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## **Infringement of copyright in Nigerian: A juridical review**

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### **Abstract**

Incidences of copyright infringement abound worldwide. This has been of great concern and interest to comity of nations, Nigeria is not an exception to this. The spate of copyright infringement in Nigeria is worrisome despite the provisions of the copyright Act on civil and criminal infringement. Book, film and music infringement have so much eaten deep into the fabrics of the society that special attention should be paid to it. There are legal remedies for these infringements which if fully and effectively utilized will reduce drastically the spate of infringement. Effective and stricter measures should be put in place by Law and formidable enforcement mechanism to reduce and possibly eradicate infringement completely.

**Keywords:** Infringement, copyright, Nigeria, juridical review, remedies

### **Introduction**

Infringement of copyright occurs when a person does or causes any other person to do any of the acts reserved to the copyright owner under the Copyright Act <sup>[1]</sup>. These reserved acts are those acts set out in sections 6, 7 and 8 of the Copyright Act. It is only the copyright owner that has the exclusive right to control these reserved acts subject to exceptions. These acts vary from one type of work to another, but generally include reproduction, publication, performance, adaptation, commercial distribution, public performance and broadcasting. Infringement in relation to the foregoing acts is referred to as primary or direct infringement. Other activities, which are mainly of commercial nature, such as dealing with the infringing copies of a work, if they are done without the licence of the copyright owner, are described as secondary or indirect infringement. Copyright infringement also attracts criminal liability. Hence anyone who does one of the acts restricted by copyright, including secondary infringement without the licence or permission of the copyright owner, infringes copyright <sup>[2]</sup>.

### **Meaning of Copyright Infringement**

Copyright infringement is the unauthorized or unlicensed use of somebody's copyright work by another in such a way that the owners right is jeopardized. To B.A, Garner <sup>[3]</sup> Copyright infringement is the act of violating any of the copyright owners exclusive rights granted by the Federal Copyright Act. The exclusive rights include; to reproduce the work; to prepare derivative works based on the work; to distribute copies of the work; for certain kind of work, to perform or distribute the work publicly; for sound recordings to perform the work publicly and to import the work. The online Free Dictionary <sup>[4]</sup> states that copyright infringement involves a violation of the exclusive rights of the copyright owner. It may be unintentional or intentional <sup>[5]</sup>.

Copyright infringement can be civil or criminal. The civil infringement can be direct or indirect.

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<sup>1</sup> Cap C28 Laws of the Federation of Nigeria 2004

<sup>2</sup> D I Bainbridge, Intellectual Property, 4<sup>th</sup> edn, London: Financial Times Pitman Publishing, 1999 120.

<sup>3</sup> B.A. Garner, Black's Law Dictionary (9<sup>th</sup> ed), St Paul MN, West Group, p.851

<sup>4</sup> Farlex, The Free Dictionary, "Copyright Infringement"- Legal Dictionary/the Free dictionary.com. Accessed 16/9/2022

<sup>5</sup> *Ibid*

### Civil Infringement

Illuminating on the infringement of copyright, the Copyright Act <sup>[6]</sup> provides that copyright is infringed by any person who without the licence or authorization of the owner of copyright

- a. Does or causes any person to do an act, the doing of which is controlled by copyright;
- b. Imports or causes to be imported into Nigeria any copy of a work which, if it had been made in Nigeria, would be an infringing copy under this section of the Act;
- c. Exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this subsection;
- d. Distributes by way of trade, offers for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a) of this subsection;
- e. Makes or has in his possession plates, master tapes, machines, equipment or contrivances used for the purpose of making infringing copies of the work;
- f. Permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;
- g. Performs or causes to be performed, for purposes of trade or business or as supporting facility to a trade or business, any work in which the copyright subsists.

