

CREATIVE EXPRESSIONS

**An Introduction To Copyright And Neighbouring Rights
For Small And Medium Sized Enterprises In Nigeria**

Publications in the “Intellectual Property for Business” series:

1. Making a Mark: An Introduction to Trademarks for Small and Medium-sized Enterprises. WIPO publication No. 900.
2. Looking Good: An Introduction to Industrial Designs for Small and Medium-sized Enterprises. WIPO publication No. 498.
3. Inventing the Future: An Introduction to Patents for Small and Medium-sized Enterprises. WIPO publication No. 917.
4. Creative Expression: An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises. WIPO publication No. 918.

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Registry of Trademarks, Patents and Designs, Federal Ministry of Trade and Investments, Abuja, Nigeria, Copyright (2011)

INTRODUCTION

'Intellectual Property' till recently has been considered a luxury by the industry in general and SMEs in particular. In fact, it is a major avenue for SMEs to establish their credentials at par with the large enterprises. Every business has some valuable intangible property worth protecting. Therefore, keeping SMEs abreast of the latest information on Intellectual Property Rights (IPRs) systems and enabling them to protect their IP assets is the need of the hour as ignorance may lead to loss of valuable rights or expensive litigation or both. This customized version of 'Creative Expression' will enable SMEs in Nigeria to understand the kind of work protected under the provisions of Copyright and related rights, the ownership procedure and benefits, system for protection and prevention of violation of these rights in Nigeria and abroad. These points are illustrated with the help of mostly original examples of the works of Nigerian creators.

The main beneficiaries of this booklet would be SMEs engaged in printing, publishing, music and audiovisual creations (film, television and radio), architectural work any drawing/map, chart or plan, photography, sculpture, sound recordings, advertising, communication and marketing, crafts, visual and performing arts, design and fashion, and broadcasting. It also throws light on the effective copyright protection extended to SMEs dealing in production/development of software, multimedia, digital content driven industries including work available on the internet.

The purpose is to enable SMEs to seize the opportunity of copyright protection rather than deferring the decision to adopt IP system on the assumption that IP protection is costly and time consuming or enforcement of the laws are ineffective.

In compilation of this booklet, efforts of the Law and Allied Resourcery team comprising Ayo Ayeni (Project Coordinator), Tinukemi Alabi, Alexandria Adesuwa, Yahaya Maikori and Ese Oraka of Law Allianz, and our registry's Aisha Y. Salihu, have been most commendable.

I hope SMEs will benefit from this joint effort on the part of World Intellectual Property Organisation (WIPO) and The Registry of Trademarks, Patents and Designs, the Federal Ministry of Trade and Investments, The Nigerian Copyrights Commission, Federal Ministry of Justice, for seeking protection and drawing maximum economic gains through the appropriate commercialization of their original creative work.

**J.K. Ahmadu-Suka
Registrar, Trademarks, Patents and Designs.**

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1. COPYRIGHT AND NEIGHBOURING RIGHTS

What is copyright?

Copyright law grants authors, composers, songwriters, computer programmers, website designers and other creators legal protection for their literary, artistic, dramatic and other types of creations, which are usually referred to as "works."

Copyright law gives an author or creator of a work a diverse bundle of exclusive rights over his/her work for a limited but rather lengthy period of time. These rights enable the author to control the economic use of his work in a number of ways and to receive payment. Copyright law also provides "moral rights," which protect, amongst other things, an author's reputation and integrity.

In Nigeria, the principal legislation on copyright is the Copyright Act (as amended), Chapter C20, Laws of the Federation of Nigeria (LFN), 2004.

Copyright and Business

Most companies do not know that by default some aspects of their business are protected by copyright. Examples include: computer programs or software; content on websites; product catalogs; newsletters; instruction sheets or operating manuals for machines or consumer products; user, repair or maintenance manuals for various types of equipment; artwork and text on product literature, labels or packaging; marketing and advertising materials on paper, billboards, websites, and so on. In Nigeria, copyright also protects sketches and drawings. However, an artistic work is not eligible for copyright, if at the time when the work is made, it is intended by the author to be used as a model or pattern to be multiplied by any industrial process. Designs of manufactured products are not protected under copyright but they may be protected as industrial designs.

