

Criminal Sanctions for Copyright Infringement: the Half of a Yellow Sun Copyright Piracy

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Abstract

This article examines the provisions of the Nigerian Copyright Act stipulating sanctions for copyright infringement. Copyright is said to be infringed when a person exercises one or the entire array of rights exclusively owned by the author of a work without permission. This article argues that irrespective of the jurisprudence of copyright, the unwholesome act of piracy remains largely undefeated sequel to the massive illegal reproduction of the most expensive indigenous film ever made in Nigeria 'Half of a Yellow Sun' on the streets of Lagos which are being sold on wheelbarrows. This article applies the principles of law and economics to determine whether the Nigerian Copyright Act is economically efficient to deter pirates from engaging in their appalling activity. The monetary sanctions put in place by the principal statute governing copyright in Nigeria as well as the Criminal Code is in no way strict to deter intellectual pirates and abate piracy. This article concludes that the need for a reform is eminent. Stricter sanctions and public enlightenment on copyright infringement must be put in place to stamp out piracy and increase the value of intellectual creations.

Keywords: Copyright Infringement, Nigerian Copyright Act, Piracy, Half of a Yellow Sun, Criminal Sanctions.

1. Introduction

It is incontrovertible to assert that the philosophy behind copyright law is the prevention of the unlawful harvesting of another person's intellectual labour. Copyright which stands a branch of intellectual property consists of an array of rights exclusively owned by the creator or author of a work, thereby stopping others from exercising certain rights over his work without due authorization. Indeed, one of the significant features of copyright is that, it cannot be registered like other industrial properties such as trademarks, patents etc. but this stands as a disadvantage to innovative minds. However, in the bid of protecting the interest of these innovative minds, copyright has being statutorily flavored such as the principal statute governing copyright in Nigeria, Copyright Act 1988¹. Sanctions are levied against any person who exercises the right(s) of an author or creator (which constitutes as an infringement) without authorization. Be that as it may, the distinct philosophy of copyright law is largely misplaced in Nigeria coupled with unprecedented piracy of works constituting copyright infringement.

Piracy has become an intractable problem in the Nigerian media and entertainment industry despite the criminal sanctions provided by the Copyright Act². It saddens to mind to realize that the unwholesome act of pirating works in which copyright subsist, not only discourages creativity but constitutes an acute sabotage to the Nigerian economy as significant revenues are lost to intellectual pirates. The cinematograph film '*Half of a Yellow Sun*' which stands as an indigenous film became a victim of piracy. It becomes question-begging as regards whether the law and its enforcement are effective or are the sanctions put in place by the Nigerian Copyright Act not stringent enough to deter pirates. The thematic concern of this article is to examine provisions of the Nigerian Copyright Act stipulating criminal liability and sanction for copyright infringement and to see whether the tragic event which befell the piracy of the '*Half of a Yellow Sun*' film could have being averted if certain reforms were made to the statute.

2. Copyright Infringement

It is well settled that copyright doesn't protect ideas³. The expression of the idea in a tangible form makes it eligible for copyright protection. Upon crystallization of the work with copyright protection, the owner of the work can deal with his work in whatever manner provided it is not contrary to public policy and injurious to the interest of other members of the society. In addition, he prevents others from exercising those rights exclusive to himself without due authorization. A person who deals with a work in which copyright subsist without obtaining requisite permission from the owner constitutes copyright infringement.

Generally rights that accrue to the owner of a work in which copyrights subsist include:

- Reproduction
- Adaptation
- Distribution to the public
- Public performance

¹ CAP C28 Laws of the Federation (LFN) 2004

² Ibid

³ World Intellectual Property Organization: Understanding Copyright and Related Rights
http://www.wipo.int/edocs/pubdocs/en/intproperty/909/wipo_pub_909.pdf accessed October 9, 2014

▪ Public display¹

However, statutes in different jurisdictions regulating copyright stipulates the rights of the owner of a work in which copyright subsist in which he can either prohibit or authorize others from exercising those rights. The Nigerian Copyright Act² states the works that are eligible for copyright protection which includes: literary, musical works, artistic works, cinematograph films, sound recordings and broadcasts³.

