

Literary Works And Copyright Protection In Nigeria

Introduction:

Similarity between two works often implies that one is a copy of the other. However, in the creative industry, similarity without more is not a conclusive proof of copyright infringement. The industry permits derivative works and allows different authors to produce perspectives of an idea, and each work is considered to be as an original. Copyright subsist only in an original literary work. However, it is not necessary that the work should be the expression of original or incentive thought, for copyright is not concerned with the originality of ideas, but with the expression of thought, and in the case of a literary work, with the expression of thought in print or writing. Accordingly, one of the defences to a claim of copyright infringement is independent creation of similar works by two different individuals.

This paper seeks to explain the concept of copyright infringement, how to establish copyright infringement, duration of copyright, and exception to copyright infringement of a literary work.

Concept of Copyright infringement of a Literary Work

Copyright literally means the right to copy. It is a form of protection given to the authors of original works of authorship, including literary, dramatic, musical, artistic, and certain other works. This protection is available automatically to both published and unpublished works. For the purpose of copyright, the term "literary works" is not confined to works of literature in the commonly understood sense, but is taken to include all works expressed in writing, regardless of whether they have literary merit or not. In fact, literary works is defined by the Copyright Act to include the following work or similar works thereto;

1. Novels, stories, and poetic works
2. Plays, film scripts
3. Text books, treaties, letters, sermons
4. Encyclopaedias, dictionaries, directories
5. Lectures, speeches and addresses
6. Computer programmes
7. Choreographic works

Taking into consideration the technological development of this modern age, computer software is also considered a "literary work" and is thus given all of the protections of the copyright under the law. It is noteworthy that it is not all literary work that is protectable by copyright under Nigerian law. According to the Act, a literary work can only be protected;

1. If sufficient effort has been expended on making the work to give it an original character
2. If same has been fixed in a definite medium of expression
3. If the work or the author has sufficient connection with Nigeria.

Who has Copyright Protection?

In the first instance, the author owns the copyright, by the simple fact that he created same. However, authors can partially or completely, assign their copyright. Thus, the holder of a book's copyright may be the author, the

publisher, distributor or any other person to which the right has been assigned. Two or more of these persons may also jointly hold the copyright. It is not unusual to find that the publisher of a book is the copyright owner as opposed to the author, depending on the terms that have been agreed under the publishing agreement between the author and the publisher. Therefore, copyright of a literal material is a property that may be licensed, transferred or assigned to third parties. Once it is assigned or transferred, the transferee becomes the holder of copyright and becomes duly protected by the law.

In an employer-employee relationship, if an employee creates a literary work as part of his employment, the employer is considered to be the author for copyright purposes. The author acquires a copyright in a work as soon as it is fixed in a tangible medium of expression.

Essentially, copyright infringement entails the unauthorized use of a copyright protected work. Section 14 of the Copyright Act (the “Act”) provides that copyright is infringed by any person who without the license or authorization of the owner of the copyright holder does, or causes any other person to do an act, the doing of which is controlled by copyright. The Act, in Section 5, sets out the controlled acts, which are solely reserved for the owner of the copyright. The Act provides that without due authorization from the copyright owner and outside the parameters of the exceptions provided for under the Act, the doing of any of the protected work, such as producing, reproducing, performing or publishing the work or any part of it, amongst others, would constitute an infringement of copyright. In essence, copyright law grants five exclusive rights to the owner of a literary work. These include the right to distribute, reproduce, adapt, perform, and publicly display the protected work. Infringement of the literary work occurs when one or more of these actions occur without the copyright holder’s consent.

In addition, the copyright holder has economic and moral rights to the literary work. Economic rights refer to the right of the holder to derive financial benefits from the literary work. Thus, the above listed acts which the copyright holder can carry out exclusively are considered economic rights. Whilst moral rights refer to the author’s rights to oppose the distortion of a book in a manner that would adversely affect his reputation or the spirit of the work. It also covers the author’s right to be acknowledged as the creator of the

work. The economic rights of the author can be transferred or assigned to other persons whilst moral rights are perpetual and non-transferable, therefore, they subsist in the author even after a total assignment of copyright. Thus, if the exercise of the economic rights by an assignee violate the moral rights of the author, the author could revoke the rights granted by invoking their moral rights.