The provisions of the Copyright Act above was well elucidated by the Court of Appeal in *Digital Communication Network Nig Ltd v NCC* <sup>[7]</sup> per Tur JCA thus;

As to when copyright is infringed, section 15(1)-(2) of the Act provides as follows: "(1) Copyright is infringed by any person who without the licence or authorization of the owner of the copyright:- (a) Does, or causes any other person to do an act, the doing of which is controlled by copyright; (b) Imports or causes to be imported into Nigeria any copy of a work which, if it had been made in Nigeria, would be an infringing copy under this Section of this Act; (c) Exhibits in public any article in respect of which copyright is infringed under Paragraph (a) of this Subsection; (d) Distributes by way of trade, offers for sales, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under Paragraph (a) of this Subsection; (e) Makes or has in his possession plates, master tapes, machines, equipments or contrivances used for the purpose of making infringing copies of the work; (f) Permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright; (g) Performs or causes to be performed, for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists. (2) Notwithstanding Subsection

(1) of this Section, or any other provision of this Act, where any work in which copyright subsists, or a reproduction of any such works, is comprised in:- (a) The archives stored in the National Archive established under the National Archives Act; or (b) The public records of a state, being records for the storage or custody of which provision is made by law, the copyright in the work is not infringed by the making or the supplying to any person of any reproduction of the work in pursuance of that Act or law.

From the foregoing discuss and provisions of the Copyright Act one can surmise that civil infringement of copyright could be direct <sup>[8]</sup> or indirect <sup>[9]</sup>. The direct infringement is also known as primary infringement, while the indirect infringement is also known as secondary infringement.

### Primary or Direct Infringement

Primary infringement of copyright is that provided under section 15(1) (a) of the Copyright Act and they include;

#### (a) Reproduction

Any person who, without the licence or permission of the copyright owner reproduces or causes any other person to reproduce any literary, musical or artistic work, or cinematograph film or sound recording or broadcast shall be deemed to have infringed on the owner's right. Hence the Act defines reproduction to mean the making of one or more copies of a literary, musical or artistic work, cinematograph film or sound recording <sup>[10]</sup>. The question then that comes to fore is what is 'copy'? 'Copy' under the Copyright Act means a reproduction in written form, in the form of a recording or cinematograph film or in any other material form, so however that an object shall not be taken to be a copy of an architectural work unless the object is a building or model <sup>[11]</sup>.

Significantly, a copy need not be a verbatim duplication of the original. For a work to be treated as a copy, it must of necessity have been based on the copyright work. This point is crucial since copyright tolerates coincidence. It does not forbid the independent expression of the same idea by different persons. For an allegation of copying to be sustained, there must be a substantial objective similarity between the copyright work and alleged infringing work, so much so that there is a reasonable inference that the infringing work derived substantially from the copyright work. Fundamentally, there must be connection between the alleged infringing work and the copyright work. In *Hawkes & Sons (London) Ltd v Paramount Film Service Ltd* <sup>[12]</sup> the court held that similarity between two works, depends on whether the alleged similarity is substantial. Also that what must be considered as substantial is a matter of fact, and value as well as quantity. In *Francis Day & Hunter Ltd. & Anor v Bron & Anor* <sup>[13]</sup> the court held that in order for an act to constitute reproduction under the Act, there must be;

1. a sufficient objective similarity between the two works
2. Some causal connection between the two works.

<sup>8</sup> Copyright Act *op cit* 5(1)(a).

<sup>9</sup> *Ibid*, s. 15(1)(b) – (g).

<sup>10</sup> *Ibid*, s. 51(1).

<sup>11</sup> *Ibid*

<sup>12</sup> (1934) Ch 593.

<sup>13</sup> (1963) 1 Ch 587, [https://vlex.co.uk/\\_infringement](https://vlex.co.uk/_infringement), accessed on 21/9/2022

<sup>6</sup> S.15(1)(a) – (g) of the Copyright Act *op.cit*  
<sup>7</sup> (2013) LPELR 20797 CA

Also, that where there is a substantial degree of objective similarity, it only affords *prima facie* evidence of causal connection and not an irrebuttable presumption of infringement. However, the issue of substantial similarity is a question of fact. Proof of copying may often have to be based on circumstantial evidence, except in the very rare cases, where the defendant admits the allegation. It is however of relevance to prove that the defendant had access to the plaintiff's work, otherwise the possibility of copying becomes impossible.

Reproduction of a copyright work may be in the form of direct or indirect copying of the substantial part of the work. This is evident in a situation where the reproduction of two dimensional drawings in three dimensional form constitutes infringement of the copyright in the two dimensional drawings.

#### **(b) Publication**

A work is deemed to have been published, if copies of it have been made available in the manner sufficient to make it accessible to the public [14]. Suffice it to say that publication involves not merely reproduction, but also making it available to the public. Therefore any person who publishes a work without the consent or permission of the copyright owner is infringing on the right of the copyright owner.