What are neighbouring rights?

"Neighbouring rights" refer to the category of rights granted to performers, phonogram

producers and broadcasters. In Nigeria, the rights of phonogram producers (producers of sound recordings) and broadcasters are included under copyright. However, the rights of performers are protected under the separate category called “neighboring rights.” Both copyright and neighbouring rights are included under the Copyright Act.

In Nigeria, the description of neighbouring rights is notably different from what generally obtains in most countries. While neighbouring rights are taken to include performers (e.g. actors, musicians, and dancers), phonogram producers and broadcasters in some countries, in Nigeria, the Copyright Act only protects two classes of neighbouring rights:

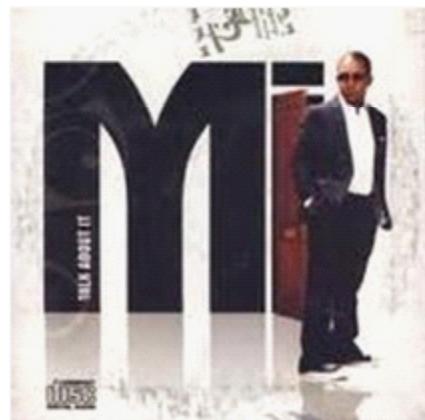
- Live Performances
- Expression of Folklore

(See more on neighboring rights on page 14).

Example: In the case of the song ‘Anoti’, the copyright protects the music of M.I, the composer and the lyrics of the song which he also authored (lyricist and/or writer).

Copyright also applies to the:

- Performances of the musician who performs the song, which is M.I in this case;
- Sound recording of the producer and
- Broadcasts of the song.



M.I on the album 'Talk About It' courtesy of Chocolate City

How are copyright and neighbouring rights relevant to your business?

Copyright protects the literary, artistic,

dramatic or other creative elements of a product or service, whereby the copyright holder can prevent those original elements from being used by others. Copyright and neighbouring rights enable a business to:

- **Control commercial exploitation of original works:** such as books, music, films, computer programs, original databases, advertisements, content on websites, video games, sound recordings, radio and television programs or any other creative works. Works protected by copyright and neighbouring rights may not be copied or exploited commercially by others without the prior permission of the rights owner. Such exclusivity over the use of copyright and neighbouring rights protected works helps a business to gain and maintain a sustainable competitive edge in the market place.
- **Generate income:** Like the owner of a property, the owner of copyright or neighbouring rights in a work may use it, or

give it away by way of sale, gift or inheritance. There are different ways to commercialize copyright and neighbouring rights. One possibility is to make and sell multiple copies of work protected by copyright or neighbouring rights (e.g., prints of a photograph); another is to sell (assign) your copyright to another person or company. Finally, a third – often preferable – option is to license, that is, permit another person or company to use your copyright-protected-work in exchange for payment, on mutually agreed terms and conditions.

- **Raise funds:** Companies that own copyright and neighbouring rights assets (e.g., a portfolio of distribution rights to a number of movies/films) may be able to borrow money from a financial institution by using such a bundle of rights as collateral by letting investors and lenders take a “security interest” in them.
- **Take action against infringers:** Copyright law enables right holders to take legal action against anyone encroaching on the exclusive rights of the copyright holder

(called infringers in legal parlance) for obtaining monetary relief, destruction of infringing works, and recovery of attorneys' fees. In Nigeria, criminal penalties may be imposed on willful copyright violators.

- **Use works owned by others:** Using works based on the copyright and neighbouring rights owned by others for commercial purposes may enhance the value or efficiency of your business, including enhancing its brand value. For example, playing music in a restaurant, bar, retail shop or airlines, adds value to the experience of a customer while using a service or while visiting a business outlet. In Nigeria, to use music in this manner, prior permission of the copyright and neighbouring rights owners must be obtained by means of a license to use the music for a specified purpose.

