journals.unizik.edu.ng/index-php/jcpl ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

Copyright Adaptation: A Litmus Test of Oloture Movie

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Abstract

The ingenious publication of a well-researched storyline on Premium Times few years ago birthed the emergence of an acclaimed non-fiction movie - 'Oloture', a Nigerian film inspired by a 2014 trafficking investigation by Premium Times which has welcomed rave attention in Nigeria and nations abroad. The highly celebrated movie mentioned Tobore Ovuorie, the investigative reporter in the appreciation part of the movie. This attitude of the producer, who probably assumed that was enough credit for the labour, skill and judgment expended by the original author of the work, has instigated the original author to claim compensation. The aim of this paper is to x-tray the ownership of the copyright in Oloture as a whole and critically examine copyright law on adaptation. This is achieved through qualitative and doctrinal method of research. These includes sourcing online materials, critically watching the movie Oloture itself, consulting relevant text books and the provisions of Copyright Act in Nigeria. Consequently, the paper recommends prompt registration of content whenever creativity is employed. The paper concludes that adaptation cannot erode the copyright of the original owner of a work.

Keywords: Oloture, Copyright, Adaptation, Author and right.

Introduction

Like any other proprietary right, enforcement of rights is of utmost importance in copyright matters.[1] The intention of the law is to protect the author's labour, skill and judgment expended in the bid of realizing the result of creativity of an original piece of work. This is because the infringement of copyright can lead to loss of income, discourage creativity, retard industrial, economic and cultural growth, as well as result in loss of revenue for the government in the entertainment industry,[2] especially where the creativity is exploited for economic gain by a third party without the license or permission of the original author. Thus, the need to protect these creators from indiscriminate and unrestrained exploitation of the products of their creativity in order to preserve their right to benefit from their labour cannot be over emphasized. These

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[1] Ifeoluwa Ayokunle Olubiyi, 'A Comparative Analysis of Copyright Enforcement Provisions in Nigeria: Maximising the Current Legal Regime' (2014) *NnamdiAzikiwe University Journal of International Law and Jurisprudence. 90-91.*

[2]Onoyeyan Glory, "Copyright Law and Photocopying Practice in Nigeria" (2018). *Library Philosophy and Practice (e-journal). 2179.* <https://digitalcommons.unl.edu/libphilprac/2179.>(date of access to online material)

creators include poets, writers, artists, painters, broadcasters, performers, musicians, composers, etc. and their products are the books, poems, paintings, songs, films, etc. which they create.[3] Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself.

Òlòturé, is a story of an inexperienced young girl (a journalist), who went undercover to expose the brutal underworld of human trafficking. She is caught off-guard by the dangerous environment she finds herself, a place teeming with cruel traffickers, pimps, madames and unscrupulous politicians.[4] She ultimately got bonds with a group of prostitutes and becomes deeply buried in their world. Yet in her unrelenting pursuit to tell their stories, she is so successful in inserting herself inside the trade that she doesn't know how to get out again or whether she even wants to. The film is currently trending on NETFLIX in Nigeria, Morocco, Ukraine, France, Portugal and South Africa. Other countries include Brazil, Oman, Switzerland, Qatar, Romania, Luxembourg, Saudi Arabia, UAE and Russia.

The dialysis of truth over the years is that rights abounds. However, obligations to these rights are not secured as a result of ignorance, ineffective law and non-accessibility to justice or indifference. This article intends to demystify the meaning of copyright with regards to author's right, eligibility of a work and an author, remedies for copyright infringement and the legal guidelines for copyright protection.

Meaning of Copyright

Copyright has been defined as the exclusionary right that the owner of an intellectual creation has to make copies of his work, the right in use, production and exploitation.[5] It is an exclusive right to an originator of a work, which gives the author an opportunity to enjoy certain privileges ranging from the rights to reproduction, distribution, and adaptation of the work to rights of public performance, broadcasting and communication of the work to the public, etc.[6]

The principal Act protecting copyrighted works in Nigeria is the Copyright Act Cap C28, Laws of the Federation of Nigeria, 2004. The Nigerian Copyright Commission (NCC) is the body charged with the responsibility of administering the Copyright Act. Apart from the Act, other regulations for copyright in Nigeria include; Copyright (Optical Discs Plants) Regulations 2006, Copyright (Collective Management Organizations) Regulations 2007, and Copyright (Levy on Materials) Order etc.[7] In addition, Nigeria is a signatory to some international treaties, agreements and conventions like the Berne Convention (1886), The Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement (1994), WIPO Copyright treaty (1996) etc., which have also stipulated additional prescriptions to be observed by members or signatories.