Duration of copyright

Copyright in literary works lasts until seventy years following the death of the author. In cases where the work is owned by a government or a body corporate, the copyright will expire seventy years after the work was first published.

Establishing Copyrights Infringement in Nigeria

Copyright law protects the author of the literary work in several ways. The owner of the copyright of a literary work has the exclusive right to make and distribute copies and to create derivative works. In addition, the law not only gives the author of the literary work the ability to prevent others from making exact copies of the work, but it also gives him the right to prevent others from creating and selling works that are “substantially similar” to the copyrighted work.

To prove infringement of copyright in a literary work, the author must establish the following;

1. That the literary work is an original expression and therefore qualifies for the inherent protection guaranteed by copyright.
2. It must also be expressed or fixed in a definite medium
3. The author must be a Nigerian citizen or company domiciled in Nigeria or in a country, which is a party to an obligation in a treaty or other international agreements to which Nigeria is a party, or the work was first published in Nigeria.
4. The author must establish that the infringing work was likely copied from his work. The copyright work must be the source from which the infringing work was derived.
5. The author must demonstrate access and sufficient similarity between his work and the infringing work to make copying more likely.
6. He must establish that a substantial part of the copyrighted work was copied by the infringing work. This is often determined by a confirmation of the

quality rather than the quantity of what may have been taken. In this regard, it is important to note that copyright law protects the particular original expression of a work and not the underlying idea behind the work. The fact that the infringing work bears some similarity to an existing work, does not amount to an infringement of the copyright.

A literary work obtains copyright protection from the moment of its creation, provided it meets the conditions for eligibility. Therefore, an original work fixed in the medium of a book be it physical or digital that meets the above can be protected as a copyright. Registration is not a pre-condition for copyright protection under Nigerian Law. However, the Nigerian Copyright Commission operates a voluntary copyright notification scheme, by which authors can 'notify' the commission and general public of their copyright in a work. This is beneficial where a person needs to prove their copyright ownership.

Exception to Copyright infringement of a literary work

The Nigerian Copyright Act provides several instances in which copyright protection will not apply, with respect to a literary work. They include the following

1. Fair dealing for the purpose of research, private use, criticism or reporting of current events.
2. Parodies or caricatures of the book
3. An inclusion of not more than two excerpts of the book, in a collection for educational purposes
4. Educational broadcast of the book
5. Use by the government in the public interest, provided no revenue is derived from the book
6. Use in a judicial proceeding or report of such proceeding.

Conclusion

An author may combine a series of incidents or ideas into his own arrangement. An author who takes existing materials from sources common to all writers, arranges and combines them in a new form, giving them an application unknown before, is entitled to a copyright, notwithstanding the fact that he may have borrowed much of his materials and ideas from others, provided they are assembled in a different manner and combined for a different purpose, and his plan and arrangement are a real improvement upon existing modes.

Copyright protection confers exclusive rights to an originator of a work, which gives the author an opportunity to enjoy certain privileges ranging from the rights to reproduction, distribution, and adaptation of the work to rights of public performance, broadcasting and communication of the work to the public. These rights also have several limitations enshrined in the Copyright Act. Although, registration of a copyrighted work is not a pre-condition for copyright protection, the benefits of lodging a notification of a work with the national depository far outweighs any perceived negatives. With the growing number of copyright infringement cases and the difficulties associated with proving prior ownership or authorship of a work, depositing a work in the robust databank of the NCC, would be a wise decision for authors and creators.

References

https://www.mondaq.com/nigeria/copyright/692416/an-overview-of-copyright-protection-in-nigeria-part-1

http://www.spaajibade.com/resources/fundamental-elements-of-copyright-ownership-and-protection-under-nigerian-law-sandra-eke

http://ijkcdt.net/xml/22688/22688.pdf

http://www.nji.gov.ng/images/Workshop_Papers/2017/Refresher_Judges_and_Kadis/s7.pdf

Copyright Act (Laws of Federal Republic of Nigeria) 2004.