



DUALE, OVIA &
ALEX-ADEDIPE



New Horizons of Rights in a Digital Copyright Environment

Introduction

Since the enactment of the now repealed Copyright Act Cap C28 Laws of the Federation of Nigeria in 1988 (“**1988 Copyright Act**”), the Nigerian creative industry has since witnessed considerable technological and financial development which compelled the evolution of trade practices to conform with the technological and economic realities of the industry. This resulted in several disputes of copyright infringement as stakeholders become more aware of their rights and resist any infringement of same. For example, in July 2022, Nigerian record producer, Tempoe, sued Nigerian award-winning artiste, Asa, and producer, P. Prime, for infringing his copyright, forcing Asa to remove some songs from her ‘V’ album. In October of the same year, Asa also alleged that Nigerian artiste, JoeBoy, infringed her copyright over a composition produced by Tempoe. Furthermore, the growth of the Nigerian creative and entertainment industry has developed into a \$4,500,000,000 (Four Billion, Five Hundred Million United States Dollars) Industry¹ such that in a report by global streaming giant, Netflix, Netflix has invested \$23,600,000 (Twenty-Three Million, Six Hundred Thousand United States Dollars) in Nigeria.

In view of the rapid development and dynamism associated with the creative industry, President Muhammadu Buhari on 17 March, 2023² passed the Copyright Act 2022 (the “**Act**” or “**Copyright Act**”) into law which repealed the 1988 Copyright Act and aligns Nigerian copyright regime with the technological and economic realities of the 21st century. We shall in the DOA Copyright Series examine the innovative provisions of the Copyright Act and how the legislation modernizes the Nigerian copyright regime.

Works Protected under the Copyright Act

The Copyright Act retains the closed list copyright regime such that for a work to be protected, it must be fall into one of the 6 categories of work eligible for copyright and is only entitled to specific rights attributable to each category of work. The categories of eligible works and relevant rights is diagrammatically represented in Table 1. While the categories of work and relevant rights in the Copyright Act mirrors a lot of rights and works in the 1988 Copyright Act, the new Copyright Act introduces a number of innovations to align the Nigerian copyright regime with the present realities. It is important to also note that the Copyright Act identified classes of work not eligible for protection under the Copyright Act.³ Suffice to mention that the Copyright Act codified the traditional rule of copyright law that works do not require registration or any other formality to be eligible for protection under the Copyright Act. The eligible works are protected once they satisfy the requirements of originality and fixation.

¹ Jimoh Babatunde, ‘Nigeria’s creative industry worth \$4.5bn- Emefiele’ Vanguard (3 December 2021) <https://www.vanguardngr.com/2021/12/nigerias-creative-industry-worth-4-5bn-emefiele/> accessed 4 May 2023.

² While the Copyright Act does not state the commencement date, by virtue of section 2(2)(a) of the Interpretations Act, the Copyright Act is deemed to have commenced on the date the President assented to it.

³ mere data, ideas, procedures, processes, formats, systems, methods of operation, concepts, principles, or discoveries (ii) legislative and administrative texts (iii) official state symbols and insignia.

	Right of Reproduction	Right to make the work available by wireless means (4)	Right of Publication	Right of Distribution to the Public	Right to communicate to the public (4)	Right to include work in Audio visual	Right to broadcast	Right of Adaptation	Perform in public	Produce, reproduce or publish any translation in public	Right to make audiovisual work out of the work	Right to make Copies of Soundtrack	Cause images and sound to be seen and heard in public	Right of distribution for rentals
Literary Work (1)(6)	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓			
Musical work (6)	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓			
Artistic work (6)	✓	✓	✓		✓	✓	✓	✓						
Broadcast (2)	✓			✓	✓		✓	✓						
Sound Recording (5)	✓	✓		✓	✓		✓							✓
Audio Visuals Work (3)	✓	✓		✓	✓		✓	✓		✓		✓	✓	

