



TOPE ADEBAYO LP

Copyright



A REVIEW OF THE COPYRIGHT ACT OF 2022

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Introduction

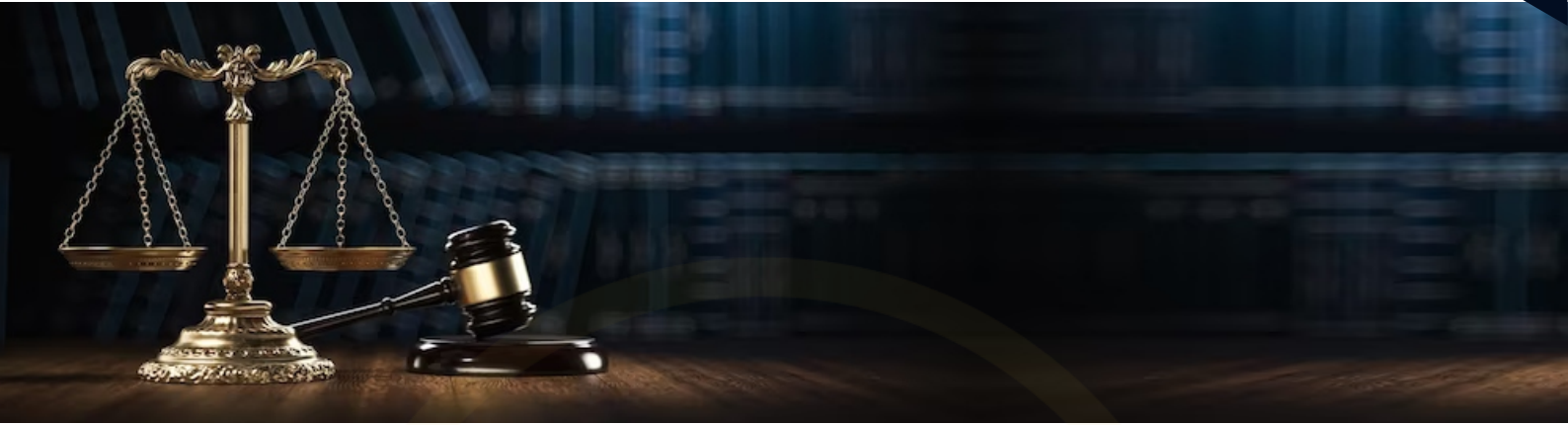
On the 17th day of March 2023, the President of Nigeria assented to the Act passed by the Nigerian National Assembly in 2022 repealing the Copyright Act of 2004¹ and enacting the Copyright Act of 2022.² The new Act represents a significant overhaul of the previous legislation, establishing a comprehensive legal framework for copyright protection in Nigeria. The Act brings several important changes, it strengthens the rights of authors, aligns Nigeria with relevant international copyright treaties and conventions, and provides appropriate limitations and exceptions to guarantee access to creative works.

The new Act also empowers the Commission with more authority and criminalizes the unauthorized broadcasting of digital or online works without the consent of the copyright holder. Additionally, it introduces provisions to protect technological measures employed for safeguarding copyrighted works. The new Act also bestows copyright owners with the exclusive right to communicate their works to the public. This provision enables them to exercise control over the online distribution and accessibility of their works. The following are some of the key provisions that were newly introduced and/or revised:



¹Hereinafter referred to as the "2004 Act" or the "old Act".
²Hereinafter referred to as the "2022 Act" or the "new Act".

A REVIEW OF THE COPYRIGHT ACT OF 2022



Objectives and Application

The 2022 Act began by providing a comprehensive overview of its objectives and scope of application. This initial section offers valuable insights into the interesting context of the Act, encompassing the following aspects:

- i. Protecting the rights of authors to ensure that adequate rewards and recognition are given to them for their intellectual efforts;
- ii. Providing appropriate limitations and exceptions to guarantee access to creative works;
- iii. Facilitating Nigeria's compliance with obligations arising from relevant international copyright treaties and conventions; and
- iv. Enhancing the capacity of the Nigerian Copyright Commission for effective regulation, administration, and enforcement of the provisions of this Act.³

A New Dawn

1. Works Eligible for Copyright: Under the new Act, any form of creative work, including literary, musical, and artistic works, that is original and expressed in any medium, will be eligible for copyright protection. The quality of the work or the intention behind its creation will not affect its eligibility. Copyright protection will be automatically granted to all eligible works,

³Section 1

A REVIEW OF THE COPYRIGHT ACT OF 2022



regardless of whether they have been registered with the Commission.⁴

2. Works Ineligible for Copyright: The new Act provides that official texts of a legislative or administrative nature as well as any official translations (except their compilations); official state symbols and insignia, including flags, coat-of-arms, anthems, and banknote designs, ideas, procedures, processes, formats, systems, methods of operation, concepts, principles, discoveries or mere data shall not be eligible for copyright since they were originally made for the public.⁵

