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Review

Evaluating International Legal Frameworks for Copyright Protection

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The increasing number of creators who publish their works has led to an increase in copyright violations and a pressure on copyright legislation. It is herein argued that as copyright becomes prohibitive, social norms, domestic cultural and economic diversity consideration as well as the values of the copyright holder tend to dominate so that using domestic norms to generate international norms would more easily permit attention to issues raised by new technology, and can thus supply the dynamism missing from classical public international law making. The generation and distribution of knowledge should conventionally be viewed as the central purpose of the grant of copyright protection. This is because copyright is an incentive that, properly calibrated, can positively affect the creation and availability of knowledge. Also, canvassed herein is the need for an upward review of copyright term to afford copyright holders and their heirs more time to reap the fruits of their efforts. Such review will at the same time boost the economy of a nation. The Private international litigation, if configured to reduce application of purely national norms, might make a beneficial contribution to internationalization in ways that are dynamic, more balanced, and more respectful of national differences. The Berne Convention must therefore, seek to balance two competing objectives: providing copyright protection on an international scale, and a respect for cultural and economic diversity. It is submitted that since the Berne Convention, the world has greatly changed giving rise to the need for an upward review of copyright duration. The purpose of the Copyright term extension is to ensure adequate copyright protection for copyrighted works by extending the term of copyright protection for at least an additional 20 years.

Key words: Copyright, convention, protection, right, holder, signatory, use, fair.

INTRODUCTION

A copyright is a legal authority assigned to the author of a literary work in order to protect his intellectual product till such a time as fixed by the law within which he is to enjoy a sole right to make pecuniary gains or advantage from his intellectual exploits. Moreover, international copyright is an automatic international right that gives the creators of literary, dramatic, musical and artistic works the right to control the ways in which their material may be used. The concepts of property and copyright law are complex. While Copyright does not create property per se, there is a belief that there is property in creative works. Copyright rather creates a set of exclusive rights in the holder who decides whether his or her work may be copied or transferred to an audience within permissible range of time. The time fixed by the law acts as the life span of the copyright at the end of which it expires. The implication of expiration of copyright is that the door of accessing the product of the copyright is thrown wide open to all corners.

The concept of copyright is based on the understanding

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that a labourer is worthy of his wages. There is, therefore, a basic correlation between work and wages. Hence a person who has laboured or worked to produce an intellectual property in a literary form ought to have a sole enjoyment of the benefits accruing from his work. This conception is the basic thing that founded the copyright legal regime. The problem faced by copyright owners relates sorely to the covetousness of deviants in the human society who enjoy reaping the benefits of intellectual exploits of others at the expense of the copyright owners. The international copyright legal regime is a conscious attempt at conferring on copyright owners a wider protection within the territories of state parties to a copyright treaty or convention. By virtue of copyright legal regime persons not directly connected with the production of the original literary work are forbidden from making a copy or copies of the work in any form or by any means in order to allow the copyright owner to benefits maximally from his intellectual investment. The intellectual investment is technically known in the layman's parlance as "brain work". It is indeed a realistic assumption because there is the employment of the central nervous system especially the brain in the production of every literary work. The mental energy dissipated, the stress undergone and the financial burden borne in the production of intellectual work justify the concept and application of the copyright in modern civilization.

In international law copyright is protected with the motive of making the producer of a literary work to benefit from his mental exploits which translated into a material form to benefit the human society in one area or the other. Several treaties create international copyright law. According to B.A Safrath:

International copyright has been created through several treaties allowing creators to have copyright protection in any of the countries that have signed the treaties. The treaties were created through several organizations, including the Berne Convention, the World Intellectual Property Organizations and the Universal Copyright Convention[1].

The treaties that create law on copyright law aim at the universal protection of the copyright. However, the element of universality of copyright protection extends to international conglomerate of states that sign a particular copyright treaty. This is in tandem with the general position of international law that treaties are binding only to the states that enter into it. The application of a treaty principle to any issue in international axis, cannot therefore, be imported outside the contextual limit of the membership of the organization that produced the treaty. For instance, the World Intellectual Property Organization Copyright Treaty of 1996[2] limited the enjoyment of copyright protection to the member states which ratified or acceded to the treaty. These member states are technically known as contracting parties.

The desire of the contracting parties is to develop and maintain the protection of the rights of authors in their literary and artistic work in a manner as effective and uniform as possible[3]. Moreover, it aims at introducing new international rules and clarifying the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economics social, cultural and technological developments. The WIPO copyright treaty also protects the arrangements and selection of materials in databases. Prior to the WIPO copyright treaty, the Berne Convention for the Protection of Literary and Artistic Works of 1886 governed matters and issues relating to copyright which could be best described in its original form as the right of the author. The Convention requires its signatories to recognize the copyright works of others from other signatory countries[4]. The protection of the Convention also applies to architectural works situated in a signatory country[5].

Moreover, the Convention approves of signatory countries authorizing fair uses of copyrighted works in other publications and broadcasts. The above provision, it is submitted, is a consumer protection strategy. However, the consumer protection is largely limited to that of fair uses and to no other use. Even though this is a kind of flaw in the entire treaty, it is, however, a step in the right direction in sending the message home in a clear format that the consumers should be able to make a fair use of purchased products. It is to be noted that the Universal Copyright Convention of 1952 the brain child of the United Nations Educational Scientific and Cultural Organization (UNESCO) fine- tuned this area in the Berne Convention[6].