#### **(c) Performance in Public**

A performance in public of any literary or musical work or cinematograph film without the permission or licence of the copyright owner is an infringement in the work. The list of what consists performance in public is inexhaustible and necessarily a question of fact with no fixed criteria.

#### **(d) Translation and Adaptation**

Translation is the reproduction of a work in a language different from the one in which the original is issued. The right to translate a work vests in the copyright owner. Therefore whoever does that without the licence or authorisation of the copyright owner is infringing on the owner's copyright.

Adaptation under the Copyright Act [15] means the modification of pre-existing work from one genre to another and consists of altering work within the same genre to make it suitable for different conditions of exploitation, and may also involve altering the composition of the work.

Any adaptation of a copyright owner without the permission or licence of the owner is an infringement. Adaptation may take the form of transforming a novel story into a drama or vice versa, or reducing a piece of drama into poetry or vice versa etc.

#### **Secondary or Indirect Infringement**

The various acts of secondary infringement of copyright can be distilled from the provisions of section 15(1)(b) – (g) of the Copyright Act. They are:

##### **(a) Importation of Infringing Copies into Nigeria**

Any person who without the licence or authorisation of the copyright owner imports or causes to be imported into

Nigeria any copy of a work which, if it had been made in Nigeria, would be an infringing copy under the Act, is infringing on the right of the copyright owner [16]. Consequently it is an infringement for one to import pirated work, which if made in Nigeria are infringing copies.

It is crucial to note that it is an infringement of copyright where a Nigerian places an order of pirated copies from another country for consignment into a third country. This is well illuminated in Article 16(1) of the Berne Convention for the Protection of Literary and Artistic Works which provides that infringing copies of a work shall be liable to seizure in any country of the union where the work enjoys legal protection. The foregoing provisions also extend to reproductions coming from a country where the work is not protected [17].

##### **(b) Exhibition in Public**

Exhibition in public of any article in respect of which copyright subsists amounts to an infringement of copyright [18]. It is immaterial whether the public exhibition of the article is by way of trade or any other similar arrangement. It is sufficient to establish that the said exhibition was done in public and without licence or authorisation of the copyright owner [19]. Thus in *Fenning Film Services Ltd v Wolverhampton, Walsall and District Cinemas Ltd* [20], exhibition of a certain cinematograph film in an unauthorized place was held to be an infringement of copyright in the plaintiff's film.

##### **(c) Distribution**

Infringement may also occur where any person without the licence or authorisation of the owner of the copyright in the work distributes by way of trade, offers for sale, hire or otherwise, or for any purpose prejudicial to the copyright owner any article in respect of which copyright is infringed [21]. There is no doubt that this covers both commercial and gratuitous distribution, so long as the purpose of such distribution is prejudicial to the copyright owner.

##### **(d) Making or Possession of Infringing Contrivances**

This provision is used to assist right owners who may not be able to prove actual infringement and discourage infringers and free riders. It is an infringement to make or have in ones possession plates, master tapes, machines, equipment or contrivances used for the purpose of making infringing copies without the licence or permission of the right owner [22].

To actually succeed under this provision, the right owner must prove by direct evidence that the master tapes, plates, machines or equipments, or other contrivances found in possession of the alleged infringer, were really used for making infringing copies of his work, otherwise the allegation fails. The mere fact that such devices are capable of being used for making infringing copies is not sufficient proof. In any event, circumstantial or similar facts evidence

<sup>16</sup> Copyright Act, *op cit.* s. 15(1)(b).

<sup>17</sup> Berne Convention for the Protection of Literary and Article Work, Article 16(2)

<sup>18</sup> Copyright Act, *op cit.* s. 15(1)(c).

<sup>19</sup> I.M. Olueze, Nigerian Copyright Law, Maglink International Lagos 1998, p.104

<sup>20</sup> [1914] 3 KB 1171.

<sup>21</sup> Copyright Act, *op cit.* s. 15(1)(d).

<sup>22</sup> *Ibid.*, s. 15(1)(e).

<sup>14</sup> Copyright Act, *op cit.* s. 51(2); I. J. Adenuga v Ilesanmi Press & Sons (Nig) Ltd (1991) 5 NWLR (Pt. 189) 92.

<sup>15</sup> S. 51(1) copyright Act Cap C28 Laws of the Federation of Nigeria 2004.

may be used to prove such infringement, depending on how cogent and compelling such evidence is.

