Intellectual Property/Copyright Law

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Protecting Creative Works in Nigeria: Copyright Laws and Digital Piracy in Nollywood.

1. Introduction

Technology advancement has significantly accelerated the recognition of creative works in Nigeria. Individuals gifted with creative talents are opportune to utilize various digital platforms to produce and disseminate their works globally. Unfortunately, these digital platforms and online distribution media have weakened the protections conferred on creative works by facilitating unlawful access and misuse of these works, and vulnerability to infringement with the click of a button. This paper examines the protection of creative works in Nollywood, the use of digital platforms for movie distribution, the scope and effects of digital piracy in Nollywood. It also considers the adequacy of the legal measures aimed at combating digital piracy and anti-piracy measures provided in the Copyright Act and makes recommendations on the effective enforcement of the anti-piracy measures in Nollywood.

2. Protection of creative works in Nollywood.

Nigeria has comprehensive legislation for the protection of creative works. The Copyright Act[2] is the primary law that protects creative works and grants the creators certain rights to their works. Copyright protection aims to promote the circulation of ideas by protecting the expression or embodiment of the idea in a creative work while preserving the right of the creator to the exclusive exploitation of these works. It

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2 Copyright Act, No. 8 of 2022, available at <https://lawsofnigeria.placng.org/laws/copyright.pdf> accessed on 11th February 2025.

ensures that the creator acquires financial, economic, and moral benefits from his work.

The Copyright Act identifies the works that are eligible for protection.[3] Audiovisual works, the subject matter of this paper, are a series of related visual images with or without sound, which is capable of being shown as a moving picture by devices that do not include a broadcast.[4] Audiovisual works include movies and short films. Section 11 of the Act grants exclusive rights to the creator of an audiovisual work to reproduce and disseminate the work and preclude unauthorized commercial exploitation of the work. The production, reproduction, adaptation, translation, and distribution of the audiovisual works are prescribed by the creator. Nollywood creatives are conferred with the exclusive right to make their works available to the public by wire or wireless means in such a way that members of the public are granted access to the work from a place and at a time independently chosen by them. Copyright protection conferred on movies and short films ensures that actors and producers gain adequate benefits over the efforts expended on the work and precludes unauthorized usage of the work by third parties. It also creates a conducive environment for talented individuals to unleash their creative energies to enrich society by contributing to socio-economic and cultural development and providing a means of livelihood for themselves.

3. Digitalization of Nollywood

Technological advancement and intervention in movie production have significantly enhanced the level of creativity in Nollywood. The introduction of digital platforms enables ease of production, reproduction, transmission, and dissemination of audiovisual works especially movies and short films. The adoption of digital and multi-media technologies in Nollywood epitomizes the transformative role of technology in originality and positive multiplier effects. Nigeria's cultural arts and experiences are reflected in Nollywood's concepts, themes, scripts, and visual images.[5] Filmmakers and producers employ new technologies and maximize the opportunities presented by such technologies for the production and profitable distribution of their creative works. Digital technologies create innovative ways of distributing creative works on a global scale and enhance the ability to make higher-quality copies of these protected works.

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3 Section 2 (1) of the Act. These include literary works, musical works, artistic works, audiovisual works, sound recordings and broadcasts.

4 Section 108 0f the Act.

5 Chidi Oguamanam, "Beyond Nollywood and Piracy: In Search of an Intellectual Property Policy for Nigeria", *NIALS Journal of Intellectual Property* (NJIP) Maiden Edition (2011), p. 8.

With the introduction of new digital platforms and mediums of expression such as *YouTube*, *Netflix*, and *Amazon Prime* amongst others, a worldwide audience is generated. This also creates e-commerce opportunities in the entertainment industry by promoting socio-economic development, projecting cultural heritage, supporting foreign direct investment, and enhancing the Nigerian film industry.[6] The adaptation, reinterpretation, or reinvention of Nigeria's cultural experiences are employed by filmmakers through the use of multi-media technologies.

