The Purpose of Copyright Law in Nigeria: The Need for a Balanced Approach

By:

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November 30, 2021

Introduction

The copyright industry in Nigeria generates massive revenue. The music industry alone is expected to generate about $73 million USD in 2021. Is financial gain the primary rationale for the existence of copyright law in Nigeria? Arguably, the dominant narrative on the purpose of copyright law in Nigeria hinges on the financial rewards ideology approach to copyright. In other words, the perception is that copyright law exists to prevent unauthorized access of a creator's work. The justification for this approach is that it helps secure financial rewards for the creator, which in turn incentivizes him to create more works for the good of the copyright ecosystem. Admittedly, this is acceptable as unauthorized access to content is rife in Nigeria.

However, this perspective of the purpose of copyright law in Nigeria presents a narrow understanding. In this article, I challenge this dominant narrative on the purpose of copyright law in Nigeria not because it is wrong, but because it has eclipsed the fundamental purpose of copyright law, which essentially is an attempt to balance the interests of the creators' desire for financial reward and the users' access to creative works to encourage the creation and dissemination of cultural works for societal benefit. In other words, the purpose of copyright law is to fairly manage the rights of the creator to earn rewards for his creativity and the right of the users to access information. I critique the understanding of the purpose of copyright law in Nigeria and whether the understanding of the underlying rationale for copyright law in Nigeria aligns with the purpose enshrined in the first copyright law (the Statute of Anne) enacted over three centuries ago. As the first copyright law, it necessarily implies that all other copyright legislation, including the current copyright law in Nigeria trace their legislative ancestry to the Statute of Anne.

First, I discuss the purpose of copyright law in Nigeria and examine it with the historical rationale for enacting the first copyright law. Second, I consider the scholarship in Canada on the purpose of copyright law and how Canada has progressed from unclear policy on the purpose of copyright law to a robust erudition on the rationale for copyright law by the Supreme Court of Canada. Third, I argue that Nigeria would benefit more from a copyright system with a balanced approach. This should serve as a basis to drive copyright policy in Nigeria in the digital landscape.

The Purpose of Copyright Law in Nigeria

The policy foundations for the purpose of copyright law in Nigeria is arguably unclear. The extant copyright legislation – Nigerian Copyright Act (NCA) Cap. C28 Laws of the Federation, 2004 does not specifically articulate the purpose of copyright law neither does the Nigerian Copyright Commission (NCC) – the organization that oversees copyright matters and ought provide direction on policy issues besides dealing with copyright registration, protection, infringement and enforcement. This presumably means that, at least, from a layman's perspective, the NCA exists primarily to protect the proprietary interest of creators' works and to prevent unauthorized access or sanction perpetrators of unauthorized access. This is unsurprising as Aifuwa Edosomwan

notes, in a bid to combat unauthorized access to content, the NCC conducted several raids in 2016 and discovered copyright infringing materials worth 2.4 billion naira. Similarly, Omotayo Awomolo-Enujiugha corroborates the challenges of unauthorized access in the Nigerian copyright system and the NCC's various anti-piracy campaigns. Unauthorized access is incontrovertibly a challenge in Nigeria and probably responsible for the narrow understanding of the purpose of copyright – to combat unauthorized and commercial duplication of copyright materials.

Despite this narrow perception of the purpose of copyright law in Nigeria, some copyright scholars have articulated a broader understanding of the purpose of copyright law. Awomolo-Enujiugha opines that the main reason for the existence copyright law, which protects the rights of copyright holders is to stimulate and encourage creativity – this position aligns with the encouragement of learning as envisioned by the Statute of Anne (the first copyright law discussed below). Similarly, commenting on the policy objectives of copyright protection, Kolawole Olatoun and Onu Osinachi while acknowledging that it is necessary for creators to benefit from their works, also note that the main rationale for copyright protection is to encourage societal growth and creativity. Furthermore, they assert that the primary purpose of copyright is to promote public interest through the creation and dissemination of cultural works for the advancement of knowledge. Knowledge plays a key role in driving innovation. Helen Chuma-Okoro and Nicole Tumaine of the Open African Innovation Research (OPENAIR) rightly assert that accesss to knowledge (A2K) is a sine qua non for innovation and creativity. A Copyright system that hinders access to knowledge impedes creativity. Additionally, Tobias Schonwetter and Caroline Ncube argue that exceptions to copyright (access to copyright-protected content) are crucial for access to learning materials.