The international copyright system, as classically established by the Berne Convention for The Protection of Literary and Artistic Works (1971), intruded, although minimally on national copyright policy making. The core issues motivating the conclusion of the Convention were basic protection for authors against rampant piracy and protection for the works of foreigners (Ricketson and Ginsburg, 2005). To achieve these ends, the treaty is relatively respectful of national policy choices. Under the Berne Convention, nations retained a great deal of flexibility to pursue local policy objectives through the construction of distinct national systems of copyright law. This flexibility was made possible by a number of features of the public international copyright system. The international system was primarily a codifying device, where substantive norms were applied internationally only after some positive experiment in a number of countries' national laws. As a result, international instruments tended not to impose radically new obligations on signatory countries. Therefore, the classical international system was relatively lax on substantive levels of protection, and quite deferential to national autonomy. The basic principle of territoriality underlying the Berne Convention was also used by

national courts to help limit external influence on copyright law making. The principle of territoriality is capable of a wide range of interpretations, as is well known by scholars of private international law. However, national courts applied their conflicts laws or private international law in ways that substantially minimized the influence of foreign or international law. In particular, most national courts did not permit adjudication of foreign copyright claims (Austin, 1997). Courts either found no jurisdiction over such claims or assumed that the dispute was subject to local law. And there was almost no discussion of the principles according to which to localize trans-border disputes and thus wrestle with competing applicable national laws. As a result, there is no judicial exploration of the circumstances where a foreign state might have an interest in getting its copyright laws applied in the trans -border setting and there is little or no need to consider foreign copyright laws. There is, therefore, minimal engagement by the municipal courts with foreign copyright laws.

REVIEW OF COPYRIGHT AS A REMEDIAL MEASURE UNDER INTERNATIONAL LAW

Copyright law has been improved upon by international treaties in the past decades. Nevertheless, complaints abound that copyright industry groups and corporate copyright owners have sought and too often obtained extremely strong and overly long copyright protections that interfere with downstream creative endeavours and legitimate consumer expectations. The regulation of copyright to the extent that it creates a no- go area for others could makes it difficult, and sometimes impossible, for a wide range of creativity that any free society would legally allow to exist. This reveals the need for a review of copyright as a remedial measure to counteract or deter overreaching rights by copyright owners.

In the view of Patry (2012), the owners in question who maintain the copyright industry may not run actual losses when their works are made more popular by the promotion of a wide range distribution of their works by whatever available means. He also draws upon insights from the field of cultural economics to explain why copyright law does not accomplish the often-stated objective of promoting creative work as effectively as is commonly assumed (pp. 14-29). In his own contribution, Mazzone (2011, pp. 14-29) maintains that there are multifarious ways that people and firms in a wide variety of settings, unilaterally claim entitlements beyond what copyright law provides. He considers these unwarranted claims of rights to be a form of fraud, referred to as ‘copyfraud,’ for which new penalties need to be devised.

It is important to review a substantial shortening of the duration of copyrights (Patry, 2012, pp. 189-201). Presently, for individual authors, copyright would last for the life of the author plus fifty years, and for corporate-authored or anonymous works, copyright terms were set at seventy-five years from the first publication. This conforms with the international mandatory minimum established by the Berne Convention for the Protection of Literary and Artistic Works (1971, Article 7).

In 1998, the United States Congress extended their copyright terms by enacting the Sonny Bono Copyright Term Extension Act (CTEA)[7]. This legislation was, in part, in response to the twenty-year extension of copyright terms in the European Union.[8] The overwhelming majority of copyrighted works, such as books and films, have relatively short commercial lives and copyright terms should reflect this reality. Excessively long terms, according to Patry (2012) impose transaction costs on others, provide windfalls to rights holders, and inhibit the creation of new works based upon expression from earlier works. The United States committed itself by treaty to the life-plus-fifty-year Berne minimum term (Berne Convention for the Protection of Literary and Artistic Works, 1971, Article 7(1)). This minimum term is also required by the Agreement on Trade-Related Intellectual Property Rights (TRIPs) (1994), to which the United States is bound as a member of the World Trade Organization (WTO). Thus, the prospects for legislation to shorten the duration of copyrights seem exceedingly dim, at least in the near future and probably beyond that. The Berne and TRIPs treaties would not, however, forbid adoption of certain measures that could mitigate problems caused by excessive copyright terms. The United States could, for instance, decide to shorten copyright durations for U.S. authors without violating international treaty obligations. The fair use doctrine could enable reuses of copyright works that have become “orphans” either because their owners are unknown or because the owners cannot be found after a reasonably diligent search (Jennifer, 2013). It is submitted that fair use should enable reuses of commercially inactive works in the later years of their copyright terms, even if the authors of the works are unknown (Patry and Richard, 2004; Hughes, 2003; Joseph, 2002). It should be noted that the foregoing expression is not meant to prejudice the prior idea of this research to the effect that there should be an upward review of copyright term. It is rather aimed at exposing the two sides of the same coin.

Moreover, it is imperative to restore to international copyright law certain obligations on the part of copyright owners who claim rights in their works in order to enjoy the benefits of legal protections. Historically, obligations such as placing copyright notices on publicly disseminated copies of protected works and registering copyright claims have been known as ‘formalities’. United States law, for instance, retained the registration-to- sue requirement for U.S. authors. It eliminated this requirement for non-U.S. authors[9]. These changes had to be made to enable the United States to join the Berne Convention, which provides that “the enjoyment and the exercise of . . . rights shall not be subject to any formality (Berne Convention for The Protection of Literary and

Artistic Works, 1971, Article 5(2))." However, there is nothing in the Berne Convention which forbids a national legislature from imposing formality requirements on its own nationals. It just cannot impose them on foreign nationals. Many core copyright industries players already register claims of copyright and put notices on copies distributed to the public. As long as registration is simple and cheap, individual authors should not find it onerous.