#### **(e) Permitting Performance in Place of Public Entertainment**

Copyright is infringed by any person who without the licence or authorization of the copyright owner permits a place of public entertainment or business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of copyright <sup>[23]</sup>.

#### **(f) Performance to Promote Business or Trade**

Section 15(1) (g) of the Copyright Act prohibits the performance of copyright works for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

It then follows from this provision, that the acts of banks and other business set-ups that play others music and cinematograph films for entertainment of the customers without permission, constitutes copyright infringement.

#### **Criminal Infringement and Liability**

The infringement of copyright also attracts criminal liability. It is the law <sup>[24]</sup> that any person who –

- a. makes or causes to be made for sale, hire or for purposes of trade or business any infringing copy of a work in which copyright subsists; or
- b. imports or causes to be imported into Nigeria a copy of any work which if it had been made in Nigeria would be an infringing copy; or
- c. makes, cause to be made or has in his possession, any plate, master tape, machine, equipment or contrivance for the purposes of making any infringing copy of any such work;

is, unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was an infringing copy of any such work or that such plate, master tape, machine, equipment or contrivance was not, for the purpose of making infringing copies of any such work, is guilty of an offence under this Act and liable on conviction to a fine of an amount not exceeding N1,000 for every copy dealt with in contravention of this section or to a term of imprisonment not exceeding five years or to both fine and imprisonment <sup>[25]</sup>.

#### **Furthermore, any person who**

- a. sells or lets for hire or for the purpose of trade or business, exposes or offers for sale or hires any infringing copy of any work in which copyright subsists; or
- b. distributes for the purposes of trade or business any infringing copy of any such work; or
- c. has in his possession, other than for private or domestic use any infringing copy of any such work; or

- d. has in his possession, sells, lets for hire, or distribution for the purposes of trade or business, or exposes or offers for sale or hire any copy of a work, which if it had been made in Nigeria, would be an infringing copy;

is, unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was an infringing copy of any such work, guilty of an offence under this Act and liable on conviction to a fine of N100 for every copy dealt with in contravention of this section, or to a term of imprisonment not exceeding two years or in the case of an individual, to both such fine and imprisonment <sup>[26]</sup>.

Similarly any person who, without the consent of the owner of copyright distributes in public for commercial purposes, copies, of a work in which copyright subsists, by way of rental, lease, hire loan or similar arrangement shall be guilty of a criminal offence and liable on conviction to a fine of N100 for every copy dealt with or imprisonment for six months or to both such fine and imprisonment <sup>[27]</sup>.

Suffice it to say that an infringer under section 20 of the Copyright act can rely on the defence of innocence. However, the court in determining the defence of innocent infringement shall have recourse to the number of copies of the infringing work found in the possession of the accused. Also reference to 'person' under the said section includes both natural and artificial persons. It is my view that the penalty for criminal infringement under section 20(2) and (3) of the Act is too small and lenient, that it may scarcely act as a deterrent.

#### **Anti- Piracy Measures**

Under the Copyright Act, certain anti-piracy measures have been provided <sup>[28]</sup>. The Nigerian Copyright Commission has powers with the consent of the minister to prescribe any design, label, mark, impression or any other anti-piracy device for use on, in, or in connection with any work in which copyright subsists <sup>[29]</sup>.

Any person who sells, rents, hires or offers for sale, rent or hire any work in contravention of the prescription will be deemed to commit an offence and liable on conviction to a fine not exceeding N100,000 or imprisonment for a term not exceeding twelve months or to both such fine and imprisonment <sup>[30]</sup>.

In addition, any person who without the permission of the commission imports into Nigeria or has in his possession any anti-piracy device prescribed under this section or any machine, instrument or other contrivance intended for use in the production of the anti-piracy device, will also be deemed to commit an offence and liable on conviction to a fine not exceeding N500,000 or imprisonment for a term not exceeding five years, or to both such fine and imprisonment <sup>[31]</sup>.

Similarly, any person who without the permission of the commission is in possession of or reproduces or counterfeits any anti-piracy device prescribed under this section is guilty of an offence and is liable on conviction to a fine not

<sup>26</sup> Copyright Act, s. 20(2).

<sup>27</sup> *Ibid*, s. 20(3).

<sup>28</sup> *Ibid* s. 21.

<sup>29</sup> *Ibid*, s. 21(1).

<sup>30</sup> *Ibid*, s. 21(2).

<sup>31</sup> *Ibid*, s. 21(3).