The copyright system in Nigeria tends to focus more on the prosecution of infringers. I concur with the African copyright scholars on their position on the purpose of copyright law because it challenges the narrative that copyright law exits solely to crackdown on audacious copyright infringement. I argue that more attention should be devoted to developing scholarship on the purpose of copyright law to promote a balanced understanding among copyright stakeholders. This will hopefully enhance a holistic understanding of the basis for copyright and thereby drive informed copyright policy formulation in

Nigeria. A balanced approach to copyright does not mean dismantling a system of rewards for creators, on the contrary, increased creativity leads to increased revenue. Furthermore, judicial pronoucements on the subject would certainly attract and enrich scholarship on the subject and create a paradigm shift towards a re-orientation on the purpose of copyright law in Nigeria. At the time of writing, preliminary research suggests that it is unlikely to find a case law in Nigeria that broaches the issue of the purpose of copyright law in Nigeria.

As noted earlier, modern copyright law owes its foundation to the Statute of Anne, the first copyright law. It is therefore fitting to examine and contextualize the opinion of African copyright scholars discussed above in relation to purpose of the Statute of Anne.

On April 10, 1710, the Statute of Anne came into force as the world's first copyright legislation to grant creators copyright in their works. The Statute of Anne practically ended the book trade monopoly held by the Stationers' Company (publishers who had exclusive right to book publication) for more than a century.

Copyright is a controversial subject globally and this has been so right from the beginning. Prior to the enactment of the Statute of Anne, there were intriguing debates involving schemes, intense lobbying and business and monopoly interest in the book trade in England at the time. The rationale for enacting the Statute of Anne is subject to debate as copyright scholars share different viewpoints. Copyright scholars argue that the Statute of Anne come into force for several reasons. Oren Bracha argues that the Statute of Anne was a compromise legislation embodying the interests of the Stationers' Company, the interest of the public (encouragement of learning) and the interest of authors. Victor Bonham-Carter believes that the Statute of Anne was enacted for the interest of the author to give them copyright in their works, which was previously no-existent as authors could not publish their works without clearance from the Stationers' Company. Disagreeing with Bonham-Carter, Lyman Patterson posits that the core reason for the Statute of Anne was to dismantle the Stationers' Company book trade monopoly and that the author was merely a pretext to achieve that purpose (Patterson, 1968).

The purpose of the Statute of Anne can be also be gleaned from its long title – *An Act for the Encouragement of Learning by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned*. This title is indicative of the primary purpose – to encourage learning or knowledge, which is ultimately a public interest and for the good of all. This views of African copyright scholars discussed above align with purpose the Statute of Anne as perceived from its long title. The inference from the title of the Statute of Anne is that the copyright is granted to the creator for his benefit, but ultimately for public good and the creation and dissemination creative works. While the views of the copyright scholars on the purpose of copyright law in Nigeria show a balanced approach to copyright, it is uncertain whether creators in Nigeria share this opinion in the face of copyright infringement. It is expected that the creator community (who primarily seek monetary gain from creative works) may have a different view of the purpose of copyright law in Nigeria, arguably, that copyright law is designed primarily to combat infringement and illegal duplication of content. This is the reality on ground in Nigeria where creators face the potential and actual compromise of their proprietary interest in copyright.

Nigeria is not the only country where there is seemingly little or no policy rationale for the existence of copyright law. It is fitting to briefly discuss the issue from the Canadian perspective and how judicial pronouncements by the apex court in Canada have significantly shaped copyright jurisprudence in defining the primary purpose of copyright law.