The benefits of restoring formalities would be numerous. Firstly, it would provide much-needed information about works for which authors truly want copyright protections. Secondly, it would likely facilitate licensing. Thirdly, it would breed more respect for copyright law because the current law's promiscuous ubiquity runs counter to common sense and is economically unnecessary and inefficient. In today's world, in which as Patry (2012, p. 204) observed, the number of creators has greatly increased, formalities allow those authors who wish to signal their desire for such protection to do so and allow those authors who choose not to comply with formalities to enable freer uses. Fortunately, interest in restoration of formalities is growing.[10] There is thus some reason to be optimistic that this reform of copyright law will mature with time. Nevertheless, one of the main complaints about copyright today is that it is linked with a property right, which implies that "owners" have the right to exercise exclusive dominion over protected work. Rights holders should be actively concerned about finding ways to get compensated for the use uses of their works by others' rather than trying to exercise a measure of control over their works, which is impossible in our present day digital networked environments.

There are four ways in which copyright owners can be compensated (Samuelson, 2012). The first is by receiving payments as a result of one-to-one contract negotiations, as is common in copyright industries. The second is by statutorily created compulsory licenses for particular types of works and uses. The recording industry has been a beneficiary of such a license scheme that authorizes the re-recording of musical compositions for statutorily fixed fees. A third is by the imposition levies on recording media. A fourth option is by collective licensing (Gervais, 2011). In many countries, collective societies issue licenses to users who wish to make certain kinds of uses of certain kinds of works, for example, to license public performances of music in bars and restaurants (Besen et al., 1992). The society collects money from users and then pays out to the members, some share of the revenues collected.

THE SUFFICIENCY OF COPYRIGHT DURATION UNDER INTERNATIONAL LAW

The Berne Convention states that all works except photographic and cinematographic shall be copyrighted for at least 50 years after the author's death, but parties are free to provide longer terms[11]. For photography, the Berne Convention sets a minimum term of 25 years from the year the photograph was created, and for cinematography the minimum is 50 years after the initial release, or 50 years after creation in a case where the author is unknown[12], notwithstanding whether the author is deliberately anonymous or works under a pseudonym. However if the identity of the author later becomes known, the copyright term for known authors, that is, 50 years after death applies (Berne Convention for The Protection of Literary and Artistic Works, 1971, Article 7). Even though the Berne Convention states that the copyright law of the country where copyright is claimed shall be applied, Article 7(8) states that "unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work"[13].

It is submitted that there is need for an upward review of copyright duration. The purpose of the Copyright term extension is to ensure adequate copyright protection for copyrighted works by extending the term of copyright protection for at least an additional 20 years. The reasons for this include the need to make the copyright terms to conform with the prevailing worldwide standard of promoting investment and dividends; the insufficiency of the copyright term to provide a fair economic return for authors and their dependents; and, the failure of the copyright term to keep pace with the substantially increased commercial life of copyrighted works resulting from the rapid growth in communication technology. Developments over the past 50 years have led to a widespread reconsideration of the adequacy of the life-plus-50-year term based on the above-stated reasons. Among the main developments is the effect of demographic trends, such as increasing longevity and the trend towards rearing children later in life, on the effectiveness of the life-plus-50 term to provide adequate protection for copyright holders and their heirs. In addition, unprecedented growth in technology over the last 50 years, including the advent of digital media and the development of the various countries' National Information Infrastructure and the Internet, have dramatically enhanced the mercantile lifespan of creative works. Most importantly, though, is the growing international movement toward the adoption of the longer term of life-plus-70-year.

Fifty years ago, the Permanent Committee of the Berne Union began to re-examine the sufficiency of the life-plus-50-year term. Since then, a growing consensus of the inadequacy of the life-plus-50- year term to protect creators in an increasingly competitive global marketplace has led to actions by several nations to increase the duration of copyright. Of particular importance is the 1993 directive issued by the European Union, which requires its member countries to implement a term of protection equal to the life of the author plus 70

years by July 1, 1995.[14] The reason this is of such importance is that the European Union Directive also mandates the application of what is referred to as the rule of the shorter term.[15]This rule permits those countries with longer copyright terms to limit protection of foreign works to the shorter term of protection granted in the country of origin. Thus, in those countries that adopt the longer term of life-plus-70-year term, another country's works will forfeit 20 years of available protection and be protected instead for only the duration of the life-plus-50-year term afforded under that country's law.

It is to be noted that in July, 2004, the Council of Europe's Cybercrime Convention came into force as the first binding International treaty in the field of Cybercrime (Lloyd, 2008). Its primary aim is to fight cybercrimes and urges parties to the Convention to use their criminal law justice system to punish cybercrimes such as hacking and child pornography. It is therefore strongly submitted that other regional blocs should use it as a model to fine tune the copyright laws of the states in that regional blocs. However, the issue of copyright duration is apparently missing in its contents. Nevertheless, the protection it affords to copyright owners is appreciated at the reflection of its main thrust which is to forge a common criminal policy in order to smoothly facilitate the fight against computer-related crimes across national borders. This serves as remarkable deterrence to cybercriminals in general and pirates in particular. This in turn will undoubtedly improve the economic wellbeing of copyright owners on one hand and the economy of a state of the copyright owners through taxation on the royalties accruing from copyright.

The upward review of copyright duration, therefore, helps a country's national economy. The fact is that a country whose exports are more of copyrighted intellectual property reaps a huge percentage of profits. In fact, a country whose intellectual property is among its largest export and whose copyright industries are creating more jobs than the rate at which other industries do, stands to lose a significant part of its international trading advantage if the said country's copyright laws do not keep pace with emerging international standards. Given the mandated application of the rule of the shorter term under the European Union Directive, the works of any other country that adopts the duration of the life-plus-50-year term will fall into the public domain twenty years before those of European trading partners, thereby undercutting the country's international trading position and depriving copyright owners from the said country of two decades of income they might otherwise have. Similar consequences will follow in those nations outside the European Union that choose to exercise the rule of the shorter term under the Berne Convention and the Universal Copyright Convention.