3. Nature of Copyright: The new legislation has broadened the author's rights in a copyrighted work, encompassing the authority to make the work accessible to the public using wired or wireless methods. Consequently, the new Act now addresses all unauthorized transmissions of an author's work through wired or wireless means, including cable transfers, Bluetooth, social media, and other internet transfers, which were previously unregulated.⁶

4. Author's Moral Rights: Aside from the pecuniary/economic rights, rights associated with a copyrighted work are considered

'moral rights.' This includes the right to be recognized as the author of a work (paternity right) and the right to object to any distortion or derogatory action that may harm the author's reputation (integrity right).⁷ The Act also sets a limit on the duration of moral rights, which were previously granted in perpetuity and were non-transferable. Under this new Act, moral rights can be transferred through testamentary disposition or by operation of law after the author's death, and they remain in effect only for the duration of the copyright in the work.⁸

5. Right to Adequate Remuneration for Broadcasting of Sound Recording: Under the old Act, only authors of literary, artistic, and musical works were entitled to be remunerated for any commercial audiovisual/cinematographic display of their work, performers or owners of sound recordings were not included which means that there was previously no liability for the unauthorized broadcast of a sound recording even if it has been copyrighted.¹⁰ The new Act, however, addresses this by including a provision for adequate remuneration to be given to both the performer and owner of a broadcasted sound recording. This remuneration could be agreed upon by all parties

⁴Sections 2(5), 4, 43 and 87

⁵Section 3

⁶Section 10(f), 11(f), 12(f), and 13(c)

⁷Section 12 of the 2004 Act

⁸Section 14

⁹Section 9 of the 2004 Act

¹⁰Section 15 (1)

A REVIEW OF THE COPYRIGHT ACT OF 2022



involved or by the Commission where a consensus cannot be reached by the parties.¹¹

6. Copyright by Reference to International Agreement: The 2022 Act expands the scope of international agreements referred to in copyright matters to encompass all nations that have a membership with Nigeria in any international agreement or treaty. In contrast, the 2004 Act restricted this provision to only the United Nations, its specialized agencies, the Organization of African Unity (OAU), and the Economic Community of West African States (ECOWAS). Notably, the new Act omits the provision for reciprocal extension of protection.¹²

7. Falsification, Alteration, or Removal of Rights Management Information: "Rights Management Information" refers to information that identifies a work or subject

matter, such as the author, owner, or any rights associated with it including details about the terms and conditions of using the work or any corresponding codes or numbers. According to the Act, if someone knowingly falsifies, alters, or removes this Rights Management Information, it is considered a violation. The offender may face penalties such as fines, imprisonment, or both or any other proprietary right action.¹³

8. Circumvention of Technological Protection Measures: The 2022 Act acknowledges not only physical copies of creative works but also their digital presence, demonstrating an understanding of the influence of technology. This legislation prohibits the circumvention of technological safeguards designed to protect online works, ensuring that they are not utilized in ways that diminish or impede their commercial value. Violation of this provision may result in fines, imprisonment, and other remedies typically applied in cases of infringement on proprietary rights.¹⁴

The Act also includes provisions outlining exceptions to the contravention of the aforementioned provision and the specific circumstances under which these exceptions would be applicable.¹⁵

¹¹Section 15 (3) (4)

¹²Section 41 of the 2004 Act

¹³Sections 51 and 52(1), (6)

¹⁴Section 50 (1), (2); Section 50(3)(a) defines "technological protection measure" as a technology, device, product or component incorporated into the work which is designed to effectively prevent or inhibit the infringement of any copyright or related right.

¹⁵Section 50 (4)-(8) – For example, non-profit libraries, archives, educational institutions which gain access to a commercially exploited copyrighted work in order to make a good faith determination of whether to acquire a copy of the work for permitted purposes only; or any lawfully authorised investigation, protection, information security, intelligence activity, or computer security measures; or a person who has obtained the right to solely identify and analyse elements of a programme; or any other exception provided for in the Act.

A REVIEW OF THE COPYRIGHT ACT OF 2022

Copyright

9. Take Down Provisions: When copyright infringement occurs online, such as sharing copyrighted works without authorization from the owner, online distribution of pirated copies or any other infringements, the new Act provides that the copyright owner can notify the relevant Service Provider (“SP”) to takedown the infringing content or link. The SP must promptly comply after notifying the subscriber. Where the SP fails to take reasonable steps to investigate the breach and take down the infringing provisions, proprietary rights action could be taken against the SP.¹⁶

10. Exceptions to Copyright: The new Act, includes additional provisions that extend the scope of copyright exceptions, particularly concerning electronic adaptations of copyrighted works. These exceptions enable authorized entities to produce or obtain accessible format copies of a work or subject matter, even without obtaining permission from the copyright owner. These copies can then be distributed to designated beneficiaries through various channels, including non-profit lending or electronic communication using wired or wireless methods. The Act explicitly outlines the specific requirements and conditions that must be met in order to qualify for these exceptions.¹⁷



