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Abstract

Copyright and publishing issues in Nigeria have become topical in recent times. The paper analyses the extant situation of Nigeria’s identity with regards to copyright, it related issues and the publishing sector. The scope of what constitute copyright and what it would take to obtain and enforce copyright in the Nigerian context was examined. It further delves into issues concerning the exclusive right of copyright holders, the fair use clause, exemptions for visually impaired persons and the vexed matter of piracy. An overview of the situation of the Nigerian publishing industry in the context of the Global publishing industry was discussed with emphasis on the challenges and recent developments in Nigeria’s publishing terrain. The paper concludes that although copyright administration and publishing in Nigeria is still developing, both have impacted positively on the protection of intellectual property. The paper recommends an urgent intervention of stakeholders.

Keywords: Copyright, Intellectual Property Protection, Publishing, Publishing Industry, Nigeria.

Introduction

Copyright is the exclusive, legally secured right to publish, reproduce and sell the matter and form of a literacy, musical, dramatic, or artistic work (Encyclopaedia Britannica, 1992). It is a legal concept enacted by most governments, giving the creator of an original work exclusive right to use it, usually for a limited time. It is the right to copy, but it also gives the copyright holder the right to be credited for the work, to determine who may adopt it to other forms, who may perform the work, who may financially benefit from it (Wikipedia, 2013).

Copyright therefore seek to protect intellectual property of artists, publishers, or other owners against an unauthorized copying of works such as reproducing the work in any material form,

publishing it, performing it in public, filming it, broadcasting it, causing it to be distributed to subscribers, or making any adoption of it.

Historically, copyright grew out of the same system as royal patent grants, by which authors and printers were given the exclusive right to publish books and other materials. The grants were not to protect the author or publishers but rather, to raise government revenue and for it to control publication contents. Copyright has evolved so much today that it even has territorial application. Several issues had also evolved around copyright and its application in the real world. Such issues includes its justification, its 'fair use', its scope; how does one obtain or enforce copyright, what constitute exclusive rights of a copyright holder, its limitations or exceptions, its relationship with other rights and piracy. These issues had helped in no small way in shaping the conceptualisation and direction of copyright administration globally.

Many of the materials protected by copyright are “published resources”. This simply means that materials or intellectual property which are deemed published, qualify to be copyrighted. Therefore, publishing is central to copyright and it will indeed help in the understanding of copyright.

Publishing is the activity that involves the selection, preparation and marketing of printed matter. Generally it involves the manufacturing of newspapers, magazines, books, newsletters, journals, reports and many other printed materials (Okwilagwe, 2001). Publishing as an activity has greatly influenced the world such that its impact on civilisation is incalculable. In Nigeria, the publishing industry has not reached its full potential. The country's economic realities, coupled with other factors had relegated the publishing industry to the background such that publishing in Nigeria is not indicative of any form of specialisation.

Today, publishers are few and many times printers erroneously pride themselves as publishers. What are the recent developments in the publishing industry globally? This paper delves into copyright and its associated issues; publishing as well as the Nigerian publishing industry.

Copyright and Related Issues.

Copyright is designed to encourage creativity and it provides society the results of such creative activity in economic terms. It is part of what is generally regarded as intellectual property, other includes patents, trademarks etc. It is limited in time, scope and in exercise. Copyright may be said to have been invented and developed for society for two reasons: to enable the creative artist to demand a reward for his work by providing the security necessary for its publication; and to enable the public to have access to works which might otherwise remain unpublished (Baker, 1970).

Copyright naturally do not extend beyond the territory of a specific geographical area or state unless that state is a party to international agreements. In recent times, this has become less relevant since most countries are parties to at least one of such agreements (Wikipedia, 2013).

While many aspects of national copyright laws have been standardized through international agreements, copyright laws of countries still retain some unique features.

