

ARTICLE SERIES

SHARING OF CONTENT THROUGH ONLINE PLATFORMS – CONSIDERING DIGITAL PIRACY IN NIGERIA

```
..._mod.use_z = False  
..._operation == "MIRROR_Y":  
..._mod.use_x = False  
..._mod.use_y = True  
..._mod.use_z = False  
..._operation == "MIRROR_Z":  
..._mod.use_x = False  
..._mod.use_y = False  
..._mod.use_z = True
```

```
...selection at the end -add back the des  
..._ob.select= 1  
..._ob.select=1  
...context.scene.objects.active = modifier_...  
...selected" + str(modifier_ob) # modif  
..._ob.select = 0  
...key.context.selected_objects[0]  
...objects[one.name].select = 1
```

```
print("please select exactly two objects, ...")
```

OPERATOR CLASSES

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INTRODUCTION

Like many industries around the world, the creative industry has undergone evolution; from the use of three dimensional (3D) printers to compact discs (CDs) to Digital Versatile Discs (DVDs), and since the late 90s, the internet. The impact of digital technology on the Nigerian copyright space cannot be over-emphasised.

Over the last two decades, the internet has grown into a multi-purpose medium accommodating more than 4 billion users worldwide and has brought with it, unprecedented challenges[1]; challenges which legislation did not anticipate, and so new ways have to be found to address them.


WHAT IS PIRACY?

The Nigerian Copyright Act[2] (“the Act”) does not define the term “piracy” However, the Trade Related aspects of Intellectual Property Rights (TRIPS) Agreement[3], to which Nigeria is a signatory defines pirated copyrighted goods as follows:

“Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have

constituted an infringement of a copyright or a related right under the law of the country of importation.”[4]

Piracy has always been an obstacle to the growth of the copyright industry in Nigeria, the consequence being loss of revenue for creatives and the government, discouragement of foreign investment and the stifling of creativity. Before now, piracy took more traditional forms such as copying and distributing creative content through CDs or DVDs. However, the offence has morphed with the advent of the internet and new technologies leading to what is now termed digital piracy which is more of a menace than the more traditional forms, arguably because of ease of access to different digital platforms.



[1] Digital 2020: Global Digital Overview at <https://datareportal.com>

[2] CAP C28 Laws of the Federation of Nigeria 2004.

[3] Although Nigeria is a signatory to the TRIPS, it is yet to be domesticated as an Act of the National Assembly and so is not enforceable

[4] Article 51, n.14 of the Trade Related Aspects of Intellectual Property Agreement.

FORMS OF DIGITAL PIRACY

Digital piracy is the practice of illegally copying and selling digital music, video, computer software and other related products, and is a growing phenomenon.[5] For instance, a recent survey by the United Kingdom Intellectual Property Office (“IPO”) discovered that 23% of internet users consuming content online have accessed at least one item illegally[6].

The Director General of the Nigerian Copyright Commission (“NCC”) disclosed in 2019 that Nigeria loses N918trillion (\$3billion) annually to digital piracy[7]. There is little need for emphasis that the impact of digital piracy is alarming.

Digital piracy can take several forms and a few of them are considered below.

a) **Illegal streaming of content** - Illegal streaming is a process that allows a user to view unauthorised copyrighted content online without downloading the illegal file. Websites may either provide links to content hosted on other websites or provide access to stream directly.

Both hosting unauthorised content and providing links to unauthorised content are illegal.

b) **Cyberlockers** – These are third-party online services that provide file-storage and file-sharing services for various media file types, such as photos, videos and sound files. They offer fast, convenient and anonymous distribution of content, which can be downloaded or streamed. Very often, these sites generate significant income through subscription services. Cyberlockers often do not have search features, making them unsearchable and as such, infringing content is shared freely on blogs, forums and social media platforms[8].

c) Peer-to-peer sharing (P2P) sites – These platforms allow the sharing of digital files among “peers”. When using a P2P network, a user allows files stored on their computer to be available for copying by other users. The user can then transfer exact copies of these files from one computer to another. Although it is legal to share large amounts of data or files, it is now commonly used to illegally transfer copyrighted materials[9].

