



# THE COPYRIGHT BILL (SB 688): IS REGULATION FINALLY CATCHING UP WITH INNOVATION?

## Introduction

Copyright in Nigeria is governed by the Copyright Act, Laws of the Federation of Nigeria, 2004 (the “Act”). The Act was enacted to promote the progress of creatives by protecting the exclusive rights of authors of original works and to ensure they reap the full benefits over their works, amongst other things. However, since the enactment of the Act in 1988 creativity has developed past the ambit of protection contemplated under the law, and this is mostly due to advancement in technology as well as the exponential growth of the internet. Technically, almost anyone anywhere can recreate and distribute copyrightable content at ease, thereby creating a challenge for the effective enforcement of rights accorded under the Act.

In light of the above, the Copyright Bill (SB 688) (the “Bill”) was introduced on the floor of the Senate of the Federal Republic of Nigeria and on 7 June 2021, the Bill passed its second reading. The Bill seeks to repeal the Copyright Act 2004 by introducing contemporary provisions aimed at addressing current challenges faced by copyright holders in Nigeria.

## Salient Provisions of The Bill and it’s Implications

**Though the Bill adopts most of the provisions contained under the Act, it introduces some notable provisions highlighted below:**

1. The Bill grants authors or copyright holders the exclusive right of making their work available to the public via wire, wireless or online means in such a way that members of the public can access the work from a place and at a time individually chosen by them.<sup>1</sup> To this end, the Bill safeguards the work from online threats by expressly providing that no person shall knowingly circumvent by avoiding, bypassing, removing, deactivating, decrypting or otherwise impairing a technological protection measure that effectively protects a copyright work.<sup>2</sup>

<sup>1</sup>Section 6 (1)(a-b)  
<sup>2</sup>Section 26 - 32

### Key Contacts



Ijeoma Uju  
Partner  
[ijeoma.uju@templars-law.com](mailto:ijeoma.uju@templars-law.com)



Ifeoluwa Ibiyemi  
Associate  
[ifeoluwa.ibiyemi@templars-law.com](mailto:ifeoluwa.ibiyemi@templars-law.com)

2. The Bill also empowers authors or copyright holders to issue a notice of infringement (in writing) to the relevant service provider requesting a take down or deactivation of a link to any infringing content, hosted on its systems or network. Sequel to notifying the subscriber responsible for the infringement, the service provider is obliged to take down the infringing content after 48 hours of the notice, if the subscriber fails to provide any information justifying the continued keeping of the infringing content on its system or networks.<sup>3</sup> The service provider is also mandated to notify the Nigerian Copyright Commission (the “Commission”) of such takedown. In the same vein, the Bill empowers the Commission (by itself or with the assistance of any other person) to block or disable access to any content, link or website hosted on a system or network, which it reasonably believes to infringe copyright.<sup>4</sup>
  
3. As a means of deterring infringements, the Bill introduces more acts which constitute an infringement of copyright and these include:
  - i. The making of a copyrighted work available to the public via wire, wireless or online means without the consent of the owner and for commercial purposes;
  - ii. Refusing or omitting to pay upon demand, any royalty by virtue of a right of remuneration or agreement; and
  - iii. Aiding or procuring another person to commit an act which constitute an infringement under the Bill.<sup>5</sup>



Through the aforementioned provisions, the Bill actively guards against online infringement which has been a recurring challenge for authors of musical and audiovisual works. Technology has eased the means of obtaining and consuming content, and consumers are now able to access content on their mobile devices via streaming or downloads mostly for a fee. While this is laudable, certain platforms have exploited this position by accessing and providing content to consumers at no cost, thereby increasing traffic and ad fees for the platform without remitting any revenue to the authors or copyright holders.

In the same vein, the internet has facilitated the creation of copyrightable content i.e., from memes to tik-tok videos to podcasts etc. and content creators are able to work effortlessly. Most times, these works are dubbed by platforms with larger social media following with no credit or payment to the original creators. This indiscriminate dissemination has been curbed under the Bill by expressly granting authors control over the publication of their works through the internet or otherwise.

<sup>3</sup>Section 29 (1), 30

<sup>4</sup>Section 36

<sup>5</sup>Section 20 (7-9)

Typically, when faced with online infringement of their works, authors resort to taking legal action against the infringing party. Such actions are usually protracted and what most authors do in the interim is issue 'cease and desist' letters which have not been effective enough in deterring the infringing party. Fortunately, this has been further mitigated by the Bill as it places an obligation on online service providers to investigate and take down infringing content after receiving a notice from copyright owners. This position is further strengthened by authorizing the Commission to take down, block or disable access to infringing materials online. Thus, the usual challenge of deciphering identities behind websites (for the purpose of issuing cease and desist letters) has been mitigated by the Bill, as the author can explore the additional remedy of writing to the online service provider or the Commission to effect a take down as well as deactivate a link to an infringing material.

Furthermore, the Bill now expressly makes it a violation of copyright law to “circumvent” any technical measure that controls access to copyright protected works. For example, it is a violation to disable encryption software used to prevent unauthorized access to a movie or music video stored or transmitted in digital form. That said, platforms who bypass security software in order to gain access to music, documents or to provide movie streaming services without the authorization of the copyright owner commits a violation and therefore liable to penalties under the Bill. The Bill goes further to prohibit the manufacture, sale, purchase, distribution or use of any device, technology or service that can be used to circumvent protective measures put in place for copyrighted works.



## Conclusion

The expansion of the internet and user-generated digital content has created a platform that not only simplifies the creation of copyrightable content but also facilitates the modification of existing content belonging to other parties. Though the Copyright Bill is a good attempt to catch up with innovation by providing and guarding against online infringement, law makers and regulators must be mindful of the fast evolution of technology and proactively enact laws that contemplate and accommodate technological advancement.

