



**A Boost for the Creative
Industry : An Analysis of the
Copyright Act 2022**



Introduction

In a bid to revitalise Nigeria's economy and bolster the global competitiveness of its creative and entertainment industry, the President of Nigeria gave his assent to the Copyright Bill 2022 on March 17, 2023.¹ The Copyright Act 2022 (Act), repeals the old Copyright Act (Repealed Act) which was enacted in 1988 and last amended in 1999 and, is designed to regulate, and protect copyright, with the principal objective of safeguarding the rights of creatives and ensuring they receive just rewards and recognition for their intellectual efforts. The Act also provides appropriate limitations and exceptions to ensure access to creative works, facilitates Nigeria's compliance with international copyright treaties and conventions, and strengthens the capacity of the Nigerian Copyright Commission for effective regulation, administration, and enforcement.²

The Act expands the rights of creatives and imposes stiffer penalties for criminal infringements, thereby addressing the additional challenges posed by digital and online use of copyright-protected works³. In this article, we examine the novel positions introduced by the Act and amendments it has made to the old copyright law, assessing their anticipated impact on Nigeria's dynamic and rapidly evolving creative economy.

Key Provisions of the Copyright Act 2022

The Act introduces several provisions aimed at modernising Nigeria's copyright environment and matching our regulatory environment with international best practices. These provisions address a range of issues and streamline the regulatory framework for copyright protection and enforcement in Nigeria. They include:

1. Expansion of the Powers of the Copyright Commission

The Repealed Act established a Nigerian Copyright Commission⁴ (Commission) which is charged with all matters relating to the administration, regulation, and enforcement of copyright in Nigeria as well as the functions and duties that are necessary for the fulfilment of the objectives of the Act⁵. The Commission may now under the Act appoint Copyright Officers who shall have the powers to engage in activities, without a warrant, geared toward enforcing the provisions of the Act. These activities include but are not limited to the inspection of premises where they reasonably suspect that activities amounting to copyright infringement may be taking place, arresting any person reasonably believed to have committed an offence under the Act, and sealing up premises.⁶ There is no doubt that Copyright infringement is often incorrectly thought of as a harmless crime, however, this is not the case for creators, who in addition to the abuse of their rights, often suffer irreparable damages to their revenue.

¹ Braise, S. (2023, March 23). Buhari signs Copyright Act, Federal College of Medical-Laboratory Science, Technology bills into law. Tribune Online <https://tribuneonlineng.com/buhari-signs-copyright-act-federal-college-of-medical-laboratory-science-technology-bills-into-law/>

² Section 1 of the Copyright Act 2022 (Copyright Act).

³ Buhari signs Copyright Act, Federal College of Medical Laboratory Science, Technology bills into law < Tribune Online>.

⁴ <https://tribuneonlineng.com/buhari-signs-copyright-act-federal-college-of-medical-laboratory-science-technology-bills-into-law/> accessed April 5, 2023.

⁵ Section 77 of the Copyright Act

⁶ Section 78(1) *ibid.*

⁶ Section 86 of *ibid.*



However, this expansion of the Commission's powers will undoubtedly act as a deterrent to those who would infringe on the copyright of others.

The Act also extends the powers of the Commission to include maintaining a Register of Works (Register) that are eligible for copyright protection.⁷ As copyright is conferred automatically on an eligible work and requires no formality,⁸ registration of a work in the Register shall not confer copyright in the registered work.⁹ Rather the benefit of registering a work is that the said registration shall serve as evidence of the work and any particulars or extract of the registered work, having been certified by the Commission shall be admissible in evidence in all proceedings and will not require the production of the original work.¹⁰

In the Repealed Act, the Commission had the power to collect a levy on all such materials that may be used to infringe copyright in a work¹¹ and this is replicated in the Act with the addition of granting the Commission the ability to disburse the funds to approved Collective Management Organisations (CMOs) or other representatives of right owners.¹² While the intention of this appears to be a bid to reduce piracy of copyright-protected works, the application of this provision could capture persons who are not and do not intend to infringe copyright who utilise the materials mentioned in the Act¹³. Notably, the Act does not expressly state the amount payable as the levy, rather the levy payable as well as any exemption from its application shall be at the discretion of and prescribed by the Minister of Information and Culture (Minister).