The authors right, it must be said are never absolute, the public is always being given some right to use his work for particular purposes and subject to certain limitations. However, it has to be remembered that if the use which the public is allowed to make is such as importantly to erode the market for a published work, the publisher may hesitate to publish and the public may be denied access to such work(s). Equally, the more vulnerable the work is to free use, the less reward will the author be able to command (Baker, 1970).

Okwilagwe (2001) identified six pre-conditions (provided by the copyright act chapter 68 laws of the federation of Nigeria) which has to be met before a work enjoys copyright protection as follows:

- (a) Sufficient effort must have been expended on making the work such that it has an original character.
- (b) Work must be fixed in a definite medium of expression now known or to be developed later into a form which it can be perceived, reproduced or otherwise communicated.
- (c) An artistic work shall not be eligible for copyright, if it was intended by the author to be used as a model or pattern to be duplicated industrially.
- (d) A work shall not be ineligible for copyright by reason only that the making of the work or any doing related to the work involves an infringement of copyright in some other work.
- (e) A work is eligible for copyright protection if the author is:
 - 1 A Nigerian citizen or domiciled in Nigeria,
 - 2 For a company, it is incorporated by or under the laws of Nigeria or
 - 3 If work was first published in Nigeria.
- (f) Works made in another country is eligible for copyright protection if such a country has an agreement with Nigeria for equal protection of works.

Scope of Copyright.

WIPO (2006) and Yu (2007) identified the wide range of works to which copyright may be applied as creative, intellectual or artistic forms or works; they can also include poems, thesis, plays, other literacy works, movies, devices, musical compositions, audio recording, paintings, drawings, sculptures, photography, software, radio and television broadcasts and industrial designs. Copyright does not cover ideas and information themselves, but only the form in which they are expressed (Stokes, 2001).

In many instances, copyright laws make exceptions to lay down restrictions when the work is copied for the purpose of commentary or other related uses. For instance, the fair use or fair dealing clause. Trademarks and patents however, impose restriction beyond the scope of copyrights. Standardization for copyright laws was achieved through international conventions

such as Berne convention, universal copyright convention and WIPO copyright treaty. These treaties have been ratified by most of the world's countries.

Obtaining and Enforcing Copyright

A work qualifies for copyright if it meets the minimal standard of originality. The copyright expires at a set period of time as may be stipulated by each country. Countries actually impose different tests, although the requirements are generally relaxed. Copyright law recognises the right of an author on whether the work is an original creation, rather than whether it is unique. This is because two authors may own copyright on two nearly identical works given that the duplication is determined to be coincidental and that neither of the authors copied from each other.

Based on the Berne Convention as applied in all signatory countries, copyright is automatic and need not be obtained through official registration with a government agency. Once an idea has been converted into a "tangible" form (such as photography, a book, software etc). The copyright holder is entitled to enforce his or her exclusive rights. In some cases, the original holder of a copyright may be an employer of the author rather than the author himself. This is the situation where the author was hired to create a work.

Copyright will generally be enforced by the holder in a civil court of law, however there are also criminal infringement statutes in some jurisdictions. Some countries keep registries but this does not necessarily prove ownership, nor does copying without permission prove an infringement.

Exclusive Rights of Copyright Holder

Exclusive right simply means that only the copyright holder is free to exercise those rights and that others are stopped from using the work without the copyright holders permission. The exclusive rights attached to copyright holder include:

- Right to produce copies of reproductions of the work and to sell those copies (including e-copies)
- Right to import or export the work
- Right to create derivative work
- Right to perform or display the work publicly
- Right to sell or assign these rights to others
- Right to transmit or display by radio or video (Yu, 2007)

These rights, it must be said, stand separately of each other and the original or first owner of copyright in a work will have all of them at the same time. This means that before any other person can exercise any of such rights, he must obtain consent in writing from the owner (Okwilagwe, 2001).

