



HERMON LEGAL PRACTITIONERS

A SIMPLE
GUIDE
THROUGH
COPYRIGHT

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WHAT IS COPYRIGHT?

Copyright is the exclusive right to use the work, with some exceptions. When a person creates an original work, the copyright in that work automatically belongs to such a person.

In simpler terms, original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work. By this, creators of original material get automatically, the exclusive right to further use and duplicate that material for a given amount of time, at which point the copyrighted item becomes public domain

An owner of the copyright is one who holds an exclusive right or rights to copyrighted material.

- Multichoice (Nig.) Ltd. v. M.C.S.N. Ltd.Gte. (2020) 13 NWLR (Pt. 1742) 415



WHO QUALIFIES AS A LEGAL OWNER OF COPYRIGHT?

For a person to be legal owner of copyright for the purpose of vesting requisite locus, he must fall into any of the following categories, namely:-

- (a) author of the work himself;
- (b) the assignee;
- (c) the licensee.

It is only any of these legally authorised or accredited owners that can seek redress in copyright in the court of law.

- SECTION 15 (10) COPYRIGHT ACT
M.C.S. (Nig.) Ltd./Gte v. Adeokin Records (2007) 13 NWLR (Pt. 1052) 616



WHICH WORK IS ELIGIBLE FOR PROTECTION IN NIGERIA?

Section 1 (1) of the Copyright Act provides that the following shall be eligible for protection:

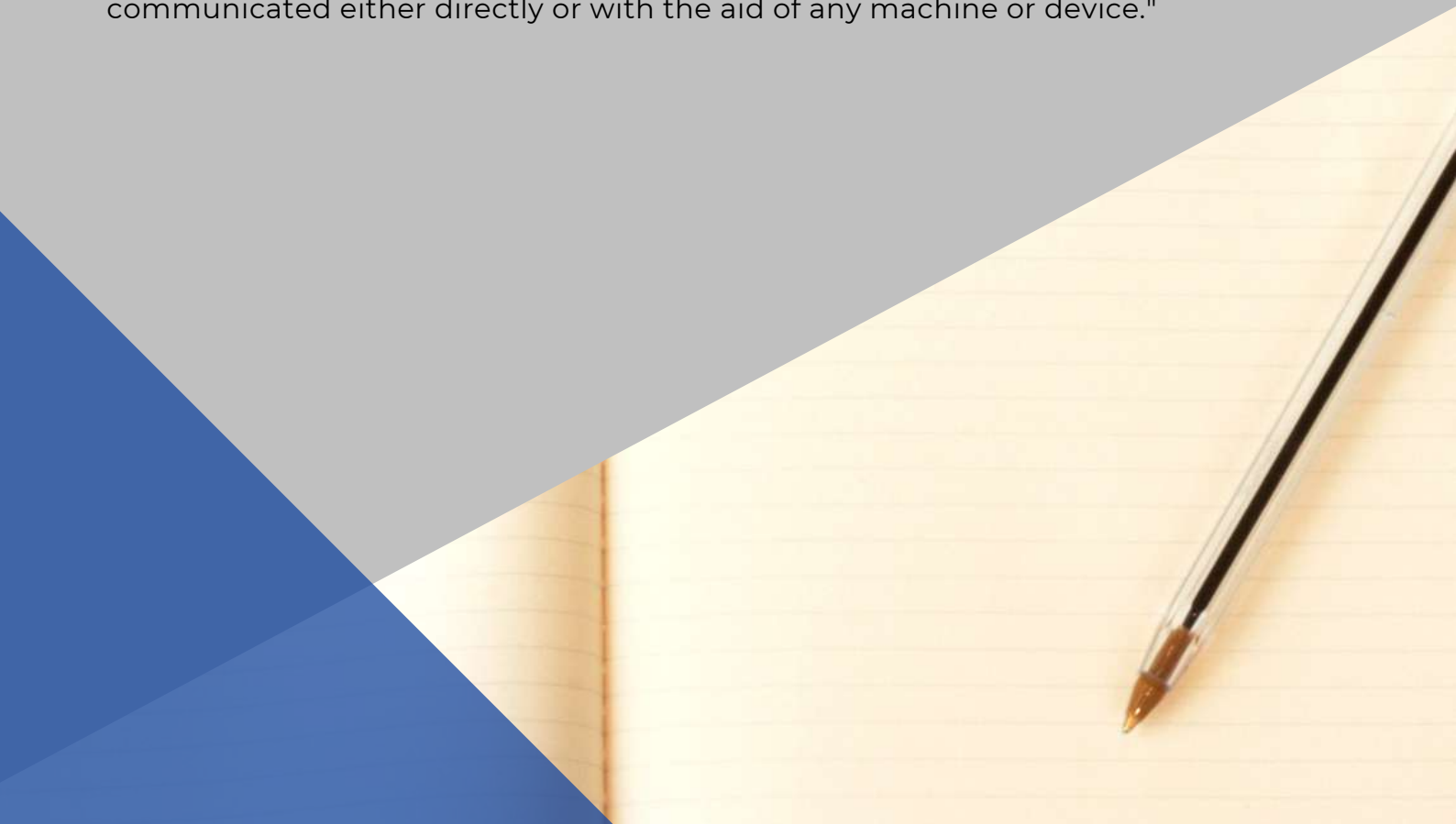
- 1.Literary works
- 2.Musical works
- 3.Artistic works
- 4.Cinematographic films
- 5.Sound recordings
- 6.broadcasts

But...