2. Online and Digital Copyright Protection Provisions

The Act introduced robust provisions that empower the Commission to combat online piracy and safeguard creative works distributed over the internet, thereby ensuring that intellectual property is protected in this digital age. These measures include:

i Recognition of the Rise of Online Content Creation

The Act expressly now specifically provides for the protection of 'audio-visual works'¹⁴ as opposed to 'cinematograph films' as used in the Repealed Act, a term which did not necessarily cover all digital/electronic media. Additionally, pictures, films, and sound recordings, many of which can be accessed online, are protected under the new Act from being reproduced or used without the approval of the author as the Act now recognises digital copies as a form of reproduction of a copyrighted work.¹⁵

⁷ Section 87(1) the Copyright Act.

⁸ Section 4 *ibid.*

⁹ Section 87(3) *ibid.*

¹⁰ Section 87(4) *ibid.*

¹¹ Section 40 of the Repealed Copyright Act

¹² Section 89(3) of the Copyright Act

¹³ Section 89(5) *ibid.*

¹⁴ Section 11 *ibid.*

¹⁵ Section 108 *ibid.*

This provision reflects the evolved nature of creative expression, especially with the growth of digital technology and the internet which has led to the popularisation of new art forms including non-fungible tokens (NFTs) and art created by or with the aid of artificial intelligence. This forward-thinking is a welcome and important addition to the Nigerian copyright environment as it provides a much-needed framework that has the capacity to ensure copyright protection in the face of new and emerging technology in an ever-changing digital world.

ii Notice to Take Down Infringing Content

The Act permits a copyright owner to request that a service provider remove or block access to any content or link to content hosted on its system or network which infringes on their copyright.¹⁶ The request, in the form of a notice of infringement, must be in writing and include specific information such as the identification of each work claimed to have been infringed, the identification of the infringing material, and an oath declaring that the complainant believes the use of the material in the manner complained of is not authorised by the owner of the copyright, his agent, or the law.¹⁷ The law further requires the service provider, upon receiving notice of infringement to promptly notify the subscriber responsible for the content to which the notice relates and take down or disable access to the infringing content or links to such content hosted on its system or network. The service provider may resume access to or restore the content or link that has been removed if certain conditions are met, such as receiving a written counter-notice from the subscriber and not receiving a response from the owner of the copyright indicating that no authorization has been granted for the subscriber to make the content available.¹⁸

With the proliferation of digital content, copyright infringement has become more prevalent than ever before. Therefore, by empowering copyright owners to send notices of infringement directly to service providers, the law allows them to swiftly address instances of unauthorised use or reproduction of their creative works quickly and effectively. This innovation will be beneficial to the Nigerian creative industry, which has been plagued by issues of piracy and copyright infringement and will foster a more supportive and sustainable environment for creativity and innovation in Nigeria.



iii Anti - Piracy Measures

Though the Act maintains the power of the Commission, with the consent of the Minister to prescribe anti-piracy devices such as designs, labels, marks, or impressions that can be used on or in connection with any work in which copyright subsists¹⁹. As well as the criminalisation of the sale, renting, hiring, or offer for sale, rental, or hire of any work in contravention of the prescription made by the Commission as punishable by a fine or imprisonment, or both. The Act however increases the fine to a minimum of N500,000.00 (five hundred thousand Naira) and the imprisonment to a term of not less than three years.

