

The Roles of Librarians in Copyright Protection in Nigeria

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Abstract:

This paper gives an overview of copyright issues in Nigeria with an emphasis on the librarians who are the custodians of most intellectual property. The paper dwells much on the librarians' roles in the protection of their users' rights as well as safeguarding the interest of creators. Such protection provides the necessary incentives for scientific, technological and intellectual creativity. Librarians need to pay close attention to the balance between promoting the users' right as well as creators' right. It is concluded that it is the responsibility of librarians to protect the copyright of authors. They have to discourage library users from infringing on copyright laws. The paper offers some suggestions that will reduce the infringement on copyright to the barest minimum.

Introduction

All over the world, the protection of literary and artistic work is not new. The Berne Convention in 1886 brought into limelight the introduction of protection of literary and artistic works. The convention concluded in 1886 was revised at Paris in 1896, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979. The convention is open to all states. Most countries are members of the Berne convention. The Convention rests on three basic principles and a series of provisions determining the minimum protection to be granted, as well as making special provisions available to developing countries which want to make use of them. The principles are stated below

- The principle of "national treatment" i.e. works originating from one of the contracting states must be given the same protection in each of the other contracting states.
- The protection must not be conditional.
- The protection is independent of the existence of protection in the country of origin of the work (Berne Convention).

Nigeria is not left out in keeping up with global economic trends and challenges relating to copyright issues. Nigeria has signed various international treaties and conventions in order to create avenue for the rapid development and appreciation of intellectual property. The issue of copyright over a particular work is very important. It enables the creator of the work to have a sole responsibility over his work and to enjoy the work of his hand. This will motivate such creators to invest more in creativity since it is profitable to do. Copyright is the right to copy or use another person's work. A copyright is a law that gives the owner of a document, musical composition, book, or other pieces of information, the right to decide what others can do with it. This makes it easier for authors to make money by selling their works. In view of this, a work can only be copied if the owner gives permission. People who copy a work under copyright without

permission can be punished by the law, usually with a fine. In other more serious cases, they could be arrested or go to prison. Copyright is the right to literary property as recognized by law.

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of original works of authorship including literary, dramatic, musical, artistic and certain other intellectual works. This protection is available to both published and unpublished works (Webster, Chamberlain & Bean). In Nigeria, copyright in a work means that its author has the exclusive right to control certain actions in respect of the whole or a substantial part of a work either in its original form or in any form recognisably derived from the original (Olowu, n.a.). However, this is subject to certain statutory exceptions, including carrying out a specified act for research purposes, private use, criticism or review and use in prescribed educational institutions. According to Ike (1992), copyright is the right granted to an individual against unauthorized copyright or reproduction of his intellectual creation or work. The concept of copyright explains its usage in the context of artistic and literary work. Copyright is the right of the owner of a literary or artistic work. It is an intellectual property of a person as recognized by law.

Copyright arose from the idea that anything we create should be protected from use by someone else (Onatola and Dina, 2005/2006). Copyright is a universal concept and a form of protection provided by the laws of any sovereign state. It is a legislation backed right for creation of work (U.S. Copyright Office, 2000).

Gleason (1998) observed that today's copyright law:

- ❖ guarantees an author a monopoly, or executive right to continue the uses made of his or her own (original) work for a specific period;
- ❖ guarantees a publisher a monopoly right to publish (or arrange to publish) and sell a work within national boundaries for a specified period;
- ❖ provides financial compensation (royalties) to authors to reward them for their creative work; and
- ❖ encourages progress in the country's arts and sciences in order to foster its economic social cultural development.

Literary works, musical, aesthetic works, cinematography film, sound recordings and broadcasting are the recognised categories of works eligible for copyright according to the copyright Act (Ayanyemi, 2007). Summarily, copyright can be referred to as the protection that covers published and unpublished works that can be seen, heard or touched. Copyright is an incentive for authors to create new works. Copyright can be defined as the monopoly rights granted to authors and creators in order to make sure that adequate returns are made from their work so as to encourage the creation of intellectual works. The socio-economic development of a country depends on a large extent on the creativity of her people and creative works cannot be encouraged without effective administration of copyright laws.