Understanding copyright and neighbouring rights laws will enable you to know when authorization is required and how to go about obtaining it. Obtaining a license from the copyright and/or neighbouring rights owners

to use a work for a specific purpose is often the best way to avoid disputes that may otherwise result in potentially time consuming, uncertain, and expensive litigation.



Most businesses print brochures or publish advertisements that rely on copyright protected materials.

How are copyright and neighbouring rights obtained?

In Nigeria, any work eligible for copyright/neighbouring right is protected without any formalities or requirement of registration, provided that the work has fulfilled the requirements of originality, fixation and origin. However, a copyright owner may voluntarily register and

deposit his/her work at the Nigerian Copyright Commission under the Copyright Notification Scheme (see page 22). Practically all countries, worldwide, have one or more national laws concerning copyright and related rights. As there are important differences amongst the copyright and related rights laws of different countries, it is advisable to consult the relevant national copyright and/or related rights law(s) and/or take legal advice from a competent professional before taking any key business decision involving copyright and/or related rights.

A large number of countries are signatories to several important international treaties that have helped to harmonize, to a considerable extent, the level of copyright and related rights protection amongst countries. In a very large number of countries, this has made it possible for works to benefit from copyright protection without any formalities or requirement of registration. A list of the main international treaties is in Annex III.

Nigeria is a member to the following international

copyright treaties:

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

Are there other legal means for protecting original creations?

Depending on the nature of your creation, you may also be able to use one or more of the

following types of intellectual property rights to protect your business interests:

- **Trademarks.** A trademark provides exclusivity over a sign (such as a word, logo, color, or combination of these) which helps to distinguish the products of a business from those of others. In Nigeria, even though it is not compulsory that a trade mark be registered, a registered trade mark enjoys certain benefits. The office in charge of registering trade marks in Nigeria is the Registry of Trade Marks, Patents and Designs, Ministry of Trade and Investments, (see Annex I).
- **Industrial designs.** Exclusivity over the ornamental or aesthetic features of a product may be obtained through the protection of industrial designs. An industrial design must be registered to be protected. Unregistered designs are not protected. The office in charge of registering industrial designs in Nigeria is the Registry of Trade Marks, Patents and Designs, Ministry of Trade and Investments. (see Annex I).

- **Patents.** An invention may be protected by patent if it is new, results from inventive activity and is capable of industrial application or if it constitutes an improvement upon a patented invention and is also new, results from inventive activity and is capable of industrial application. A patent must be registered at the Registry of Trade Marks, Patents and Designs, Ministry of Trade and Investments, (see Annex I).
- **Confidential business information** of commercial value may be protected as a trade secret, as long as reasonable steps are taken by its owner to keep the information confidential or secret. In Nigeria, contracting parties who may have such information passed between them usually insert confidentiality clauses to protect the information.
- **Unfair competition laws** may allow you to take action against unfair business behavior of competitors. There is currently no national legislation principally governing unfair

competition in Nigeria. However, certain other areas of the law (tort, advertising, consumer protection) lightly deal with it.



Sometimes, a number of intellectual property rights are used (simultaneously or sequentially) for protecting creative works.

(c) Fido Dido courtesy of 7up Bottling Company

2. SCOPE AND DURATION OF PROTECTION

What categories or types of works are protected by copyright?

The types of works protected in Nigeria are:

- **Literary works:** these include novels, stories and poetic works; plays, stage directions, film scenarios and broadcasting scripts; choreographic works; computer programmes; text-books, treaties, histories, biographies, essays and articles; encyclopaedias, dictionaries, directories and anthologies; letters, reports, and memoranda; lectures, addresses and sermons; law reports (excluding decisions of courts); and written tables or complaints;
- **Musical works or compositions,** including compilations and works composed for musical accompaniment;
- **Artistic works:** these include any paintings, drawings, etchings, lithographs, woodcuts, engravings and prints; maps, plans

and diagrams; works of sculpture; photographs not comprised in a cinematographic film; works of architecture in the form of buildings models; and works of artistic craftsmanship and also pictorial woven tissues and articles of applied handicraft and industrial art.

protection.