Furthermore, though the Act maintains that it is an offense, punishable by a fine or imprisonment, or both, for any person to import into Nigeria or have in their possession any machine, instrument, or contrivance intended to be used for producing anti-piracy devices without the permission of the Commission. The Act raises the fine to a minimum of N1,000,000.00 (one million Naira) whilst also increasing the minimum imprisonment term to five (5) years.²⁰ Additionally, any person who reproduces or counterfeits any anti-piracy device prescribed without the permission of the Commission commits an offence and is liable on

¹⁶ Section 54(1) of the Copyright Act

¹⁷ Section 54(2) *ibid.*

¹⁸ Section 55(2) *ibid.*

¹⁹ Section 49 *ibid.*

²⁰ Section 49(3) *ibid.*



conviction to a fine of not less than N500,000.00 or imprisonment for a term of not less than three years or both.²¹

The increase in the severity of the anti-piracy penal measures by the Act has the potential of being more deterrent than the punishments under the Repealed Act which ultimately benefits the Nigerian creative industry. Discouraging copyright infringement will reduce the incidences of piracy, thereby protecting the integrity of creative work, encouraging more investment in the industry, increasing revenue for creators and copyright owners, and ultimately leading to the growth and development of the industry.

iv. Circumvention of Technological Protection Restriction

The Act prohibits the circumvention of technological protection measures that effectively protect access to copyrighted works.²² It also prohibits the manufacturing, selling, or provision of any technology, product, or service designed to circumvent such measures, with limited exceptions for non-profit libraries, archives, and educational institutions, as well as lawful investigations, protection, information security, intelligence activity, and computer security measures. Technological protection measures can include digital locks, encryption, and other technologies that prevent unauthorized access or use of copyrighted materials.

This provision is especially relevant in the present digital age, as most copyright-protected works are shared on digital platforms. This provision, therefore, provides copyright owners with an additional layer of protection for their works. By prohibiting the circumvention of measures adopted to protect copyright, this provision helps to deter piracy and unauthorized distribution of copyrighted works, which amounts to secure protection and in turn increased revenue and for copyright owners. As such, this provision specifically outlaws devices such as computer software that bypass encryption or remove the watermarks on copyright-protected works, or circumvents access-control or copy-control measures that illegally make copyright protected works available for download.

Additionally, this provision includes provisions that allow for non-profit libraries, archives, and educational institutions to gain access to copyrighted works to make good faith determinations about whether to acquire a copy of the work.²³ This provision strikes a balance between protecting the rights of copyright owners and promoting access to educational and cultural materials.

Finally, the exemptions for certain activities, such as investigations, information security, and interoperability of computer programs, which ensures that legitimate uses of copyrighted works are not unfairly restricted by technological protection measures can encourage innovation and collaboration in industries that rely on the use of copyrighted materials.

3. Right to Remuneration for Broadcasting of Sound Recordings

The Act provides for performers and copyright owners of sound recordings to receive equitable remuneration for any broadcast of a sound recording that has been published for commercial purposes.²⁴ The payment of remuneration shall be paid by the person using the sound.²⁵ The amount and conditions of payment for the use of the sound recording shall be agreed upon between the parties, and where there is a failure to reach an agreement, it will be determined by the Commission. However, the Act does not clarify the metrics for this determination or what parameters should be taken into consideration by the Commission to guide their decision. It will therefore be interesting to see how this aspect of the Act will play out in practicality, considering that the value of an art form, in this case, a sound recording, varies from artist to consumer. It raises the question of how exactly the Commission is to value these sound recordings.

For example, if the yardstick is to be the popularity of the artist in question, how would an agency hypothetically justify that simply because an artist is not as popular as another, he deserves less pay or vice versa. Additionally, the distribution of the remuneration between the performer and the owner of copyright in the sound recording shall be determined by the Commission²⁶ except otherwise provided for in an agreement.