In Nigeria, the copyright laws are not effectively administered. This is the reason violation of copyright laws still persists. This manifests in terms of plagiarism, photocopying and piracy. The institutional roles of libraries and librarians who are the custodians of most intellectual property made them to be indispensable in the effective administration of copyright law in the world and in Nigeria in particular calls for this paper. Copyright violation act can easily be carried out in the library. Thus, the need to create more awareness in order to make sure that services rendered in the libraries protect the economic and moral rights of the authors. As a principle of law states that ignorance of the law is no excuse and does not exempt one from compliance (Copyright, 2007). Using other people's work always implies some level of responsibility, so it is

always good to see what that responsibility is before using the work. This paper sought to provide answers to the following questions.

1. What is the copyright situation in Nigeria?
2. Do people readily comply with the copyright law?
3. How can librarians assist?
4. Have they been able to do these?

Copyright Issues

Almost every nation has some form of copyright protection for authors and artists. Several important international treaties also deal with copyright law among nations. The first and perhaps the most important international treaty concerning copyright law is called the Berne Convention, first adopted in Bern (Berne), Switzerland, in 1886 and revised several times since. Most countries of the world are members of the Berne Convention, including the United States and Canada. Members of the Berne Convention grant copyright protection to works of authors who are citizens of any member country. The treaty also forbids members from placing conditions on copyright protection based on the observance of formalities, such as registration of the copyright or placement of the copyright notice on copies of the work. Thus, although no such thing as an international copyright exists, the Berne Convention makes it easy for an author to obtain copyright protection in many nations.

In 1994 most countries of the world signed another important treaty dealing with copyright law. This agreement, called the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), clarified several aspects of copyright law and strengthened copyright protections internationally. Some nations of the world have weak copyright laws or few resources devoted to enforce those laws. These countries often have a large market for counterfeit goods made in violation of the copyright protections of authors. Unauthorized recordings of music on compact discs, computer software, and videocassettes of movies are often available at very low prices in these countries. This activity costs American copyright owners billions of dollars each year in sales and royalties. To protect these copyright owners, the United States attempts to persuade other countries to enforce copyright laws vigorously.

Under the 1976 act, copyright extends to all works of authorship fixed in a tangible medium of expression which includes literary works of all kinds, including fiction, nonfiction, prose, and poetry; visual arts, such as a painting or sculpture; audiovisual works, such as a television program or motion picture; musical compositions; dramatic works, such as a theatre production or works of choreography and pantomime; and sound recordings (recordings of music, speech, or other sounds). Computer programs and works of architecture are within the scope of the statute (Webster, Chamberlain & Bean). However, works prepared by government employees, such as court opinions, acts of Congress, and other government documents, are not protected by the copyright law. Anyone may reproduce these works without obtaining permission

Authors will benefit from effective enforcement of the copyright law. Authors will be motivated to make new works. Since it is a profitable venture for devoting time, efforts and money to the creation of more works, thereby gaining income from their creations and helping in the education of the Nigeria populace. Publishers will gain. They will be willing to invest their money in the production of books since they know that it will be a profitable venture. Government will gain. It will be a source of revenue to the government. Since taxes will be paid by the investors into the government coffer if people's works are not pirated. The entire populace will benefit in terms of being gainfully employed. It will reduce unemployment. Many people will be gainfully employed if author's works are not pirated. Learners too are not left out as they will

be able to get adequate materials for their studies when creators are motivated to make new works (Apotiade, 2004).

Copyright Infringement

Copyright is infringed by any person who, without the license or authorization of the copyright owner:

- carries out, or causes any other person to carry out, an act that is controlled by copyright;
- imports or causes to be imported into Nigeria any copy of a work that, if it had been made in Nigeria, would be an infringing copy under this section of the copyright Act;
- exhibits in public any article in respect of which copyright is infringed;
- distributes by way of trade, offers for sale, hire or otherwise or for any purpose prejudicial to the copyright owner any article in respect of which copyright is infringed;
- makes or has in its possession plates, master tapes, machines, equipment or contrivances used for the purpose of making infringing copies of the work;
- permits a place of public entertainment or business to be used for a public performance of the work where the performance constitutes copyright infringement, unless the person permitting the place to be used for the performance was not aware, and had no reasonable grounds to suspect, that the performance would be an infringement of copyright; and
- performs or causes to be performed, for the purposes of trade or business or as a supporting facility to trade or business, any work in which copyright subsists (Olowu, n.a.).

Therefore, anybody doing any of the above without permission or license is infringing copyright.

