obtaining requisite permission from the owner constitutes copyright infringement.³⁷ This form of infringement is provided for in section 15(1) (b)-(g). Under this section, the following would constitute copyright infringement if done without the licence or authorization of the copyright owner.
 - Importing or causing to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy under that section;
 - Exhibiting in public any article in respect of which the copyright is directly infringed;
 - Distributing by way of trade, offering for sale, hire or otherwise for any purpose prejudicial to the owner of the copyright any article in respect of which copyright is directly infringed.
 - Making or being in possession of plates, master tapes, machine, equipment or contrivances used for the purpose of making infringing copies of the work;
 - Permitting a place of public entertainment or of 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 used was not aware, and had no reasonable ground for suspecting that the performance would be infringement of the copyright.
 - Performance or causing to be preformed for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsist.

From the foregoing therefore infringement of copyright basically occurs when a person does in respect of a copyright work any of the acts which are reserved for the exclusive control of the author or right owner without the latter's consent. The foregoing are clearly civil infringements. The Act also criminalizes some of the infringing acts. In essence, their commission would give rise to liability by way of fine and or imprisonment³⁸ Therefore the infringement of copyright is both a civil wrong and crime³⁹.

³⁵ Section 1(2) (a) & (B) of the Act.

³⁶ The Basics of copyright infringement <http://mindfusion.files.wordpress.com/2008/01/basics-of-copyright-infringement.Pdf>, Accessed February 7, 2016, see also section 6D (a)(b) & (c) of the Act.

³⁷ Agboola M. J, Criminal Sanctions for copyright infringement: The half of a Yellow sun copyright piracy, op at p. 49

³⁸ Adebambo Adewopo, Nigeria Copyright System, Principles and Perspectives, op.cit P. 40

³⁹ Section 24 of the copyright Act provides for both criminal and civil actions to be taken simultaneously in respect of the same infringement.

⁴⁰ Adejoke O.Oyewumi, Nigeria Law of Intellectual Property, University of Lagos press and Bookshop Ltd. P. 100

⁴¹ Ibid.

⁴² Ibid.

5. CRIMINAL LIABILITY FOR COPYRIGHT INFRINGEMENTS

Certain acts of infringement of copyright go beyond being legal injuries actionable by private person through civil actions.⁴⁰ Rather these infringing acts are considered as public concerns, due to their adverse, far-reaching consequences for socio-cultural and economic well being. This is because violations of rights in the creative sectors frustrate the realization of public interest objectives of copyright, including the encouragement of creativity to enrich the worlds of education, information, entertainment and culture⁴¹In addition to civil action, The Act thus provides for criminal liability in respect of certain acts of infringement on a commercial level.⁴² The copyright Act imposes criminal liabilities on two categories of persons: they are individuals and bodies corporate. The Act repealed sections 491,492 and 493 of the first schedule to the criminal code Act which deals with copyright offences ⁴³ and now provides for criminal liability in section 20, 21, and 22. Thus any person who:

- (a) Makes or causes to be made for sale, or for hire or the purpose of trade or business any infringing copy of a work in which copyright subsists, or
- (b) Imports or causes to be imported into Nigeria a copy of any work which if it had been made in Nigeria would be an infringing copy: or
- (c) Makes, causes to be made, or has in his possession, any plate, master tape machine, equipment or contrivance for the purpose of making any infringing copy of any such work, is unless proves to 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 and liable

On conviction to a fine of an amount not exceeding N1,000 for every copy dealt in contravention of the section or to a term of imprisonment not exceeding five years or to both such fines and imprisonment.⁴⁴ Furthermore, any person who:

- (a) Sells or lets for hire or for purposes of trade or business, exposes or offers for sale or hires any infringing copy of any work in which copyright subsists; or
- (b) distribute 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; or
- (d) has in his possession, sells, lets for hire or distribution for the purpose of trade or business, or exposes or offers sale or hire any copy or a work which, if it had been made in Nigeria would be an infringing copy, 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, is guilty of an offence under this Act and liable on conviction to a fine of N100 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.⁴⁵

