

ARTICLE SERIES

**AN OVERVIEW OF  
THE COPYRIGHT ACT 2022**

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## INTRODUCTION

March 17, 2023, ushered in a new regime for the copyright space in Nigeria. The President of the Federal Republic of Nigeria signed the Copyright Bill 2022 into law, which officially repealed the Copyright Act CAP C28 LFN 2004 (the “Old Act”) and re-enacted the Copyright Act 2022 (the “Act”).

The Act introduces significant changes which will impact creatives and further strengthen the exercise of their rights, particularly in a digital world. Some of these changes include the recognition of digital copies of work, empowerment of the Nigerian Copyright Commission (“NCC” or “the Commission”) to effectively administer and enforce compliance of persons and entities with the provisions of the Act, recognition of audiovisual work as eligible for copyright protection, tenure of moral rights, licensing of photography and arts, among others.

Though the Act adopts most of the provisions contained under the Old Act, it introduces some notable provisions, which we have highlighted below.

## ELIGIBILITY OF WORKS

The Act maintains the provision on works eligible for copyright protection, albeit with some modifications. Notably, it replaces cinematograph films with audiovisual works.[1]

This is mainly seen as an improvement on the new Act, as the definition of cinematograph films is inadequate and limits its application. However, audiovisual works cover a larger scope and has been described as an electronic media possessing both a sound and a visual component, such as slide-tape presentations,[1] films, television programs, corporate conferencing, church services, live theater productions, web streaming, video conferencing, and live broadcast services. Some countries have also recognized the eligibility of audiovisuals for copyright protection. For example, the French Copyright Act recognizes audiovisual works as ‘works consisting of sequences of moving images, with or without sound’.[2] The United States also has a similar provision. The Act defines audiovisual work as “the aggregate of a series of related visual images with or without sound, which is capable of being shown as a moving picture by means of a mechanical, electronic or other device and irrespective of the nature of the material on which the visual images and sounds are carried and includes the soundtrack but does not include a broadcast.”[3] The Act also reiterates that the quality and the purpose of the work are not factors for determining the eligibility for protection.[4] This is important, as there have been controversies regarding the eligibility of certain works, particularly by social media content creators, due to the perceived “low quality of the work.” A compiler of existing work does not have exclusive rights over the pre-existing material or data.[5]

[1] Section 2(1)(d) of the Act

[2] Article 1112-6

[3] Section 108 of the Act

[4] Section 2(3) of the Act

[5] Whilst this is not new, it is important to highlight this in light of emerging kinds of works not contemplated under the Old Act.

## **COPYRIGHT BY REFERENCE TO COUNTRY OF ORIGIN**

In defining the conferment of copyright by reference to country of origin, the Act revises the provision that emphasizes domicile. The Act now confers copyright on a work if one of the authors, amongst other things, is a citizen of or is habitually resident in Nigeria.[6] The definition of “domiciliation” has been debated in various fields, including copyright protection. The Act does away with this complex requirement by replacing it with habitual residency. It embraces a more practicable and achievable one.

## **TENURE OF MORAL RIGHTS**

Before the enactment of the Act, moral rights were perpetual and inalienable. A question that typically arises in the minds of copyright enthusiasts is how to deal with works in the public domain, given that the author's moral rights still exist. The Act lays this to rest by stating that moral rights will expire when the copyright in a work expires. Additionally, moral rights are now transmissible upon the author's death by testamentary disposition or by operation of law.

## **RECOGNITION AS NON-EXCLUSIVE LICENSEES**

A commendable provision of the Act is that on commissioned works.

The Act allows persons who commissioned works to restrain the publication, exhibition, communication and distribution of such works, subject to a written agreement. This provision will affect photographs, paintings, drawings, or audiovisual works for private and domestic purposes as non-exclusive licensees.[7] Before the enactment of the Act, a photographer, for instance, had the sole right of exploitation (save as otherwise agreed).

## **PROVISIONS RELATING TO ONLINE CONTENT**

The Act makes provisions with regard to takedown notices for online content[8]. Before this provision, service providers who hosted copyrighted content on their platforms relied on the Digital Millennium Copyright Act of the United States of America, 1988, as well as the general provisions on licensing of content contained in the Old Act as the basis for the removal of infringing content hosted on their platform. However, this new provision provides a more direct and detailed approach to dealing with infringement on digital platforms.

It also lays down a procedure for takedown and reinstatement of the content[9] and redress for a person dissatisfied with the determination or action of a service provider.[10] In addition, a service provider which fails to promptly notify the subscriber responsible for the content for which a notice of infringement has been issued or take down infringing content from its platform will now be liable for breach of statutory duty and copyright infringement to the same extent as the actual infringer[11].

[6] Section 3(b) of the Act

[7] Section 28(3) of the Act

[8] Section 54 of the Act

[9] Section 55 (1) & (2) of the Act

[10] Section 55 (4) of the Act

[11] Section 55(6) of the Act

The Act also contains rules for suspension of an account that repeatedly infringes the copyrights of others, as well as the procedure for challenging an alleged consistent infringement.[12] The Act does not define what constitutes repeated infringement. We assume that service providers will be free to determine what constitutes repeated infringement in their content moderation rules. The Commission also has the right to block or disable access to any content, link or website hosted on a system or network which it reasonably believes to infringe copyright.[13]

## PERFORMER'S RIGHTS

The Act gives performers the exclusive rights to control the fixation and reproduction (of a fixation) of their live performances. The conditions for exclusive control over the reproduction of a fixation only applies where[14];

a.an original fixation was made without the performer's consent;

b.the reproduction is made for purposes other than those which the performer consented to in respect of the original fixation or of a reproduction; or

c.the original fixation was made under the provisions of section 68[15] , and the reproduction is made for purposes not covered by those provisions.