Again, adoption of the Copyright term extension will ensure fair compensation for the copyright holders whose efforts sustain the intellectual property sector of the economy by allowing copyright owners to benefit to the fullest extent from foreign uses. This will at the same time ensure that a country's trading partners do not get a free ride from their use of its intellectual property[16]. Now, it does appear that at some point in the future the standard will be life plus-70-year term. But, the question is at what point in time will the world move to this stage?

PROTECTION OF COPYRIGHT BY DOMESTIC LAW: CASE STUDY OF NIGERIA

In Nigeria the term 'copyright' is not expressly defined under the Copyright Act (Laws of the Federation of Nigeria, 2004). However, the meaning of the term has been reflected in the provisions of section 6 of the Copyright Act, which provides that "copyright in Nigeria of an eligible work is the exclusive right to control, to do or authorise the doing of any of the acts restricted to the copyright owner". In Nigerian, such works include musical works, literary works, cinematograph films, artistic works, sound recordings, and broadcast (Laws of the Federation of Nigeria, 2004, Section 1(1)). The protection offered by copyright is available to both published and unpublished works of authors. The owner of a copyright in Nigeria has the exclusive right to do any of the following (Laws of the Federation of Nigeria, 2004, Section 10(1)): reproduce the work, prepare other works based upon the work , distribute other copies of the work by sale or other transfer of ownership or by lease, perform the work publicly, display the copyrighted work publicly and authorise others to do all the above. Copyright is therefore, possessed as a 'property' and the owner is known as a copyright holder[17]. The criteria for the protection of copyright in Nigeria include the requirement of fixation, originality of the work, reference to the author, reference to the country of origin.

Fixation is the physical form in which the work is expressed. It is only when a literary, musical or artistic work "has been fixed in any definite medium of expression 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", that it becomes eligible for copyright protection under the law (Laws of the Federation of Nigeria, 2004, Section 1(2b)). However, such works intended to be used as a model to be multiplied by an industrial process is not eligible for copyright protection (Laws of the Federation of Nigeria, 2004, Section 1(3)). The fixation requirement is of evidentiary value as works that are not fixed in any medium would be difficult to serve as evidence in order to compare with the infringing copy in a court of law.

The requirement of originality, entails that sufficient efforts must have been put in the making of the work as to give it an original character. Here, copyright only covers the particular form or manner in which ideas or

information have been manifested, that is, the form of material expression. It does not cover the actual idea or techniques contained in the copyright work[18]. The work must have been created by a person who is a citizen of Nigeria or domiciled in Nigeria, and in the case of a body corporate, must have been incorporated under the Laws of the Federation of Nigeria (2004, Section 2(1)(b)). Foreign works also enjoy copyright protection in Nigeria, but in addition to satisfying the foregoing requirements, the country from where the work emanates must be listed in the 1972 Copyright Reciprocal Extension Order or any other order made pursuant to section 33 of the Copyright Act; and the author must either be a citizen of or domicile in one of the listed countries.

COPYRIGHT ENFORCEMENT MECHANISM: A COMPARATIVE ANALYSIS

The enforcement of copyright is necessary to guide against its infringement. It involves pre- infringement and post-infringement measures to manage a likely or actual copyright infringement. Copyright infringement is the unauthorized use of works under copyright, infringing the copyright holder's "exclusive rights", such as the right to reproduce, distribute, display or perform the copyrighted work, spread the information contained in copyrighted works, or to make derivative works. It often refers to copying an "intellectual property" without written permission from the copyright holder, which is typically a publisher or other business representing or assigned by the work's creator.

Copyright infringement is often associated with the terms piracy and theft. Although piracy literally means brazen high-seas robbery and kidnapping, it has a long history of use as a synonym for acts which were later codified as types of copyright infringement. The term "piracy" has been used to refer to the unauthorized copying, distribution and selling of works in copyright. Article 12 of the 1886 Berne Convention for the Protection of Literary and Artistic Works uses the term "piracy" in relation to copyright infringement, stating that "Pirated works may be seized on importation into those countries of the Union where the original work enjoys legal protection." Article 61 of the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights requires criminal procedures and penalties in cases of "wilful trademark counterfeiting or copyright piracy on a commercial scale." Piracy traditionally refers to acts of copyright infringement intentionally committed for financial gain. Theft is more strongly hyperbolic, emphasizing the potential commercial harm of infringement to copyright holders; however, not all copyright infringement results in commercial loss, and the United States Supreme Court has ruled that infringement does not easily equate with theft.

Here, comparative analysis shall be made of the legal regimes[19] of copyright enforcement in Nigeria, Philippines, U. S. A. vis-a-vis the operation of Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Generally, the enforcement of copyright is the responsibility of the copyright holder (Waelde and Edwards, 2005). This means that the enforcement of copyright, particularly in courts of law, takes the form of private litigation. But, in Nigeria, the prosecution of crimes, including copyright related crime is the responsibility of the state through the Attorney General of the Federation (Constitution of the Federal Republic of Nigeria, 1999, Item 13, Part 1, Second Schedule, Section 174).

In the U.S., copyright infringement is sometimes confronted via lawsuits in civil court, against alleged infringers directly, or against providers of services and software that support unauthorized copying. For example, major motion-picture corporation MGM Studios filed a suit against P2P File-Sharing Services, Grokster and Streamcast for their contributory role in copyright infringement (McDonald and Wasko, 2008). In 2005, the Supreme Court ruled in favour of MGM, holding that such services could be held liable for copyright infringement since they functioned, and indeed wilfully marketed themselves, as venues for acquiring copyrighted movies. This is in line with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) (1994, Article 50) which requires that signatory countries should enable courts to remedy copyright infringement with injunctions and the destruction of infringing product and award of damages.