- **Cinematographic works** includes motion pictures, television shows, webcasts and their soundtracks;
- **Sound Recordings** including sound recording of musical works;
- **Broadcasts:** sound or television broadcast by wireless telegraphy or wire or both or by satellite or cable programmes, including re-broadcast.

Copyright protects works that are expressed in print as well as those created or stored in electronic or digital media. The fact that a work in its digital form can only be read by a computer – because it consists only of ones and zeros – does not affect its copyright

Music and video CD's

Protection of Databases

A database is a collection of information that has been systematically organized for easy access and analysis. It may be in paper or electronic form. Copyright law is the primary means to legally protect databases. However, not all databases are protected by copyright, and even those that are may enjoy very limited protection.

- In Nigeria, copyright may protect a database if it is selected, coordinated, or arranged in such a way that it is sufficiently original and it fulfills the other basic copyright requirements. However, exhaustive databases

and databases in which the data is arranged according to basic rules (e.g., alphabetically, as in a phone directory) may not be protected under copyright law. It may however, be protected under unfair competition law.

- In other countries, mostly in Europe, non-original databases are protected by a *sui generis* right called the database right. This gives a much greater protection to databases. It allows makers of databases to sue competitors if they extract and reuse substantial (quantitatively or qualitatively) portions of the database, provided there has been a substantial investment in obtaining, verifying, or presenting the data contents. In Nigeria, there is no *sui generis* system in place for the protection of non-original database.

When a database is protected by copyright, this protection extends only to the manner of selection and presentation of the database and not to its contents.

What criteria must a work meet to qualify for protection?

In Nigeria, to qualify for copyright protection, the following basic requirements must be met:

1. **Originality:** sufficient effort must have been expended on making the work to give it an original character. An original work is one that 'originates' in its expression from the author, that is, the work was independently created and was not copied from the work of another or from materials in the public domain. In any case, originality relates to the form of expression and not to the underlying idea. However, it is noteworthy that a work will not be ineligible for copyright by reason only that the making of the work or the doing of an act in relation to the work involved an infringement of copyright in some other work.

2. **Fixation:** the work must be fixed in any definite medium of expression now known or later to be developed, from which

it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device. Thus, the work must be fixed in a material form, for example, written on paper, stored on a disk, painted on canvas or recorded on tape.

3. Origination: Another requirement/condition for the protection of copyright in Nigeria is origination. Beyond originality and fixation, for a work to enjoy copyright protection in Nigeria, the origin of the work is essential. In this regard a work will enjoy copyright if:

- a) The author or one of the authors, at the time the work was made was a citizen of Nigeria, a person domiciled in Nigeria, a company incorporated in Nigeria, a government or any agency of any government in Nigeria (Federal, State or Local government), or an international body prescribed in accordance with the laws of Nigeria (e.g, the United Nations or one of its agencies like World Intellectual Property Organisation); or
- b) The work is a sound recording made in

Nigeria, regardless of the citizenship, domicile, incorporation, etc, of any of the authors;

c) The work was first published in Nigeria, regardless of the citizenship, domicile, incorporation, etc, of the any of the authors. However, this does not apply to broadcasts.

d) The work is covered by any international agreement or treaty (such as the Universal Copyright Convention or the Berne Convention).

In Nigeria, there is no statutory requirement for copyright to be registered in respect to a work. The work becomes protected as soon as it is created and put/fixed in a tangible material. This protection is accorded to both published and unpublished works.

What aspects of a work are not protected by copyright?

Ideas or concepts. Copyright law only protects the way ideas or concepts are expressed in a particular work. It does not protect the underlying idea, concept, discovery, method of operation, principle, procedure, process, or

system, regardless of the form in which it is described or embodied in a work.

