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Copyright Law and Photocopying Practice in Nigeria

by

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Abstract

The protection of copyright is an obligation of nations in order to promote and encourage innovation and creativity. The copyright law gives the owner of copyrighted work the exclusive right to control the reproduction of copyrighted works. This right, however, does not bestow on the copyright owner an absolute monopoly to control access to copyrighted information. The paper highlighted that illegal photocopying practice of copyrighted work is damaging to the rights of owners of copyrighted materials as it stifles creativity, innovation and development, and the introduction of the doctrine of 'fair use' is aimed at balancing the exclusive rights of copyright owners and access to information by all, in order not to harm scholarship. The paper argues that there is need to raise awareness about copyright law in order to discourage violations, thereby robbing copyrighted owners of the benefit of their labour.

Keywords: Copyright law, Photocopying, Fair use, Nigeria

Introduction

Copyright is one of the two branches of intellectual property law. The other branch relates to industrial property, chiefly inventions trademarks and industrial design. Items generally classified as intellectual property include literary and artistic works, films, computer programmes, inventions, designs and marks, etc. Copyright is a legal right that protects the owner of an intellectual property from being exploited. The law protects indiscriminate copying and distribution of an author's work without the permission of the author. Copyright law in Nigeria is governed by the Copyright Act 1988 with its amendments of 1992 and 1999 which is

now re-codified in the Laws of the Federation of Nigeria 2010. The primary function of Copyright under the law is to protect from annexation the fruits of a person's work (Babafemi, 2007).

Photocopying without permission is a form of copyright violation. The copyright law under the doctrine of fair use creates a legal exception. The law specifically states that the concept of fair use can be invoked for purposes of research, private use, criticism, or review of the reporting of current events. Reproduction of literary works by photographic and like means on a large scale is a comparatively recent phenomenon. Until the late 1960s, the usual means of obtaining multiple copies of textual matter was by carbon copying, and stencil duplicating (Bush & Dreyfuss 1979).

Oduowo (2002) asserts that copyright law protects the owner of property rights in literary and artistic works against those who adopt the exact form of words or arrangement employed by the author in the production of his work. Nigeria is a signatory to the Universal Copyright Convention 1952, the Berne Conventions of 1886 and 1971 for the protection of rights in literary, musical and artistic works and the Rome Convention of 1961 for the protection of performers, producers, broadcasting organizations (Asein, 2002). The aim of conventions is to enable countries give the same protection to the works of the nationals of other countries as they give to their nationals (Flint, 1979). This article looks at the history of copyright law in Nigeria, concepts of 'copyright', 'photocopying', and 'fair use' under the Nigerian copyright law.

Objectives of the Study

The objective of the paper is to examine copyright law and photocopying practice in Nigeria.

The study will specifically:

1. highlight the concept of copyright law in Nigeria.
2. discuss the history of copyright law in Nigeria.
3. examine photocopying practice and the copyright law in Nigeria.
4. show the relevance of the doctrine of fair use in copyright law in Nigeria.

History of Copyright Law in Nigeria

Copyright law was governed in Nigeria by the English Copyright Act 1911 which was made applicable to Nigeria by virtue of an order-in-council under Section 25 of the Act of 1911 of Great Britain. Nigeria applied the 1911 Act until 1970 when it replaced it with the Copyright Act of 1970 (Babafemi, 2007). Umaru (2002) notes that the 1970 Act was inadequate as it could not combat the increasing rate of piracy and other copyright infringements, coupled with the need to increase the penal sanctions and provide adequate remedial measures. Hence the birth of the 1988 Act. In 1992 vide the Copyright Amendment Decree No. 98 of 1992, the Act was amended. The primary legislation now is the Nigerian Copyright Act Cap. C.28, Laws of the Federation of Nigeria 2010, initially passed in 1988, amended in 1992 and 1999 and re-codified in 2010. Section 1 (1) of the Copyright Act, Laws of the Federation of Nigeria 2010 specifies works eligible for copyright to include literary works, musical works, artistic works, cinematograph works, sound recording, and broadcasts. is a right given to creators of literary and artistic works. Literary works include novels, poems, plays, reference works, newspapers etc. Musical works covers musical scores in the form of sheet music, broadsheets or other notation , artistic works include paintings, drawings, sculpture, maps etc. The duration of copyright is 70 years after the death of the author, or the last surviving author in case of joint authorship. This protection is of immense importance to actors, playwrights, performers and other artists, to musicians and composers of music, to authors, publishers, newspaper proprietors and librarians, to architects, designers, lawyers, doctors, pharmacists, engineers, to editors of law reports, lecturers, professors and institution of higher learning; to broadcasters; to makers of cinematograph films and photographers and to producers of computer systems, laptops and their numerous software (Aina, 2008).