In the Philippines, a person who seeks to bring an action for copyright infringement has several options. In addition to civil procedures in which a person files a claim with the regular courts, the IPC provides administrative procedures through which claims may be filed with the Intellectual Property Office. A claim may be filed through both channels concurrently, and an action can commence by resort to one of the procedures. However, this resort does not prejudice the other procedure, thus suggesting that a person may recover twice. A person who infringes a copyright in the Philippines may face criminal penalties. These penalties apply to a party infringing any rights under the copyright provisions, as well as to a party aiding or abetting such infringement (Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), 1994, Article 50, 168-169). This provision goes beyond TRIPs, which only requires that criminal punishment apply to copyright piracy on a commercial scale (Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), 1994, Article 61). The IPC significantly increases the criminal penalties for copyright infringement. Under the Philippines old law (Bureau of Patents, Trademarks and Technology Transfer, 1997), the maximum fine for infringement was 2000 Philippine pesos (approximately fifty U.S. dollars). Under the IPC, the maximum fine is 150,000 Philippine

pesos (approximately 3700 U.S. dollars) for a first offense, but up to 500,000 Philippine pesos (approximately 12,300 U.S. dollars) for a second offense, a maximum of 1.5 million Philippine pesos (approximately 37,000 U.S. dollars) for a third offense, and 1.5 million Philippine pesos for each subsequent offence. Under the Philippines old law, an infringer could receive a maximum of one year in prison, but under the IPC, a court may impose a sentence of up to three years for the first offense, up to six years for the second offense, and up to nine years for the third offense.

However, in Nigeria, any of the following acts is an offence punishable by fine or a term of imprisonment (Bureau of Patents, Trademarks and Technology Transfer, 1997, Sections 20 and 21): manufacture or importing or possessing equipment for manufacture of an infringing copy of copyrighted work[20]; trading in and possessing, other than for private/domestic use, infringing copy[21]; unauthorised distribution of literary, cinematographic, sound recording and broadcast works[22]; trading in works in violation of Anti-Piracy measure[23]; importation and possession of works in violation of Anti-Piracy[24] ;unauthorised possession, reproduction and counterfeiting of Anti-Piracy device[25]; failure to keep, or making of false entry in statutory register or knowingly tendering or producing same[26]. By this comparative analysis, it could be seen that Nigerian's copyright criminal jurisprudence provides for little or no serious deterrence for copyright infringements.

In addition to setting penalties for copyright infringement, the IPC establishes a term of copyright protection that meets the minimum term required by TRIPs. The IPC measures the period of copyright protection based on the life of the author, granting protection throughout the author's life and for fifty years after the author's death. This is the same thing with Nigeria and U.S.A. By enacting the IPC, the Philippines give the same intellectual property protection to foreign copyright owners that it gives to its own domestic copyright owners. The IPC provides foreign copyright owners the same exclusive rights as domestic copyright owners as required by the "national treatment" provision of TRIPs. TRIPs also require that a World Trade Organisation (WTO) member extend Most Favoured Nation (MFN) treatment to other WTO members (Agreement on Trade-Related Aspects of Intellectual Property, 1994, Article 4)[27]. The IPC does not include an MFN provision, but it does entitle foreign copyright owners to additional benefits as required by any treaties, conventions or agreements relating to intellectual property to which both the country of the foreign copyright owner and the Philippines are parties. Foreign works also enjoy copyright protection in Nigeria, but the country from where the work emanates must be listed in the 1972 Copyright Reciprocal Extension Order or any other order made pursuant to section 33 of the Copyright Act; and the author must either be a citizen of or domicile in one of the listed countries.

In sum, the IPC incorporates provisions for copyright protection that are similar to those in U.S. law and largely conform to TRIPs requirements. The IPC protects computer software as copyrightable subject matter, but permits recompilation of software in cases of fair use. In Nigeria, the idea of computer software is not comprehensively dealt with because at the time of making the law, the present day computer world was not envisaged as it presently stands, hence, the need for review of the law. In addition, the IPC, unlike the Nigeria's Copyright Act, strengthens more the criminal penalties for copyright infringement, and provides foreign copyright owners with the same treatment that it extends to Philippine nationals.

PROTECTION OF COPYRIGHT FROM PIRACY AND PLAGIARISM UNDER INTERNATIONAL JUDICIAL FORUM

The term "piracy" has been used to refer to the unauthorized copying, distribution and selling of works in copyright (Panethiere, 2005). On the other hand, plagiarism is the failure to abide by scholarly standards for citation of sources. These standards assure us that information can be verified and traced to its source (Snapper, 1999). Thus, in a nutshell, piracy is the infringement of a copyright; whereas plagiarism is the failure to give credit to an author of a work after making reference to part or all of the work. The history of copyright has more to do with piracy than plagiarism. At a basic level, plagiarising the work of another is a form of academic dishonesty and not acceptable in academic circles. It has been described as unethical, illegal borrowing, laziness, or deliberate guile (Addison, 2001). There is dearth of instances of protection of copyright from piracy and plagiarism at the international judicial forum such as the International Court of Justice, but one can easily find same under private international law, using U.S. conflict of law rules as a case study.

Although article 33 of the Berne Convention permitted the referral of disputes regarding compliance with the Convention to the International Court of Justice, this mechanism has never been used (Graeme, 2001). However, since state parties to the Berne Convention have undertaken to accord national treatment to nationals of other Berne members, and accept that their copyright law would provide a basic level of copyright protection as defined by the minimum standards set out in the Convention, the TRIPS Agreement augments these minimum standards, and backs up the obligations with an effective enforcement mechanism for the protection of copyright from piracy and plagiarism. But TRIPS did not alter the basic premise, established in 1886, that private litigation would be resolved by the application of national law (Graeme, 2001). The presumption influences the philosophy and text of the Berne Convention, and it

similarly pervades copyright analysis in U.S. courts. Thus, there is a long-standing, and, until recently, rarely discussed, copyright choice of law rule. Traditionally, and still typically, copyright disputes are resolved in and under the laws of the country in which the act of infringement is alleged to have occurred. This is taken by many courts and scholars to flow from article 5(2) of the Berne Convention, which provides that, "the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed".

