

Intellectual Property Rights Protection in Nigeria: Challenges and Prospects

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ABSTRACT

Intellectual property right protection is of growing importance in most countries of the world due to its role in the development of any nation. However, intellectual property rights protection in Nigeria has not yielded any positive results as expected due to the problem of weak enforcement and non-implementation of protection laws. In view of this, the main purpose of this article is to unravel the challenges militating against the protection of intellectual property rights of creators and inventors in Nigeria. This article further discusses the benefits of intellectual property rights protection. Challenges contributing to weak enforcement of intellectual property rights were also identified in this article. In conclusion, intellectual property rights protection in Nigeria should be given the highest priority by government to aid national development as well as promoting creativity and innovation on the part of creators and inventors.

KEYWORDS

Challenges, Intellectual Property, Prospects, Protection Laws, Rights

INTRODUCTION

Unarguably, protection of Intellectual Property Rights (IPRs) is of growing importance in many countries of the world due its significance in the social and economic life of any nation. In most developed nations of the world, intellectual property rights of creators and inventors are duly protected by law. The protection of intellectual properties assists government in curtailing the activities of violators, counterfeiters and imitators of intellectual works. By this measure, protection of IPR will foster economic growth for the Nation and value creation for intellectual works (Holland, 2017).

The protection of intellectual properties in many countries of the world has been implemented by their government through the enactment of dynamic and vibrant laws. These laws are reviewed regularly from time to time as a basis of addressing emerging and current issues in the operating environment. Undoubtedly, the protection of intellectual property rights of creators and inventors has attracted global attention, and this has been instrumental to the establishment of two global organizations set up to protecting intellectual properties in the world. These organizations are World Intellectual Property Organization (WIPO), International Forum for Reproduction Rights Organization. These organizations are responsible for overseeing the protection and enforcement of intellectual property rights of creators and inventors across member countries. Apart from this, treaties and agreements have been established by these organizations involving several countries of the world, including Nigeria. For instance, Nigeria is a signatory to several treaties and international agreement such as

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Berne Convention, 1886, Universal Copyright Convention, 1952, Trade Related aspect of Intellectual Property Right and the World Intellectual Property Organization among others (Blackeney, 2008).

According to WIPO, Intellectual property refers to creations of the mind such as inventions, literary and artistic works, symbols, names, images and designs used in commerce. Therefore, intellectual property rights can be described as a broad term that encompasses patents, trademarks, plant breeds, copyright trade secrets and other types of rights granted as a way of protecting creative efforts and knowledge creation. These rights are granted to safeguard creators and inventors interests and regulate the use of their products. By the granting of these rights, it creates a balance between the creators' right and the right of the public in accessing the intellectual work. These rights are granted for a limited period of years depending on the type of intellectual property and the dictates of the law protecting its use. Intellectual property can be categorized into two: these are industrial property and copyright. Industrial property includes inventions (patents), trademarks, industrial designs and geographic indicators; while copyrights include literary and artistic works such as novels, poems, plays, films, musical works, artistic works such as drawings, paintings, sculptures and architectural designs (Osunde, 2016).

The protection of intellectual property rights of creators and inventors in a country like Nigeria has been problematic in spite of the existence of regulatory frameworks. One then wonders why intellectual property rights of citizens are not adequately protected in Nigeria even in the face of a virile law. However, there are growing economic and social problems that are responsible for this occurrence. Unfortunately, these attendant problems have grave consequences on the nation's development as well as violating the rights of creators and inventors.

In the light of the above, the aim of this paper is to identify the challenges militating the protection of intellectual property rights of creators and inventors in Nigeria. Also, prospects of protecting intellectual property rights for the Nigerian economy were discussed, and recommendations that would aid adequate protection of intellectual property were suggested.