Also any person who without the consent of the owner, distributes in public for commercial purposes, copies of a work in which copyright subsists by virtue of section 6(i) (a) (vi), 6(i) (c) (iv), 7 (i) (b) or 8 (i) (c) of the Act by way of rental, lease, hire, loan or similar arrangement shall be guilty of an offence under the Act and liable on conviction to a fine of N100 for every copy dealt with or imprisonment for six months or to both such fine and imprisonment⁴⁶. The

⁴³ S. 52 of the copyright Act Cap 28 LFN 2004

⁴⁴ S. 20(1) (a) and (b) of the Act

⁴⁵ S. 20 (2) (a)-(d)

⁴⁶ S. 20 (3) of the Act

⁴⁷S. 20 (4) of the Act

⁴⁸ S. 20 (5) of the Act

⁴⁹ S. 21 of the Act

Act also provides that the Court before which any proceeding are taken for any offence under subsections (1), (2) and (3) of section 20, whether the alleged offender is convicted or not, may order all copies of the works, plates, master tapes, machines, equipment and contrivances in the possession of the alleged offender, which appear to be infringing copies of the works, to be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit⁴⁷. The Act further provides that where an article has been seized by a police officer or an authorized 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.⁴⁸

The Act also renders the possession of Anti-piracy device as criminal infringement. The Act states that the commission shall have power, with the consent of the minister, to prescribe any design, label, mark, impression or any other anti-piracy device for use on, in or in connection with any work in which copyright subsists.⁴⁹ It further stipulates that any person who sells, rents, hires, or offers for sale, rent or hire, any work in contravention of the prescription made pursuant to subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding N100,000 or imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.⁵⁰ The Act also provides that a person who without the permission of the commission is in possession of or reproduce or counterfeits any anti-piracy device prescribed under the section is guilty of an offence and is liable on conviction to a fine not exceeding N50,000 or imprisonment for a term not exceeding five years or to both such fine and imprisonment. The Act equally provides that any person who fails to keep a register as required under Section 14 of the Act, or makes or causes to be made a false entry in such register, or produces or tenders, or causes to be produced or tendered as evidence any such entry or writing knowing the same to be false, is guilty of an offence under this section and liable on conviction to a fine not exceeding N10,000.⁵¹

Furthermore, the Act provides that in any action for infringement of any right under the Act, where an ex-parte application is made to the court supported by affidavit that there is reasonable cause for suspecting that there is in any house or premises any infringing copies or any plate, film or contrivance used or intended to be used for making infringing copies or capable of being used for the purposes of making copies or any other article, book or document by means of or in relation to which any infringement under this Act authorizing the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer not below the rank of an Assistant Superintendent of Police and;

- a) Seize, detain and preserve any such infringing copy or contrivance and
- b) inspect all or any document in the custody or under the control of the defendant relating to the action; and any person who knowingly gives false information under this section is guilty of an offence and liable on conviction to a fine of N1,000.⁵²

6. CRIMINAL INFRINGEMENT BY BODIES CORPORATE

Criminal liability for infringement of copyright by bodies corporate is provided for under the Act. It states that where an offence under the Act has been committed by a body

⁵⁰ S. 21(3) Act

⁵¹ S. 23 of the Act

⁵² S. 25 1(a) (b) and 2 of the Act

⁵³ S. 22 (1) of the Act

⁵⁴ S. 22(2) of the Act

⁵⁵ S. 22(3) of the Act

corporate, every person who at the time the offence was committed was in charge of; or was responsible to the body corporate for the conduct of the business of the body corporate shall be deemed to be guilty of such offence and liable to be proceeded against and punished accordingly; provided that nothing contained in this subsection shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or he exercise all the due diligence to prevent the commission of such offence.⁵³ The Act also stipulates that where an offence under the Act has been committed by a body corporate and it is proved that the offence was committed with the consent or connivance of any director, manger, secretary or other officer of the body corporate, such director , manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.⁵⁴ For the purpose of this section, body corporate includes firm or other association of persons, while director in relation to a firm includes a partner in the firm.⁵⁵ This in effect means that the classification of body corporate under the Act is not exactly the same with that of the Companies and Allied Matters Act (CAMA).