Example: Your company has copyright over an instruction manual that describes a system for brewing beer. The copyright in the manual will allow you to prevent others from copying the way you wrote the manual, and the phrases and illustrations that you have used. However, it will not give you any right to prevent competitors from (a) using the machinery, processes, and merchandising methods described in the manual; or (b) writing another manual for a beer brewery..

- Facts or information. Copyright does not protect facts or information - whether scientific, historical, biographical or news - but only the manner in which such facts or information are/is expressed, selected or arranged.
- Names, titles, slogans and other short phrases are generally excluded from copyright

protection. The name or logo of a product or an advertising slogan will usually not be protected by copyright but may be protected under trademark law or the law of unfair competition.

- Official government works (such as copies of statutes or judicial opinions) are not protected by copyright in Nigeria.

Works of Applied Art – Overlap between Copyright and Design Rights

Works of applied art are artistic works used for industrial purposes by being incorporated in everyday products. Typical examples are jewelry, lamps, and furniture. Works of applied art have a double nature: they may be regarded as artistic works; however, their exploitation and use do not take place in the specific cultural markets but rather in the market of general-purpose products. This places them on the borderline between copyright and industrial design protection. The protection given to works of applied art differs greatly from one country to another.

In Nigeria, it is possible that an artistic work (including works of artistic craftsmanship, pictorial woven tissues and articles of applied handicraft and industrial art) may enjoy protection under copyright, but where the work was created to be multiplied by an industrial process, it is protected under the law of industrial designs.

What rights does copyright protection provide?

Copyright provides two sets or bundles of rights. Economic rights protect the author's or copyright owner's economic interests in possible commercial gain. Moral rights protect an author's creative integrity and reputation as expressed through the work.

What are economic rights?

Economic rights give the owner/holder of copyright the exclusive right to authorize or prohibit certain uses of a work. Exclusive means no one may exercise these rights without a copyright owner's prior permission. Generally, the economic rights include the

exclusive rights to:

- Reproduce a work in copies in various forms. For example, copying a CD, photocopying a book, downloading a computer program, digitizing a photo and storing it on a hard disk, scanning a text, printing a cartoon character on a T-shirt, or incorporating a portion of a song into a new song. This is one of the most important rights granted by copyright.
- Distribute copies of a work to the public. Copyright allows its owner to prohibit others from selling, leasing or licensing unauthorized copies of the work.
- Rent copies of a work. This right generally applies only to certain types of works, such as cinematographic works, musical works, or computer programs.
- Make translations or adaptations of a work. Such works are also called derivative works, which are new works that are based on a protected work. For example, translating

an instruction manual in English into other languages, turning a novel into a film (motion picture), rewriting a computer program in a different computer language, making different musical arrangements, or making a toy based on a cartoon figure.

- Publicly perform and communicate a work to the public. These include the exclusive rights to communicate the work by means of public performance, recitation, broadcasting or communication by radio, cable, satellite, or television (TV) or transmission by Internet. A work is performed in public when it is performed in a place that is open to the public or where more than just the closest family and friends are present.
- Receive a percentage of the sale price if a work is resold. This is referred to as resale right or droit de suite. In Nigeria, this right is limited to graphic works, three-dimensional works and manuscripts. Resale rights give creators the right to receive a share of the profit on resale of a work provided the resale

occurs in a specified way.

- Make works available on the Internet for on-demand access by the public so that a person may access the work from a place and at a time individually chosen by him/her. It covers in particular on-demand, interactive communication through the Internet.
- Publish the work. Only the owner of the copyright in a musical or literary work has the right to make copies of the work available to the public.
- Make a recording of the work. Only the copyright owner can make a recording of the work.

Any person or company wishing to use protected works for any of the purposes listed above must normally obtain prior authorization from the copyright owner(s). Although a copyright owner's rights are exclusive, they are limited in time (see page 20) and are subject to some important exceptions and limitations

(see page 29).

What are moral rights?