<sup>23</sup> S. 15(1)(f) of the Copyright Act *op. cit.*

<sup>24</sup> Copyright Act *op cit.*, s. 20(1)

<sup>25</sup> Copyright Act, *op cit.*, s. 20(1).

exceeding N50,000 or imprisonment not exceeding five years or to both such fine and imprisonment <sup>[32]</sup>.

Most of the criminal penalties are stringent, while a few are soft. Despite these stringent criminal provisions and penalties in our legal system, piracy of books, films, music tapes and records still abound. The Nigerian Copyright Commission arrests and prosecutes pirates.

### Action for Copyright Infringement

The Federal High Court has jurisdiction to adjudicate over copyright matters. The Copyright Act provides that the Federal High Court shall have exclusive jurisdiction for the trial of offences and disputes under the Act <sup>[33]</sup>. Also the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) <sup>[34]</sup> provides *inter alia* that the Federal High Court shall have exclusive jurisdiction over causes and matters relating to copyright, patent, designs, trademarks, passing off etc.

However, an action for copyright infringement can be brought by the owner, assignee or an exclusive licensee. This is illustrated in *Jobela (Nig.) Enterprises Ltd v Taiwo Kupolati & Ors* <sup>[35]</sup> wherein the Court held that infringement of copyright is actionable where the party is either the owner, assignee or an exclusive licensee of the copyright. It is pertinent to note that civil and criminal actions in copyright infringement can be taken simultaneously. This is aptly illustrated by the Copyright Act <sup>[36]</sup> where it provides that “notwithstanding the provisions of any law to the contrary, it shall be permissible for both criminal and civil actions to be taken simultaneously in respect of the same infringement under the Act.

### The Court of Appeal elucidating on the above provision in Digital Communication Network Nig Ltd V NCC (supra) states that

An owner of a copyright that has been infringed has three options, namely, to institute civil proceedings and claim damages and injunctive relief, etc under Sections 16-19 of the Act or to institute criminal proceedings under Section 20 of the Act (supra). In the alternative the violator of a copyright may be proceeded against simultaneously in a civil and criminal proceeding under Sections 24 and 25 of the Act. A body Corporate such as the appellant that commits an offence by way of infringement of copyright is to be proceeded against under Sections 22-23 of the Act. In this case the prosecution opted to initiate criminal proceedings.

### Remedies for Infringement of Copyright

These are the reliefs available to the plaintiff in a civil action for the infringement of copyright. “All such reliefs by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights <sup>[37]</sup>.” Specifically, the available remedies are Damages, Injunction, Anton Pillar Order, Account of Profit, Conversion, and Fair Compensation.

### Damages

This is the primary remedy for copyright infringement. This is a pecuniary satisfaction awarded to the plaintiff by the court in compensating financial loss occasioned by infringement of his/her copyright work by the defendant. The primary motive of damages is to restore the plaintiff back, as much as possible, to the position he would have been but for the infringement. Damages could be general, special, exemplary, punitive or nominal.

### Injunction

This remedy in copyright infringement is granted by the court to prevent the infringer from continuing the infringement. It is granted generally in law to prevent a person from doing or continuing doing a wrong. It is also possible to obtain an injunction to prevent the commission of a threatened infringement <sup>[38]</sup>.

### Anton Pillar Order

This is an order made in special circumstances to permit the owner of a work to enter into the infringers premises to inspect and remove any infringing copies or contrivances, material to the substantive action. The Act <sup>[39]</sup> is instructive on this, wherein it provides that;

In any action for infringement under this Act, where an *ex-parte* application is made to the court supported by affidavit, that there is reasonable cause for suspecting that there is any house or premises any infringing copy or any plate, film or contrivance used or intended to be used for making infringing copies or capable of being used for purposes of making copies or any other article, book or document by means of or in relation to which any infringement under this Act has been committed, the court may issue an order upon some terms as it deems just, authorizing the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer not below the rank of an assistant superintendent of police and –

- a. Seize, detain and preserve any such infringing contrivance; and
- b. Inspect all or any document in the custody or under the control of the defendant relating to the action <sup>[40]</sup>.

An appraisal of the foregoing provision of the Act leaves no doubt that for the applicant to succeed, he must show by affidavit that there is a reasonable cause for suspecting the existence of infringing copies or contrivance used for making infringing copies or contrivance capable of being used for making infringing copies in the house or premises of the defendant. This is actually a codification of the common law remedy of Anton Pillar Order.