7. BURDEN OF PROOF FOR COPYRIGHT INFRINGEMENTS

In criminal procedure, the burden of proof of a crime rest on the prosecutor who is expected to prove beyond reasonable doubt that the alleged criminal committed the offence. However in criminal prosecution of an offender who committed copyright infringement, the burden of proof lies on the alleged offender. He has to prove to the satisfaction of the court that he did not know and has no reason to believe that any such copy was an infringing copy of such a work.⁵⁶ The burden does not shift because the law presumes that the copyright owner did not give his consent or license to the person who is being accused of the offence. This presumption allows the infringer to come up with any available defences. This particular mode of establishing the guilt of the offender is at variance with the provision of the 1999 constitution (as amended) wherein it is the duty of the prosecutor to establish beyond reasonable doubt, the guilt of the offender.

8. RECOMMENDATIONS

The rate of criminal infringement of copyright is on the rise in Nigeria and there is the need to take certain urgent action necessary to stem the tide. The following recommendations may be the right step in the right direction towards reversing the present trend.

(a) Amendment of Certain Provisions of the Act

(i) Removal of the option of fine as alternative to imprisonment from the Act. There should be no option of a fine. The penalties provided for infringement of copyright under the Act should be stiffer. Anyone that infringes a copyright is like a robber and should be treated with some measure of penal seriousness. The offenders make more money than the owners of copyright and the meager amount stipulated by the penalty provisions is not a burden to the infringers. A better option will be to convict the infringer without an option of a fine. This will deter perpetrators the more. This cannot be feasible except the penalty provisions for criminal infringement of copyright in the Act is amended.

(ii)The penalty provisions of the Act should also be amended to make a body corporate that infringes a copyright to pay very heavy fine upon conviction and its operating documents suspended for a specific number of years.

⁵⁶ S. 20(IC) AND (2d) of the Act.

(iii) Amending the provision of the Act placing the burden of proof on the offender in line with section 36(5) of the 1999 constitution (as amended) wherein it is the duty of the prosecution to establish the guilt of the offender. This is in line with conventional practice in most common law Jurisdiction.

(b) Adequate Public Awareness

The Nigeria Copyright commission had sometimes in the past admitted that lack of awareness about the laws and administration of copyright constitutes a major inhibition to the development of a sound copyright system in Nigeria. The commission must take the issue of public education serious. Most people in the country are not aware of the existence of any copyright law or even the presence of the commission and its mandate. The continuous education of the citizen by the commission will make them come to terms with the fact that copyright infringement is a form of stealing. This in our view is the magic-wand that will curb copyright infringement in the nation.

(c) Strengthening of the Copyright Inspectorate Division of the Nigerian Copyright Commission

There is the need to strengthen the copyright inspectorate division of the Nigerian Copyright Commission. Copyright inspectors should be encouraged to make more arrest and prosecution so as to deter other would be perpetrators.

9. CONCLUSION

The Protection of copyright is backed by legal safeguards aimed at preventing the violation of the rights of the copyright owner, and in the event of a violation, ensuring that remedial, punitive and other measures are in place to stop the infringement from being repeated and otherwise deal with such infraction as appropriate. The Nigerian Copyright industry is a great national asset. Effective copyright system is a major revenue earner to the Government. Nigeria is richly endowed with talented artistes and authors with the potential of earning foreign exchange for the country through the export of their works. This can be realized through strict enforcement of our copyright legislations. A creator of copyright work expends some labour and skill in his creation. This intellectual effort is worthy of protection from undue appropriation by those who would like to reap from where they did not sow.

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