²¹ Section 49(4) *ibid.*

²² Section 50 of the Copyright Act

²³ Section 50 (4) *ibid.*

²⁴ Section 15(1) *ibid.*

²⁵ Section 15 (2) *ibid.*

²⁶ Section 15(4) Copyright Act 2022



Interestingly, the Act explicitly states that any sound recording that is made available to the public in such a way that members of the public can access it at an independent time and place of their choice shall be deemed as being published for commercial purposes.²⁷ This addition further demonstrates the forward-thinking and awareness of the Act, as it takes into consideration the rise of music streaming platforms that artists often utilise and gives them the protection and right to remuneration that they deserve.

This improves the protection of the economic rights of the creative industry and encourages the production of quality works. It also provides a framework for collective management organisations to administer and collect remuneration on behalf of performers and copyright owners.



4. Stipulating the Duration of Copyright

There is a significant improvement from the Repealed Act, as the New Act now dedicates a section to explain the duration of copyright protection for different types of works including anonymous or pseudonymous works²⁸, a welcome change from the Repealed Act in which the duration of copyright was spread across different sections and the first schedule. The Act also makes a slight amendment to the duration of copyright protection for audio-visual works, photographs and sound recordings by stating that the copyright duration shall be fifty years after the work was first made available to the public with the consent of the author, however where the work was not made available to the public during that time, the copyright shall subsist in the work for a period of fifty years after the work was created.²⁹ The provision also clarifies that the copyright term for works made by or under the direction or control of a government, agency of government or a prescribed international body is fifty years from the date of first publication.³⁰

Furthermore, the provision makes a revision to the protection of anonymous or pseudonymous works, which will enjoy copyright protection until seventy years from the date the work is first made available to the public with the author's consent or seventy years after the work is created if not made available to the public within that time. When the author of the anonymous or pseudonymous work is later identified, the duration of copyright protection will be in accordance with the applicable provisions of the Act as summarised above.³¹ This provision grants protection to creatives who do not wish for their personal identities to be made public and choose to either release their works under a nom de plume or even anonymously (with no name attached). The provisions of the Act are to the effect that the mere fact that there is no publicly recognised creator for a work, does not imply that there is no creator of the work in question, and that such anonymous or pseudonymous creators ultimately deserve protection. A valid example of this can be seen in the UK-based street artist, Banksy, who enjoys copyright protection for their works although there is no indication as to their true identity.

²⁷ Section 15 (7) *ibid.*

²⁸ Section 19 *ibid.*

²⁹ Section 19(1)(c)(d)(e) *ibid.*

³⁰ Section 19(1)(b) *ibid.*

³¹ Section 19(2) *ibid.*



In the current digital age, this provision is even more relevant as there is an increased ease and desire for creatives to create and share work without their personal identity attached, it is reassuring that their works will still be entitled to protection. Overall, this provision provides clarity and certainty on the duration of copyright protection for various types of creative works in Nigeria, which promotes legal certainty and effective enforcement of copyright laws. However, it is interesting that the Act considers the author's consent regarding when a work is made public (where applicable), yet, to an extent, this may lead to potential ambiguity in the determination of the duration of copyright in a work. This ambiguity may arise where the author of a work has transferred their rights to a third party, as the question may be raised on if the act of transferring their rights to the said third party alone amounts to consent to their work being made available to the public. Furthermore, the additional caveat that where a work has not been made public, within the stipulated time, the copyright ultimately expires, is commendable as it prevents authors or copyright holders from potentially taking undue advantage of the systems in place by seeking or obtaining extended protection thus stifling innovation and creativity.

5. Enhancing Moral Rights

The Act's provision on moral rights³² represents a significant improvement compared to the old position. The expanded scope of moral rights allows an author to claim authorship of their work not only in its original format but also clarifies that moral rights are not transmissible during the life of the author, but can be transferred through a testamentary disposition or by operation of law after the author's death.³³ This recognises the importance of preserving the author's connection to their work during their lifetime, while also allowing for the transfer of moral rights after their death.