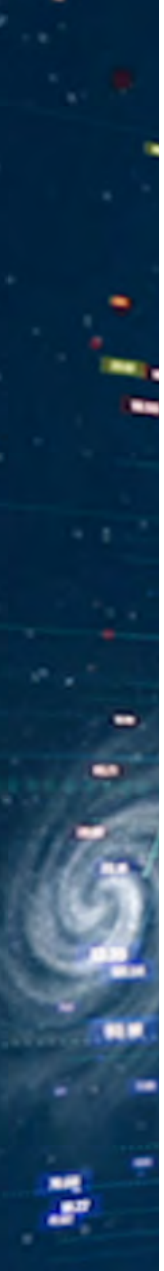
[5] Cambridge English Dictionary

[6] Access complete report at <https://www.gov.uk/government/publications/online-copyright-infringement-tracker-survey-8th-wave>

[7] John O. Asein, the Director General of the NCC made this disclosure at the 2019 World Intellectual Property day, Abuja in April 2019.

[8] <https://www.fact-uk.org.uk/the-problem/digital-online-crime/online-piracy/>

[9] *ibid.*



Although people may believe that their files are only available to a few friends, these files can potentially be accessed by millions of people all over the world who are part of the same P2P network.

d) **Linking websites**- These websites collate thousands of links to pirated content often stored on external cyberlockers. These sites facilitate copyright infringement because cyberlockers are not searchable.

e) **Film release groups** – These groups upload and share content on private torrent sites that rely on donations from members. The materials eventually make their way onto public torrent sites, where they can be downloaded by unauthorised persons.


Asides these specific forms of digital piracy, sharing of media files and books through WhatsApp, LinkedIn, Telegram and other social media platforms has also become commonplace.



INTERNATIONAL LAWS AND TREATIES

Generally, countries make provision for works that are copyrightable. Most copyright laws provide for the protection of literary works, artistic works, sound recordings, musical compositions, broadcasts and neighboring/performance rights. These traditional categories of eligible works are restrictive in light of the exigencies of the digital age.


There is also an international regime of laws that seek to address transboundary copyright issues. Some of these instruments include the Berne Convention on Literary and Artistic Works of 1886, the Universal Copyright Convention established in 1952, the Geneva Phonograms Convention and the Rome Convention. In 1996, the World Trade Organisation (“WTO”) Treaty also introduced the TRIPS Agreement which stipulated certain minimum standards of protection for copyrighted works.



However, most of these international instruments failed to address the special role of digital technologies and their consequence for copyright ownership and enforcement.

As a result, the international community has attempted to extend the provisions of the Berne Convention and the TRIPS Agreement to new technologies by the enactment of the World Intellectual Property Office (WIPO) Internet treaties introduced with effect from 2002[10]. The WIPO treaties allow rights-holders to protect their rights through encryption technologies commensurate with the needs of the digital age.[11]

These treaties introduced minimum requirements for the protection of copyright owners by member states of WIPO regarding the access and use of their works on the internet and other digital platforms by recognising their rights to control these works and to be compensated for their use. In addition to extending the protection of copyright law to these types of uses, the WIPO internet treaties also introduced the anti-circumvention provisions to all digital rights management techniques[12].



The United States has also implemented the provisions of the WIPO Internet treaties in its Digital Millennium Copyright Act enacted in 1998 and so effectively captures the offence of digital piracy as well as the remedies available to right holders that have had their copyright infringed.

In the Africa scene, there are hopes that the protocol on intellectual property to be introduced under the Africa Continental Free Trade Agreement will address digital piracy concerns.

ARE NIGERIAN LAWS ADEQUATE?

Copyright Act


The Nigerian Copyright Act ('the Act') protects literary, musical or artistic works where sufficient efforts have been expended in creating the work to give it an original character and such work is fixed in a definite medium of expression (now known or later to be developed) from which it may be perceived, reproduced, or communicated either directly or by means of a machine or other device.[13]

[10] The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, adopted December 20th 1996. The Treaties were concluded in 1996 and entered into force in 2002.

[11] Art 18 of the WIPO Performances and Phonograms Treaty; Art 11 of the WIPO Copyright Treaty

[12] J. Onyido, Copyright in The Digital Age: Prospects and Challenges.