As a corollary to the above, Performers have exclusive rights to control the distribution and accessibility of their fixed and unfixed performances to the public. This includes selling or transferring copies of their fixed work, broadcasting their performances (unless it was already broadcasted), and making their fixed performances available to the public via wired or wireless means, allowing individuals to access them at any time or place they choose.

The Act also provides that in the absence of an express agreement to the contrary, a performer's consent to broadcasting his performance shall be deemed to include his consent to an authorised rebroadcasting of same, the fixation for broadcasting purposes and the reproduction for broadcasting purpose of such fixation.[16]

This inclusion is particularly important as live-streaming of performances garnered popularity during the COVID-19 lockdown and continues to grow. However, performers need to understand that based on the provisions of section 65 of the Act, consent to live-streaming is deemed to include rebroadcast rights. Hence, if performers wish to grant solely broadcast rights and not rebroadcast rights, this limitation must be established through a contractual agreement.

[12] Section 56 of the Act

[13] Section 62 of the Act

[14] Section 63 of the Act

[15] Section 68 provides that where a performer consents to the inclusion of his performance in a visual or audio-visual fixation, section 65 of this Act shall cease to apply in respect of the performance.

[16]Section 65 of the Act

They must also clearly spell out the scope for the rights granted, as it will constitute an infringement, as stated in section 63(b)(ii) where such scope is exceeded. The section also includes the exclusive rights of the performers to upload their fixated performance on streaming platforms[17]. Promoters who engage performers intending to retain exclusive rights over fixed performances must be vigilant in defining their exclusive rights regarding those performances.

Moral rights are also provided for performers, implying that performance rights are a special subset of copyrights distinct from the typical copyrights which exists in a work. The section provides the inalienability of the right, except by testamentary disposition, as well as the right of identification as the performer, in connection with the use of the performance and the rights against mutilation, distortion or modification of the performance or fixation without the performer's consent.[18] Performance rights exist for a duration of 50 years from the end of the year of the first fixation.[19]

### ***Collective Performances***

Where several performers take part in the same performance as a group, consent to broadcast may be obtained from the person in charge of the group. Payment can also be made to such person.[20]

This means that performers in a group need to contractually decide who their key-man is for any performance. They should also agree on his duties to prevent potential conflicts in administering their rights in respect of a live broadcast of their performances.

The duration of performers' rights is 50 (Fifty) years. [21]The Act criminalizes a breach of performer's rights. It sets a fine of N100,000 (One Hundred Thousand Naira) or imprisonment for one year, or both for individuals and N2,000,000 (Two Million Naira) for corporate entities.[22] Under the Old Act, the fines were N10,000 (Ten Thousand Naira) and N15,000 (Fifteen Thousand Naira), respectively.

## **AMENDMENTS TO THE POWERS OF THE NIGERIAN COPYRIGHTS COMMISSION**

Under the new Act, the NCC has been given quasi-judicial powers. The Act vests in the NCC the power to investigate and redress copyright infringement cases and settle copyright disputes, where those disputes have not been reserved explicitly for settlement under the Act.[23] In addition, the Act has granted the Commission certain powers, which shall include:

a)to prosecute, conduct or defend before a court any charge, information, complaint or other proceedings arising under the Act

[17] Section 63 (1) (d) of the Act  
[18]Section 66 of the Act  
[19]Section 70 of the Act  
[20] Section 67 of the Act  
[21] Section 70 of the Act  
[22] Section 73 of the Act  
[23] Section 78 (c) of the Act

- b)to levy such charges or fees as may be reasonable for services and facilities provided by the Commission;
- c)to regulate and implement measures to promote copyright protection;
- d)to regulate the conduct of collective management of rights; and
- e)to exercise such powers as are incidental to any of its objects under the Act.

The Commission is empowered to maintain a register of works, much like under the old regime; however, it is empowered to make its Regulations for the purpose of the register and registration of works.[24]

## **COLLECTIVE MANAGEMENT ORGANIZATIONS**

Collecting Societies under the old Act have been renamed Collecting Management Organizations (CMO), with an expanded scope. It now includes the right to issue licences permitting the use of works of owners of copyright who are not members of the CMO, provided that:

- a)such works are of the same category as works for which it is approved to issue licences;
- b)the owners of copyright in such works are not otherwise represented by any other CMO;
- c)there is not more than one CMO approved to operate in the particular category of works concerned;

d)the owners of copyright in such works have not by written notice to the CMO, opted out of collective management of their rights; and

e) the CMO does not discriminate against such owners in terms of the tariffs for using their works and paying royalties to such owners.

## **CONCLUSION**

The Copyright Act 2022 is a welcome development in the Nigerian Intellectual Property space. The recognition of online and user-generated digital content is particularly overdue. We anticipate the use of these provisions by authors and content creators, as well as the interpretation of these provisions by the courts in case of disputes. Commendably, the Act also reviews all the fines provided for under the old Act. To conform with the current economic and financial realities, lawmakers must be mindful of fast-evolving technology and enact laws that accommodate technological advancement. We look forward to a comprehensive revision of other intellectual property laws through policies and legislative processes.

[24] Section 87 of the Act



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