Additionally, the Act provides for a person to object to a work being falsely attributed to them as the author³⁴ which should protect individuals from being falsely credited with a work that they did not create that could have negative consequences for their reputation.

6. Disabled Accessibility

The Act permits authorised entities to make accessible format copies of copyrighted works and provide them to beneficiary persons by any means without the permission of the copyright owner.³⁵ To be eligible for these exceptions, the authorised entity must have lawful access to the work or subject matter, convert it to an accessible format copy, supply it exclusively to beneficiary persons, and undertake the activity on a non-profit basis. One of the key benefits of this provision is that it enables people with impairments to access copyrighted works that they may not have been able to access previously due to their disabilities. By providing accessible format copies of works, authorised entities can ensure that people with impairments have equal access to information and education, which can be essential for their personal and professional development as well as serve as inspiration for them to create their own original works. Nevertheless, by allowing 'authorised entities' to engage in the unlicensed reproduction of copyright-protected works on a 'non-profit' basis, the Act might have unintentionally created an avenue for the exploitation of these works and the proliferation of the version of the works created under the Act which will negatively affect copyright protection.



³² Section 14 *ibid.*

³³ Section 14(3) the Copyright Act

³⁴ Section 14(2) *ibid.*

³⁵ Section 26 *ibid.*

For example, while the right to convert published books to other formats is typically reserved for the copyright holder, an authorised entity may, empowered by this provision, convert a published book into an audiobook to make the book accessible to visually impaired persons, an action that ordinarily should only be carried out or authorised by the copyright holder of the work in question.

7. Improved Punitive Measures for Copyright Infringement

The Act identifies several offences pertaining to copyright infringement and outlines the penalties for these offences including making, importing, or possessing infringing copies of copyrighted works. It also covers activities related to selling, distributing, or renting infringing copies of copyrighted works. More importantly, the section includes penalties for unauthorised communication or making available copyrighted works to the public.³⁶

The adjustment in the penalties for copyright infringement is a notable improvement as the fines and prison terms specified in the Act are higher than those in the Repealed Act.³⁷ For instance, the penalty for making or causing to be made an infringing copy of a work is a fine of not less than N10,000 for every copy or imprisonment for a term of not less than 5 years, or both whereas the Repealed Act provides for a fine of N1,000 or a jail term of not more than five years³⁸. Similarly, the penalty for communicating or making available to the public a copyrighted work without the owner's consent is a fine of not less than N1,000,000 or imprisonment for a term of not less than five (5) years, or both.³⁹

The Act continues to allow for lifting the veil as it provides that where a body corporate commits an offence under this Act, the body corporate and its principal officers will be punished if found guilty.⁴⁰

Overall, these provisions ensure that copyright laws can be strictly enforced by imposing penalties on infringers, holding corporations and their officers accountable for their actions, and providing copyright owners with a variety of options for protecting their rights.

8. Improved Protection of Collective Works and Authors' Rights

The Act recognises copyright protection in relation to collective works and stipulates that the copyright shall vest in the person on whose initiative or direction the collective work was created.⁴¹ However, the term collective work under the Act only applies to a collection of literary and artistic works.⁴²



The Act goes further to state that the authors of the works incorporated in a collective work nonetheless have the right to exploit their works independently of the final product of the collective work,⁴³ thereby giving them control over their work and the freedom to use their work(s) in any manner they see fit without needing to seek the permission of the owner of the collective work. This clarification ensures that there is no ambiguity in ownership, which can lead to disputes and litigation.