The *'Half of a Yellow Sun'* stands as a cinematograph film which makes it eligible for copyright protection and the author⁴ has the exclusive right to control the doing in Nigeria of any of the following acts:

1. Make a copy of the film
2. Cause the film, in so far as it consists of visual images, to be seen in public and in so far as it consists of sounds, to be heard in public
3. Make any record embodying the recoding in any part of the soundtrack associated with the film by utilizing such soundtrack;
4. Distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement⁵

Invariably, any person who does any or all of the abovementioned acts without the permission of the author(s) infringes on copyright. Section 15 specifically states situations when copyright is infringed. It succinctly states that:

'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, offer 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 infringed 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 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 subsist...'*

The ongoing case between *Roland Chambers v Apple Inc. Amazon.com & CD Baby*⁶ depicts the nature of copyright infringement. Chambers instituted an action against the defendants for copyrights infringement over twelve (12) pieces of sound recordings (ringtones) and two (2) pieces of album covers⁷. The plaintiff alleges that the defendants have been reproducing, distributing and selling the works without due authorization. The plaintiff is demanding \$5,206, 860,000.00 including interest rate of 2.5% as damages for copyright infringement⁸.

¹ The Basics of Copyright Infringement <http://mindfusion.files.wordpress.com/2008/01/basics-of-copyright-infringement.pdf> accessed October 9, 2014

² Ibid, CAP C28 Laws of the Federation (LFN) 2004

³ Section 1 (1)

⁴ Section 51 (1): Author in the case of cinematograph film, means the person by whom the arrangement for the making of the film were made, unless the parties to the making of the film provide otherwise by contract between themselves.

⁵ Section 5(1)(c)

⁶ 3:14-cv-00972 https://www.docketalarm.com/cases/South_Carolina_District_Court/3--14-cv-00972/Chambers_v_Apple_Inc_et_al/ accessed October 10, 2014

⁷ Apple sued for over \$1.7 billion in new copyright infringement case <http://www.patentlyapple.com/patently-apple/2014/03/apple-sued-for-over-17-billion-in-new-copyright-infringement-case.html> accessed October 10, 2014

⁸ Ibid

The reliefs available to the owner of a work in which copyright subsist includes damages, injunction, account of profits etc.¹ However before the court would grant any of these reliefs it would take account of the flagrancy of the infringement and any benefit shown to have accrued to the defendant by reason of that infringement². In the case of *Peter Obe v. Grapevine Communication Limited*³ where the plaintiff published photographs depicting the Nigerian Civil War in his book titled ‘*Nigeria: A Decade of Crises in pictures*’ was infringed by defendant without the permission of the plaintiff by publishing those photographs in its maiden edition of Grapevine Magazine. The defendant initially sought the permission of the plaintiff but this permission was not given. The court held thus:

‘...But far more than that, it has been established before this court that the defendant has flagrantly infringed the copyright of the plaintiff...the defendant after insolently replying the plaintiff went ahead to arrogantly publish the photograph...followed it up with another publication on page 5 and 39 of the August Edition of a same magazine is indicative of the fact that the publications was calculated to make profit and had benefitted from the publication...Rather than apologizing, the defendant turned around like the tail wagging dog to demand for an offer of financial out-of-court settlement with apology from the plaintiff...The plaintiff is hereby awarded the sum of ₦10,000,000.00 (Ten Million Naira) as additional damages.’

3. Criminal Sanctions for Copyright Infringement

In the bid of protecting the distinctive rights of innovative minds, promoting creativity in Nigeria and combating piracy in the media and entertainment industry, the Copyright Act stipulates instances where a person would be criminally liable for copyright infringement and the sanctions thereto. Section 18(1)⁴ provides that:

- ‘Any person who*
- a. Makes or causes to be made for sale, hire or for the purpose of trade or business any infringing copy of a work in which copyright subsists; or*
 - b. Imports or causes to be imported into Nigeria more than two infringing copies of such work; or*
 - c. Makes, causes to be made, or has in his possession, any plate, master tape, machine, equipment or contrivance for purpose of making any infringing copy of any such work; shall 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 not an infringing copy of any such work, be guilty of an offence under this Act and shall be liable on conviction to a fine of an amount not exceeding ₦1000 for every copy dealt with in contravention of this section or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment’*

From the above provision it may be asserted that it applies to manufacturers of pirated copies. With the advancement of technology globally, any person can reproduce the original of a work in countless of copies without first obtaining the kind permission of the author. The internet has given consumers unprecedented tools to reproduce, alter and immediately transmit perfect digital copies of copyrighted works around the world⁵. Counterfeits are made in way that it becomes difficult to actually show the difference between the original and a counterfeit. The provision may be held to be laudable as it relieves the State from proving beyond reasonable doubt that the accused (pirate) infringed the copyright of the owner. The burden of proof is saddled on the accused to prove that he has not committed copyright infringement.