Fair Use Clause

Copyright does not prohibit all copying and reproductions. In all countries the copyright law permit some copying and distribution without permission under the 'fair use' clause. These are limited set of circumstances under which copyrighted materials can be legally copied or adapted without the copyright holders consent. The criteria for determining whether a use is 'fair' according to Baker 1970) includes:

- The type of use involved
- The intent with which it is made
- The effect of the use on original work
- The amount of users' labour involved
- The benefit gained by the user
- The nature of the works involved
- The amount of material used and
- The value of material taken in relation to the work as a whole.

In many instances, these process or criteria are not well defined and therefore may spur litigation. However, legislation, court judgments and the statues itself have provided fair dealing exceptions to the copyright law in countries. Fair use includes research and study, review and critique, news reportage and may include copying material for personal or private use such as in photocopying. A lose look at the criteria earlier stated, one can infer that so long as copies made of materials are not of such a length as to make it unnecessary for the user to buy the original work in those cases where he otherwise would, and so long as the copies are not for sale but for personal use (for study and research), they would seem to qualify as "fair use".

Exemptions for Persons with Disabilities

It is legal in several countries including Nigeria, the United States and the United Kingdom to produce alternative versions of copyrighted material in large prints, Braille, audio materials including DAISY format. This is done and essentially to provide improved access to these works for the blind and other visually impaired persons without permission from the copyright holder.

Copyright exemptions for the visually impaired according to Nkiko (2013) are enshrined in international instrument, in particular the United Nations Universal Declaration on Human Rights and the United Nations Standard Rules on the Equalisation of opportunities for the Disabled persons. These exemptions are aimed at securing the right of the visually impaired persons to access information and knowledge.

Copyright and Piracy

Piracy is the illegitimate use of materials held by copyright (Lynette, 2001). For a work to be considered as pirated, it's illegitimate use must have occurred in a country that has its domestic

copyright laws and/or adheres to a bilateral treaty or established international convention such as the Berne Convention or WIPO Copyright Treaty. Piracy primarily targets music, films and software; however the illegal copying of books and other text remain common, especially for educational purposes. In Nigeria, it is a big problem as it takes place in various forms. Nothing reproducible is spared records, radio-cassettes, video tapes, all paper based materials are pirated (Okwilagwe, 2001).

Adesanoye (1995) described piracy as the greatest problem facing publishers in Nigeria and that the bestselling titles are usually the target of pirates who get material reproduced for sale at very low prices. Printers are also culpable. Printers produce identical copies of books and sell at give away prices. Nwafor (1991) cited in Okwilagwe (2001) advanced reasons for piracy in developing countries as follows:

- Very high cost of books in relation to average income.
- Scarcity of publishing materials
- Infant stage of publishing industry resulting in over-dependence on industrialized countries for books to meet educational and research needs.

The Publishing Industry – Global Perspectives

Publishing is a process of production and dissemination of literature or information, the activity of making information available to a general public (Wikipedia 2013). Traditionally, publishing refers to the distribution of printed works such as books and newspapers, however with the coming of internet and the flourishing of digital information, the scope of publishing has expanded to include electronic resources such as electronic versions of books and periodicals and well as today's micro publishing, websites, blogs publishers etc.

The process of publishing is long and it involves lot of personnel and time. It involves the pre-production stages, editorial stage, signing, sales and marketing, printing and distribution. Distribution brings the product to the public by offering it for sale.

The publishing industry is a commercial business that cares about its sustainability by way of profit making. Publishing is a major industry with many of today's brands having global publishing operations. Publishers majorly handle the task of advertising and marketing; however other duties may be licensed or sub-contracted to specialists or freelancers. The publishing industry sub-divisions include:

- Newspaper publishing
- Periodical publishing
- Book publishing
- Academic publishing
- Directory publishing

Book publishers rarely own printing presses and binderies. The publishing industry is not dynamic in nature; it is a social sector that ensures that people are informed and educated.

