

## Key contacts



**Ijeoma Uju**  
Partner,  
Corporate and Commercial  
[ijeoma.uju@templars-law.com](mailto:ijeoma.uju@templars-law.com)



**Adenike Oyeledun**  
Senior Associate,  
Corporate and Commercial  
[Adenike.oyeledun@templars-law.com](mailto:Adenike.oyeledun@templars-law.com)



**Obi Meghoma**  
Associate,  
Corporate & Commercial  
[obi.meghoma@templars-law.com](mailto:obi.meghoma@templars-law.com)



**Joshua Chizoma**  
Associate,  
Corporate & Commercial  
[joshua.chizoma@templars-law.com](mailto:joshua.chizoma@templars-law.com)

## TEMPLARS ThoughtLab

### A New Dawn for Copyright Protection in Nigeria

The advent and constantly evolving world of social media has occasioned a gradual shift in the means of storage, use and dissemination of creative works from traditional media as we know it. There is no gainsaying that this shift will not be static., Consequently, there has to be a concurrent shift in intellectual property regulatory frameworks to keep abreast of evolutions in the creative space and safeguard the interests of originators of creative works.

Despite the global changes in the creative space, the regime for copyright protection in Nigeria remained archaic until recently, as it was regulated by an Act which was enacted in 1988. However, on 17<sup>th</sup> March 2023, the Copyright Act 2022<sup>1</sup> (the “**new Act**”) which repeals the Copyright Act 1988<sup>2</sup> (the “**old Act**”) was signed into law by President Muhammadu Buhari. The signing of the new Act was a culmination of extensive efforts by various stakeholders aimed at enacting a comprehensive copyright legislation to align with global standards and present-day realities. From a reading of the provisions of the new Act, it appears this aim was achieved, considering the robust provisions of the new Act, especially as it relates to digital infringement of copyright.

This publication examines notable changes and innovations introduced by the new Act and the impact on intellectual property protection of creative works in Nigeria.

### Changes Introduced Under the Copyright Act 2022

A comparison of the old and new Acts reveals interesting innovations which are expected to improve copyright protection in Nigeria. The relevant provisions are discussed below.

#### 1. Protection of Digital Works

One of the shortcomings of the old Act was its limitation in scope. Specifically, it did not contemplate the protection of digital works. This is however understandable, considering the old Act was enacted prior to the proliferation of the digital revolution, and the drafters could not have envisaged the extent of the revolution at the time.

<sup>1</sup> The objectives of the new Act includes the protection of the rights of authors to ensure just rewards and recognition for the intellectual efforts, provision of appropriate limitations and exceptions to guarantee access to creative works, facilitation of Nigeria’s compliance with obligations arising from relevant international copyright treaties and conventions and an enhancement of the capacity of the Nigerian Copyright Commission for effective regulation, administration and enforcement of the provisions of the Act. Section 1 of the new Act

<sup>2</sup> CAP C28, Laws of the Federation of Nigeria 2004.

# TEMPLARS

The new Act aims to remedy this deficit, as it makes express provision for the protection of digital works, by amongst others, expanding the definition of “copy”<sup>3</sup> to include a digital copy.<sup>4</sup> The import of this is that every provision in the new Act prohibiting the copying of a copyright-protected work now includes prohibition from making digital copies. For example, the prohibition of the importation into Nigeria of any copy of a work which if it had been made in Nigeria would be an infringing copy would now include digital copies of the work<sup>5</sup>.

Additionally, the new Act grants authors or copyright owners the exclusive right, either by themselves or through someone to whom they have granted authority, to make their work available to the public via wire, wireless or online means, in such a way that members of the public have the discretion to access the work at their convenient place and time.<sup>6</sup> Being cognizant of the inherent infringement threats/dangers posed by such wired, wireless or online dissemination of works, the new Act safeguards copyrighted works from threats/dangers of infringement, by expressly providing that no person shall knowingly circumvent, by avoiding, bypassing, removing, deactivating, decrypting or otherwise impairing a technological protection measure<sup>7</sup> that effectively protects a copyrighted work.<sup>8</sup> The new Act provides that a measure effectively protects a work if, in the ordinary course of its operation, **the measure controls access to the work or prevents or restricts acts in respect of the work which are not authorised by the authors or permitted by law**. This does not extend to measures which in the normal course of their operation only control access to a work for non-infringing purposes.