This principle of law was aptly enunciated in the locus classicus case of *Anton Pillar KG v Manufacturing Processes Ltd & Ors* <sup>[41]</sup> Here, the plaintiff by an *ex-parte* application sought, *inter alia*, for the permission to enter the defendant’s premises to inspect all such documents in their possession relating to the plaintiff’s machines or designs, and to further remove them into the plaintiff’s solicitors’ custody. Hence the English Court of Appeal enunciated a

<sup>32</sup> *Ibid*, s. 2(4)

<sup>33</sup> S. 46 of the Copyright Act *op cit*

<sup>34</sup> S. 251(1) (e) of CFRN 1999 (as amended)

<sup>35</sup> [2005] ALL FWLR (pt 268) 1736; Copyright Act, s. 16(1).

<sup>36</sup> Copyright Act, *op cit*, s. 24.

<sup>37</sup> *Ibid*, s. 16(1).

<sup>38</sup> *Ibid*, 114.

<sup>39</sup> Copyright Act, Cap C28, Laws of the Federation of Nigeria, 2004, s. 25(1).

<sup>40</sup> *Ibid*

<sup>41</sup> (1976) Ch 55

principle that later crystallized into what is today known as Anton Pillar Order. The court held that the order should be granted if by putting the defendant on notice, there is a grave danger that vital evidence will be destroyed, that all papers will be burnt or lost or hidden, or taken beyond the jurisdiction and so the end of justice be defeated. In *Musical Copyright Society (Nig) Ltd v Details Nigeria Ltd* <sup>[42]</sup> the court stated *inter alia*, that one of the interlocutory remedies available in intellectual property action include Anton Pillar Orders.

### Account of Profit

In law by a claim of account of profit, the plaintiff is seeking for an order of the court directing that the transactions involving the defendant or the accounting party be investigated with a view to ascertaining the amount of money due to the plaintiff from such transactions. There is statutory approval to account of profit as found in the Copyright Act <sup>[43]</sup>, which provides that;

Where, in an action for infringement of copyright, it is proved or admitted that an infringement was committed but that at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement, whether or not any other relief is granted under this section.

### Conversion Right

This right is also available to copyright owner whose right has been infringed. The Act provides that all infringing copies of any work in which copyright subsists or any substantial part thereof, and all plates, master tapes, machine, equipment or contrivances used, or intended to be used for the production of such infringing copies shall be deemed to be property of the owner, assignee or exclusive licensee as the case may be, of the copyright, who accordingly may take proceeding for the recovery of the possession thereof or in respect of the conversion thereof <sup>[44]</sup>.

### Fair Compensation

The broadcasting of a cinematograph film in which a musical work is incorporated entitles the owner of the right to broadcast the musical work a fair compensation from the broadcasting authority <sup>[45]</sup>. The amount of compensation payable by the broadcasting authority shall be determined by the Court in the absence of any agreement <sup>[46]</sup>.

### Conclusion and Recommendation

Copyright is an intangible, incorporeal right that protects the owner of copyrighted work or a licensee or assignee of the right. It is a right that has been so much abused that it is worrisome. Infringement of copyright vary from one type of work to the another and it is constantly increasing. Since the spate of infringement is increasing, available legal remedies and other proactive measures should be utilised

to arrest the situation.

Consequently, it is my recommendation that more stringent provisions should be inserted into the Copyright Act which are more effective and enforceable, and effective enforcement mechanism devised. There should be public enlightenment by the Nigerian Copyright Commission (NCC) and relevant stakeholders on the rights available to owners, their infringement and consequences for infringement.

Monitoring of infringement by NCC and individual right owners is very critical and important. The government both at the national and state levels must join NCC and the individual citizens towards the achievement of this noble goal. The State should prosecute immediately those who are arrested. The individuals whose work is being pirated should also take the infringer to court, without minding the legal cost.

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15. Musical Copyright Society (Nig) Ltd v Details Nigeria Ltd FHCLR; c1996. p. 473-482.

<sup>42</sup> (1996) FHCLR 473 at 482.

<sup>43</sup> Copyright Act, *op cit*, s. 16(3).

<sup>44</sup> *Ibid*, s. 18.

<sup>45</sup> *Ibid*, s. 9(2).

<sup>46</sup> *Ibid*, s. 9(3).