

Copyright Law
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TRANSITIONING FROM PEN TO PROTECTION: NAVIGATING AUTHORS' RIGHTS UNDER THE COPYRIGHT ACT IN NIGERIA[1]

1. Introduction

The right to create is the cornerstone of cultural, intellectual and technological advancement. In a world driven by innovation and storytelling, authors stand at the heart of expression-shaping society through words, images, music and art. However, without a legal framework to safeguard their rights, these creative contributions remain vulnerable to unauthorized use, exploitation, and misappropriation.

In Nigeria, the legal instrument designed to protect authors and their works is the *Copyright Act*, 2022 ("**the Copyright Act**"). This legislation introduced a more modern and comprehensive approach to the protection of literary, musical, artistic, audio-visual, and digital works. The *Copyright Act* aligns Nigeria's copyright regime with international standards, including the *Berne Convention for the Protection of Literary, and Artistic Works* and the *World Intellectual Property Organization (WIPO) Copyright Treaty*. The *Copyright Act*[2] recognizes the importance of economic rights such as the right to reproduce, publish and distribute a work; and moral rights, which protects an author's personal connection to his work. It also provides for exceptions and limitations that promote access, particularly in education and for persons with disabilities.

This article explores the rights of authors, as enshrined in the *Copyright Act*. It seeks to demystify the legal language and provide an accessible roadmap for authors, researchers, and stakeholders in the creative industry. From defining who an author is under the law to examining the rights of an author; infringement of an author's right; enforcement; and the impact of digital evolution, this article will serve as a guide to understanding what it means to transition "from pen to protection" in today's Nigerian creative landscape.

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2 Sections 9 – 13 of the *Copyright Act*, 2022.

2. Who is an Author under the Copyright Act?

The concept of "authorship" forms the backbone of copyright protection, as it is the legal status upon which moral and economic rights are conferred. In legal parlance, an "author" is the creator of an original work that has been put in a tangible medium, whether the work exists in a graphic, visual or in recorded form. Thus, the act of creating such an original work is referred to as "authorship". Hence, a sculptor, painter, composer is regarded as the author of their respective works.

The *Copyright Act* does not provide a general definition of an "author". Instead, it provides a framework for identifying the author depending on the category of the work involved. According to section 108(1) of the *Copyright Act*,[3] the definition of an author, is determined in accordance with the different classes of copyright work:

(i) **For audio-visual works:** The authorship of audio-visual works (such as recordings of live performances, recordings of music and songs, recordings of sermons, records of literally words read aloud and oral histories, podcasts, feature films, documentaries and television programs, animations, cartoons, short films, YouTube content, free- to-air broadcasts and more) is vested on the person by whom the arrangements for making the audiovisual work were made, unless the parties to the making of the audiovisual work, agree otherwise by a contract between them.

(ii) **For Collective works:** The author of a collective work is one who takes the responsibility for the selection and arrangement of the collection. Notably, the *Copyright Act* provides that the ownership of copyright in a collective work shall be on the person under whose initiative and directive the work was created. It also provides that the author of the work incorporated in the collective work shall have the right to exploit that work independent of the rights in the collective work.[4] This means that the right of the person who put out the work in its original form is distinct from the author of the collective work. Collective works in this context includes encyclopaedia, periodicals, newspapers, magazines, anthologies, etc. Section 108(1) of the *Copyright Act* defines "collective works" as "*a collection of literary and artistic works, which by the reason of the selection and arrangements of their contents, constitute intellectual creations and as such protected without prejudice to the copyright in each of the works forming part of such collection."*

(iii) **For Photographic works:** The author of a photographic work means the person who took the photograph. This stance may vary in instances where the photographer was commissioned to take photographs or in the course of an employment contract. Put differently, where a person pays or commissions a photographer to take pictures, such person need not obtain the photographer's permission to use the photograph for private and non-commercial purposes. More so, a person can also restrain the photographer from releasing the photos into the public domain, but this only applies in cases where the person whose photos were taken commissions the photograph. In **Banire v. NTA-Star TV**

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3 Section108(1)(a), section108(1)(b), section 108(1)(c), section 108(1)(d) and section 108(1)(e).