Copyright Laws

Different countries have different copyright laws. The differences are mostly on whether or not the government's work falls under copyright, the duration of the copyright, after the author dies or after the work is created or published and the issue of what is and what is not fair use (Wikipedia). Copyright law did not exist before the invention of the printing press in Europe in the 15th century. To reduce the risk of adversaries printing politically dangerous books, the royal government of England granted a publishing monopoly to a group of book publishers, who all belonged to a guild called the Stationers' Company. These publishers depended on the favour of the English crown for their existence, and so they only published materials that did not offend the royal authorities. Whenever one member of the guild obtained the rights to publish a book, all other members agreed to refrain from competition. This private arrangement was an early form of copyright. It was replaced in 1710 when the British Parliament passed a law called the Statute of Anne, named for Queen Anne, who reigned in England from 1702 to 1714. This was the first real copyright law in the modern sense. It granted authors the exclusive right to authorize the printing or reprinting of books for a limited number of years.

The Constitutional Convention delegates who drafted the U.S. Constitution in 1787 were familiar with the Statute of Anne and with the importance of copyright as an incentive for authors to create new works. In Article 1, Section 8 of the Constitution, they included a clause giving the Congress of the United States the power to promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries. This provision gave the federal government the power to

enact copyright and patent statutes. Congress adopted the first U.S. copyright law in 1790. The copyright law has been amended frequently, often in reaction to new inventions, such as photography and the development of motion pictures. Congress made a major revision to U.S. law in the Copyright Act of 1909, which remained in effect until January 1, 1978, when it was replaced by the Copyright Act of 1976. Although Congress has amended the 1976 act often, this statute continues to be the legal basis for copyright protection in the United States. Copyright protection begins as soon as the work is fixed (recorded), regardless of whether it is published under the 1976 act. The copyright lasts for the life of the author plus 50 years. If a work is created by an employee in the normal course of a job, however, the copyright belongs to the employer and lasts 75 years from publication or 100 years from creation, whichever comes first. Once a copyright expires, the work enters the public domain and anyone can copy it.

The Copyright Act of 1976 gives only the copyright owners the exclusive rights to:

1. reproduce or make copies of the work;
2. prepare adaptations of the work, such as preparing a translation of a book originally written in English or preparing a movie screenplay based on a novel;
3. distribute copies of the work to the public;
4. perform the work in public; and
5. display the work in public.

However, these rights are subject to many exceptions, which are detailed in the copyright act. For instance, certain nonprofit organizations can perform certain copyrighted works without the permission of the copyright owner, and libraries can make copies of damaged books without violating the copyright statute. The statute also permits owners of copies of computer software to make one copy as a backup. Copyright notice informs the public that a given work is copyrighted. The notice is placed in each published copy of the protected work and consists of either the word *copyright*, or the symbol ©, accompanied by the name of the copyright owner and the date of first publication (Wikipedia). For sound recordings, the symbol ℗ is used instead of the symbol ©. Under the 1909 act, publication of a work without a proper copyright notice resulted in a complete loss of copyright protection.

A copyright owner may register a claim of ownership with the U.S. Copyright Office in Washington, D.C. To register, the owner must fill out an application, pay a fee, and, if the work is published, send two complete copies of the work. The copies become part of the collection of the Library of Congress. Although copyright registration is theoretically optional, the copyright owner cannot go to court to enforce any rights until the work has been registered. In addition, early copyright registration allows an author more options in any litigation to enforce the copyright.

Copyright, Design and Patents Act (CDPA) (1988) and amendments are the laws governing copyright in the United Kingdom. They are to protect the intellectual standing and economic rights of creators and publishers of all literary, dramatic, artistic, musical, audiovisual and electronic works (LJMU, 2007). Copyright protection is automatic for original work. Copyright registration is not required in UK. Copyright exists whether or not it is asserted using the © symbol or otherwise. The copyright symbol © was established by the Universal Copyright Convention in 1952 signifying that the work is copyright protected.

In Nigeria, a body known as the Nigeria Copyright Council was established to see to the administration of Copyright. The Council is saddled with the following responsibilities:

1. responsible for all matters affecting copyright in Nigeria as provided for in this Act;
2. monitor and supervise Nigeria's position in relation to international convention and advise Government thereon;
3. advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country;
4. enlighten and inform the public on matters relating to copyright;
5. maintain an effective data bank on authors and their works;
6. and responsible for such other matters as relate to copyright in Nigeria as the Minister may, from time to time, direct (Copyright(Amendment) Decree, 1999).