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[3]Desmond O. Oriakhogba and Alero I. Fenemigho, 'Development, Concept and Scope of Copyright Protection in Nigeria: An Overview' (2014) 5*Nnamdi Azikiwe University Journal of International Law and Jurisprudence.*

[4]**Indiewire, 'How a Nollywood Netflix Drama Sheds Light on Nigeria's Human Trafficking Crisis'** <https://www.indiewire.com/2020/10/oloture-nollywood-netflix-nigeria-1234590106/> accessed6th of January 2021

[5]Onoyeyan Glory, (n 2)

[6]Sandra Eke, '**Fundamental Elements of Copyright Ownership and Protection under Nigerian Law**' <http://www.spaajibade.com/resources/fundamental-elements-of-copyright-ownership-and-protection-under-nigerian-law-sandra-eke/> accessed 6th of January 2021.

[7]Ibid

Eligibility of a Work and the Author

Copyright as one of the branches of intellectual property is protected under the Nigerian Copyright Act 1988 as amended and it is so protected upon the fulfilment of certain requirements.[8] The provision of Section 1 of the Copyright Act[9] provides for works eligible for copyright protection. The works are; literary works, musical works, artistic works, cinematograph films and sound recordings broadcasts. In other words, for any category of work to enjoy the privilege of being protected from exploitation by third parties, such work must fall within the closure of Section 1(1) of Copyright Act. The provision of Section 1(2) further states that for a literary, musical or artistic work to be eligible for copyright, such works must be original and must have been expressed in a permanent form (originality and fixation). The word 'originality' does not mean that the work must be of a high quality. It only means that such work must have originated from the author.

The provision of Section 1(2)(a)(b) of the Copyright Act Cap C28 LFN (2004) is to the effect that the law is not particular about any mode of expression. It is however necessary that the work be expressed in a permanent form. It is the originality of work that confers copyright on the author. The original author of a work owns the copyright to that work, unless he or she has assigned those rights to a third party. Section 2 of the Copyright Act provides that, copyright can be conferred on every work eligible for copyright of which the author or in the case of joint authorship, any of the author is a qualified person, that is to say, that the individual is domiciled in Nigeria or is a body corporate incorporated by the laws of Nigeria.[10]

Rights of an Author

Section 5 of the Copyright Act went further to provide for the exclusive right of an author as to literary and musical works[11], artistic works[12] and cinematograph films[13] and this exclusive right cannot be shared with the author unless with his permission. An author enjoy exclusive rights in respect of a literary work in the following regards.

The exclusive right of literary originators include the right to reproduction, adaptation, publish the work, perform the work in public, produce, reproduce, perform or publish any translation of the work; make any cinematograph film or a record in respect of the work; distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement; broadcast or communicate the work to the public by a loud speaker or any other similar device.[14]

Exceptions to the Author's Exclusive Right

The provision of **Section 5 of the Copyright Act** confers exclusive rights to an originator of a work and not the publisher of the work. This gives the author an opportunity to enjoy certain

[8]Olugbenga A Olatunji, 'Copyright Regulations Under The Nigerian Copyright Act: A Critical Analysis'(2013) 2(1) *NIALS Journal of Intellectual Property* p.1.

[9] Copyright Act Chapter C28 Laws of the Federal Republic of Nigeria 2004.

[10]Olusola Jegede and Winifred Idiaru, 'Nigeria: Overview Of Copyright Law And Copyright Registration In Nigeria'<https://www.mondaq.com/nigeria/copyright/983450/overview-of-copyright-law-and-copyright-registration-in-nigeria>accessed 17th of January 2021.

[11] 5(1)(a) of Copyright Act.

[12] 5(1)(b) of Copyright Act.

