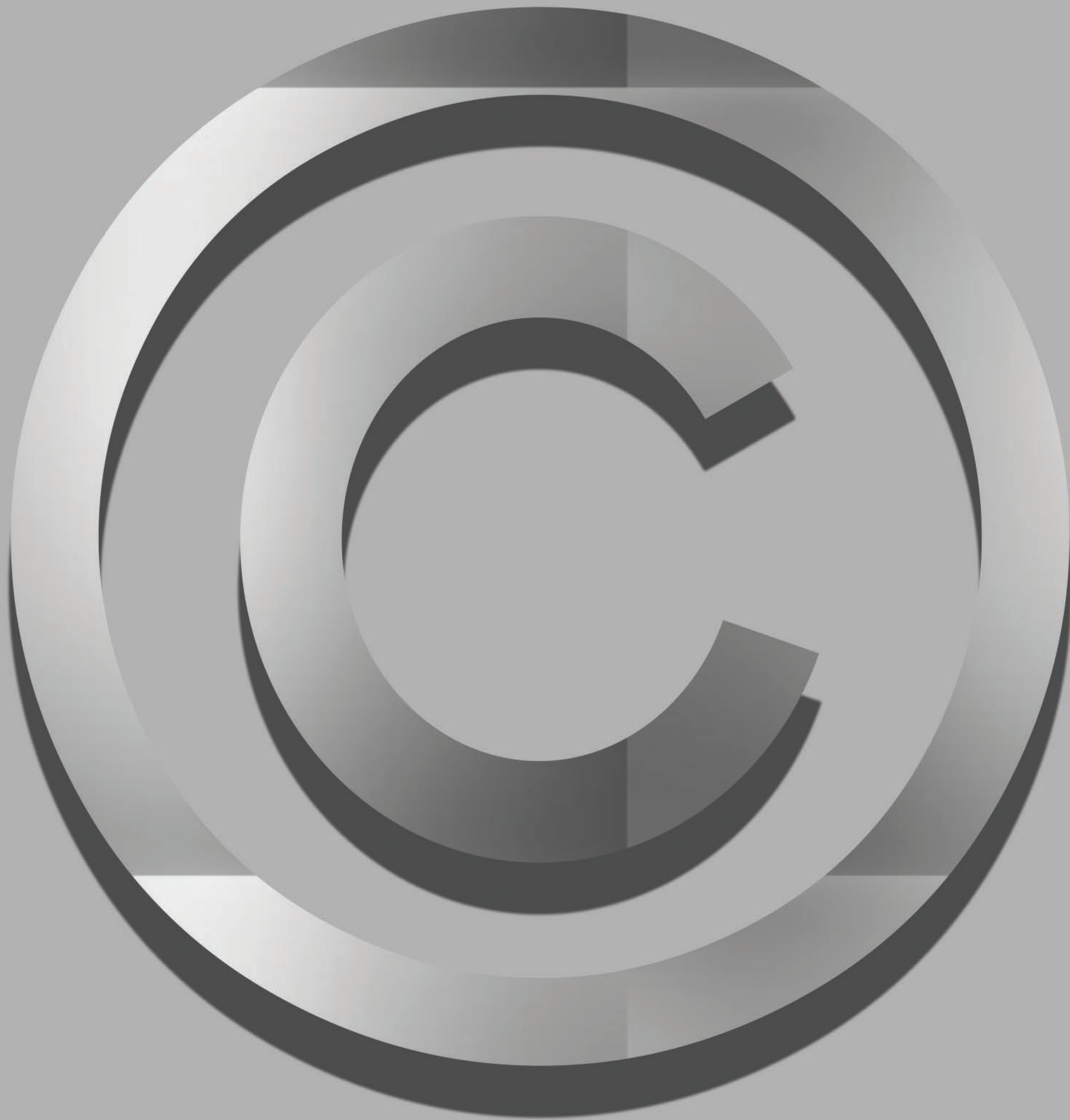


COPYRIGHT 101



INTRODUCTION

Copyright refers to rights that an author has in a created work. Every author seeks to exploit their work and the right to exploit such work or derivatives thereof are granted exclusively to the author/creator of that work. Copyright is codified and in Nigeria, the principal legislation is the Copyright Act.

BRIEF HISTORY

Copyright law was born in the wake of a technological revolution – the invention of print in Europe - which enabled the mass dissemination of information². In that age and as it is now, information was crucial and a British law like the Licensing of the Press Act of 1662³, prevented the printing of “seditious, treasonable and unlicensed Books and Pamphlets” and the regulation of Printing and Printing Presses. Literary advancement and Free Thought saw that such laws were repealed, as censorship of print materials doggedly stifled growth in literacy. Consequently, the Statute of Anne⁴ became the first iteration of modern day copyright laws with the long title of the Act reading as follows: “An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the

Over time, the United States of America, Denmark and other nations would go on to codify copyright laws/ordinances but there was a need for uniform copyrights protection, that would bind all signatories to the agreement. This need birthed the Berne Convention for the Protection of Literary and Artistic Works, which was concluded and adopted on September 9, 1886⁵ (Nigeria became a signatory on September 14, 1993). The noteworthy gains of the universal system created by the Convention is the recognition that copyright protection is free of any formality⁶ and the minimum rights that must be accorded each work. Nigeria, being a former colony of Great Britain received the English Copyright Act of 1911, which continued to apply until 1970⁷, when the Copyright Act was promulgated.