³⁶ Section 44(4) the Copyright Act

³⁷ Section 20, the Repealed Act

³⁸ Section 44(1) the Copyright Act

³⁹ Section 18(1) The Repealed Act

⁴⁰ Section 46 of the Copyright Act

⁴¹ Section 29(a) The Copyright Act

⁴² Section 108 *ibid.*

⁴³ Section 29 (b) *ibid.*

Whilst this could potentially lead to exploitation and abuse of the power by the person on whose direction the work was created, this provision of the Act attempts to ensure that the interests of both the individual creator and the pioneer of the collective work are protected. By allowing individual authors to exploit their works independently of the collective work, the provision ensures that they can receive fair compensation for their work. This is particularly important in cases where collective work generates significant revenue or gains popularity, as the individual creator can still exert their rights over their individual work and are not bound to the collective work alone. It prevents situations where the owner of the collective work benefits disproportionately at the expense of individual creators. This also provides a more conducive environment for creativity and innovation, which ultimately benefits society. It must be noted however that under the Act, this provision will only be applicable where there is no agreement to the contrary,⁴⁴ Therefore in order to prevent any misunderstandings, it is essential that creators ensure that where they submit or permit their work to be included as part of a collective, adequate contracts are in place that sufficiently reflect the intentions of both parties while protecting their mutual rights.

9. Improved Provision for Performer's Rights

Unlike the Repealed Act,⁴⁵ the Act⁴⁶ makes elaborate provisions regarding performer's rights. These include the right to control their performances by dictating the fixation, reproduction, distribution, broadcasting, renting, lending, and making the performance available to the public.⁴⁸ The rights granted to a performer under the Act apply if they are a citizen or habitually resident in Nigeria, or if the performance takes place or is first fixed in Nigeria or in a country that is a party to an international agreement to which Nigeria is a party.⁴⁷

Furthermore, unless explicitly stated otherwise, a performer's consent to broadcasting their performance is considered to include authorisation for rebroadcasting, fixation, and reproduction for broadcasting purposes.⁴⁹ Also, the Act gives performers moral rights over their performance that include being identified as the performer in connection with any use of their performance, objecting and preventing any derogatory action that could be prejudicial to their honour or reputation, and ensuring that their rights are transmissible upon their death.⁵⁰

In the event that several performers take part in the same performance, any consent required can be given by the person in charge of the group. Any payment for the use of the performance may be divided equally among all performers, subject to any contract between them.⁵¹

Additionally, there are exceptions to performer's rights, including cases where the performer consents to the inclusion in a visual or audio-visual fixation, or if the performance or fixation is used for certain purposes, such as demonstration, research, private study, reproduction for people with a disability, or making an ephemeral recording for time-shifting.⁵² The potential benefit of the new provisions is that they can make it easier for performers to negotiate fair compensation for their work and help to ensure that they are properly credited for their contributions. This could be especially important for independent artists and performers, who may not have the resources to fight back against infringement on their own.

10. Principle of Fair Dealing

Though the Act, like its predecessor, does not provide a clear definition of what exactly fair dealing is, it has greatly widened the scope of what amounts to fair dealing by the inclusion of

several circumstances in which the use of a copyright-protected work may amount to fair dealing.⁵³ It is interesting to note that a number of these additions were included under the Repealed⁵⁴ Act but were classified as general exceptions from copyright control.



⁴⁴ Section 29 The Copyright Act

⁴⁵ Section 26 – 30 the Repealed Act

⁴⁶ Sections 63 – 73) The Copyright Act

⁴⁷ Section 63, *ibid.*

⁴⁸ Section 64, *ibid.*

⁴⁹ Section 65, *ibid.*

⁵⁰ Section 66 the Copyright Act

⁵¹ Section 67 *ibid.*

⁵² Section 68 the Copyright Act



For example, parody, satire, pastiche or caricature now fall under the scope of fair dealing⁵³ despite being previously classified as an exception under the Repealed Act.⁵⁴

With the widening of the scope of fair dealing, it would have been expected that a test of some sort would have been provided in order to provide parameters to determine if the use of a work truly amounts to fair dealing. While some of the circumstances included as fair dealing in the Act now include factors that must be considered in determining whether the use of a work is fair dealing, for example, in the case of criticism, review or the reporting of current events, to determine if the use of a work in these specific circumstances amounts to fair dealing, the following factors must be considered:

i. The purpose and character of the use

ii. The nature of the work

iii. The amount and substantiality of the portion used in relation to the work as a whole

iv. The effect of the use upon the potential market or value of the work.⁵⁵

However, while these may be deemed reasonable factors to determine if a work amounts to fair dealing generally, it debatably only applies to a single subsection, leaving the rest up to interpretation.