The import of the foregoing is that the parameters for benefitting from the protection accorded by this section are two (2) pronged:

- A. There must be a **deliberate act** on the part of the infringer to **circumvent** the technological protection measure.
- B. The technological protection measure must **effectively protect** the copyrighted work.

While the first prong seems clear and should be relatively ascertainable, the second prong could be challenging to ascertain in many respects, despite the yardstick for effective protection set out in the new Act. For instance, intercepting and hacking a pass-coded file containing an unreleased song of a musical artist which the artist sends to his manager (to whom he has transmitted the passcode) via email (wireless) and subsequently releasing the song would certainly come within the ambit of the first prong. To clarify, the pass-coded file is a technological measure put in place by the artist and the hack is an intentional act to circumvent the passcode. On the other hand, the lines are not so clear in relation to the second prong, and the issues for consideration in this regard are:

- i. Whether the passcode in the ordinary course of its operation controls access to the song and **such control of access is not only for non-infringing purposes**; or
- ii. Whether the passcode prevents or restricts acts which are unauthorized or unlawful, such as hacking.

While the latter issue can be answered in the affirmative, the former is not as straightforward, because; a) the new Act does not provide clarity regarding the distinction between measures which in the ‘ordinary course of their operation’ restrict control of access solely for non-infringing purposes and those which restrict for both infringing and non-infringing purposes, b) consequently, making such distinction would not always be clear-cut. For instance, in determining copyright infringement of a picture posted on social media with a digital watermark of the creator’s name/signature, deciding if the watermark controls access for infringing purposes would be subjective, as such digital watermarks are used by some persons to control access to their works, while others use it for identification purposes.

<sup>3</sup> Section 51 of the old Act defined copy as “a reproduction in written form, in the form of a recording or cinematograph film, or in any other material form, so however that an object shall not be taken to be a copy of an architectural work unless the object is a building or model”.

<sup>4</sup> Section 108 of the Act defines copy as “a reproduction in any form including a digital copy”.

It is noteworthy that the aforementioned provision does not prohibit any lawfully authorized investigation, protection, information security, intelligence activity or computer security measures.<sup>9</sup>

**Penalty for Circumventing a Technological Protection Measure:** The new Act provides for the right of a copyright holder to seek redress in court for damages, accounts, or injunction where a technological protection measure in respect of the copyright has been circumvented. Furthermore, the new Act also seeks to deter aiding such circumvention, by prescribing penalties for various acts which would facilitate circumvention of such measures, as follows:

- A minimum fine of N1,000,000.00 (One Million Naira) or a minimum imprisonment term of 5 (five) years or both a fine and imprisonment upon conviction for making or importing a technology or device for the circumvention of a technological protection measure into Nigeria.<sup>10</sup>
- A minimum fine of (Five Hundred Thousand Naira) or a minimum imprisonment term of 3 (three) years, or both fine and imprisonment upon conviction for knowingly selling, distributing, letting for hire, offering or exposing for sale or hire, a technology or device for the circumvention of a technological protection measure<sup>11</sup>.
- A minimum fine of N200,000.00 (Two Hundred Thousand Naira) or a minimum imprisonment term of 1 (one year) or both fine and imprisonment, upon conviction for the provision of a service to another person, knowing that the service is to enable or assist the person to circumvent a technological protection measure<sup>12</sup>.

Extension of penalties for circumvention of technological protection measures to persons who assist the infringer in the illicit act by directly or indirectly providing the tools for the circumvention would have the impact of impeding the ability of a potential copyright infringer to access tools to commit the infringement, which in turn would potentially lower the incidents of copyright infringement vide circumvention of technological protection measures.