Types of Intellectual Property Rights

There are four major categories of Intellectual property rights which comprises of copyright, patent, trademark and industrial designs respectively:

1. **Copyright:** Copyright can be described as the right that creators have over their literary and artistic works. Works covered by copyright include books, music, paintings, sculpture, computer programs, databases, maps and technical drawings. According to the Copyright Amended Acts of 1999, copyright holders are entitled to the following rights:
 - a. Reproduction of the work in any material form;
 - b. Publication of the work;
 - c. Performance in Public spaces;
 - d. Production, reproduction, performance or publication of any translation of the work;
 - e. Making of cinematograph film or record of the work;
 - f. Distribution to the public for commercial purposes of the copies of the work by way of rental, lease, hire or loan or similar arrangement;
 - g. Broadcasting or communication of the work to the public by loud speakers or any similar device;
 - h. Making adoption of the work.

These sets of rights listed above dictate how creator's works are to be used or distributed for public consumption. In essence, any copyright holder that fails to adhere to the above highlighted rights would be duly sanctioned as indicated in the Copyright Act.

2. **Patents:** Patent is an exclusive right granted for an invention for a maximum period of 20 years from the date of filing of the patent application. The right granted the patentee prevents others from using the invention during the period granted (Kujembola, 2014). In exchange of this right, the patent owner makes information on the patent publicly available in the published patent document. The Nigeria's Patent and Designs Act of 1990 establishes the rules governing patent and design matters. Section 1-11 of this Act is devoted to patents while sections 12- 22 are devoted exclusively to design;
3. **Trademarks:** Trademark is a symbol, sign or logo which distinguishes an organization's goods and services from one another. The Nigerian Trademark Act Cap T13 LFN 2004 regulates trademark registration and practice in Nigeria. Therefore, an individual applying for trademark must register with the Registrar of Trademark. Trademark protects names, logos, shapes and slogan for duration of 7 years. Trademarks are however, renewable for a period of 14 years;
4. **Industrial Designs:** Industrial designs are ornamental or aesthetic aspect of an article. It may comprise three dimensional features such as shape or surface of an article, or two-dimensional features such patterns, lines or colours (WIPO). Rights to Industrial designs are granted by the state authority at the fulfilment of certain conditions by the applicant. Registration of an industrial design confers on the applicant the right to preclude others from copying or reproducing the design, manufacturing the product or selling for commercial purposes. The right to an industrial design is granted for a maximum period of 15 years from the date of application for registration.

These categorizations of intellectual property rights as identified above differ in their purposes, processes and regulatory laws. Regulatory bodies governing the granting of rights for each of the intellectual properties differ in their functions and approaches. However, intellectual properties share the same fundamental feature of protecting the applicant's right by stopping piracy, counterfeiting, and exploitation without the permission of the owner (Nwokocha, 2012).

Intellectual Property Rights Protection in Nigeria

Intellectual property right is a broad term that covers creators and inventors' work such as patents, trademarks, plant breeders, copyright, trade secret and other type of rights granted by law (WIPO). It had been stated that Intellectual properties are intangible in nature, therefore are vulnerable to stealing and illegal appropriation (Adekola & Eze 2015). Due to the high level of vulnerability of intellectual properties, it is expedient that intellectual works should be duly protected by government from the activities of imitators, pirates and counterfeiters. Therefore, without adequate protection of intellectual properties by government, creators and inventors are denied their rights and privileges.

In the case of Nigeria, intellectual property rights of creators and investors are not adequately protected due to illegal activities such as piracy, counterfeiting and imitation (Nwokocha, 2012). For instance, it was reported by the Nigerian Copyright Commission that the Nigerian software market has an alarming rate of pirated product contributing to a loss of more than US\$82M per annum (Economist, 2006). Again, the Nigerian film industry loses an estimated amount to the tune of N4.2M annually due to illegal digital duplication, online piracy and unauthorized rental of video works within the country (Waziri, 2011).