The Concept of Copyright

Copyright has been defined as the exclusionary right that the owner of an intellectual creation has to make copies of his work, the right in use, production and exploitation (Cornish, 1999). The law refers to a legal concept that concerns rights to copy as it protects the labour, skill and judgment that someone – author, artist or some other creator – expends in the creation of an original piece of work (Feather & Sturges, 2003). The violation of copyright legislation can lead to loss of income, discourage creativity, retard industrial, economic and cultural growth,

and deprive the government a huge amount of taxes especially in copyright related industries. To this end, Odunowo (2002) insists that awareness becomes necessary. Wahid (2011) also asserts that the issue of illegal photocopying and plagiarism could lack of awareness. The main purpose of copyright law is to protect works that are protected from indiscriminate copying by others. The law also aims to promote public welfare by advancement of knowledge, creativity, and innovation. Arewa (2007) posits that copyright theory typically reflects an assumption that copying is antithetical to originality and creativity. The Nigerian copyright law (Cap 28, Laws of the Federation of Nigeria) permits the holder of a copyrighted works to reproduce the work in any material form, publish the work, perform the work in public, produce, reproduce, perform or publish any translation of the work, make any adaptation of the work, etc. It is important to note that the rights granted by the copyright protection are subject to exemptions prescribed in the Copyright Act, Cap 28, Laws of the Federation of Nigeria, 2010.

Photocopying Practice in Nigeria

The term 'photocopying' cover a majority of the processes used for permanent reproduction of text. Cornish and Llewelyn (1999) prescribes that copying covers causal connection, subconscious copying, indirect copying, substantial taking and unaltered copying. Copyright comes under pressure in a largely illiterate society like Nigeria, as the purveyor of pirated audio and video cassettes, the shopkeeper who sells pirated copies of popular textbooks and the student who makes a photocopy of an entire textbook for his use are all reacting in their own way to the situation (Guobadia, 1989). One of the major ways of violating an author's right in Nigeria is through the means of indiscriminate photocopying of copyrighted resources. As a result of the high prices of books, especially foreign books, many Nigerians resort to indiscriminate photocopying of copyrighted works. Adoki (2002) laments that this situation, in addition to the shortage of books have led to the boom of photocopying business in Nigeria. Today, photocopying or unauthorized reproductions of copyright works are rampant with utmost disregard for the interests of copyright owners, and such infringement has become a culture (Adoki, 2002). This phenomenon is attributed to the low level of copyright awareness in Nigeria, which has also militated against effective copyright administration in the country. Bush & Dreyfuss (1979) believes that the question of a practical solution to the photocopying problem is one of the most difficult issues facing humanity. Ekwensi (1992) connected this to

the shortage of books, which have made photocopying business a lucrative venture in Nigeria, so that photocopying of texts without regard to copyright law has become a norm, and an issue worth looking into.

Photocopying of library resources serves many roles in the Nigerian education system; it is used in information dissemination on a large scale among students, lecturers and researchers in the tertiary institution environment in Nigeria and also keeps the educational system going. A key responsibility of librarians is providing access to information to all in order to generate the creation of new intellectual property (Darkey & Akussah, 2008). One way to make access easier is through the provision of photocopying services for users. The practice of photocopying in the library also prevents the mutilation and theft of books of library books (Igbeneghu, 2009). However, photocopying of copyright materials should be done within the stipulated standards since not every student has enough money to buy all the information resources needed for their study, therefore students have come to depend so much on photocopying for survival in their study and researches (Ajegbomogunm, 2011). But Adusei, Anyimadu-Antwi & Halm (2010) have found that photocopying activities exceed the limits permitted by copyright law because there are inadequate textbooks in the university libraries to support the large student population, in addition to the problem of inability for students to afford foreign textbooks.