4 Section 29 of the *Copyright Act*.

Network Ltd.,[5] the Court of Appeal clarified that in the case of photographic works, authorship vests in the person who took the photograph unless there is a written agreement that states otherwise. The Court reiterated the need for express contractual agreements to transfer ownership rights from the author.

(iv) **For Sound Recording:** An author of a sound recording, is the person by whom the arrangements for making the sound recording were made.

(v) **For Broadcast:** An author of a broadcast transmitted from within any country, means the person by whom the arrangements for making or the transmission from within that country were undertaken.

2.1 **Works Created Under Employment or Commission**

In a work-for-hire arrangement or where the author produces the work in the course of his employment or apprenticeship, the employer or the commissioning party is presumed under the *Copyright Act* to be the owner of the copyright unless the parties have expressly agreed otherwise (in writing). Conversely, the copyright of a work by an employee in the course of his own time and not in the course of an employment is vested on the employee.

Section 28(2) of the *Copyright Act* provides that where a person in the absence of an agreement to the contrary, creates a work under a contract for services, or in the course of an employment by a government, a ministry, department or agency of a government or a prescribed international or inter-governmental organization, the copyright in that work shall vest in that government, department, agency, prescribed international or inter-governmental organization. Section 28 (3) of the *Copyright Act* further provides as follows:

> Notwithstanding subsection (1) and subject to any agreement between the parties, where a person for private and domestic purposes, commissions the taking of a photograph or a painting or a drawing of a portrait or the making of an audiovisual work, the person who commissioned the work shall be-
>
> (a) Deemed to have a non-exclusive licence to exploit the commissioned work for non-commercial purposes; and
>
> (b) Entitled to restrain the publication, exhibition, broadcasting, communication, distribution, and making available of the copies of the work to the public.

In **Peter Obe v. Grapevine Comm. Ltd.,**[6] where the Plaintiff sued the Defendant for infringement of his copyright in a civil war photograph, it was held that the Plaintiff was

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5 (2021) LPELR – 52824 (CA). In this case, the Court of Appeal, per Honourable Justice Mohammed Baba Idris, JCA, at pp. 34 – 38, paras. C – E, held as follows: "*It is the act of Virtual Media Network being the ones who took the photographs that makes it the author of the photographs. By taking photographs they automatically have the rights except there is an agreement that states otherwise. The Appellant by her own evidence has stated that she had a photo session with Virtual Media Network the owners of Orisun Tv and as such since Virtual Media Network took the photographs, then they have authorship and as a result they have copyright of the photograph not the Appellant.*"

6 (2003 – 2007) 5 I. P. L. R. 354. In this case, Honourable Justice Abdullahi Mustapha, J., at p. 373, paras. F – J, quoted with approval, Halsbury's Laws of England 4th edition, page 549 paragraph 860, as follows: "*Where a literary, dramatic or artistic work is made by the author in the course of his employment by the proprietor a newspaper, magazine or a similar periodical under a contract*

the owner of the copyright in the civil war photograph in contention, and that the photographer took the picture after resigning from his last employment.

2.2 Joint Authorship

Under the *Copyright Act*,[7] a work of joint authorship is one produced by the collaboration of two or more authors, where the contribution of each work is not distinct from that of the other. A work produced by the collaborations of authors are merged into inseparable or independent part of a whole. This connotes that for joint authorship to be recognized under the *Copyright Act*; the work must not be distinct or independent or of a different context. In Nigeria, copyright can only be vested in joint authorship where at least one of the authors is at the time when the work or substantial part was made, a Nigerian citizen, or was habitually resident in Nigeria or a body incorporated under the laws of the federation.[8] Joint authorship demands proof of the following facts:

(i) That there must be contribution of skills and efforts from each author;

(ii) That the contributions must be inseparable and interdependent; and

(iii) That each author owns equal and undivided shares in the copyright.

In the absence of Nigerian cases directly addressing joint authorship, courts have often drawn from persuasive English jurisprudence. In **Hardley v. Kemp**,[9] it was held that mere ideas or inspiration do not amount to authorship unless those ideas are expressed in a copyrightable form. Similarly, in **Robin Ray v. Classic FM**,[10] the Court held that authorship must involve an original, substantial contribution to the expression of the work.

2.3 Implications for Authors

Understanding authorship is crucial for the following reasons:

(i) Only the author or his legal assignee can enforce copyright.