It is arguable that the language used in section 20 (1) (d) of the Act is poorly drafted, as it may suggest that the factors listed apply to all instances of fair dealing when, in fact, they only apply to Subsection 1(d). The misunderstanding could stem from the fact that the subsection states that the factors in question should be used “...in determining whether the use of a work *in any particular case* is far dealing...” However, it is not appropriate for the factors in this subsection to be considered applicable to all instances of fair dealing especially when one takes into consideration the fact that these factors were not provided for at either the beginning or the end of subsection (1), instead it nestled in subsection 1(d). Furthermore, there are other subsections⁵⁶ detailing instances amounting to fair dealing that include specific factors to be considered in those specific circumstances. This language could therefore potentially lead to confusion and misinterpretation of the law, which may result in unintended consequences. As such, the Act should have been more clearly drafted to avoid this, as one may argue that it’s the intendment of the law that those factors are to be relied on when determining whether the use of a work is fair dealing.

The expansion of the scope of fair dealing could potentially reduce the economic returns that creators derive from their works. However, as these provisions allow for some level of flexibility in the use of copyright-protected works for certain purposes, this can lead to more creativity, innovation, and a more open and vibrant creative industry.

11. Establishment of the Collective Management Organisations (CMOs)

While the Act introduces Collective Management Organisations (CMOs)⁵⁷ this is not a wholly new provision as the Repealed Act made provisions for Collecting Societies which are somewhat identical to the provisions for CMOs contained in the new Act.⁵⁸



⁵³ Section 20 1(b) *ibid.*

⁵⁴ Second Schedule, the Repealed Act

⁵⁵ Section 20 (1)(d) the Copyright Act

⁵⁶ Sections 20(1)(i) and 20(1)(j) the Copyright Act

⁵⁷ Section 88 the Copyright Act.

⁵⁸ Section 39 of the Repealed Act

The similarities between CMOs and Collecting Societies are cemented by virtue of the Copyright (Collective Management Organisations) Regulations, 2007 which defines a CMO as a “Collective Society as defined under the Nigerian Copyright Act”.⁵⁹

The new Act has gone a step further by giving the Commission the power to review and approve tariffs as may be determined by a CMO.⁶⁰ In addition, the Act drastically increases the penalty for performing the duties of a CMO without the approval of the Commission. Where any person contravenes the provision, the penalty has been increased to a fine of not less than N1,000,000 or imprisonment for a term of not less than five (5) years or both in the case of an individual. While, in the case of a body corporate, to a fine of not less than N5,000,000.⁶¹

The provision further allows for the Commission to assist in the establishment of a CMO for any category of copyright works. This provision could help facilitate the establishment of CMOs, especially for categories of works that are not well represented.

It is interesting to note that, the new Act expands the scope of CMOs by permitting a CMO to issue licenses for works of copyright owners who are not members of the CMO in question⁶² provided that such works are of the same category as works for which it is approved to issue licenses. However, the owners of copyright in such works must not be represented by any other CMO, and they must not have opted out of the collective management of their rights by the CMO in question. Additionally, the CMO must not discriminate against such owners in terms of the tariffs for the use of their works and the payment of royalties to such owners. The fact that the Act permits CMOs to act on behalf of copyright owners without their initial permission flies in the face of everything copyright aims to protect i.e., giving the copyright owner the sole right to decide how their work is used. Furthermore, the fact that the Act provides for an opt-out option implies that it is only when the copyright holder becomes aware that the CMO is issuing licences without their consent can they take any action.