11. Copyright Offences and Criminal Liability: The new Act now encompasses copyright offenses facilitated by technology, including the unauthorized transfer of copyrighted works using wired or wireless technology. This expansion is viewed as a positive step, considering the increasing likelihood of copyright infringement with the progression of technology. According to the 2022 Act, individuals found guilty of such infringements face a minimum fine of N1,000,000, a minimum imprisonment term of 5 years, or both. Additionally, the new Act acknowledges that aiding or abetting a copyright offender is an offense, subjecting those found guilty to the same penalties as the primary offender.¹⁸ Overall, the criminal liability for copyright offences under the new Act has been increased.¹⁹

¹⁶Sections 54 - 60

¹⁷Such as the blind, visually impaired persons or other disabled persons. Section 26

¹⁸Section 44(7)

¹⁹Section 20, 14 of the Third Schedule to the 2004 Act

A REVIEW OF THE COPYRIGHT ACT OF 2022



12. Financial Provisions: The new Act provides for the establishment and maintenance of a “Fund” for the Commission in furtherance of its objectives, submission of Annual Returns and Annual Reports, and stipulates the borrowing and investment power of the Commission.²⁰

13. Restrictions on Execution against Property of the Commission: Alongside the existing limitations on executing a judgment against the Commission's property, the new Act introduces a requirement for a 3-month pre-action notice as a condition before initiating legal action against the Commission.²¹

14. Functions and Powers of the Commission: The 2022 Act broadens the functions of the Commission to encompass the resolution of disputes not explicitly covered in the Act, granting access to copyright-related documents and information held by the

Commission, and carrying out any other necessary functions and duties to achieve the objectives of the Act. Additionally, the Commission is empowered to prosecute, impose charges and fees, regulate and implement measures to promote copyright protection, and oversee collective management of rights.²² The commission also has the power to accept gifts consistent with its functions and objectives.²³

15. Membership of the Governing Board “the Board”: The 2022 Act made changes to the membership of the Board by replacing the representative from the Ministry of Education with a representative from the Ministry of Culture. Except for ex-officio staff, the Act introduced a 4-year term for Board members, based on the terms and conditions stated in their appointment letters. Furthermore, the new Act provided guidelines for Board proceedings and specified the conditions for cessation membership, except in cases of removal by the President.²⁴

16. Copyright Officers: The 2022 Act expanded the powers of officers previously known as “copyright inspectors” under the 2004 Act. These officers now have the additional authority of ingress and egress, as

²⁰Sections 91 - 95

²¹section 100(1) of the 2022 Act; section 49 of the 2004 Act

²²Section 78

²³section 96 (1)

²⁶section 39

²⁴Sections 81 - 82

A REVIEW OF THE COPYRIGHT ACT OF 2022

Copyright

well as the power to arrest without a warrant.²⁵

17. Collective Management Organisation (CMO): The 2022 Act introduced changes to the term "collecting society" used in the 2004 Act.²⁶ The new Act empowers the CMO to issue licenses and tariffs for the use of works owned by members and non-members of the CMO on certain conditions. Notwithstanding, the Act also allows for the suspension or revocation of approval granted to the Collective Management Organization (CMO) and makes the review and approval of tariffs determined by the CMO subject to the Commission's approval.²⁷

18. Dispute Resolution Panel "the Panel": This Panel is charged with the responsibility of resolving disputes arising from the payment of royalties, terms of the licence or any matter in respect of which a determination by the Commission is required under the Act. Anyone that is dissatisfied with a decision of the Panel may apply to the Federal High Court for a review of the decision.²⁸

19. Regulations: Under the previous system, in cases where there was a copyright gap or absence of regulations, the Minister of

Culture would create the necessary regulations to address the situation.²⁹ However, the 2022 Act expands this authority by granting the Commission the power to create such regulations, although the regulation would be subject to the consent of the Minister.³⁰

20. Schedule and Interpretation: The new Act introduced a single schedule that encompasses provisions concerning the proceedings of the Governing Board of the Commission. In contrast, the old Act included five schedules that contained provisions that are now integrated into the substantive provisions of the new Act. Also, the new Act expanded the interpretation section to incorporate the new provisions and provide clearer context for previously ambiguous provisions.

In summary, the Copyright Act of 2022 establishes a comprehensive legal framework that strengthens the protection of creative works in Nigeria and aims to tackle challenges within the country's creative industries. While there are still some areas that need to be addressed, this new legislation is widely appreciated as a significant step forward for the creative industry.

²⁵Sections 38 and 86

²⁶section 39

²⁷section 87 (6) (a, b)

²⁸Section 90 of the 2022 Act. One may want to qualify this provision as an improvement of section ³⁷ of the 2004 Act which provides for Copyright Licencing Panel also called the "Panel", which was constituted solely for the granting of compulsory licenses under the old Act. However, I do not think so, I prefer to state this as a new provision because its powers, constitution and functions are totally different from the old Act.

²⁹section 45 of the 2004 Act

³⁰section 97

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