In spite of the usefulness of photocopying, it has argued that photocopying poses a danger to the growth and development, because of the rate of photocopying activities going on in different parts of the world (Lahood and Sullivan, 1975). It is crucial to understand that in spite of the harsh realities of the present economic situation in Nigeria or elsewhere, there is no justifiable reason whatsoever for one to rob another in order to survive. Besides, the harsh effect is cushioned by the presence of libraries. Recourse could be made to the library for books that are not readily affordable, rather than infringing the beneficial rights of copyrighted owners of creative works. It is criminal, fraudulent and cheating to do any acts or omission which will deprive an owner of copyrightable work the benefits of his labour (Adoki, 2002). Works of others should not be used without their permission unless the use has been authorized by the

copyright owner or the use is within the exceptions provided in the law under the doctrine of fair use.

The Concept of Fair Use/ Dealing

Fair use is a doctrine under copyright that creates exception from copyright control. “Fair use” means that the dealing with the work must be genuine and reasonable (Babafemi, 2007). Guobadia (1989) asserts that fair dealing refers to the treatment of an author's work with genuineness and with reasonable purpose. The doctrine of fair use, which has been developed over many years, identifies uses of copyrighted material that fall outside the control of the copyright owner. When an individual makes a copy under the fair dealing doctrine, he or she is not required to get permission from the copyright owner (Rubin, 2000). The law specifically states in the Second Schedule to the Copyright Act, Laws of the Federation of Nigeria 2010 that acts done by way of fair dealing for the purposes of research, private use, criticism, or review of the reporting of current events are exempted from copyright control. In other words, where a work is used for the purpose of research, private use, criticism or review or reporting of current events, there is no question of infringement of the copyright in such a work provided the use is by way of fair dealing (Uviegbara, 1992). The doctrine is only a defense available only in respect of the infringement of literary, dramatic, musical and artistic works, and the question of substantiality is relevant because it is one of the principal tests in deciding whether the use of a work in fact constitutes fair dealing so that to photocopy the whole of a large work of copyright cannot be justified on the grounds that the purpose of the publication was for research or private study (Flint, 1979). Under the cover of fair dealing, it is necessary that the work be accompanied by a sufficient acknowledgment. Fair use is a defense against a claim of copyright infringement. This it to encourage innovation, creativity, and development. The doctrine of fair use is important, because new works are expected to derive from existing works, as it is impractical to make any progress in research in a field of knowledge without recourse to what has been done in that field of knowledge before the current research. The principle behind the doctrine of fair dealing is to increase reasonable access to copyrighted works. It is certainly not a defense for cheaters to make profits from another's hard work and innovation.

It is important to note that a library's reproduction of works for purposes of preservation and security or for research use in another library falls under the exception (Bush & Dreyfuss, 1979). Through fair use, users of information and owners of information had struck a balance where it was understood that educators and researchers can use portions of works without permission for education and research purposes, including the conversion of works into formats that are user-friendly for different groups of people, such as those living with disabilities (Aina, 2008). In addition to striking a balance between owners and users of information, fair use must be preserved so that copyright ownership does not become an absolute monopoly over the distribution of, and access to copyrighted information. The loss of this provision would greatly harm scholarship, teaching and the operations of a free society (Brennan, 1996).

Conclusion

The protection of copyright has become one of the most obligations of nations today, in order to encourage innovation, creativity, and development. In Nigeria, the need is most imperative especially with the activities of pirating audio and video works, and the sale of pirated copies of popular books. There is need to raise the level of awareness of people about copyright law in order to discourage flippant and ignorant violations of the copyright law. It is also imperative that there be mechanism for severe enforcement of copyright provisions. However, this should not be done at the expense of research, innovation, and education.

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