Copyright Protection

Copyright protects authors of original works of authorship, including literary, dramatic, musical, artistic, and other intellectual works, regardless of whether the work is published or unpublished. The Copyright Act gives the copyright owner the right to:

- reproduce the work in copies;
- prepare derivative works based upon the work;
- distribute copies to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- perform the work publicly;
- display the work publicly;
- perform the work publicly by means of a digital audio transmission in the case of sound recordings. (Webster, Chamberlain & Bean)

A copyright owner may register a claim of ownership with the U.S. Copyright Office in Washington, D.C. To register, the owner must fill out an application, pay a fee, and, if the work is published, send two complete copies of the work. The copies become part of the collection of the Library of Congress. Although copyright registration is theoretically optional, the copyright owner cannot go to court to enforce any rights until the work has been registered. In addition, early copyright registration allows an author more options in any litigation to enforce the copyright. Copyright protects original works of authorship that are fixed in a tangible form of expression. Copyrightable works include literary works including electronic documents and software; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphical, and sculptural works; motion pictures and other audiovisual works; sound recordings and architectural works (U.S. Copyright Office, 2000).

In most countries, authors automatically own the copyright to any work they make (as long as they do not give the copyright to someone else), and there is no need to register the copyright. But without registration, it is often difficult to prove that the copyright of a work belongs to a certain author. So, it is often a good idea to register, especially for works sold for money (Wikipedia, 2007). Works made for hire become the property of the employer. If an author gets paid to make a work for someone else, the person who pays for making the work (for example, the author's employer) will often get to own the copyright instead of the author himself or herself.

Copyright protection subsists from the time the work is created in fixed form. The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright.

Copyright Enforcement

Copyright infringements are usually dealt with in civil lawsuits in federal court. The law provides several remedies to copyright owners who prove infringement against their work. In such a case, the court may order an injunction against future infringement, which requires the infringing party to refrain from committing further violations of the copyright. The court may also order the destruction of infringing copies, reimbursement for any financial loss suffered by the copyright owner, transfer of profits made from the sale of infringing copies, and payment of specific damages, plus court costs and attorneys' fees. If the infringement was intentional the infringing party can be subject to criminal penalties as well, which include fines and possible imprisonment. Okwilagwe(2001), opines that the Nigerian Copyright Commission needs to put more efforts in the areas of enlightenment and enforcement of the copyright law. Violation of copyright law is usually viewed as a serious offence in many countries of the world, hence, given copyright owners avenues to seek redress with the ambit of law for any infringement. According to Ayanyemi (2007), infringement of copyright by any person is punishable with imprisonment of up to five years or with a fine of one thousand naira (₦1,000) for every infringed copy of a work for which he is responsible. All copies of the work, plates, master tapes machines and other equipment in the possession of the infringer are to be destroyed or surrendered to the owner of the copyright.

The role of Librarians in Copyright Protection

Libraries play a key role in educational institutions in many spheres, including copyright. Library collections house both copyrighted and public domain materials and their missions are to make these works available to students and faculty in support of teaching, learning, research and scholarship. Libraries are creatures of the historical and statutory balance in copyright law. Libraries lend materials based on the First Sale doctrine. Libraries share materials and preserve works under specific provisions for libraries in the Act. Libraries are often the only entities that provide access to the vast majority of copyrighted works that lose market vitality long before the expiration of the copyrights, and are often the only entities that preserve public domain materials. Libraries enable users to access copyrighted and public domain works and to exercise their rights under the exceptions and limitations to creators' rights in the law. The creation of new intellectual property building on the old is stimulated as a result of the existence of libraries. Libraries are places where public and the proprietary meet. The multiple roles of libraries as social organizations address the balance in the law and are shaped by it. The institutional roles of libraries, librarians and their associations necessitate paying close attention to that balance and promote users' rights as well as creators' rights.

Libraries are a small but significant market for published works. The vast majority of copyrighted works in library collections were purchased or acquired through license agreements. Often libraries pay more for copyrighted works than works of an individual. This is especially true of subscriptions to periodicals, to ongoing research works, and to electronic information. Hence, there is the need for library staff and users to know about copyright, their limitations and benefits, when making use of any of the materials on the library shelves, either in open or closed access in order to safeguard anti-piracy legislation.