12. Establishment of a Dispute Resolution Panel

The new Act now harmonises the provisions of the Copyright (Dispute Resolution Panel) Rules, 2007 by making provisions in the Act establishing a Dispute Resolution Panel⁶³, which is intended to provide an effective and efficient means for resolving disputes related to copyright licensing and royalty payments in Nigeria. The Panel shall be composed of three persons knowledgeable in copyright matters, with one of them designated as the chairman. The Panel’s establishment is intended to provide a more specialised approach to resolving disputes in the creative sector regarding copyright, ensuring that disputes are handled by individuals who understand the specific nuances of the industry. This provision is also designed to provide a less formal and costly means of resolving disputes in comparison to litigation, which is often expensive and time-consuming.



⁵⁹ Section 22 Copyright (Collective Management Organisations) Regulations, 2007

⁶⁰ Section 88(6)(b) the Copyright Act

⁶¹ Section 88(5) *ibid.*

⁶² Section 88(9) *ibid.*

⁶³ Section 90 of the Copyright Act



Additionally, the provision also ensures that the panel is independent and impartial. Any person with an interest in the subject matter in question cannot be appointed as a member of the panel. If a member of the Panel is unable to continue as a member, the remaining two members can still constitute a quorum for the proceeding. The Commission is also required to establish regulations to govern the Panel's procedure and operations, which in this case the Copyright (Dispute Resolution Panel) Rules, 2007 would operate.⁶⁴

13. Outdated Provisions in the New Nigerian Copyright Act 2022: Implications for the Future of the Creative Economy

The Act would undoubtedly bring about significant changes in the country's creative industry, but it has its limitations. Despite the many additions and improvements by the Act to the Nigerian copyright space, it is discouraging to observe that the Act maintains a section from the Repealed Act which permits works that have infringed on another work to gain protection⁶⁵. Section 2(4) of the Act states that "Any work shall not be ineligible for copyright by reason only that the making of the work or the doing of any act in relation to the work involved an infringement of copyright in some other works." The Act ought to have taken into consideration that to legitimise the infringement of any work in this manner ultimately eradicates the essence of copyright protection which is the protection of original expression.⁶⁶

Conclusion

The Act is a welcome development that has the potential to propel growth in Nigeria's creative industry. The Act makes significant changes that address some of the challenges that copyright owners face in the country and improves the local law to match international standards. While the new Nigerian Copyright Act of 2022 is undoubtedly a step in the right direction, there are areas where it is just considering outdated changes. It is therefore crucial that lawmakers consider and keep up with the constantly evolving nature of the creative economy and ensure that the copyright laws reflect this. Failure to do so may result in outdated laws that do not adequately protect the rights of creators or facilitate the growth of the creative industry.

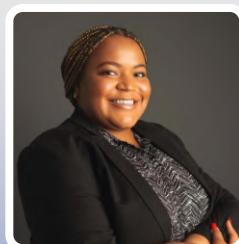
Moreover, to truly enjoy the benefits of the Act, copyright owners must be aware of their rights and take necessary steps to protect their works. This includes registering their works with the Commission, keeping records of their works, monitoring the use of their works to detect and prevent infringement and retaining the services of a competent legal representative. Nevertheless, this burden should not be placed solely on the copyright holder, the Commission must also utilise its powers and work alongside the Nigerian Government to ensure strict adherence to the provisions of the new Act and enforce penalties for infringement to deter potential infringers from engaging in piracy and other forms of copyright infringement. It is expected that this in addition to a coherent collaboration of all stakeholders in the industry would see to the actualisation of the Act's objectives.

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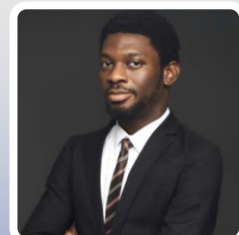
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⁶⁴ Section 90(5), Copyright Act 2022.

⁶⁵ Section 1(4) of the Repealed Act

⁶⁶ Section 2(4) of the Copyright Act