These are based on the French droit d'auteur tradition – which sees intellectual creations as an embodiment of the spirit or soul of the creator. They are granted to the author/creator of every work eligible for copyright. In Nigeria, moral rights are recognised and are even entrenched in the copyright legislation. The moral rights which are provided for by statute are:

- 1.) The right to be named as the author of the work ("authorship right" or "paternity right"). The author has the right to claim authorship of his work, except when the work is included incidentally or accidentally when reporting current events by means of broadcasting.
- 2.) The right to protect the integrity of the work. This prohibits the making of any changes to a work that would tend to damage the author's honor or reputation.

Unlike economic rights, moral rights cannot be transferred to someone else, as they are personal to the creator (but they may pass on to the creator's heirs and successors in title). They are provided by statute to be perpetual, inalienable and imprescriptible.

The Copyright Act does not provide for the moral rights of a performer.

What rights do "neighbouring rights" provide?

In Nigeria, the Copyright Act protects only two classes of neighbouring rights: Live Performances and Expressions of Folklore.

Live Performances include a dramatic performance (including dance and mime); a musical performance; a reading or recitation of a literary act or similar presentation which is or so far as it is, a live performance given by one or more individuals.

The rights of a performer includes the exclusive

right to do or control the record

A performer has the exclusive right to control the public performance; recording; live broadcast; reproduction in any material form; adaption; or dealing (by way of trade) in his/her performance.

The Copyright Act also provides for criminal liability in respect of the rights of a performer.

Expression of Folklore

Under the legislation, expressions of folklore cover folklore, folk poetry and folk riddles; folk songs and instrumental folk music; folk dances and folk plays; and productions of folk arts in particular drawings, paintings, carvings, sculpture, poetry, terra cotta, music, woodwork, metalware, jewelry, handicraft, costumes and indigenous textiles.

Expressions of folklore are protected against: reproduction, communication to the public by performance, broadcasting, distribution by cable or other means and adaptations,

translations, and other transformations when such expressions are made either for commercial purposes or outside their traditional or customary context.

The right to authorise the exploitation of folklore is vested in the Nigerian Copyright Commission.

The law also creates criminal liability in respect of the exploitation of folklore.

Producers of phonograms/sound recordings: in Nigeria, the artiste/singer under whose name the record is issued to the public is the author and first owner of copyright in a sound recording of a musical work, except there is a contract that provides otherwise. They enjoy the rights accorded to authors and producers of sound recording.

The rights of copyright owners in sound recordings of musical works in Nigeria are administered by the Copyright Society of Nigeria (COSON) (see Annex I).

Rights of Record Manufacturers

In Nigeria, record manufacturers cannot prohibit broadcasting of their records, but only have the right to receive a royalty from the broadcasters. The rate of these royalties is prescribed by the Nigerian Copyright Commission.

However, this right to receive a royalty in respect of the work is not a definite one as the copyright in a sound recording of a musical work belongs to the recording artist. The record manufacturer may receive royalty only if there exists a contract with the recording artist that assigns the copyright to the record manufacturer or allows it to receive royalties.

When a country joins the Rome Convention, the WTO (TRIPS Agreement) or the WIPO Performances and Phonograms Treaty, it may make reservations so that broadcasters in that country do not have an obligation to pay any royalties to record manufacturers.

Broadcasters enjoy exclusive rights in their wireless communication signal such as the

right to rebroadcast it, to fix the signal, or to reproduce any fixation of it even if it was made without the broadcaster's consent.

In Nigeria, broadcasting organizations have the right to authorize or prohibit the on-demand transmission of fixations of their broadcasts to individual subscribers and the granting to the public of access to fixations of their broadcasts incorporated in computer databases via an on-line network. However, cable operators still have the ability to re-transmit broadcasters' signals by cable without authorization or payment.

Currently, Internet audio and video streaming is not expressly included in the definition of broadcast in Nigeria.



The right given to broadcasters is separate from the copyright in the films, music and other material that is transmitted.