[13] Section 1(2) of the Copyright Act.



This definition does not adequately cater for all the developments introduced by the digital era. Despite the inadequacy of the Act, section 21 provides for anti-piracy measures and empowers the NCC, with the consent of the minister to prescribe suitable marks, labels, designs or impressions or other anti-piracy devices in connection with any works over which copyright subsists. That section also proscribes the offer for sale, rental or hire, importation, possession, unauthorised replication or circumvention of anti-piracy devices.

Further, while there is no obligation on Google, Bing and other similar search engines to stop access to these platforms in cases of copyright infringement, the intermediaries may be passively liable under the provisions of Section 14(1)g of the Act for allowing unfettered access and acting as a channel for copyrighted content without taking measures to stop unauthorised downloads.

Measures have been taken to amend the Act in order to bring it in conformity with modern realities, and as such, the NCC, in November 2012, formally launched a reform



of the copyright system. The key objective of the reform was to reposition Nigeria's creative industries for greater growth and to strengthen their capacity to compete more effectively in the global marketplace. The reform birthed the Copyright Bill 2015 which introduced salient provisions, particularly as it relates to copyright protection in the digital space. It also amended/modified some existing provisions and expunged some of the provisions in the Act.

Some of these provisions include anti-piracy measures,[14] circumvention of copyright technology protection measures,[15] liability of Internet Service Providers (ISPs) for online infringing material, issuance of Take-Down Notices, [16] empowering the NCC to block access to infringing online content,[17] among other laudable provisions.


[14] Section 43.
[15] Section 44.
[16] Section 47.
[17] Section 48.



Cybercrimes (Prohibition, Prevention, etc.) Act, 2015

The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 (“the Cybercrimes Act”) contains certain provisions on liability of internet intermediaries. ‘Service providers’, as they are called under the Cybercrimes Act are required to provide assistance towards the identification, apprehension and prosecution of offenders; the identification, tracking and tracing of proceeds of any offence or any property, equipment or device used in the commission of any offence; or the freezing, removal, erasure or cancellation of the services of the offender which enables the offender to either commit the offence, hide or preserve the proceeds of any offence or any property, equipment or device used in the commission of the offence.

Some of such offences include, intentionally accessing in whole or in part, without authorisation, a computer system or network for fraudulent purposes and obtaining data that are vital to national security, intentionally and without authorisation, intercepting by technical means, non-public




transmission of computer data, content, or traffic data, including electromagnetic emissions or signals from a computer, computer system or network carrying or emitting signals, to or from a computer, computer system or connected system or network.

Any service provider who contravenes the provisions of the Cybercrimes Act will be liable on conviction to a fine of not more than N10,000,000.00. In addition, each director, manager or officer of the service provider shall be liable on conviction to imprisonment for a term of not more than 3 years or a fine of not more than N7,000,000.00 or to both such fine and imprisonment.

Fair dealing and other exceptions

The transferring and downloading of e-books on social media platforms such as Whatsapp, sharing of pictures and memes, on platforms such as Instagram or Facebook have become very common place.