Most notably, in *Itar-Tass Russian News Agency v. Russian Kurier,* Inc.[28], the Second Circuit found existing commentary unduly simplified and thus developed a copyright choice of law rule as a matter of federal common law. The court concluded that different laws may apply to different issues in a copyright litigation (Graeme, 2001, pp. 88-92; Willis, 1973)[29]. In particular, the court determined the ownership of the copyright in question by referring to the law of the place with the most significant relationship to the parties and the transaction. This test persuaded the court to attach weight to the nationality of the authors, and the place of first publication, both of which were Russian and Russia, respectively. But, on the separate question of which law applied to determine questions of "infringement," the court concluded that the *lex loci delicti*[30] would apply. This led the court to apply U.S. law to the question of infringement, notwithstanding that Russian law had been applied to determine the ownership of the copyright in question (William, 2000). However, nationality and place of publication may provide little information about the respective prescriptive claims of interested states in a more complex global economy. And the rule of *lex loci delicti* may provide too many *loci delicti* in a digital world where, for example, publication may occur simultaneously in a number of countries. Indeed, under prevailing copyright doctrine, these places can easily be interpreted, in most cases, to include the United States if the digital copy is accessible by persons in the United States[31]. Thus, conventional choice of law doctrine used in private international copyright litigation is problematic on its own terms. And, by insisting upon localization of a multinational dispute within a single territory, traditional private law techniques renounce the ability to contribute to international norm development by fictionalizing international disputes as national in nature. If, instead, courts addressed international disputes in real terms that accounted for the international nature of the dispute, rather than through the fiction of localization, they could contribute to the development of international copyright norms. This contribution could be facilitated by adopting a new approach to choice of law in international copyright cases.

CONCLUSION

International copyright law institutions are reacting to the demands of constant change in seeking to establish lawmaking mechanisms which are dynamic in nature. The classical Berne-inspired model of international copyright lawmaking has come under substantial pressure. Technological advances made copyright-rich countries more sceptical of claims for national variation. The ease with which works can be digitally reproduced and digitally delivered to any location in the world means that international protection is required by producers merely to sustain their domestic market. Respect for national autonomy and cultural diversity has given way to a pervasive concern about offshore pirates operating in countries offering less protection. Thus, copyright law must keep current with the technological and cultural growth that it engenders. This insight glaringly reveals the need for a periodic review of copyright treaties with the aim of updating the treaties in order to effectively match with current trend in technological advancement relating to copyright matters.

Copyright law is an instrument of cultural and information policy (Ginsburg, 2013). As such, it embodies a nation's priorities in establishing its cultural environment, and those priorities vary widely among countries of different social and cultural traditions. According to the former United States' Register of Copyrights, Barbara Ringer, "National copyright laws are a component of local cultural and information policies. As such, they express each sovereign nation's aspirations for its citizens' exposure to works of authorship, for their participation in their country's cultural patrimony". It is submitted, however, as rightly pointed out by the above observation, making national copyright provisions to be subservient to international treaties on copyright like that of the Council of Europe Convention on Cybercrime would significantly uplift the standard of copyright protection globally. In particular, a court faced with an international copyright dispute might not necessarily apply the copyright law of a single state to the contested issues, but instead formulate a rule reflecting the varied national and international interests of the dispute before it[32]. This approach finds conceptual antecedents in a variety of historical settings and falls within what is called the substantive law method of choice of law[33]. The biggest advantages are with respect to what this approach might contribute to the internationalization of copyright law. Using the substantive law method to develop international norms takes advantages of the power of litigation. Like activist WTO adjudication, using domestic litigation to generate international norms more easily permits attention to issues raised by new technology, and can thus supply the dynamism missing from classical public international lawmaking.

However, the substantive law method will achieve this benefit without incurring the costs associated with broad WTO lawmaking. In particular, parties bringing private disputes to courts are likely to reflect much greater diversity than those having input into the conduct of WTO

dispute settlement proceedings (even allowing for the evolving liberal approach by panels to third party involvement). Persons having input to the development of international norms would reflect a more varied set of interests. States would remain free to deviate from multinational standards developed by other countries' courts. Thus, although reference to the practices of other national courts devising international solutions would be encouraged, the facultative nature of this reference would encourage the national experimentation that activist WTO adjudication would threaten. Any harmonization that this approach engendered would be based upon the force of reason, rather than in response to the threat of trade sanctions. A national court decision articulating international standards is more readily subject to legislative reversal, and would thus be more closely linked to the democratic process than is the WTO dispute settlement mechanism. These advantages illustrate the claim of private international lawmaking to an important role in the development of international copyright norms.

Conflict of Interests

The author(s) have not declared any conflict of interests.

REFERENCES

Addison PA (2001). "Academic Misconduct, Definitions, Legal Issues, and Management." Teaching and Learning Forum, School of Accounting, Curtin University of Technology. Available at https://otl.curtin.edu.au/events/conferences/tlf/tlf2001/addison2.html

Trade-Related Aspects of Intellectual Property Rights art (1994). Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 108 Stat. 4809, 1869 U.N.T.S. 299 [hereinafter TRIPs]. 9(1), April 15, Article 50, pp.168-169, Article 61. [hereinafter WTO agreement]. http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm

Austin GW (1997). 'The Infringement of Foreign Intellectual Property Rights.' Law Quart. Rev. 113:321. http://www.jstor.org/discover/10.2307/761428?uid=2&uid=4&sid=21103663656291

Berne Convention for the Protection of Literary and Artistic Works (1971). Paris text, 1161 U.N.T.S. 3 (first concluded in 1886), Articles 5(2):7(1).