The Purpose of Copyright Law: The Canadian Perspective

The Supreme Court of Canada in 2002 in the landmark case of Théberge v. Galerie d'art du Petit Champlain made pronouncements on the purpose of copyright law in Canada. Additionally, the Copyright Modernization Act (CMA) of 2012 contains some provisions that articulate the rationale for copyright law. Prior to this time, the purpose of copyright law or its policy foundations were not clear. In 2005, Teresa Scassa noted that in addition to being unclear, determining Canada's copyright policy was more challenging due to divergent views. Furthermore, Daniel Gervais observed that attempting to determine the purpose of copyright law from government document led to unclear guidance. In fact, engaging in a discussion on the purpose of copyright law was regarded

as unnecessary and unproductive. In *Théberge*, Binnie J explained the purpose of copyright law in Canada thus:

> "The Copyright Act is usually presented as a balance between promoting the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator…" The proper balance among these and other public policy objectives lies not only in recognizing the creator's rights but in giving due weight to their limited nature."

Binnie J's articulation on the purpose of copyright law is balanced and mirrors the primary purpose of copyright law as expressed in the Statute of Anne. The pronouncement also emphasizes the importance of rewarding creators for their work but cautions that this is limited.

Since the explanation in Théberge, other supreme court cases in Canada have cited Théberge with approval - *CCH Canadian Ltd. v. Law Society of Upper Canada* in 2004 and *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada* a decade later. While challenges still abound in Canada's copyright landscape, there is more clarity on the purpose of copyright law.

How Nigeria Will Benefit From A Robust Copyright Policy

The underlying reason for the inquiry into the purpose of copyright law is primarily to serve as a basis for the formulation of copyright policy in Nigeria. This knowledge is needed by the NCC and other copyright stakeholders in Nigeria to drive copyright policy formulation in the digital age. The copyright system in Nigeria seems to tilt more in favour of rewards for the creator to the detriment of promoting the dissemination of knowledge, artistic expression and creativity. In fact, the importance of access to knowledge was emphasized by Ruth Okediji as a keynote speaker at a Creative Commons Summit in 2018; according to Chuma-Okoro and Tumaine, Ruth Okediji articulates that creativity needs raw materials (access to knowledge) to flourish and that this depends not only on the right given to authors, but also on the public. Nigeria can learn from Canada's experience and articulate the encouragement of learning as the primary purpose of copyright law. The achievement of this purpose recognizes

the creator's right to enjoy exclusive right in the form of copyright to exploit their works for financial reward. This encourages content creators to make their works available to others, which in turn inspires further creativity. To balance the understanding of copyright in Nigeria, copyright policy should be aimed at promoting creativity and inspire learning. The NCC is presumably under pressure from creators and other key copyright stakeholders to clamp down on premeditated and brazen copyright infringement in Nigeria. However, in order to advance copyright in Nigeria, a balanced copyright system and a robust copyright policy is necessary and this hinges on a holistic approach. In fact, if Nigeria strategically positions itself properly with a foresighted copyright policy, it could potentially increase its revenue from the creative industry.

The creative industry in Nigeria is huge, rich and continues to progressively evolve. In fact, Nigeria's film industry, popularly called "Nollywood" is regarded as the second largest film industry by annual production of movies. According to the United States Trade Administration, Nollywood creates employment for about 1 million persons and generates over $7 billion USD for the Nigerian economy. This much has been achieved by the film industry alone and could achieve more, especially in the digital landscape if properly guided by a forward-looking copyright policy framework and government investment. The policy framework should specifically address the following 1) review the NCA for possible reform and updates to meet the challenges of digital technology as well as embrace its opportunities 2) specifically educate copyright stakeholders in Nigeria on the primary purpose of copyright law as discussed above 3) continue the campaign against copyright infringement and commercial duplication of copyright materials 4) government investment to encourage artistic creation and expression.

In conclusion, a balanced approach to copyright law with a better understanding of its purpose sets the foundation for more creativity and revenue for Nigeria.

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