Libraries have an important role to play in caring for and providing access to other people's copyrighted work. Librarians need to recognize that most users of copyrighted materials are not aware of their dependence on balanced law and policy for access to information and for gaining knowledge. Members of the public take their rights for granted and generally exercise common-sense, but do not usually get involved in policy deliberations. Librarians should take seriously their role as advocates for individual users of copyrighted materials. Librarians need to ensure that the rights and privileges of their customers are safeguarded i.e. they must assure the library users of uninhibited

access to available collection in aid of research. Any user that is unsure if the material to be copied is protected by copyright needs to seek advice from the library staff.

Onatola & Dina (2005/2006) are of the view that library users need to change their orientation towards “fair use legislation”. This means that they can copy a very small amount of a work for educational purposes and not for commercial purposes. It may be possible to get permission to copy or use copyright material by contacting the copyright owner. Any copying now carried out for a commercial purpose requires prior permission from the copyright owner or payment of a copyright fee.

Schechter (2005) is of the opinion that a very important exception to the rule of copyright infringement is the concept known as *fair use*. Under this principle, the law permits the use of portions of copyrighted works for such purposes as criticism, comment, teaching, and research, even without permission of the copyright owner. In deciding whether a use is a fair use, courts consider such factors as the purpose of the use, the nature of the work, the amount of the work taken, and the effect it will have on the value of the original work. Some examples of fair use include quoting excerpts from a book in a review, scholarly article, or term paper; copying and distributing a newspaper article to illustrate an educational lesson; and using portions of a work in a parody of that work, such as a spoof version of a song. The Supreme Court of the United States has held that it is also fair use to use a home videocassette recorder to make copies of television programs and movies for later viewing.

There is a need for all the librarians in Nigeria to have copyright education and the nation’s Copyright (Amendment) Decree of 1999, in order to familiarise with the basic principles and concept of copyright laws in Nigeria. This will enable them to render their services without violating copyright laws. With adequate education in copyright, librarians will be able to know the risk involved in copying from copyright-protected material and operate within the laws. Above all, they will be able to make use of the ‘fair use’ principle which means that one can copy a very small amount of a work thereby catering for the interests of the owner of the work and that of the user. Copyright warnings should be displayed by librarians in conspicuous locations in the libraries so as to pass the message across to the users.

There is no doubt that libraries and Librarians in Nigeria have a lot of functions, very vital ones indeed, to play in the protection of author’s rights. Firstly, they must provide the right guidance to their library users on how to make use of the library stock without infringing on the copyright of the authors of such works. The librarians can provide the following assistance to library users in order to properly enforce the copyright laws in the library. Research projects in the library should be made available to researchers for consultation only. Photocopying the entire work should not be allowed, and if there is the need to photocopy, the principle of fair use should be strictly adhered to. Also, the librarians should ensure that precise citation is done by any researcher for any piece of information collected from a given source in the Library. Librarians through their body, Nigerian Library Association (NLA) need to draw the attention of the Federal Government through the Federal Ministry of Education to the present non-inclusion of the Nigerian Libraries on the Board of the Nigeria Copyright Commission.

Conclusion

The socio-economic development of a country depends to a large extent on the creativity of her people and creative works can not be encouraged without effective administration of copyright laws. Librarians as the custodians of most of the intellectual property cannot be left out in the successful implementation of copyright laws. Violation of copyright laws can easily be carried out in the library. In order to have books, author and creators of literary and artistic works, there should be adequate reward commensurate with the work. Hence, the enactment of copyright law to encourage creativity. Librarians need to be carried along in the war against violation of copyright laws.

Implications for Policy and Practice

Authors and publishers need to be motivated by putting a strong enforcement mechanism in place so as to motivate authors and publishers. A good copyright system should be put in place in order to discourage pirates from investing in other people's work. Since the policy could impound, destroy or sell the equipment used by copyright infringers. Research should be sponsored by all the stake-holders in the book trade so as to look at the incidence of textbook piracy and its effect on the book industry in particular and the national economy in general in order to come out with relevant statistical data. There should be licensing option to reprint those textbooks of copyright owners for foreign books, which may be needed locally, if we must meet out textbook demand. The copyright council should set up collection societies to administer the collection and distribution of royalties due from photocopying on large scales.

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