## 2. Take Down Procedure for Online Infringement

The new Act provides a complaint procedure for instances of online infringement. A copyright owner who alleges infringement is required to issue a written notice to the service provider on whose platform the infringing content is hosted, requesting the takedown or disabling of such content.<sup>13</sup> Upon receipt of the notice, the service provider is to notify the alleged infringer (the "**Subscriber**") and take down or disable access to the content, and duly notify the copyright owner.<sup>14</sup> Where the service provider receives a written counter-notice from the Subscriber, the service provider is expected to promptly forward such counter-notice to the copyright owner. If no response is received from the copyright owner within seven (7) days, the service provider may restore the content which it had previously taken down.<sup>15</sup>

The new Act further requires service providers to take all reasonable steps to prevent the re-uploading of infringing content<sup>16</sup> and empowers them to suspend the accounts of repeat offenders from their platforms for a minimum period of one (1) month.<sup>17</sup> In

<sup>9</sup> Section 36(b) of the New Act/Section 15(b) of the old Act

<sup>6</sup> Sections 9(1) (i), 10(1)(f), 11(f), 12(d) and 13(1)(c) of the new Act.

<sup>7</sup> Technological protection measure is defined under the new Act to mean 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. Section 50(3) of the new Act.

<sup>8</sup> Section 50 (1) & (2) of the new Act.

<sup>9</sup> Section 50(6) of the new Act.

<sup>10</sup> Section 52 (3) of the new Act.

<sup>11</sup> Section 52 (4) of the new Act.

<sup>12</sup> Section 52 (4) of the new Act.

<sup>13</sup> Section 54 of the new Act.

<sup>14</sup> Section 55 of the new Act.

<sup>15</sup> Sections 55(2) of the new Act.

<sup>16</sup> Section 55(3) of the Act.

<sup>17</sup> Section 56(1)(a) and (b) of the Act.

addition, the new Act mandates service providers to not only take down the infringing content but also to prevent such content from being reuploaded and in the event it is reuploaded despite a service provider's best efforts, it should be taken down without notifying the Subscriber<sup>18</sup>.

These takedown obligations under the new Act extend to all entities which provide online services or network access, transmission, routing, or provision of connection for digital communications, without modification to the content being transmitted.<sup>19</sup> Consequently, by their nature, blogs, social media platforms, as well as search engine operators would be covered by the definition of service providers. While under the old regime, it was not uncommon for takedown actions to be instituted against the referenced categories of service providers by copyright owners, such takedown was not required and guaranteed under the old Act. Considering the current culture of flagrant infringement of copyright online, the statutory backing for takedown under the new Act would certainly cause a tremor in the online space and give copyright holders much to be ecstatic about.

As a major deterrent to non-compliance by service providers, the new Act holds a service provider who does not comply, liable for breach of statutory duty, as well as for actual infringement of the content, to the same extent as the infringer (Subscriber).

### 3. Works Made Under Commission

Copyright generally always vests initially in the author of the work concerned, except as otherwise provided in any agreement.<sup>20</sup> This was the case under the old Act, including in relation to commissioned works, as ownership of such works was vested in the author without any right in favour of the person who commissioned the work, except where the parties agreed otherwise under a written contract<sup>21</sup>. However, under the new Act, a person who commissions a *photograph, portrait, or audio-visual work* for private and domestic purposes (the "**Commissioning Person**") now has a **non-exclusive** licence to exploit the commissioned work for non-commercial purposes, as well as a right to restrain the publication, exhibition, broadcasting, communication, distribution, and reproduction of the work to the general public, except there is a written agreement to the contrary.<sup>22</sup>

It is noteworthy that the right accorded to the Commissioning Person under the new Act is not an ownership right, but a licence to exploit and restrict use/dissemination of the work to the general public if deemed necessary. Although the licence to exploit is not exclusive, it arguably recognises the role of the Commissioning Person in bringing about the birth of the work and the attendant entitlement to use and derive benefit therefrom (albeit, in a non-commercial context). A relatable import of this provision is that persons who for instance commission a picture or video coverage of their event have a right to preclude the photographer and videographer from showcasing the content on their social media or other advertorial platforms for any reason, including as evidence of their talent. Same goes for an art collector who commissions a distinct painting, the artist can be precluded from replicating, exhibiting, and selling the painting.

<sup>18</sup> Section 55(3) of the new Act.

<sup>19</sup> Section 108(1) of the new Act.

<sup>20</sup> Section 28 (1) of the new Act.

<sup>21</sup> Section 10(2) of the old Act.

<sup>22</sup> Sections 28(3)(a) and (b) of the new Act.