Piracy and counterfeiting have been termed the robbers of creativity especially in the Nigerian environment where illegal activities thrive heavily (Adediji, 2012). Piracy is the unauthorized and illegal reproduction, distribution of materials protected by copyrights, patents or trademark. On the other hand, counterfeiting is unlawful forging, copying or imitating of a product without authorization and the intention to defraud or deceive the public. Intellectual properties rights of creators and inventors in Nigeria are not adequately protected by law due to inability to bring the perpetrators of these illegal activities to books. The high level of piracy and counterfeiting in the country is quite alarming, unfortunately Intellectual Protection Regulatory Bodies such as the Nigerian Copyright Commission (NCC), National Agency for Food Drug Administration and Control (NAFDAC),

Standard Organization of Nigeria (SON), Trademark Registry, Nigeria Broadcasting Commission among others have not been able to combat piracy. Even though, these regulatory agencies are set up to play major roles in the enforcement of intellectual property rights.

The protection of intellectual properties had been problematic in the Nigeria environment due to some factors that would be unveiled in this paper. These factors include: high level of corruption by the regulatory officials, inadequate sanction for offenders, lack of skilled personnel, lack of awareness of intellectual property right by the populace, outdated intellectual property laws among others. Unless the Nigerian government takes radical and positive steps in addressing these impending issues, the protection of intellectual properties becomes an unachievable endeavour by government. Therefore, enforcement of protection by regulatory agencies is expedient due to big lose on the part of creators and inventors. For instance, the Nigerian business environment is rather tensed for creators because they hardly make profit from their creative works. Most of these creators especially artists are forced out of business due to inability to make huge returns on their investments. On account of this menace, creators and inventors' level of morale, innovation and creativity is diminishing gradually.

Benefits of Intellectual Property Rights Protection Laws

Basically, intellectual property rights protection laws are set up to protect the rights of creators and investors as regard their intellectual works. However, the level of implementation and enforcement of intellectual property rights protection laws differs across countries (Adegoke, 2011). The benefits of protecting intellectual property rights include the following as identified by (Adegoke, 2011; Omotayo, 2014): (i) increased returns on creators investments (ii) Promotion of creativity and innovation (iii) Continuous investment in knowledge creation and innovation (iv) Serves as incentives to encourage creators and inventors. These benefits address creators and inventors' rights. However, there are economic and social benefits that are capable of fostering economic growth for the nation through: (i) Revenue generation based on the proceeds from the sale of intellectual products. (ii) Reduction of criminal activities/ offenders (iii) Creating stable market for creators and inventors due to the sale of their intellectual works (iv) Taxes and tariffs collected by government from intellectual works.

Based on the foregoing, it can be said emphatically that intellectual property protection laws in Nigeria have not yet attained the set goals and objectives in their various acts. The reasons for this are not farfetched due to several challenges that are responsible for weak implementation and low enforcement of intellectual property protection laws in Nigeria.

Challenges Militating the Protection of Intellectual Property Right of Creators and Inventors in Nigeria

In the Nigerian environment, creators and inventors have been denied the moral expression of their intellectual right due to the non-enforcement of intellectual property protection laws. The business environment is not conducive for creators and inventors due to several challenges that are economically and socially inclined. Some authors in the literature have identified several challenges encountered mostly by African Countries in a bid to protecting intellectual property rights (Nwokocha, 2012; Mengistie, 2013; Omotayo, 2014). Some of these challenges are explained briefly below:

1. **Lack of enforcement of intellectual protection laws:** The various regulatory agencies are incapacitated in the enforcement of intellectual property protection laws due lack of funding by government, lack of skills, lack of training, poorly paid enforcement officials such as police and custom officers and corruption on the part of the regulatory officials. Therefore, government should address specific problems militating against enforcement of intellectual property rights protection laws;
2. **Lack of awareness and enlightenment:** There is lack of awareness and public enlightenment on the importance of intellectual property rights protection laws. The public should be given

proper orientation and enlightenment programmes organized to create high level of awareness on intellectual property rights protection;