Despite the above, such work will only be eligible for legal protection if:

"(a) Sufficient effort has been expended on making the work to give it an original character;

(b) The work has been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device."



DURATION OF PROTECTION

Any work that eligible for copyright need not be registered in order for it to enjoy legal protection. Protection is automatically activated upon creation. However, owners of copyrights have the option to deposit a copy of their works with the NCC and receive a certificate which serves as notification of the existence of the work to the general public.

Copyright in literary, musical or artistic works other than photographs persists for the duration of seventy (70) years following the death of the author. In cases where the work is owned by a government or a body corporate, the copyright in the literary, musical or artistic work will expire seventy (70) years after the work was first published.

Copyright in films and photographs remains for 50 years after the year the work was first published. Copyright in sound recordings also lasts 50 years after the recording was first published.



WHAT TYPE OF RIGHT IS PROTECTED?

Section 6 of the Act gives you the following exclusive rights as a copyright owner in a work in Nigeria;

- Right to reproduce the work in any material form;
- Right to publish the work;
- Right to perform the work in public;
- Right to produce, reproduce, perform or publish any translation of the work;
- Right to make any cinematograph film or a record in respect of the work;
- Right to distribute to the general public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan, or similar arrangement;
- Right to broadcast or communicate the work to the public by a loudspeaker or any other similar device;
- Right to make any adaptation of the work;
- Right to do a translation or an adaptation of the work.

The doing of any of these acts may be in respect of a whole or part of the work either in its original form or in any way recognizably derived from the original.

The ensuring rights in copyright can be conveniently classed into Moral rights and Economic rights.



WHAT IF MY COPYRIGHT IS REGISTERED OUTSIDE NIGERIA?

Usually, copyright is municipal in nature and valid within the Country where the work was originally made or registered. However, section 4A of the Copyright Act provides that:

4A.—(1) Copyright shall be conferred by this section on every work if—

(a) on the date of its first publication at least one of the authors is—

(i) a citizen of or domiciled in, or

(ii) a body corporate established by or under the laws of a country that is a party to an obligation in a treaty or other international agreement to which Nigeria is a party;

(b) the work is first published—

(i) in a country which is a party to an obligation in a treaty or other international agreement to which Nigeria is a party;

(ii) by the United Nations or any of its specialized agencies;

(iii) by the Organisation of African Unity, or

(iv) by the Economic Community of West African States.

Nigeria has ratified a number of Copyright treaties. Treaties such as the Berne Convention for the protection of literary and artistic works, WIPO Copyright treaty for the protection of computer programs and databases, WIPO Performances and Phonograms Treaty (WPPT) for the protection of performers and producers of phonograms, Marrakesh treaty, and Beijing treaty on audiovisual performances.

It is not enough to go to bed and assume automatic protection for international works. The Court in the case of *Microsoft Corporation v. Franike Associates Ltd* (2011) LPELR-CA/L/573/2008 held that for the purpose of an infringement litigation an international owner of copyright must obtain a certificate from the Nigerian Copyright Commission stating that its home country is a signatory to the relevant international treaties such as the Berne Convention. And by section 12 of the Constitution, such treaties must have been ratified.

COPYRIGHT INFRINGEMENT

Copyright infringement takes place when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the express permission of the copyright owner. Copyright infringement can therefore be said to be any unauthorized use of copyrighted material.

In *Adenuga v. Ilesanmi Press* (1991) 5 NWLR (Pt. 189) 82, it was stated that Copyright, according to section 11(1) of the Act, would be infringed by any person who, without the license of the owner of the copyright, did or caused any other person to do, an act, the doing of which was controlled by copyright.

According to the Court in *M.C.S. (Nig.) Ltd./Gte v. Adeokin Records* (2007) 13 NWLR (Pt. 1052) 616 Infringement of copyright interests, like trespass, is actionable per se. Thus, in action for infringement of copyright, damages are at large and it is not necessary to prove actual or specific damages.

In *Multichoice (Nig.) Ltd. v. M.C.S.N. Ltd.Gte.* (2020) 13 NWLR (Pt. 1742) 415, the court stated that there are five classes of persons who or which can institute an action, either personally or in a representative capacity, in respect of breach of copyright in Nigeria. They are:

- (a) Owner;
- (b) Assignee;
- (c) Exclusive licensee (section 16);

A person carrying on the business of negotiating, granting licences, collection and distribution of royalties for not more than fifty owners of copyright (section (d) 17); and

- (e) A collecting society (section 39).

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