[13] 5(1)(c) of Copyright Act.

[14] Section 1(1)(a) of Copyright Act.

privileges such as, the rights to reproduction, distribution, and adaptation of the work to rights of public performance, broadcasting and communication of the work to the public etc. However, where the author works under the employment of a person for the purpose of making such creativity, the employer holds the copyright exclusively. The exclusive rights granted to copyright owners are not without certain restrictions. The second schedule of the Copyright Act contains a voluminous list of exceptions to the exclusive right of an author to copyright. Some of these exceptions would be briefly discussed below:[15]

The most significant and, perhaps, murky of the limitations on a copyright owner's exclusive rights is the fair use exception.[16] Fair use is an affirmative defense to an action for copyright infringement. It is potentially available with respect to all manner of unauthorized use of all types of copyrighted works in all media. The fair use exception permits a party to use a work without the copyright owner's permission and without compensating the copyright owner for such use in certain circumstances. The copyright law identifies certain types of uses including criticism, comment, news reporting, teaching, scholarship, and research as examples of activities that may qualify as a fair use.

Secondly**,** the first sale exception. This is an exception to a copyright holder's distribution and display rights. The first sale exception provides that when someone lawfully purchases a copy of a copyrighted movie, book, song, computer program or other copyrighted work, the purchaser may generally sell, lease, loan, gift, display or otherwise dispose of his or her copy of the work. However, these are with certain limitations.

Furthermore, the copyright law includes several exceptions that apply to educational institutions. For example, the law allows a non-profit educational institution to perform or display a copyrighted work in the course of face-to-face teaching activities in a classroom or similar setting. It also allows the transmission of a performance or display of a copyrighted work if (1) the performance or display is a regular part of the systematic instructional activities of the non-profit educational institution; (2) the performance or display is directly related and of material assistance to the teaching content of the transmission; and (3) the transmission is made primarily for reception in classrooms or similar places or by persons to whom the transmission is directed because of their disabilities.

There is also the blind exception. The copyright law permits certain authorized entities to reproduce and distribute copies of previously published, non-dramatic literary works in specialized formats exclusively for use by 'blind or other persons with disabilities', without the need to first obtain permission from the copyright owners of such works.

There are numerous exceptions and limitations to the copyright owner's exclusive rights in the Copyright Act, including exceptions to: allow libraries and archives to make copies for preservation purposes; allow the owner of a copy of a computer program to make a back-up copy of the program; allow certain performances and displays for the purposes of classroom education, religious services, and transmissions to the handicapped and to the blind; allow certain authorized entities to reproduce and distribute copies of certain works in specialized formats

[15]Copyright Alliance, 'Limitation on a Copyright Owner's Right' <https://copyrightalliance.org/education/copyright-law-explained/exceptions-and-limitations-to-a-copyright-owners-rights/> 16th January 2021

[16]Ibid.

exclusively for use by blind or other persons with disabilities; allow purchasers of legal copies to re-distribute or otherwise dispose of those copies (commonly referred to as the first sale exception).

There are also several compulsory licenses in the law as contained in the Third Schedule of the Copyright Act, including compulsory licenses that allow: reproduction and distribution of nondramatic musical works in the course of making and distributing sound recordings; cable systems and satellite operators to retransmit copyrighted programming without infringement liability if they pay a statutory licensing fee; public performance of nondramatic musical works by means of jukeboxes; and use of certain works in connection with non-commercial broadcasting.

The Test of Adaptation of Oloture

Tobore Ovuorie, an investigative journalist, who went undercover in Lagos as a prostitute and witnessed orgies with politicians, transactional sex and murder on a first account basis.[17] She then published the storyline sometime in August 2014 on Premium Time. It was titled 'Inside Nigeria's Ruthless Human Trafficking Mafia'.[18] The ingenious journalist, who investigated beyond the ripple of water regarding sex trafficking in Nigeria has claimed that, *Oloture* is an adaptation of her work and life-story and insisted that she must be adequately compensated for the infringement. However, the movie producers have argued that the play was basically fiction and not a non-fiction work. Although the work must have featured some elements of her publication, there were other materials used for the publication.