3. **High level of poverty:** The level of poverty experienced in the country is quite on the high side. The standard of living is very poor; as a result, people are looking for quicker means of making money, and out of desperation, they deliberately get involved in several illegal businesses to make ends meet. In other words, the high level of poverty in the country has contributed to the weak enforcement of intellectual property rights protection laws;
4. **High rate of piracy and counterfeiting:** The rate of piracy and counterfeiting in Nigeria is quite alarming. The effort of government toward combating this menace has not yielded positive results so far. The non- enforcement of intellectual property rights protection laws has turned Nigeria to a dumping ground for pirated products such as books, software, audio CD's video CD's among others. Adegoke (2011) pinpointed that social awareness against pirated products by government will assist in combating piracy and counterfeiting that is highly prevalent in the country. The public should be encouraged to report cases of piracy and counterfeiting to the appropriate regulatory agencies as a form of deterrent for would- be offenders;
5. **Corruption:** Corruption in Nigeria is a cankerworm that has eaten deeply into virtually all sectors of the economy. Regulatory officials are also involved in corrupt malpractices, such as bribery, pilfering, extortion among others. By these dishonest acts, intellectual properties are rarely protected;
6. **Lack of competent personnel:** Enforcement officials are not properly trained on the job. Due to lack of training or skills, some of these regulatory officials are not competent to handle sensitive issues on intellectual property protection rights. Lack of training on the part of the regulatory officials has often times created problems of enforcement of intellectual property protection laws;
7. **Slow administrative and judicial processes:** In Nigeria, the legal framework designed to address violations of creators and inventors' rights are rather not effective. For instance, judicial procedures involved in filing litigations are rather slow and time wasting. This discourages the intellectual property owner from seeking redress in court;
8. **Inadequate punishment meted out to offenders:** In Nigeria, Property rights offenders are not properly sanctioned by regulatory agencies. More so, the sanction meted out is not commensurate to the crime committed, therefore, future offenders are not deterred from engaging in illegal business such as piracy or counterfeiting. As a form of deterrence, heavier sanctions or punishments should be meted out to offenders;
9. **Inadequate technological infrastructures:** The non-application of the use of information and communication technologies in the management of intellectual properties has been responsible for inadequate protection. Most of the regulatory agencies are yet to compile a comprehensive database of registered intellectual properties within their jurisdiction.

Prospects of Intellectual Property Rights Protection in Nigeria

A proper implementation and enforcement of intellectual property rights protection in Nigeria is tailored towards achieving National development, socially and economically. Therefore, with adequate protection of intellectual properties, foreigners are encouraged to invest in the country. Foreign Direct Investment (FDI) whenever foreigners are attracted in investing since return on investment is assured. This can only be possible by the enforcement and protection of intellectual property rights.

Another prospect for the protection of intellectual property rights is the creation of job opportunities for job seekers in Nigeria. When creators' intellectual works are duly protected, there are possibilities of huge returns on investments. Consequently, avenues for employment opportunities are created for job seekers.

Again, application of new knowledge can translate to development of virtually all sectors of the economy. Nigeria can increase her foreign exchange earnings by selling patented ideas or creative

works to other countries. This can only be achieved by adequate protection of intellectual property rights.

Lastly, property right violations are reduced minimally due to high level of public awareness on the importance of creators' rights. Property right violations such as piracy, counterfeiting, imitation among others are adequately combated by regulatory bodies. Whenever, creators or inventors' rights are being violated, punishments are meted out as a form of deterrence.