1. The Copyright Act extended the definition of literary work to include tables and compilations of data stored or embodied in a computer or any medium. Hence, while mere data are not eligible for copyright protection, table or compilations of data processed⁴ electronically are eligible for copyright protection. This provision takes cognizance of the fact that processed data is the raw material and currency of the digital economy. Consequently, any company whose activities involve the processing of data can sue for any unauthorized exercise of the rights above.
2. While the 1988 Act restricted the definition of broadcast to sound or television broadcast by wireless telegraph or wire or both, or by satellite or cable programmes, the Copyright Act defined “broadcast” as transmission by wireless means of “sound” and “images” such that images and sounds can be received by the public. Since rights accruing to broadcast include (i) right to make the broadcast available to the public and (ii) right to communicate the broadcast to the public (as discussed below), broadcast will include on-demand services such as the popular DSTV Showmax by broadcasting giant, Multichoice Nigeria Limited.
3. The Copyright Act replaced “cinematograph film” in the 1988 Copyright Act with a more modern and technologically encompassing term “audiovisual works” defined as all forms of moving images with accompanying sounds transmitted by means of mechanical, electronic, or other devices, irrespective of the material on which the work is carried. It also includes a soundtrack incorporated into such work. This definition will accommodate technological developments in the entertainment industry such as skits, tiktok videos, gifs, television shows, videos on YouTube, etc. In other words, the term “audiovisual works” will embrace not only traditional materials such as film strips, microfilms, videotapes, and DVDs but also modern materials such as hyperlinks, mp4, and other digital formats.
4. The Copyright Act introduced the (i) right to make a work available to the public and (ii) right to communicate the work to the public in respect of the 6 categories of eligible works. These rights accrue not only to owners of copyright but also to performers (such as the artists singing the song or choreographers) which gives them the right to authorize the making of a work or performance available by wire or wireless means in such a way that members of the public can access the work or performance from a place and at a time chosen by them. The key focus of digitalization is a consumer-focused approach where creatives can upload content online and consumers that are geographically and/or chronologically dispersed can independently choose the time and forum to consume the content. Hence, a music or movie lover can push play to musical or movie content from a mobile device at any given time and in any given location chosen by the consumer. This will accommodate the right to stream a song on streaming platforms like Spotify or transmission of musical videos and movies via video-on-demand platforms like Netflix and Amazon.

⁴ Paragraph 1.3. of Nigerian Data Protection Regulation defines data Processing as “any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.”

5. With respect to sound recording, it is important to note the following (i) a sound recording is deemed published for commercial purposes where it is made available to the public by wire or wireless means such that members of the public can access the sound recording from a place and time independently chosen by them, hence, when a sound recording is published via Spotify, TikTok or YouTube it is deemed published for commercial purpose regardless of whether the owner of copyright or performer received any economic or pecuniary compensation; (ii) where there is a broadcast of sound recording, not only the owner of copyright but also the performer of the sound recording is entitled to equitable remuneration determined in an agreement or determined by the Nigerian Copyright Commission in the absence of an agreement on remuneration. This provision contemplates publication by Digital Service Providers (such as iTunes, and Amazon Music) or interactive streaming services (such as Spotify, Apple Music, Tidal, and YouTube Music). It will also accommodate a situation where sound recordings are included in a broadcast of an audiovisual work.
6. Notwithstanding any assignment or sale of the original work, the Copyright Act gives the author of an artistic work, manuscript of a literary work or of a musical composition an inalienable right to share in the proceeds of any sale of the originals of the work or manuscript by public auction or through a dealer subsequent to the first transfer by the author. "Author" in this case includes their heirs and successors-in-title. Hypothetically, if there is a subsequent sale of the original manuscript of a novel by Chinua Achebe, original score composition of Fela Anikulapo-Kuti or an original painting by Rufus Ogundele, the estates of these legendary authors are entitled to a share in the proceeds of such sale. This right is inapplicable to architectural works or works of applied arts. The 1988 Act had hitherto restricted these rights only to graphic works, three-dimensional works, and manuscripts.

Conclusion: With the development of technology a vast amount of copyrightable content is readily available to the public which has resulted in the proliferation of copyright infringement, particularly in relation to works created and distributed through electronic medium and devices. Hence, the Copyright Act shows commendable progress in ensuring the protection of copyright and extending the rights of creators and owners of copyright in a manner that reflects technological advancements.

This article is for general information purposes only and does not constitute legal advice. For further questions, assistance or clarifications on the abuse of dominance in the Nigeria broadcasting industry on you or your business, you may contact us at info@doa-law.com or contact any of the contributors herein listed. To request reproduction permission for any of our publications, please use our contact form which can be found on our website at www.doa-law.com.

LAGOS

Plot 1B, Block 129,
Jide Sawyerr Drive,
Lekki Phase I
Lagos State, Nigeria

ABUJA

4th Floor, Abia House,
Plot 979, 1st Avenue,
Off Ahmadu Bello Way,
Central Business District,
Abuja FCT, Nigeria

Tel.: 0700 DOALAW (0700 362529)
Email: info@doa-law.com
www.doa-law.com