Besen SM, Kirby SN, Salop SC (1992). An Economic Analysis of Copyright Collectives, Symposium on the Law and Economics of Intellectual Property. Virginia Law Rev. 78(1)383-411.

Constitution of the Federal Republic of Nigeria as amended (1999). Item 13, Part 1, Second Schedule, Section 174. http://www.draftbillmagazine.com/bill/1999-constitution-of-the-federal-republic-of-nigeria-as-amended-alteration-bill-2012-sb.261

Gervais D (2011). "Keynote: The Landscape of Collective Management Schemes." Columbia J. Law Arts, 34(4). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1946997

Ginsburg JC (2013). "International Copyright: From a "Bundle" of National Copyright Laws to a Supranational Code." 47 J. COPR. SOC'Y 265, 267.Available at http://heinonline.org/HOL/LandingPage?handle=hein.journals/jocoso47&div=12&id=&page=

Graeme BD (2001). "The Development and Incorporation of International Norms in the Formation of Copyright Law." p. 43.Available at http://works.bepress.com/graeme_dinwoodie/13/

Hughes J (2003). "Fair Use Across Time." UCLA Law. Rev. 43:775. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=326980

Jennifer MU (2013). "How Fair Use Can Help Solve the Orphan Works Problem." 27 Berkeley Tech. L.J., Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2089526

Joseph PL (2002). "Copyright and Time: A Proposal." Michigan Law Rev. 101(2). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=305374

Laws of the Federation of Nigeria (2004). Cap C. 28; Sections 1(1), 1(2)(b), 1(3), 2(1)(b), 10(1) Copyright Act. http://www.nlipw.com/wp-content/uploads/2013/07/COPYRIGHT-LEVY-ON-MATERIALS-ORDER-2012.pdf

Lloyd IJ (2008). Information Technology Law, 5th edition, Oxford, p.217. http://www.amazon.co.uk/Information-Technology-Law-Ian-Lloyd/dp/0199588740

Mazzone J (2011) . "Copyfraud and other Abuses of Intellectual Property Law." Stanford University Press, Stanford, California, pp. 14-29. Available at http://www.amazon.com/Copyfraud-Other-Abuses-Intellectual-Property/dp/0804760063

McDonald P, Wasko J (2008). "The Contemporary Hollywood Film Industry." Malden, MA: Blackwell Pub., 344p. http://books.google.com.ng/books/about/The_Contemporary_Hollywood_Film_Industry.html?id=ptBzQgAACAAJ&redir_esc=y

Panethiere D (2005). "The Persistence of Piracy: The Consequences for Creativity, for Culture, and for Sustainable Development", UNESO e-Copyright Bulletin p. 2, July – September. Available at http://portal.unesco.org/culture/en/files/28696/11513329261panethiere_en.pdf/panethiere_en.pdf

Patry W (2012). "How to Fix Copyright." Oxford University Press, 336p. ISBN 13 978-0199760091 Available at http://sydney.edu.au/law/slr/slr_34/slr34_2/SLRv34no2Bowrey.pdf

Patry WF, Richard AP (2004). "Fair Use and Statutory Reform in the Wake of Eldred." California Law. Rev. 92(6). Available at http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1316&context=californialawreview

Ricketson S, Ginsburg JC (2005). International Copyright and Neighbouring Rights: The Berne Convention and Beyond (New York: Oxford University Press, 2nd edn). http://ukcatalogue.oup.com/product/9780198259466.do

Samuelson P (2012). "Is Copyright Reform Possible?". Harvard Law Rev. 126(3). Available at http://www.questia.com/library/journal/1G1-316203665/is-copyright-reform-possible

Snapper JW (1999). "On the Web, Plagiarism Matters More Than Copyright Piracy." Ethics Inf. Technol. 1(2):127-135. Available at http://link.springer.com/article/10.1023/A%3A1010083703905

Waelde C, Edwards L (2005). "Online Intermediaries and Liability for Copyright Infringement." Keynote paper at WIPO Workshop on Online Intermediaries and Liability for Copyright, Geneva. World Intellectual Property Organisation. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1159640

William FP (2000). "Choice of Law and International Copyright." 48. Am. J. Comp. L. 383. https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=48+Am.+J.+Comp.+L.+383&srctype=smi&srcid=3B15&key=e5460ced116b0b023acf45657d106827

Willis LMR (1973). "Depeçage: A Common Phenomenon in Choice of Law", 73 COLUM. L. REV. 58(1973). http://heinonline.org/HOL/LandingPage?handle=hein.journals/clr73&div=13&id=&page=

