

RECENT DEVELOPMENTS IN INTELLECTUAL PROPERTY LAW IN NIGERIA

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“Emeritus President of IPLAN, Prof. Bankole Sodipo observed that there are no pending intellectual property bills at the National Assembly but noted that there are ongoing efforts by the regulatory authorities to redress this.

He emphasized the pressing need to “get all the stakeholders involved” in the reform process, warning that “At the rate we are going, laws may not be able to catch up with technological developments.” He advised that IPLAN members “can do a draft bill and present to members of the National Assembly,” adding that

In this quarter’s newsletter we are taking a look at the recent developments in Intellectual Property Law (IPL) in Nigeria.

Intellectual Property rights and its governing Laws have gone through some changes due to factors such as the rapid growth of information communication technology (ICT), the shifting balance between public rights and private rights etcetera.

Recent developments in IPL in Nigeria, include and is not limited to the following;

1. The ability for anyone to notify the Nigerian Copyright Commission of a copyright work by online application.
2. The Nigerian Industrial Property Draft Bill 2015 now covers trademarks for smell, colour and sound.
3. The new trademark registrar has facilitated the speedy handling of trademark applications and the online trade mark registration process.
4. The approval of the Audio Visual Rights Society (AVRS) as a Collective Management Society for the movie industry by the Nigerian Copyright Commission.

G.O Sodipo and Co is the law firm that organized the elections and inaugurated the first board of the AVRS at its first Annual General Meeting held on the 29th of March 2016.

With the creation of the AVRS, right clearance for the use of audio visual works can now be centrally licensed and controlled. The importance of the AVRS can be seen by observing the success of the first collective management organization in relation to music and sound recordings approved by the Nigerian Copyright Commission (NCC), the Copyright Society of Nigeria (COSON), which has now grown to be the biggest in Africa, raking in as much as a quarter of a billion naira.¹

Individual owners of audio visual works have already started assigning their rights to AVRS, making it easier for potential licensees to access valid licences to use the copyrighted audio visual works.

Our firm is pleased to repeat in this write up, that it offered legal advice and handled litigation for COSON against people with rival interests, who were challenging the approval given to COSON by NCC and calling for its cancellation. We successfully defended cases like MCSN V. COSON, MCSN V. PMRS etc., and therefore assisted in providing the benefits now enjoyed by copyright owners and right users.

¹<http://www.cosonng.com/the-triumph-of-faith-tony-okoroji/>

increased
advocacy is
required to
jumpstart the
industry.”-
<http://thenigeria.com/iplan-stakeholders-urge-review-of-copyright-laws/>

Further developments in IPL include the fact that the Copyright Bill 2015, has been forwarded to the Office of the Attorney-General for review and presentation to the National Assembly.

It contains amendments to the current Copyright Act 2004, which include provision for issuance of Notice for take down of infringing content (S. 47) and procedures for effecting a take-down of such content as well as suspension of accounts of repeat infringers (S. 48 & S. 49), amongst others. Its provisions should in the writer's humble opinion, also properly define the concept of "Broadcast" to mean an electronic transmission received by the public, whether simultaneously or one at a time".

The advancement in information communication technology has now made it possible to breakdown and reassemble media content and sell it at a cheaper rate over the internet. Recently, Netflix came into Nigeria and it has the technology to broadcast copyrighted material over the internet (so do Amazon, Hulu, Periscope etc.), which were previously only accessed by viewers via satellite television, such as DSTV, GOTV etc. Our Legislators are yet to act to prevent this potential threat to copyright owners, and it's a good reason to properly define terms in the Copyright Bill.

In discussing recent developments in IPL in Nigeria, the case of **Microsoft Corporation v. Franike Associates Ltd (2011) LPELR-8987(CA)** is worth mentioning, as the Court of Appeal's decision to uphold the Federal High Court's decision dismissing Microsoft's copyright infringement claim on the grounds that Microsoft having a foreign (USA) copyright, is subject to the need for a reciprocal extension of protection in accordance with section 33 of the Copyright Act, based on the fact that the exclusive jurisdiction of the Federal High Court pursuant to section 251(1) (f) of the 1999 Constitution is only limited to the listed Federal Enactments, is worth appealing at the Supreme Court.

It is the writer's humble view that the counsel ought to have brought before the court, evidence of reciprocal extension of protection of the copyright in question, such as the fact that **section 5 of the Copyright Act (Cap. C28, Laws of the Federation of Nigeria, 2004)** extends the provisions of the Nigerian Copyright Act to works from international countries (the USA inclusive) that are members of treaties or international agreements (such as the Berne Convention) to which Nigeria is party.

In the current Copyright Bill 2015 mentioned above, section 7(2) states that "Where the question arises as to whether a country is a party to an obligation in a treaty or other international agreement to which Nigeria is also a party, a certificate from the Commission to that effect shall be conclusive proof of that fact." This is a very necessary proposed amendment to the current Copyright Act.

Finally, another recent development in IPL, is the success experienced by our law firm **G.O Sodipo and Co** in a trademark/design infringement suit, **ANO CHEMICAL COSMETICS IND. LTD & ANOR V. DIVINE HARMONY ENTERPRISE**, which we instituted on the instructions of our client, the Plaintiff.

We applied and the Honourable Court granted us an Anton Pillar Order on the 8th of December 2015. Thereafter both parties executed and filed

Terms of Settlement as final judgment in the suit.

In the Terms of Settlement, the Defendant agreed not to infringe on the Plaintiff's right any further, and that where it violates the terms, the Plaintiff shall confiscate all the equipment and machines used by the Defendant to cause such infringement.

It also handed over the mould used to make the infringing plastic products, to the Plaintiff.

The recent developments in Nigeria's IPL, seem to be slow strides in the race to Intellectual Property Rights protection haven, however it is encouraging that we as a nation and as a law firm are moving forward.

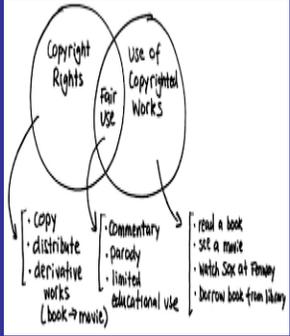
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“Speedy resolution of legal issues is the hallmark of G.O Sodipo and Co”- Barrister B.V Enwesi,LLB,BL,LLM(E-commerce Law)





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