## 4. Extension of Liability for Copyright Infringement

Under the new Act, the definition of copyright infringement has been expanded to include instances where a person permits the unauthorised reproduction of copyright works within their premises.<sup>23</sup> This would certainly impact the ability of copyright infringers to secure hideaways for the conduct of their illicit activities, as property owners would be more circumspect in leasing their property to such persons, because they run the risk of equal liability, solely on grounds of being the landlord to a copyright infringer. Whilst this is not a foolproof measure, as it might not impact bigger players who have the means to purchase their own properties for copyright infringement activities, it would contribute its quota in the fight against copyright achievement, as it would be an impediment to the activities of smaller players in the copyright infringement network.

## 5. Exceptions to Copyright Infringement

The new Act expands the categories of exemptions to copyright, including special exemptions such as infringement in the form of adaption of computer programs,<sup>24</sup> infringement for the purpose of instruction or examination, recording of a broadcast or cable programme or a copy of such a recording by or on behalf of an educational establishment for educational purposes,<sup>25</sup> exemptions granted to archives, libraries, museums, and galleries.

While the old Act provided for fair dealing as an exception to copyright protection, there was little guidance on actions which could be deemed fair dealing. In the new Act, the four-factor test utilised under American law with respect to fair use,<sup>26</sup> have been adopted. The factors are:<sup>27</sup>

- a. the purpose and character of the usage;
- b. the nature of the work;
- c. the amount and substantiality of the portion used in relation to the work as a whole; and
- d. the effect of the use on the potential market value of the work.

## 6. Special Considerations for Persons with Disabilities

Another novel provision under the new Act is the provision made for blind, visually impaired or otherwise print-disabled persons (collectively described as beneficiary persons), to make or obtain (through a person acting on their behalf or their primary caretaker, caregiver, or authorised entity) in an accessible format, copies of works otherwise protected by copyright, without obtaining a licence from the copyright owner, provided that at all times, either the beneficiary person or authorised entity has lawful access to the work.<sup>28</sup> The works to which this exception applies are literary and artistic works in the form of text, notation or related illustrations that are not available in accessible formats for the beneficiary person.<sup>29</sup>

This innovation in the new Act ensures the inclusivity of the visually impaired, by creating a framework that permits the conversion of copyright-protected literary and artistic works to formats accessible by such persons. Similar inclusivity measures have been adopted in some other jurisdictions such as the United States of America and the United

---

<sup>23</sup> Section 36 (f) of the new Act.

<sup>24</sup> Section 20(2) of the new Act.

<sup>25</sup> Section 22 of the new Act.

<sup>26</sup> Section 107, Title 17 of the United States Code.

<sup>27</sup> Section 20 (1) of the new Act.

<sup>28</sup> A beneficiary person is defined as a person, who, regardless of any other disabilities is-

(i) Blind

(ii) Has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(iii) Is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading. [Section 26 (7) of the new Act].

<sup>29</sup> Section 26 (7) of the new Act.

Kingdom, and the adoption in Nigeria is highly commendable, as it shows intentionality in providing adapted learning materials to the disabled community in Nigeria.

## 7. Limitation of the Tenure of Moral Rights

Under the old Act, an author's moral rights<sup>30</sup> were perpetual, inalienable and imprescriptible, that is, not affected by lapse of time.<sup>31</sup> However, under the new Act, moral rights are transmissible upon the death of the author, by testamentary disposition or by operation of law. Additionally, moral rights will only subsist for the duration of the copyright in the work.<sup>32</sup>

The effect of this is that the moral rights in a copyrighted work may be transferred upon the death of an author or by will, in which case, the beneficiaries would be entitled/empowered to; enforce attribution of the work to the author and protect the integrity of the work, amongst others, for the duration of the copyright in the work. The inclusion of this provision is aligned with the position in other jurisdictions with advanced protection of moral rights, such as in Canada where moral rights generally last seventy (70) years after the author's death.