CONCLUSION

In a bid to addressing these challenges, the following recommendations are made towards ameliorating the problems of weak enforcement of intellectual property rights protection laws:

1. Specific laws on the various intellectual properties should be reviewed to conform to best practices as it obtains in other developed nations. In essence, Nigeria's protection laws on Copyright, Patent, Industrial designs and Trademarks should be reviewed regularly by government to prevent obsolescence;
2. Intellectual Property violations should be highly condemned by government. Regulatory agencies should mete out heavier sanctions to deter future offenders. Also, the public should be aware of the various types of violations and their respective sanctions;
3. Government should provide employment opportunities in addressing the poverty level in the nation. By this, the high level of involvement in illegal businesses would be reduced drastically;
4. Compulsory registration of intellectual properties should be taken seriously by government. The use and application of information and communication technologies in registering applicant will facilitate the registration process;
5. Adequate funding of the regulatory agencies is necessary to ensure proper enforcement of intellectual property protection laws. Through funding, training programmes such as workshops, conferences, inter-country exchange programmes would be implemented;
6. Lastly, a standard legal framework must be constituted by the government that addresses issues on intellectual property violations such that violators of intellectual property rights can be sanctioned appropriately following judicial processes and procedures.

In conclusion, intellectual property rights protection in Nigeria should be given the highest priority by government to aid National development and equally encourage creativity and innovation by creators and inventors. This paper has brought to limelight the benefits of enforcement of Intellectual property rights protection laws in Nigeria majoring on creators and inventors rights and the Nation at large. The enforcement of Intellectual property rights protection laws in Nigeria contributes immeasurably to the robustness of the Nigeria economy based on several benefits identified in this paper such as individual, social and economic benefits respectively. These benefits include: promotion of creativity and innovation, high returns on intellectual investment such as royalties and proceeds from the sale of intellectual products, increased foreign exchange earnings, increased taxes and tariff payment among other. However, in achieving these benefits, several challenges contributing to the weak enforcement of intellectual property rights protection laws in the nation should be urgently addressed by Government. These challenges include lack of skilled and competent regulatory officials, lack of funding of the regulatory agencies, lack of sound judicial practice, inappropriate sanctions to deter would-be offender, high level of poverty, high level of piracy and counterfeiting among others.

REFERENCES

- Adediji, D. (2012). Enforcement of Intellectual Property Rights in Nigeria: A Critique. Retrieved from damolaadedijionlaw.blogspot.com
- Adekola, T. A., & Eze, S. C. (2015). Intellectual Property Rights in Nigeria: A Critical Examination of the Activities of the Nigerian Copyright Commission. *Journal of Law, Policy and Globalization*, 35, 56–61.
- Adeniyi, A. S. (2013). Intellectual Property (IP) Rights in Nigeria: A Legal Dialectics. Retrieved from <http://adeadeniyi.wordpress.com>
- Blackeney, M. (2008). *Guidebook on Enforcement of Intellectual Property Rights*. Queen Mary Intellectual Research Institute, University of London.
- Holland, J. (2017). Intellectual Property Rights in China: Patents and Economic Development. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 8(1), 40–45.
- Kujembola, D. (2014). Doing Business in Nigeria- The Intellectual Property Angle. Retrieved from www.bellanaija.com/2014/07/08damilarekujembola
- Mengistie, G. (2013). Enforcement of Intellectual Property Rights in Africa: Challenges and Experience. *Paper presented at a Workshop on the WIPO Development Agenda and the Curriculum of Start-Up Intellectual Property (IP) of Academics*, Tunis, Tunisia. Academic Press.
- Nwokocha, U. (2012). Nigerian Intellectual Property: Overview of Development and Practice. *Journal of Intellectual Property*, 100-116.
- Osunde, C. (2016). Intellectual Property Rights in Nigerian Business Environment: Challenges and Prospects. *Intel Prop Rights*, 4(3), 170. doi:10.4172/2375-4516.100070
- Waziri, K. (2011). Intellectual Property Piracy and Counterfeiting in Nigeria: The Impending Economic and Social Conundrum. *Journal of Politics and Law*, 4(2), 198. doi:10.5539/jpl.v4n2p196
- World Intellectual Property Organization. (n.d.). Understanding Intellectual Property. WIPO Publication.
- World Intellectual Property Organization. (n.d.). Retrieved from www.wipo.int/portal/en