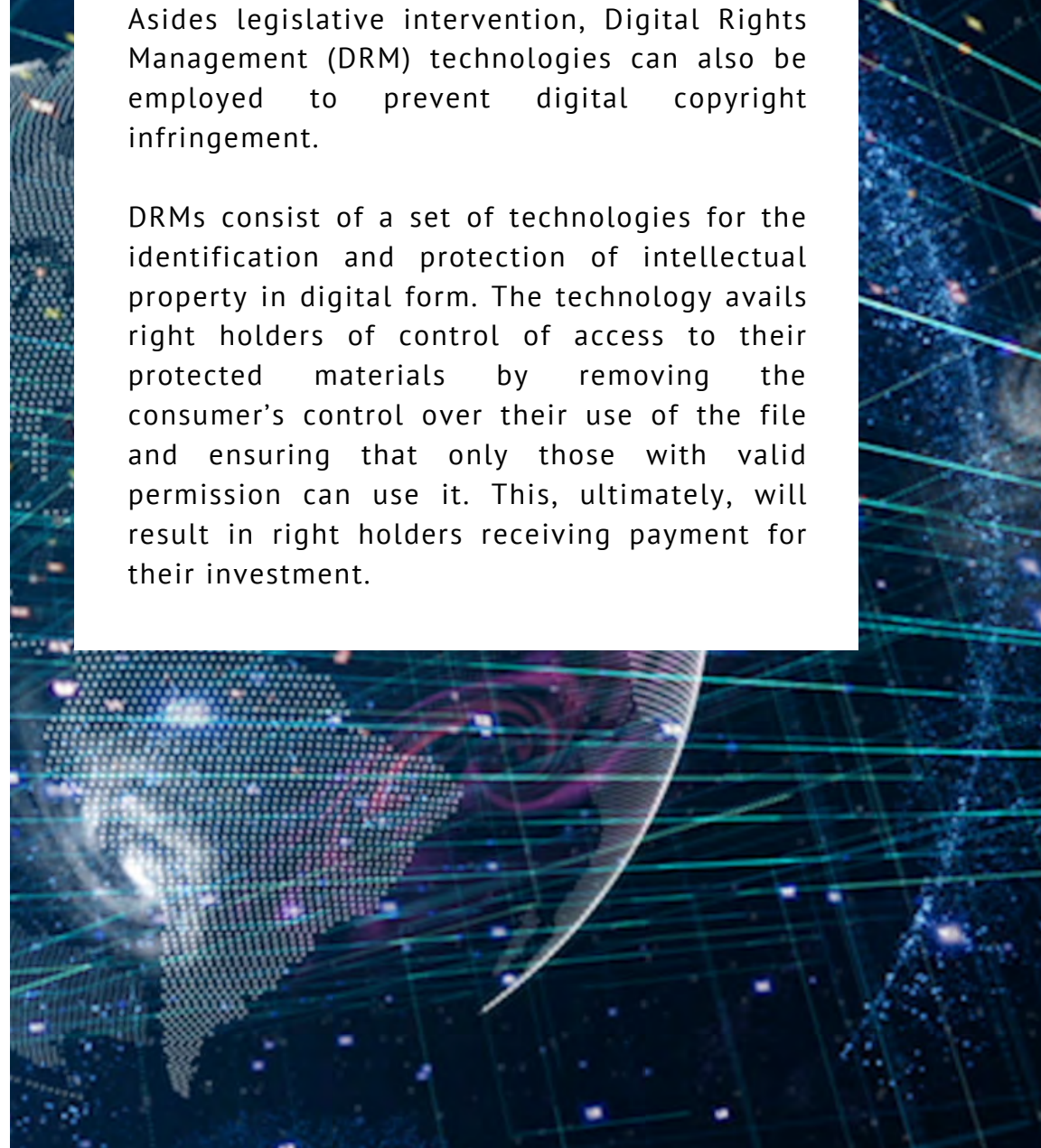


Such transfer and sharing will constitute copyright infringement if they do not come under any of the exceptions of fair dealing under the Second Schedule to the Copyright Act. The exceptions include criticism or review, research, private use, reporting of current events, parody or the use of the work in an approved educational institution. For example, sharing of an e-book on a Whatsapp group will constitute an infringement, being a public forum with the capacity to host more than 200 members, there is no control over how individual members of the group will use the e-book and such sharing will actually or potentially hurt the author's pecuniary interest.

CONCLUSION

It is clear that the Nigerian copyright space has insufficient mechanisms to curb the activities of online copyright infringers. The inaction of regulatory bodies and private enforcement efforts alike has increased the proliferation of digital piracy.

To tackle the menace of online/digital piracy, a combined effort of regulatory bodies, right societies, copyright holders/owners and internet intermediaries is required.



Asides legislative intervention, Digital Rights Management (DRM) technologies can also be employed to prevent digital copyright infringement.

DRMs consist of a set of technologies for the identification and protection of intellectual property in digital form. The technology avails right holders of control of access to their protected materials by removing the consumer's control over their use of the file and ensuring that only those with valid permission can use it. This, ultimately, will result in right holders receiving payment for their investment.

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