(ii) In employment or commissioned contexts, authors can retain their moral rights even when economic rights are assigned.

(iii) A valid contract can override default statutory assumptions about ownership.

3. Core Rights of an Author in Nigeria under the Copyright Act

The rights conferred on authors are the legal backbone of copyright protection. Under the *Copyright Act*, these rights are primarily categorized into economic and moral rights, and they reflect the dual nature of creative works as property with commercial value and as extensions of the author's personality and dignity.

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of service or apprenticeship, and is so made for the publication of a newspaper, magazine or a similar periodical, the proprietor is entitled to the copyright insofar as the copyright relates to such publication or reproduction of the work of its purpose being so published. In other respects, however, this provisions maybe excluded by agreement. The copyright in a work done by an employee in his own time and not in the course of his employment is in the employee."

7 Section 108 of the *Copyright Act*.

8 See, section 5.

9 (1999) EMLR 589.

10 (1998) FSR 622.

3.1 Economic Rights[11]

The *Copyright Act* grants authors a comprehensive bundle of exclusive economic rights. These rights allow authors to control and derive financial benefits from the use of their works. These rights include the right to:

(i) Reproduce the work in any material form;

(ii) Publish the work;

(iii) Perform the work in public;

(iv) Broadcast the work;

(v) Make adaptations or translations of the work;

(vi) Distribute copies to the public for commercial purposes; and

(vi) Communicate the work to the public (via digital and online platforms).

These rights are exclusive, meaning that others may not use the work in these ways without the author's authorization, except under permitted statutory exceptions.

3.2 Moral Rights

Distinct from economic rights, moral rights protect the author's personal and reputational connection to their work. These rights are inalienable and cannot be waived or assigned during the lifetime of the author, even when economic rights have been transferred. The *Copyright Act*[12] outlines the key moral rights as follows:

(i) **Right of Attribution:** The author has the right to claim authorship and be properly credited. In some civil law jurisdictions, these rights are called "*paternity rights*". This is the right to have the status of "authorship" recognized and also the right to have the author's name mentioned especially when the work is reproduced. For instance, in the popular adaptation of *"Harry Potter,"* the author of the original work, being J. K. Rowlings, was recognized.

(ii) **Right to object to Distortion and Mutilation:** The author can object to any distortion, mutilation, or modification of their work that can be prejudicial to their honour or reputation. This right is also known as "*right of integrity*." For instance, a poet quoted out of context in a defamatory way can sue for damages under moral rights, even if the author's rights have been transferred.

(iii) **Posthumous Enforcements:** These rights continue to subsist after the author's death and may be enforced by the author's heirs or estate.

3.3 Duration of Copyright in Nigeria

This refers to the length and time the rights granted to an author or copyright owner remains valid and enforceable. After the expiration period, the work enters into the public domain, meaning anyone can use it freely without seeking permission or paying royalties. This concept maintains a balance between protecting the rights of creators and serving the public interest. The *Copyright Act*[13] provides for the duration of

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11 See, sections 9 – 13 of the *Copyright Act*.
12 See, section 14 of the *Copyright Act*.
13 See, section 19 of the *Copyright Act*.

copyright. It directs that in the case of audio visuals, photographs and sound recordings, copyright will be in existence until 50 years after the end of the year in which the work was first made available to the public with the consent of the author or 50 years after the work was created, if not made available within that time.

For literary, musical or artistic works with the exception of photographs, the duration of copyright protection is 70 years after the end of the year in which the author dies. For broadcasts, 50 years after the end of the year in which the broadcast first took place. Works made under the control or directive of the government, an agency of the government or an international body shall subsist until 50 years after the work was made available to the public or 50 years after it was created, if it was not made available to the public within that time. Anonymous or pseudonymous literary, musical or artistic works shall subsist until 70 years after the work was made public with the consent of the author or 70 years after the work was created, if not made available to the public within that time, provided that when the author becomes known, the duration shall be in accordance with section 19(1) of the *Copyright Act*. The *Copyright Act* also provides that in works made by joint authors, reference to the death of the author shall be to the author who dies last.

It is important to note that in as much as copyright protects author's original work, such protection does not last forever. In the sense that, the protection of copyright on an author's work is time bound.