In Nigeria, the broadcaster of a television communication signal has the exclusive right to authorize or prohibit communication to the public, for example, to perform it in a place open to the public on payment of an entrance fee.

The exercise of related rights leaves intact, and in no way affects, the underlying copyright protection, if any, in the works being performed, recorded or broadcast on the Internet.

Copyright and Related Rights Protection for Music

A business may use music for various reasons to attract customers, create a positive effect on customer behavior, or for the benefit of its employees. This may help the business to obtain a competitive edge over its competitors, provide a better working environment for its employees, help establish a core of faithful customers, and even enhance people's perception of its brand or the company as a whole.

The licensed public performance or use of music is paid for by major television networks, local television and radio stations, cable and satellite networks and systems, public broadcasters, Internet websites, colleges and universities, night clubs, restaurants, background music services, fitness and health clubs, hotels, trade shows, concert presenters, shopping centers, amusement parks, airlines, and music users in a wide variety of other industries, including the telephone industry (ring tones).

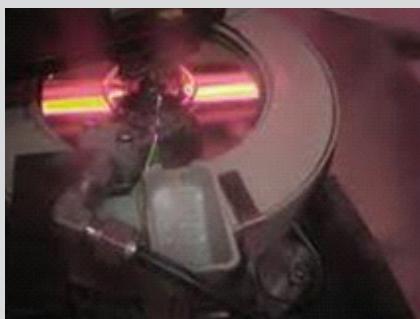
Copyright and related rights protection for music often involves layers of rights and a range of rights owners/administrators, including lyricists, composers, publishers of the scores, record companies, broadcasters, website owners, and copyright collecting societies.



If the music and lyrics are composed by two

different people then the song will be treated as consisting of two works – a musical work and a literary work. However, in most cases a license can be obtained from one collective management organization (CMO; see page 38) for the broadcasting of the entire song.

The music publishing rights include the right to record, the right to perform, the right to duplicate, and the right to include the work in a new or different work, sometimes called a derivative work. To facilitate commercial exploitation, most songwriters generally prefer to transfer the publishing rights to an entity identified as “the publisher,” pursuant to a music publishing agreement, that assigns the copyright or the right to administer the copyright to the publisher.



Among the many types of rights tied to works

of music are performance rights, print rights, mechanical rights, and synchronization rights. These are briefly explained below:

The public performance right is generally the most lucrative source of income for songwriters.



Fela Kuti performed publicly for his audience every week at his Africa Shrine.

The right to print and sell single song and multiple songs or copies of sheet music of musical compositions is the print right, which is licensed by the publisher.

A mechanical right refers to the right to

record, reproduce and distribute to the public a copyrighted musical composition on phonorecords (which includes audiotapes, compact discs and any other material object in which sounds are fixed, except those accompanying motion pictures and other audiovisual works). The licenses granted to the user to exploit the mechanical rights are called mechanical licenses.

The right to record a musical composition in synchronization with the frames or pictures in an audiovisual production, such as a motion picture, television program, television commercial or video production, is called the synchronization ("synch") right. A synchronization license is required to permit the music to be fixed in an audiovisual recording. The grant of this license permits the producer to incorporate a particular piece of music into an audiovisual work. This license is traditionally obtained by the television producer, through direct negotiation with the composer and the lyric writer or, more commonly, their publisher. Apart from the license needed to be obtained

from a composer for the use of music in an audio-visual recording, a separate "sync" license needs to be secured from the owner of the sound recording, which embodies or contains the musical work.

The term master recording (or master for short) refers to the originally produced recording of sounds (on a tape or other storage media) from which a record manufacturer or producer makes CD's or tapes, which it sells to the public. Master recording rights or master use rights are required to reproduce and distribute a sound recording embodying the specific performance of a musical composition by a specific artist.