ENDNOTES

[1]B.A Safrath: "International copyright law" available @http:wwwehow.com/ facts – 6301793 – international copyright last accessed on 14/2/13.
[2]See the preamble to the WIPO copyright treaty.
[3]See Article 4. Writing computer programmes is like writing a text book and as such computer programmes enjoys the protection of copyright as do books and other literary and artistic works. This is an improvement on earlier copyright conventions before the coming into operation of the WIPO copyright treaty.
[4]The Convention provides a copyright protection for a single term based on the life of the author of a literary or artistic work.
[5] See Article 5. These signatory countries are known as members of the Berne Union. See Article 3 of the Convention.
[6] This made countries that disagreed with the Berne Convention to be signatories to the UCC and profit from a multilateral copyright protection.
[7]Pub. L. No. 105-298, § 102(b), (d), 112 Stat. 2827, 2827–28 (1998) (codified at 17 U.S.C.§ 302(a) (2006)).
[8]Council Directive 93/98, Harmonizing the Term of Protection of Copyright and Certain Related Rights, 1993 O.J. (L 290) 9 (EC) (repealed and replaced by Directive 2006/116, 2006 O.J. (L 372) 12 (EU)). The 2006 Directive was amended in 2011 to extend the term of protection for performers and sound recordings to seventy years. *See* Directive 2011/77, 2011 O.J. (L 265) 1 (EU).
[9]*See* Berne Convention Implementation Act, sec. 9, & 411(a), 102 Stat. at 2859.
[10]The University of Amsterdam's Institute for Information Law hosted an international gathering of scholars to discuss reinvigoration of copyright formalities in July 2012. *Post-Graduate Legal Education: International Copyright Law*, INST. FOR INFO. LAW, http://www.ivir.nl/courses/icl/icl-programme.html (last visited February 1, 2013).
[11]Such as the European Union did with the 1993 Directive on harmonising the term of copyright protection. The directive was to the effect that members should review their copyright term to 70 years after the death of the author.
[12]The works of such authors are also described as having become "orphans" either because their owners are unknown or because the owners cannot be found after a reasonably diligent search.
[13] This means that an author is normally not entitled a longer copyright abroad than at home, even if the laws abroad give a longer term. This is commonly known as "the rule of the shorter term". Not all countries have accepted this rule.
[14]Countries such as Belgium, Denmark, Finland, Germany, Greece, Ireland, Spain, and Sweden, Luxembourg, The Netherlands, Portugal, the United Kingdom, Austria, etc., have shown compliance with the European Union Directive. Other countries are currently in the process of bringing their laws into compliance, or are likely to amend their copyright laws to conform with the life-plus-70-year term standard.
[15]This rule may also be applied by adherents to the Berne Convention and the Universal Copyright Convention.
[16]See generally, the speech of America's Senator Orrin Hatch's Introduction of the Copyright Term Extension Act of 1997. Available at www.gogglesearch.com, accessed on February 14, 2013.
[17]In *Oladipo Yemitan v. The Daily Times Nigeria Ltd.*, the court noted that the right of a man to that which he had originally made is an incorporeal right and must be protected.
[18]In *Hollinrake v. Truswell (1894) 3 Ch. 420*, the House of Lords stated that copyright is confined to the expression of such ideas, and that if such expression is not copied then copyright is not English Language, it amounts to infringement, because the law deals with what is known as the birth of the idea and not with the language. The work must have been published, that is, reduced to material form or definite medium, not just an idea – Walter v. Lane [1900] AC, 539, where the House of Lords held that the first ownership of copyright is enjoyed by the author of the work, unless a contract of employment or apprenticeship with a publisher stipulates that it belongs to the employer – See Section 10. A first owner of copyright may however transmit it, or any right therein by Assignment, Will (for any agreed period or over any specified territory) or operation of law – See Section 11. However, in Joseph *Ikhudiora v. Campaign Services Ltd and Anor*, [1986] F.H.C.R. 308, the plaintiff's claim to entitlement to copyright in a work he created in the course of working for the defendant was dismissed by the court and the defendant, the plaintiff's employer was held to be entitled to the copyright in the work.
[19]The four legal regimes include: the Nigeria's Copyright Act, 2004; U. S. Copyright Act, 1976; Intellectual Property Code, 1997 of Philippines and Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994.
[20]Punishment is fine of N1000 per infringing copy or term of imprisonment not exceeding 5 years.
[21]Punishment is fine of N100 per infringing copy or term of imprisonment not exceeding 2 years.
[22]Punishment is fine of N100 per infringing copy or term of imprisonment not exceeding 6 months.
[23]Punishment is fine of N100,000 or term of imprisonment not exceeding 12 months or both.
[24]Punishment is fine of N500,000 or term of imprisonment not exceeding 5 years or both.
[25]Punishment is fine of N50,000 or term of imprisonment not exceeding 5 years or both.
[26]Punishment is fine of N10,000.
[27]Rights MFN treatment means that if a WTO member gives any favour, privilege, advantage, or immunity to the nationals of another WTO member country, it must extend the same such benefits to the nationals of all other WTO member countries.
[28]153 F.3d 82 (2d Cir. 1998).
[29]The court thus recognized the doctrine of *depeçage,* which permits courts to apply the law of one state to one issue in a litigation before it and the law of another state to a separate issue in the same litigation. It thus recasts the choice of law exercise as an effort to select the law applicable to decide an issue rather than a case.
[30]The law of the place where the tort was committed.
[31]See *Allarcom Pay Television Ltd. v. General Instrument Corp., 69 F.3d 381 (9th Cir. 1995),* where performance occurs at place or receipt of satellite transmission; *National Football League v. TV Radio Now Corp., 53 U.S.P.Q.2d (BNA) 1831, 1834–35 (W.D. Pa. 2000),* where defendants originated the streaming of copyrighted programming over the internet from a website in Canada, public performances occurred in the United States because users in the United States could access the website and receive and view the defendants' streaming of the copyrighted material.
[32]To that extent, courts would draw from public international sources, such as the Berne Convention, the TRIPS Agreement, or WTO panel reports and in formulating such rules they would ensure more direct effectiveness of public international copyright law. Opinion may depend in part on the "willingness of national courts to looks to the WTO panel decisions for guidance in evaluating local exceptions".
[33]This substantive law approach can be supported as a matter of conflicts theory: it extends the critique of the formalistic claim that choice of law involves selecting between competing jurisdictions; it recognizes that national legislatures rarely enact laws with an eye to international disputes; and it maps applicable legal rules to the variety of national and international norms that citizens increasingly take to govern their lives.