Adaptation of a literary work is one of the rights accruing to the originator of a work and such right is exclusive to the originator. Adaptation, translation, arrangement of music and other alteration and modification of literary and artistic work falls under a 'derivative works' which also enjoys full protection of copyright. Adaptation is generally perceived as a modification of original work to create another work.[19] For example - adapting a novel to make a film or adapting a textbook that is originally written by universities, to make it suitable for a lower level. Although the adaptation may be eligible for copyright protection in its own right, unless either the original work which has been adapted in it is in the public domain, or the necessary copyright license has been obtained from the owner of the copyright in the original work, the adaptation would infringe the copyright in the original work.[20]The right of adaption entitles the copyright owner to authorize or prohibit the creation and use of derivative works, in other words, for anyone to adapt a literary work of an originator, there must be an express permission of the originator.[21] The author of adaptation has her own copyright in derivative work if it fulfills the conditions for protection to wit: originality, fixation and nationality. The copyright in a

[17]Nollywood Post, 'Òlòtūré: True story retold in shocking detail' <https://www.nollywoodpost.com/2020/10/09/oloture-a-true-story-retold-in-shocking-detail/> accessed 18th of January 2021.

[18] Ibid

[19] What Is 'Adaptation' Under Copyright Law? < https://www.applytrademark.co.in/adaptation-copyright-law/ >accessed 18th of January 2021.

[20]NanditaSaika, **'Adaptations, Derivations and Transformations in Copyright Law' <https://copyright.lawmatters.in/2010/10/adaptations-derivations-and.html> 18th of January 2021.**

[21]Applytrademark, 'What is Adaptation under Copyright Law?'< https://www.applytrademark.co.in/adaptation-copyright-law/ > 18th of January 2021.

derivative work will only extend to the material contributed by the adapter and does not affect the copyright protection given to the original material.[22] This, of course, for the new material in the adaptation to be capable of being exploited separately, it must be capable of standing alone and not be entirely dependent on the original work for its existence.[23] How then can we determine whether a work has been adapted?

The question as to how to determine whether a work has been adapted is answered in the case of ***R.G. Anand v. Delux Films***,[24] the Supreme Court, while adjudicating upon such questionable infringement, adopted the test 'ordinary-observer test.' This test was first laid down by an American court in the case of ***Daly v. Palmer***,[25] which states that if after watching the movie, an unmistakable impression is made on the mind of an ordinary reasonable man that it is a copy of another, it would constitute infringement. However, this test was further evolved in the case of *Twentieth Century Fox Film Corporation v. Zee Telefilms Ltd. & Ors.*,[26] where it was stated that the infringing material must be looked at individually, then as a whole - if the theme was the same. However, if the presentation was done in an entirely new manner, one could hardly call it infringement. This point has been used by the film industry extensively as the plot of the movie might be the same, but the presentation is where it is declared as "different."[27]

There is the possibility that the producer might raise the defence of transformation which is a work that is completely new but based on the raw data contained in the original work. Unless the production of *Oloture* is transformation and not adaptation, the producer would be liable for infringement of copyright. This is because both an adaptation and a derivation would substantially rely and rest on the original work, while a transformation would only use raw data in the original work i.e. ideas which are, in any case, not protected by copyright.

Legal Guidelines for Protection

Copyright protection is conferred automatically. Hence, the moment the work is fixed in a tangible form so that it is perceptible either directly or with the aid of a machine or device, the author enjoys exclusive exploitation of his work. A story enjoys protection immediately the author dictates the story, writes it down or types it into the computer. In other words, a copyright exists from the time a work is written down or recorded. As such, copyright does not have to be registered to be protected; although, there are benefits of registration.

In Nigeria, the Nigerian Copyright Commission has introduced an online notification database to assist authors and creators in protecting their works more effectively. To lodge a notification at the NCC, the applicant is required to file an application with the following accompanying documents: completed registration form, two (2) copies of the work, evidence of payment of the prescribed fee, a letter of authority duly executed by the author of the work, authorizing his

[22]Ibid
[23]**Nandita Saika**,(n 20).
[24] AIR 1978 SC 1613
[25]6 F. Cas. 1132 (C.C.S.D.N.Y. 1868)
[26] 2012 (51) PTC 465 (Del)
[27]Sharmeen Shaikh Khurana and Khurana Adaptation v/s Copyright Infringement <https://www.mondaq.com/india/copyright/783560/adaptation-vs-copyright-infringement> 18th January 2021.

lawyer/agent to lodge the copyrighted material or to receive the certificate of registration on the author's behalf.[28]

Remedies for Copyright Infringement.