Publishing Industry in Nigeria

Publishing industry in Nigeria is one of the oldest businesses. It had existed for decades before the 1914 amalgamation of Nigeria. The first printing press was established in Calabar in 1846. The missionaries led by Henry Townsend also had another press in Abeokuta which produced the 'Iwe Iroyin' newspaper. (DEGS, 2009)

In spite of the long history of publishing in Nigeria, publishing today is a far cry from the expected. The publishing industry is still in its infancy as many factors have converged to ensure that it remains so. The publishing industry in Nigeria had suffered from lack of infrastructure, technical personnel, marketing problems and poor production just to mention but a few.

Ike (2004) viewed that on the face of it, Nigeria has a vibrant publishing houses relative to any African country. The newspaper and magazine subsector appear to be doing fairly well despite the problems confronting it from the standpoint of government policies and the economics of the business. The book and academic publishing sub-sector is in shambles. At one stage, prospect for the book industry in Nigeria appeared rosy. The government established paper and pulp making industries; the plan for self-sufficiency was in place for all tiers of education only for all to collapse following the nation's economic downturn of the 1980s. Book famine descended on Nigeria (Ike, 2004).

The publishing industry in Nigeria is essentially private sector driven with little or no regulations, and the absence pre-determined conditions for its entry and exists. The industry remains grossly undercapitalised. The book/academic publishing sub-sector is worst hit judging by its performance over the years. The trend in book publishing is not indicative of any form of specialisation by practitioners; publishers just publish anything they rate as commercially viable, hence their concentration of text for primary and secondary schools only. This had continued for many years now. The Nigerian government had failed to neither institute a National book policy nor establish a National book development commission to handle its book publishing and distribution policies. This according to (Ike 2004), explains why indigenous book publishing and development has been unplanned and uncoordinated.

The concentration of Nigerian publishers on textbooks for primary and secondary education as against tertiary and other text has militated against the availability of professional books, reference books and general books (including creative writing, general interest books and books for lifelong education). The situation of acute shortage of book supply necessitated the government to introduce measures aimed at reversing book famine in Nigeria. They include:

- 70 million naira FGN book aid programme to schools in 1989
- 1991 World Bank credit facility for importation of foreign textbooks and journals for universities.
- TETFUND intervention for educational institution for library books.

These interventions schemes did not cater for the Nigerian general reader; it failed to address the reading needs of millions of Nigerians outside the formal education sector (Ike, 2004).

New Developments in Publishing and the Nigerian Publishing Industry

Technology is currently re-shaping the industry's landscape and it remain to seen whether the Nigerian publishing industry will be able to respond to this challenge or whether technology will eventually bring the industry (especially book publishing) to a total halt. Technology has now brought about changes in form of electronic books, print on demand and accessible publishing. E-book acceptability is on the ascendancy in many countries while companies such as Google, Amazon and Sony have been leaders in working with publishers and libraries to digitize books.

With print on demand, it is not only cost effective, publishers no longer have to store books; small publishers can operate without large overhead costs and may not own warehouses. A further development is the growth of on-line publishing where no physical books are produced. The e-book is created by an author and uploaded to a website from where it can be downloaded and read by anyone.

These new developments have come to stay and as these changes become much more established; the Nigeria publishing industry will have to also migrate to the e-platform given the acquisition of the requisite infrastructure and knowhow to do so. The publishing industry in Nigeria must wake-up and re-organise itself with the ultimate goal of publishing the country's literature for the formal and non-formal needs of the country.

Conclusion

Copyright and its related issues have in no small way assisted in the protection of human ideas and knowledge. The fact that international multilateral agreements provide a platform for its implementation in countries attests to it being universal. Publishing has grown significantly into a multinational business, helping in the propagation of human ideas and knowledge. The Nigerian publishing sector however, has not attained its potential. Several impediments had forced it to remain an infant despite its very long years of existence. The government and the stakeholders need to urgently intervene to arrest this ugly situation for the future of Nigeria.

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