The Copyright Act imbibes the gains of the Convention as it does not mandate registration of a work as a prerequisite for copyright protection, however, as a means of maintaining a comprehensive database, the Nigerian Copyright Commission continues to encourage authors to register their works with the Commission.

Nigeria is also a signatory to the following notable international treaties, as they relate to copyright protection:

- Universal Copyright Convention (UCC)
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)
- Convention Establishing the World Intellectual Property Organization Convention (WIPO Convention)
- Agreement on Trade Related Aspect of Intellectual Property Rights (TRIPS) within the Framework of GATT
- WIPO Performance and Phonograms Treaty (WPPT)
- WIPO Copyright Treaty

PROTECTED RIGHTS

The Copyright Act⁸ provides that literary works; musical works; artistic works; cinematograph films; sound recordings; and broadcasts are eligible for protection. However, for these works to be protected, the expression of the works must be original and in a fixed medium. For Literary, music, or artistic works, the protection lasts throughout the lifetime of the author and a further 70 years following the demise of the author (70 years from the end of the year the work was published in cases where the author is a government). The above term varies for cinematograph films, sound recordings and broadcasts, which lasts for 50 years from the end of the year in which the respective work was published, made or took place. The protection afforded to a work grants the author of such work, the right to exploit the works for economic or artistic gain, including the rights to

- Claim
- Reproduce
- Publish
- Perform
- Produce, reproduce, perform or publish any translation
- Make any cinematograph film or record in respect of the work
- Adapt
- Distribute for commercial purposes and “Broadcast”⁹ the work.

The above rights can be grouped into two broad classes, namely:

i. MORAL RIGHTS

These rights recognize the embodiment of the author's skill, experience, knowledge and person in the work created and posit that such embodiment continues to reside in the work. Article 6 of the Convention captures moral rights as follows

"Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation"

These aforementioned rights are also recognized under the Copyright Act¹⁰ and the Act, without mincing words, states that these rights are in perpetuity, can neither be transferred to another party nor be taken away by expiration of time.

ii. ECONOMIC RIGHTS

The primary aim of copyright laws is stop all other persons, save the author, from making various uses of the work. This and other derivative rights are classed as economic rights, in that they are privileges that come from the ownership of a created work¹¹. These set of rights promote the production and dissemination of protected works. As earlier listed, they range from the rights to reproduce the work to the right to distribute for commercial purpose or broadcasting the work to the public.

INFRINGEMENT OF COPYRIGHT

Infringement of copyright occurs when a person (natural or legal) who is not an author of a work, goes ahead to make use of said work in any manner that violates the rights of the author, said violation being without the permission of the author¹². In Nigeria, infringement extends to the importation, possession of copyrighted work and permitting a public place or business to be used for the violation of a copyright and generally the law is firm with the unlicensed usage of copyrighted works, save in situations of fair dealing.

FAIR DEALING

Article 9 of the Convention provides member nations the leeway to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. This is the doctrine of Fair dealing and it is enshrined in the Third Schedule of the Copyright Act.¹³ Therein, persons are allowed to use copyrighted works for research purpose, private use, criticism/review or the reporting of current events, parodies and caricatures amongst other uses exhaustively listed under the Copyright Act (where such use is public, the author shall be credited properly).

REMEDIES

The Copyright Act offers redress to any creator who has had their copyright violated, by way of criminal and/or civil litigation. Notwithstanding any contrary law, seeking redress by both criminal and civil actions before the Federal High Court and in respect of the same infringement, is permissible under the Copyrights Act¹⁴.

Civil remedies available to an aggrieved author include

- i. Applying for an Order for Inspection of a premises believed to be used for violating a copyrighted work and the seizure of any such infringing work found at the premises¹⁵;
- ii. The right to deem any infringing copy of the work found, as belonging to the aggrieved author and account for profits in respect of the infringement¹⁶;
- iii. Applying for an injunction restraining the other party from carrying out any such act that violates the author's copyright or will dispose of any evidence which may prove the infringement;
- iv. An award of damages for loss suffered by the violation of the author's rights, as well as any other remedies the court may deem fit to award in the circumstance.
- v. Sending Cease and Desist letters to the infringer and/or copyright violation notice and seeking amiable settlement of an infringement.

Upon complaint by an aggrieved author, criminal action may be instituted, as copyright violation bears criminal liability and if found guilty of an offence under the act, the violator is liable upon conviction to a fine not exceeding ₦1000 (One Thousand Naira Only) for every copy of the infringed work or a term of imprisonment not exceeding five years, or both.

CONCLUSION

In summary, the Nigerian framework for copyright protection suffices and whilst there is room for expansion and adoption of recent globally acceptable standards of protection, the Copyright Act does its best to afford Nigerian authors and creators the basic intellectual property protection needed to promote growth in works protected by copyright.

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