The dialysis of truth over the years is that rights abound. However, obligations to these rights is not secured as a result of ignorance, ineffective law and non-accessibility to justice or indifference. The court appraised this problem in the case of In *Oladipo Yemitan v. The Daily Times (Nigeria)Ltd & Anor*,[29] the defendants flagrantly infringed on the claimant's copyright in an article titled 'The Day the Lagoon Caught Fire' published in the Nigerian Magazine by reproducing same verbatim in the 'Headlines' No 52 of 1977 without consent. Upon writing to notify the defendants of this infringement, the defendants merely replied that they would investigate the allegation and did nothing further despite subsequent correspondence to them. After the trial, the defendants admitted the infringement. The court was of the view that the defendants took advantage of the Claimant because few persons in the Nigeria were aware of their rights under copyright law and the defendants also believed that the profit to be realized from the infringement would outweigh any nominal damages the claimant may be entitled to. The flagrant infringement, the indifferent manner the letters written were treated, the nonchalant attitude of the defendants and the way the defence was prepared by denying obvious facts, making unfounded assertions and only admitting the infringement after a full trial, all convinced the court that the Defendants should pay additional damages. Hence, the court granted additional damages to the Claimant for such a condescending treatment by the Defendants.

Remedies available for the breach of copyrighted work can either be administrative, criminal or civil in nature. As to the civil remedy, the provision of Section 15(1) of the Copyright Act provides that the infringement of copyright is actionable by owner, assignee or an exclusive licensee of the copyright at the Federal High Court exercising jurisdiction in the place where the infringement occurred and upon proof of infringement, the owner is entitled to reliefs such as damages, injunction (including Anton Piller orders, Mareva injunction), accounts rendition and delivery of infringing copies. In an action for infringement of copyright, actual damage need not be proved as damages are at large.[30] Mere infringement of copyright gives rise to damage to which the claimant is entitled.[31]

Section 18 of the Act provides for the criminal liability of the person who infringed on the author's right and such liability includes imprisonment and fine, seizure[32] of infringing copies and delivery of them to the owner are means to make the party infringing liable. Section 21 of the Copyright Act provides that both criminal and civil actions can be taken simultaneously in respect of the same infringement.

In respect of the administrative remedies, one may file for moving the Registrar to ban the import of infringing copies and delivery of the confiscated infringing copies to the owner.

[28] Sandra Eke, (n 6).
[29] (Unreported Suit No: FHC/L/1/1980); Ifeoluwa Ayokunle Olubiyi, (n 1)
[30]Ifeoluwa Ayokunle Olubiyi, (n 1)
[30] Section 22 of the Copyright Act.
[31]Ifeoluwa Ayokunle Olubiyi, (n 1)
[32]Section 22 of the Copyright Act.

Ignorance is a defence to copyright infringement. In any action for infringement of copyright, where it is proved or admitted that an infringement was committed but at the time of the infringement, the defendant was not aware and had no reasonable grounds for suspecting that the copyright existed in the work to which the action relates, the plaintiff will not be entitled to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement, whether or not any other relief is granted.[33]

Conclusion and Recommendation

An author has an exclusive legal right granted to him for his creative work to use the work and distribute it as he deems fit for a limited time. Although every author ordinarily enjoys protection for all works made, either registered or not, registration however, creates a certainty of ownership in case of any dispute in respect of a similar work and it makes it easier for authors to protect their works against any future infringement.[34] Awareness of rights is key to obligation. Indifference should, however, be dealt with according to the law. The *Oloture* adapted story published in the Premium Times can be adequately ventilated via a civil suit. However, proper steps as to arbitration ought to be employed before initiating a law suit.

[33]OlusolaJegede and Winifred Idiaru, (n 10).
[34]Ibid