3.4 **Infringement of an Author's Rights.**

Copyright infringement refers to the statutory breach of the legal rights conferred on an author and this happens through the unauthorized use of his work. It stems from unauthorized use, distribution, reproduction, or performance of the work. Common examples of copyright infringement are digital piracy and plagiarism. Section 36(a) – (g) of the Copyright Act lists out instances where infringement occurs:

a. when a person does or causes any person to do an act that constitutes an infringement;

b. imports into Nigeria any copy of a work, made in Nigeria, that would be an infringing copy;

c. sells or hires an infringed work;

d. makes or has in possession, an equipment used for the sole purpose of making infringed copies;

e. permitting a premises to be used for a performance of an infringed work;

f. permitting the reproduction of an infringed work in one's premises; and

g. performance or the promotion of a work for business purposes any work where copyright subsists.

3.5 **Remedies for Infringement of Copyright**

There is a legal remedy for any manner or form of copyright infringement. Subject to the provisions of the *Copyright Act*, infringement of copyright shall be actionable at the instance of the owner, assignee or an exclusive licensee of copyright at the Federal

High Court.[14] Remedies for copyright infringement are the solutions the law puts in place to right the wrong(s) done to authors and to give them due compensation and justice. Copyright infringement can be subject to both criminal and civil liabilities and may be enforced in the following ways:

(i) **Civil Remedies:** This is the compensation of an owner after the occurrence of an infringement.[15] This includes awarding damages to compensate for actual losses and awarding statutory damages when losses are difficult to quantify. Another remedy is an injunction which is to stop ongoing or impending infringement.[16] An account of profit is also a civil remedy, and this involves recovering the profits made from the infringement.

Where it is proved that copyright infringement has occurred, and the defendant is not aware or had no grounds to suspect that copyright subsisted on the work, the plaintiff shall not be entitled to damages but shall be entitled to an account of profits.[17] In **Plateau Publishing v. Adophy**,[18] the principle upon which an account for profits is awarded in the case of copyright infringement was reproduced by the Supreme Court as follows:

> It is true that the court does not, by an account, accurately measure the damage sustained by the proprietor of an expensive work from the invasion of his copyright…. The court, by an account, as the nearest approximation which it can make to justice, takes from the wrongdoer all the profits he made by his piracy, and gives them to the party who has been wronged. In doing this, the court may often give to the injured party more, in fact, than he is entitled to… the court of equity, however, does not give anything beyond the account.[19]

Civil remedies, also include remedies for online infringement and administrative remedies:

a. **Remedy for Online infringement:** The *Copyright Act* introduces a notice and takedown regime for online infringement, which creates specific liabilities, remedies and defences.[20] Section 54 of the *Copyright Act* provides that the owner of a copyright in a work can issue a notice of infringement to the service provider requesting it to take down the infringing content on the service provider's network. Section 55 of the *Copyright Act* also provides that service providers have the obligation to take down or stop any access to the infringing

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14 Koriat & Co, 'Copyright Infringement, Defences & Remedies Under Nigerian Law' (*Koriat & Co*., 22 October 2023) <https://koriatlaw.com/copyright-infringement-defences-remedies-under-nigerian-law/> accessed 19 June 2024.

15 See, section 37 of the *Copyright Act*.

16 See, section 37(6).

17 See, section 37(4).

18 (1986) 4 NWLR (Pt. 34) 205 (SC).

19 Ibid., at p. 224, paras. G – H, per Honourable Justice Uwais, JSC. The Apex Court quoted with approval, the English decision in *Colburn v. Simms* (1843) Ha. 543 at p. 56. This decision was accessed via: Koriat & Co, 'Copyright Infringement, Defences & Remedies Under Nigerian Law' (*Koriat & Co*., 22 October 2023) <https://koriatlaw.com/copyright-infringement-defences-remedies-under-nigerian-law/> accessed 19 June 2025.