4. Digital Piracy in Nollywood

The use of new technologies for the production and transmission of creative works creates an endemic problem of piracy. Piracy has been in existence right from the early stage of movie production, especially in Nollywood. Unauthorized individuals thrive in the illegitimate mass reproduction and marketing of movies in breach of the rights of copyright holders.[7] Piracy in movies can be conducted in diverse forms, majorly with the unauthorized sharing and downloading of copyrighted films on fraudulent websites or peer-to-peer networks. Piracy is the violation and infringement of the intellectual property rights of the creator of copyrighted works. To combat the widespread piracy in Nollywood, the Copyright (Optical Discs Plants) Regulation was put in place.[8] However, with the advent of digital platforms and the rise of internet access, the landscape of piracy in the film industry has been redirected towards digital transmissions. Digital piracy, through unauthorized downloads, peer-to-peer sharing, and illegal streaming of movies has increased in Nollywood. Pirates now have easy access to reproduce and distribute films with the aid of technological tools and this poses a significant challenge to Nollywood filmmakers.[9]

It has become an extreme sport for filmmakers to regulate the reproduction and control the illegal distribution of their works. With technological advancement, third parties can easily manipulate and transmit protected creative works online thereby precluding the

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6 Adejoke Oyewunmi, "Towards Sustainable Development of Nigeria's Entertainment Industry in the Digital Age: Role of Copyright Law and Administration*", NIALS Journal of Intellectual Property* (NJIP) Maiden Edition (2011), p. 76.

7 See, NCC Survey of Copyright Piracy in Nigeria (2008). Available at <https://infojustice.org/wp-content/uploads/2011/02/Survey-of-Copyright-Piracy-in-Nigeria_June08.pdf> accessed on 12th February 2025.

8 (No.66) of 2006.

9 See, <https://www.afriff.com/post/beyond-piracy-how-the-digital-era-is-helping-filmmakers-fight-back-in-nollywood> accessed on 12th February 2025.

rightful owner from commercial exploitation.[10] This is a common practice that enables individuals or groups to circulate copies of films without obtaining the necessary authorization from rights holders. The distribution of free content on the internet poses a challenge for copyright holders, as platforms benefit from increased traffic and advertisement fees without compensating authors or copyright holders. Filmmakers experience heavy debts and financial losses due to piracy as they are deprived of their rightful profits which undermines the economic sustainability of the film industry.

5. Legal measures against digital piracy and infringement in the Copyright Act

While the impact of digital technologies is a significant development in Nollywood, the challenges presented by digitization and unrestricted internet access create uncomplicated pathways for increased piracy in the industry. The Copyright Act which was recently enacted as an improvement of the old laws, attempts to cover the global trend of digitalization and provides legal measures to prevent piracy and mitigate the effect of digital piracy in Nigeria.

The Copyright Act highlights various offenses that constitute infringement and piracy of copyrighted works.[11] This includes unauthorized reproduction and distribution of copyrighted works to the public through wire, wireless means, or online for commercial exploitation,[12] aiding and procuring individuals to commit infringement or piracy,[13] and addressing corporate bodies that are involved in piracy for commercial purposes. These offenses are punishable by a fine of not less than One Million Naira (N1,000,000.00) or imprisonment for a minimum of five (5) years upon conviction.[14] If a corporate body commits such an offense, the court has the authority to order the forfeiture of its assets and properties.[15]

Anti-piracy measures are also provided in the Act.[16] Section 49 of the Act empowers the Nigerian Copyright Commission to determine the form of the anti-piracy device to use on or in connection with any work in which copyright subsists.

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10 See, John Onyido, "Strengthening Intellectual Property Rights to Protect Innovators and Creators in Nigeria" available at <https://spaajibade.com/strengthening-intellectual-property-rights-to-protect-innovators-and-creators-in-nigeria-john-onyido/?utm_source=mondaq&utm_medium=syndication&utm_content=articleoriginal&utm_campaign=article> accessed on 12th February 2025.

11 Section 44 – 46 of the Act.

12 Section 44.

13 Section 45.

14 Section 44 (8).

15 Section 46(4)

16 Section 49 (1).

In addressing digital piracy, Section 50 of the Act prevents any person from intentionally circumventing a technological protection measure that effectively protects access to a protected work. Copy protection devices, security programs, and other technology controls are incorporated into the work to prevent infringement of copyright protection. These technological protection measures are put in place to prevent or restrict unauthorized acts with respect to the work. Any person convicted of circumventing these technological protection measures is liable to stringent fines and penalties prescribed by the Act.[17] The copyright holder can institute both criminal and civil actions simultaneously for circumvention of technological protection measures, importation of copyrighted works, and other forms of infringement.[18] These heightened restrictions, fines, and penalties aim to prevent acts such as digital piracy.