Furthermore, section 18 (2)⁶ states that:

‘Any person who

¹ Section 15 (1)

² Section 15 (4)(a)(b)

³ FHC/L/CS/1244/97

⁴ Ibid

⁵ Nick Bilton, Internet Pirates Will Always Win, New York Times, <http://www.nytimes.com/2012/08/05/sunday-review/internet-pirates-will-always-win.html>; accessed 7th October, 2014

⁶ Ibid

- a. *Sells or lets for hire or for 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 his private or domestic use, any infringing copy of any such work,*
Shall, unless he proves to the satisfaction of the court that he did not know and had no reasons believe that any such copy was an infringing copy of any such work, be guilty of an offence under this Act and shall be liable on conviction to a fine of ₦100 for every copy dealt within in contravention of this section, or to a term of imprisonment not exceeding two years of in the case of an individual to both such fine and imprisonment.'

It may be submitted that the abovementioned provision applies to retailers who sell or distributes pirated copies of works (literary, musical or cinematograph films). Notably these retailers could also stand in the position of manufacturers, hence making and selling counterfeits for personal profit without regard to what the owner of the work will feel. The number of retailers selling musical and cinematograph films on the streets of Lagos with a 'wheelbarrow' is beyond human comprehension. It has become a lucrative business to the extent that age restriction is no longer taken into consideration as a seven (7) old can buy a DVD/Blu-ray (whether it has explicit content or not) and watch.

The profitable business of movie-renting remains unprecedented in Lagos. Section 18(3)¹ however makes it a crime to rent, lease, hire or loan a work (literary or musical or cinematograph film) without the consent of the owner of the work. It provides thus:

'Any person who without the consent of the owner, distributes, in public for commercial purposes, copies of a work in which copyright subsists by virtue of section 5(1)(a)(vi), 5(1)(c)(vi), 6(1)(b) or 7(1)(c) of this Act by way of rental lease, hire, loan or similar arrangement, shall be guilty of an offence under this Act, and shall be liable upon conviction to a fine of ₦100 for every copy dealt with or imprisonment for six months or to both such fine and imprisonment'

It can be said incontrovertibly that most if not all movie-rental shops operate without the requisite permission of the authors of the respective works being rented out. Despite the abovementioned provisions, these unwholesome businesses remain unchecked.

4. Copyright Piracy: The Half of a Yellow Sun Experience

The much celebrated indigenous cinematograph film '*Half of a Yellow sun*' fell victim to copyright piracy. Piracy within the intellectual property lingua pertains to the illegal reproduction of works in which copyright subsists for commercial purposes. This illegal activity has been pervading the Nigerian media and entertainment industry with its concomitant effect on the Nigerian economy and hampering creativity. According to Chief Olusegun Obasanjo:

*'...the damaging effects of piracy are visible all around us: the waning zeal for creativity; the dearth of well-researched textbooks and reading materials in the education sector; the diminishing of the artistic and literary quality of our stage performances; and the increasing colourless and uninspiring products in the visual arts. Expectedly, investors are wary, and the younger generation is not encouraged to pursue careers in the arts and entertainment industry. We are all confronted by an attack on our culture and future as a people. We are faced with the reality of declining economic resource and a source of pride as a nation.'*²

The *Half of a Yellow Sun* film which is an adaptation of Chimamanda Ngozie Adichie's novel has been described as the most expensive Nigerian film ever made. Reports indicate that the cost of producing the film was over ₦1.6billion coupled with private funding³. In addition a loan was secured from the Nigerian Creative

¹ Ibid

² Nigerian Copyright Commission (Ford Foundation): Survey of Copyright Piracy in Nigeria <http://www.muritalaawodun.com/journal/SCP.pdf>. Accessed October 9, 2014

³ Arogundade Funsho: Lagos Pirates Feast on Half of a Yellow Sun Movie <http://www.pmnewsnigeria.com/2014/08/18/lagos->

and Entertainment Industry Stimulation Loan Scheme (NCEILS) for the purpose of completing the film¹. Be that as it may, after going through appropriate scrutiny by the Nigerian Film and Video Censors Board (NFVCB), the movie has being illegally reproduced and sold at the appalling price of ₦150, as well as uploaded online for free downloads.