20 Koriat & Co., 'Copyright Infringement, Defences & Remedies Under Nigerian Law' (*Koriat & Co*., 22 October 2023) <https://koriatlaw.com/copyright-infringement-defences-remedies-under-nigerian-law/> accessed 19 June 2025.

content after receiving a notice of infringement. Subsection (6) further provides that any positive compliance from the service providers absolves them of any liability. On the contrary, any failure of compliance, will render them liable for breach of statutory duty.

b. **Administrative Remedies:** Section 53 of the *Copyright Act* provides for Customs Enforcement Measures. Under this provision, the owner of copyright in a work may give notice in writing requesting the Nigerian Copyright Commission to notify the Nigerian Customs Service, during the period specified in the notice, to treat as prohibited goods any work in respect of which the owner's right has been infringed. More so, the Comptroller-General of Customs or other customs shall intercept and impound these infringing works.[21]

(ii) **Criminal Remedies:** The *Copyright Act*[22] provides for criminal liability on copyright infringement. The offences are punishable with a fine of at least ₦1,000, ₦10,000, ₦1 million naira or imprisonment for a term at least three or five years, or both depending on the offence.

3.6 **Limitations and Exceptions to Copyright Protection.**

While the *Copyright Act* grants broad exclusive rights to authors, those rights are not absolute. To balance public interest with private ownership, the *Copyright Act* provides for specific limitations and exceptions. These exceptions are instances where works may be used without authorization under certain conditions. They are as follows:

(i) **Fair Dealing:**[23] The *Copyright Act* granted exclusive rights to owners of copyrighted works under sections 9 – 13 but this does not include the right to control acts related to the work by way of fair dealing purposes, such as private use, parody, satire, pastiche or caricature, non-commercial research, and private study, criticism and review or reporting of current events.[24] This is on the condition that if it is for public use, the title of the work and its author needs to be acknowledged. Except where the work is incidentally included in a broadcast.[25] Fair dealing is a necessary equilibrium that preserves the public's access to knowledge while respecting creators' rights.[26]

(ii) **Examination and Instruction:**[27] There will be no infringement on literary and artistic works if it was copied for the sole purpose of carrying out an instruction or for the preparation of an instruction. This entails that the limited use of copyright is permitted so long as it is for non-commercial educational purposes,

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21 *Ibid.*

22 See, section 44 of the *Copyright Act*.

23 Section 20(1).

24 Koriat & Co., 'Copyright Infringement, Defences & Remedies Under Nigerian Law' (*Lawpavilion*, 11 December 2024) <https://lawpavilion.com/blog/copyright-infringement-defences-remedies-under-nigerian-law/#google_vignette>accessed 26 June 2025.

25 *Ibid*.

26 Adebambo Adewopo, 'According to Intellectual Property Law: A Pro-development Vision of the Law and the Nigerian Intellectual Property Law and Policy and Policy Reform in the Knowledge Era' (*NIALS*, 2012) <https://nials-nigeria.org/PDFs/NIALS%205th%20Inaugural%20Lecture.pdf> accessed 26 June 2025.

27 Section 21 of the *Copyright Act*.

only reasonable portions are used, and its use does not harm the market for the original work.

(iii) **Archives, Libraries, Museums and Galleries:**[28] Archives, libraries, museums, and galleries may, for non-commercial purposes, make and distribute copyrighted copies as part of their ordinary activities. They can also make copies of copyrighted works for purposes of preservation and back up. They can also make a copy of any missing part of a work in its collection from another institution. Copies of any work can be made, where the permission of the owner of the work cannot be obtained or where the work is not available by general trade or from the publisher.

(iv) **Blind or Visually-impaired Persons:**[29] This promotes the availability of copyrighted works to blind or visually-impaired persons. An authorised person is permitted to make an accessible format copy of a work without the permission of the copyright owner, and supply to the beneficiary persons through non-profit lending, electronic communication by wire or wireless means. This is on the condition that this is done for non-profit purposes and it is to be used exclusively by the beneficiary.

4. Emerging Challenges and Digital Frontier

In the 21st century, authorship has expanded far beyond traditional books and music to include digital art, AI-generated works, NFTs, viral content, and more. While the *Copyright Act* introduces essential reforms such as digital protection, notice and take-down mechanisms, however, significant gaps remain in enforcement, technology adaptation, and alignment with global standards. The ease with which creative works can now be created, copied, and distributed online has reshaped the very definition of originality and control. Social media, streaming platforms have introduced widespread piracy of e-books, music and digital art, plagiarism without traceability, unauthorized sharing on platforms, (like WhatsApp, Telegram, and Reddit) AI-generated works where authorship and ownership is blurry. The line between an author and an algorithm is becoming harder to draw.