Additionally, the Act as part of its 'safe harbor' provisions, grants the owner of copyrighted work the right to issue a notice of infringement to the relevant service provider requesting that the infringed work should be taken down or access disabled on the system or network that hosts such work.[19] This measure is to prevent online dissemination of unauthorized content of a copyrighted work. The service provider is obligated upon receiving repeated notification of infringement, to take down the content and suspend the account for a period of not less than one month where no challenge or defense is made to the infringement notice.[20] The Commission is also empowered to block or disable access to any content, link, or website hosted on a system or network that is believed to infringe on copyrighted works.[21]

Significantly, the Act provides a comprehensive legal framework that reinforces the protection of creative works in the digital space and establishes wider opportunities for creatives to leverage existing digital platforms. However, there are essential areas that the Act fails to address in the era of new technology.[22] There are glaring changes in the digital sphere that require adequate regulations, and the provisions of the Act may be insufficient to govern such technological changes, while the amendments introduced in the new Act may have become outdated.

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17 Section 52.

18 Section 52 (2).

19 Section 54.

20 Section 56.

21 Section 61.

22 See, S. Eke, F. Okoro, M. Abdulsalam, and K. Emmanuel, "A review of the Copyright Act 2022" available at <https://spaajibade.com/a-review-of-the-nigerian-copyright-act-2022/> accessed on 24th February 2025.

The strident evolution of Artificial Intelligence (AI), digital transmission, live streaming, Near Field Communication (NFC) technologies,[23] and the novel field of quantum teleportation of creative works especially movies and short films have rendered the provisions of the Act on digital content inadequate, creating various avenues for digital piracy and infringement. Hence, there is an urgent need for a further reform of the Act and the creation of subsidiary regulations to provide vital and innovative provisions to tackle challenges that arise from the advancement of technologies in the Nigerian creative industry.

6. Effective Means of Curbing Piracy and Enforcing Anti-Piracy Measures

Owners of copyrighted works are encouraged to utilize technological tools to prevent the spread of piracy on their works. An encryption method can be employed at the point of transmission of the work on digital platforms. Software protection that prevents the unauthorized display or distribution of copyrighted works on torrent websites or links can be developed. Filmmakers can place digital watermarks on their movies, mandate the use of unique passwords for individual access, and restrict multiple passwords sharing on streaming platforms. These measures will reduce the widespread incidence of unauthorized copying, viewing, and sharing by pirates.

Public awareness of piracy should be an important aspect that should be encouraged. Filmmakers should educate the public about the impact and effect that piracy has had on the industry. Educational content on piracy can be incorporated at the point of promoting the movies. This can be done via short advertisements, warning strips, educational clips, and television shows. These steps would educate the audience on the impact, and consequences of piracy and possible legal action.

Copyright holders are required to explore the legal measures and remedies provided in the Act, whilst supplementing them with technological protection measures outlined above. Infringers and pirates should be prosecuted in accordance with the Act and civil actions should be instituted against them. This would serve as a deterrent to individuals who intend to commence infringing activities on protected works. Copyright holders can report copyright piracy to the Nigerian Copyright Commission for the enforcement of anti-piracy measures.[24]

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[23] This is a technology that allows devices to communicate using radio frequency identification (RFID) in a contactless fashion when they are close together.

[24] See, NCC Anti-piracy and Enforcement page, available at <https://copyright.gov.ng/report-copyright-piracy/> accessed on 24th February 2025.

The Commission is empowered to conduct piracy raids on pirates and infringers. In a recent clampdown on pirates, the Commission raided suspected piracy hotspots in Ibadan, Oyo State, and arrested two suspected pirates. The arrest was carried out during an anti-piracy operation following an intelligence report.[25]

In the dissemination of movies on digital platforms, filmmakers should ensure that piracy clauses are incorporated in the distribution agreement with the service provider. A comprehensive piracy clause guards against unauthorized distribution of the work and possible legal consequences in the event of unauthorized reproduction or distribution.

7. Conclusion

Institutional support is required to combat online piracy. Training and other forms of capacity building for the administration and enforcement of copyright should be conducted for filmmakers, copyright holders, copyright inspectors of NCC, police officers, and the general public to assist in detecting and investigating digital piracy.[26]

The benefits that digitalization and the advancement of technological tools generate in Nollywood cannot be overemphasized. However, the challenges and threats of digital piracy remain significant in the industry. Filmmakers in embracing these technologies and enforcing their rights with the legal measures provided in the laws supplemented by technological measures, can foster a thriving and economically rewarding movie industry in Nigeria.

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[25] See, "NCC Raids CD Outlets in Ibadan, Arrests Two Suspects" available at <https://copyright.gov.ng/ncc-raids-cd-outlets-in-ibadan-arrests-two-suspects/> accessed on 24th February 2025.

[26] See, Adejoke Oyewunmi, "Towards Sustainable Development of Nigeria's Entertainment Industry in the Digital Age: Role of Copyright Law and Administration*", NIALS Journal of Intellectual Property* (NJIP) Maiden Edition (2011), p. 101.