## 8. Performers' Rights

The new Act also makes extensive provisions for performers' rights in comparison to what existed in the old Act, which gave a performer the exclusive right to control his performance, recording, broadcasting live, reproducing in any material form and adaptation of the performance<sup>33</sup>. Some of the new provisions are as follows:

- Provision of a definition for a performer as including actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expression of folklore irrespective of whether the work was fixed or only fixed during a performance<sup>34</sup>;
- The provisions relating to performers' rights under the new Act expand the scope of protected performance to include renting or lending copies of fixed performance to the public, irrespective of the ownership of the copy rented or lent<sup>35</sup>;
- Extension of a performer's right to cover the wire and wireless accessibility to the fixation of his work<sup>36</sup>;
- Transmissibility of a performer's moral rights by testamentary disposition following his death<sup>37</sup>;
- Consent for group representation by individuals in cases of collective performance<sup>38</sup>; and
- Upward review of the penalties for the breach of a performer's right from N10,000.00 (Ten Thousand Naira) for individuals to N100,000.00 (One Hundred

---

<sup>30</sup> Moral rights are the rights of the author of a work to claim authorship of his work, object and to seek relief in connection with any distortion, mutilation, or other modification of, and any other derogatory action in relation to his work, where such action would be or is prejudicial to his honour or reputation. (Section 14 (1) of the new Act)

<sup>31</sup> Section 12(2) of the old Act.

<sup>32</sup> Section 14(2) of the new Act.

<sup>33</sup> Part II of the old Act.

<sup>34</sup> Section 63(3) of the new Act.

<sup>35</sup> Section 64 of the new Act.

<sup>36</sup> Section 63(1)(f) of the new Act

<sup>37</sup> Section 66(2) of the new Act.

<sup>38</sup> Section 67 of the new Act.

Thousand Naira) and from N50,000.00 (Fifty Thousand Naira) for body corporates to N2,000,000.00 (Two Million Naira)<sup>39</sup>.

Collectively, these provisions would provide more robust protection for performers, including the longevity of their copyright. For instance, sharing of stage plays on social media platforms and the protection of performers' rights following their death, amongst others.

## 9. Expansion of Assignment and Licensing Rights

Under the new Act, ownership of a material in which a work is embodied shall not confer ownership of copyright in the work.<sup>40</sup> In the same vein, the Act provides that except as otherwise agreed by the parties, transfer by the copyright owner, of ownership of the material in which a work is embodied, shall not be regarded as a transfer of the copyright or grant of a licence for the exploitation of the work.<sup>41</sup> Also, in the absence of an agreement to the contrary, a copyright owner who transfers his copyright or grants a licence for the exploitation of the work shall not be regarded as having transferred ownership of the material in which the work is embodied.<sup>42</sup>

In addition, as was the case under the old Act, the new Act provides that assignment, licence or testamentary disposition may be granted in respect of a future work or an existing work in which the copyright is yet to subsist.<sup>43</sup> However, the new Act goes further to limit such grants by preventing the inclusion of all future works of an author, which means there must be a certain level of quantification to these future or uncopyrighted works i.e. by period, identification or number.<sup>44</sup>

## Conclusion

The Copyright Act 2022 is perhaps the most important legislation to emerge in the Nigerian intellectual property space in recent years. The inclusion of the aforementioned provisions has the potential to bring a significant level of modernization to the regime for copyright protection in Nigeria, in line with global developments and trends fuelled by technological advancement and various forms of socio-economic evolution. That said, as is typically the case with any new legislation, stakeholder synergy is integral to the successful attainment of the objectives of the new Act.

It behoves copyright owners to take full advantage of the innovations under the new Act, by taking the necessary steps to safeguard their copyright, including seeking appropriate counsel and representation when required. Also, the Copyright Commission should be hands-on in providing any necessary support to copyright owners and/or their representatives, including providing clarification on the provisions of the new Act as may be required from time to time. Service providers should ensure fulfilment of their obligations thereunder and the court should ensure timely adjudication of copyright infringement matters, as well as imposition of appropriate penalties as prescribed under the new Act.

With concerted efforts by all stakeholders, the Nigerian copyright scene would begin to witness a gradual shift towards upholding the sanctity of copyrights and before long the impact of the new Act should become apparent.

<sup>39</sup> Section 73 of the new Act.

<sup>40</sup> Section 30(7) of the new Act.

<sup>41</sup> Section 30(8) of the new Act.

<sup>42</sup> Section 30(9) of the new Act.

<sup>43</sup> Section 11(7) of the Old Act.

<sup>44</sup> Section 30(10) of the new Act.