4.1 Weak Enforcement in the Online Space

While section 54 of the *Copyright Act* introduces a notice-and-takedown mechanism, enforcement remains weak due to the lack of capacity in the Nigerian Copyright Commission to track online infringements; low awareness amongst authors on how to issue takedown notices; and difficulty in tracing anonymous infringers across jurisdictions. One of the major weaknesses of Nigerian copyright law is the inadequate protection for digital content. With the rapid growth of e-books, online publishing, and digital media, the laws have struggled to keep pace with the evolving digital landscape. This inadequacy has left digital works vulnerable to piracy and unauthorized distribution. Nigeria faces rampant copyright infringement, including widespread piracy, and inadequate enforcement mechanisms which contributes to these

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[28] Section 25.
[29] Section 26.

challenges.[30] Nigerian copyrights often lack international recognition, thus affecting the export potential of Nigerian literary and artistic works.[31]

The rise of Non-Fungible Tokens (NFTs) and blockchain-based licensing has created new revenue models for authors, especially in digital art, music and literature. NFTs allow for automatic royalty payments, direct-to-audience publishing, transparent ownership verification. Yet, Nigeria lacks a legal framework to recognize digital rights management on blockchain, resolve NFT-based copyright disputes and regulate cross-border IP commerce. Unscrupulous parties can mint NFTs of works they do not own, thereby robbing true authors of income and recognition.

4.2 Recommendations for Reform

The Nigerian copyright regime has made significant strides with the enactment of the *Copyright Act* in the year 2022. However, for it to effectively protect authors in a dynamic, digital-first world, reforms must go beyond legislation; it must be systemic, technological and institutional. To address these challenges, the following steps can be taken:

(i) There should be an introduction of clear liability rules for internet service providers who host or fail to takedown infringing content. There is also the need to provide legal clarity on timeframes for takedown compliance, safe harbour protections when Internet Service Providers act promptly. Additionally, clear and proper sanctions should be meted out for repeated non-compliance.

(ii) The use of smart contracts should be encouraged. Authors can licence their works through smart contracts (via NFTs or direct blockchain platforms), where royalties are automatically paid upon use. Legal recognition of these contracts ensures enforceability.

(iii) Nigeria should increasingly engage in international agreements and join organizations that promote copyright protection. Such engagements will enable the global recognition of Nigerian works and expand market access for local publishers.[32]

(iv) Most authors are unaware of their rights. The Nigerian Copyright Commission in partnership with lawyers, publishing bodies, and media houses, should run campaigns on understanding one's rights as an author; recognizing infringements; sending takedown notices; and seeking redress.

(v) Workshops and legal training should be conducted for judges, lawyers, and police officers to enhance their understanding of the complexities of digital Intellectual Property cases, online enforcement procedures, and international best practices and treaties.

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30 Bolaji David Oladokun, Elizabeth Orieoma Ndubuisi-Okoh, Chukwu Okoche, 'Publishing and Copyright Laws in Nigeria: A Critical Review' (*SRELS Journal of Information Management*, May 2024) <https://www.researchgate.net/publication/380433943_Publishing_and_Copyright_Laws_in_Nigeria_A_Critical_Review> accessed 25 June 2025.

31 *Ibid*.

32 *Ibid.*

5. Conclusion

The extant *Copyright Act* in Nigeria marks a commendable evolution in the country's legal framework for intellectual property, particularly in reinforcing the rights of authors. With clearer definitions, updated enforcement mechanisms, and digital protections, it offers a renewed commitment to safeguarding creative expression. However, as this article has shown, the evolving nature of authorship especially in a digitally driven and globally interconnected world demands continued reforms, vigilance, and innovation. Issues such as weak enforcements, and underdeveloped digital rights management persists, threatening to undermine the full realization of author s' rights.

To meet these challenges, Nigeria must go beyond legislation. It must foster an ecosystem where authors can understand their rights; where the enforcement is timely, technologically equipped, and accessible; and where innovation in publishing and rights management are supported by the law. Embracing tools like blockchain for rights tracking, and aligning with global best practices, will not only protect authors, it will also promote cultural identity. Ultimately, the law must not merely respond to infringements, it must empower authors to own their voices, protect their works, and thrive in a creative economy. Only then can the pen truly enjoy the protection it deserves in this digital frontier.

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