Interestingly, FilmOne Distribution has the exclusive licence to distribute the film but evidently the film is hawked and sold on a wheelbarrow on the streets of Lagos. It becomes question-begging on how the authors and makers of the film will recoup their investment with the attendant illegal activities of pirates.

It may be reasonable to submit that the ever rising trend of piracy in Nigeria hinges on lack of stricter laws and enforcement. These pirates selling the counterfeits of the Half of a Yellow Sun movie are retailers and if the provision of the law is to be applied they have committed a criminal offence of selling and distributing for the purpose of trade infringing copies of the movie which makes them criminally liable upon conviction to a fine not exceeding ₦100 for every copy or two years imprisonment or both². If the principle of law and economics is to be applied which states that law is viewed as a social tool that promotes economic sufficiency, the aforementioned provision is not only economically inefficient but it doesn't deter this pirates.

If these pirates are selling the film for ₦150 in which for instance a pirate has 100 copies of it for sale and upon conviction the verdict is for the pirate to pay ₦100 each for the 100 copies in his possession, thus he pays ₦10,000 but still has ₦5,000 to reproduce illegally infringing copies. Deterrence as an objective of criminal law is lacking in key provisions of the Nigerian copyright statute. It even gets worse following the provision of the archaized Criminal code in its Section 491, which states that:

'Any person who knowingly:

- a. Makes for sale or hire any infringing copy of a work in which copyright subsists; or*
- b. Sells or lets for hire, or by way of trade exposes or offers for sale or hire any infringing copy of any such work; or*
- c. Distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or*
- d. By way of trade exhibits in public any infringing copy of any such work; is guilty of a simple offence and is liable to a fine not exceeding **four naira for every copy**³ dealt with in contravention of this section, but not exceeding one hundred naira in respect of the same transaction; or, in the case of a second or subsequent offence, either to such fine or to imprisonment for two months⁴*

Where the principal statute governing criminal law in Nigeria is stipulating a lower sanction for copyright infringement, one is inclined to assert that the tragic fate of the Half of a Yellow Sun copyright piracy was inevitable. Inadequate enforcement of the law has contributed immensely to the growth of this unwholesome activity. Factors ranging from poor funding, poor enlightenment on copyright to security personnel, poor sensitization on how to distinguish a counterfeit from an original work, corruption etc. compounds the problem. However, in fairness to the Nigerian Copyright Commission, they have worked hard in combating piracy and other related offences in Nigeria but more work seems to be done.

5. Conclusion

It is one of the unique objectives of criminal law to deter members of a society from committing certain acts in the bid of promoting and maintaining law and order. The Nigerian Copyright Act, irrespective of its laudable nature fails to abate the unwholesome activities of pirates' sequel to the copyright piracy of the celebrated indigenous movie '*Half of a Yellow Sun*'.

Copyright may be termed as those '*negative rights*' which seeks to stop others from exercising the distinctive array of rights (reproduction, distribution, adaptation, public performance etc.) exclusively owned by the owner of a work in which copyright subsist. Copyright is infringed when one or all these distinctive rights are exercised without permission. Criminal sanctions are put in place for copyright infringement but it is imperative to note that some of these monetary sanctions are non-sensical. The need for a reform and adequate enforcement remains eminent. With attendant factors such as advancement in technology which has greatly helped these intellectual pirates in furthering their unwholesome activities can only be checked through reforming the Copyright Act and the Criminal Code in providing stricter sanctions.

[pirates-feast-on-half-of-a-yellow-sun-movie/](#) accessed October 11, 2014

¹ ibid

² Section 18 (2) Copyright Act CAP C28 LFN 2004

³ Emphasis mine

⁴ Criminal Code CAP C38 Laws of the Federation (LFN) 2004

Furthermore, public enlightenment and education on copyright and piracy should be made available to security agencies and the public at large. Stakeholders, musicians, actors, actresses, movie directors, producers etc. should partake in organizing seminars, conferences which will stand as a platform for educating the populace in the bid of stamping out piracy and increasing the value of intellectual creations.

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Statues

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Nigerian Criminal Code C38 Laws of the Federation (LFN) 2004

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