The use of musical works as mobile ringtones has been a rapidly growing area of music use. It has become a fun and hugely popular way to

personalize your mobile phone. The popularity of ringtones has proved to be more widespread and enduring than many initially expected and has placed this new form of music use at the forefront of a predicted growth in 'paid-for' content for mobile devices. A ringtone is a file of binary code sent to a mobile device via SMS or WAP. The license for ringtones usually covers the creation and delivery of both 'monophonic' and 'polyphonic' ringtones.



Nokia N8 by permission of Nokia

“Digital Rights Management” (DRM) tools and systems (see page 25) play an important role in online management of music sales to prevent piracy. For example, Apple’s FairPlay technology and Microsoft’s Windows Media build restraints into digital music so that copyright holders are compensated for sales, and so that making of

digital copies is curtailed.

How long do copyright and neighbouring rights protections last?

In Nigeria, by statute, moral rights are perpetual. Economic rights on the other hand only last for a specific period of time depending on the work and the author.

If several authors are involved (work of joint authorship) then the term of protection is calculated from the death of the last surviving author. Once copyright protection over a work has expired, it is considered to be in the “public domain” (see page 44).

- Literary, musical or artistic works (other than photographs): copyright protection lasts for seventy years after the end of the year in which the author dies. If the author is a government or corporate body, copyright protection lasts for seventy years after the end of the year in which the work was published.

- Cinematograph films and photographs: copyright protection lasts for fifty years after the end of the year in which the work was first published.
- Sound recordings: copyright protection lasts for fifty years after the end of the year in which the recording was made.
- Broadcast: copyright protection lasts for fifty years after the end of the year in which the broadcast first took place.
- Anonymous or pseudonymous literary, musical or artistic works: copyright protection will end seventy years after the end of the year in which the work was first published. However, when the author of the work becomes known, the term of copyright shall be calculated the normal way (as above).

of fifty years calculated from the end of the year in which the performance took place.

- Because of the nature of folklore, there is no limit to the period during which an expression of folklore is protected.

The term of protection for neighbouring rights depends on the work.

- A performer's right subsists from the time of the performance to the end of a period

3. PROTECTING YOUR ORIGINAL CREATIONS

What do you have to do to obtain copyright or neighbouring rights protection?

Copyright and neighbouring rights protection is granted without any official procedure. A work is automatically protected as soon as it exists, without any special registration, deposit, payment of fee or any other formal requirement. However, the work must be fixed on/in some material form or medium (see page 9).

Copyright Protection for Multimedia Products

A “multimedia” product typically consists of several types of works, often combined together into a single fixed medium, such as computer disk or CD-ROM. Examples of multimedia products are video games, information kiosks and interactive web pages. The elements that can be combined into a multimedia product include music, text, photographs, clip art,

graphics, software, and full motion video. Each of these elements may be entitled to copyright protection in its own right. In addition, the compilation or consolidation of these works - the multimedia product itself - may receive copyright protection if this process results in a product which is considered to be original.

How do you prove that you are the owner of copyright?

A system of protection without formalities may pose some difficulty when trying to enforce your rights in case of a dispute. Indeed, if someone claims that you have copied a work of his or hers, then how do you prove that you were the first creator? You can take some precautions to create evidence that you authored the work at a particular point in time. For example:

- You may take advantage of the voluntary Copyright Notification Scheme operated by the Nigerian Copyright Commission. Doing so provides evidence of the existence of a valid claim to copyright protection. However, it must be noted that neither registration nor notification

at the Nigerian Copyright Commission office is required to institute an infringement suit. The notification only helps to effectively pursue a lawsuit for copyright infringement, as proof of ownership will be considerably easier.

The works eligible under the Copyright Notification Scheme are: Literary works, Musical works, Artistic works, Cinematograph films, Sound recordings and Computer Programmes.

The procedure for such voluntary registration under the Copyright Notification Scheme is as follows:

a) Pay the sum of N6, 000 (Six Thousand Naira) cash into any branch of Diamond Bank Plc with the following account details:

Account Name: COPYRIGHT NOTIFICATION SCHEME

Account Number: 041 213 0000 359

As the applicant, your name, address, signature,

phone number and title of the work must be indicated at the back of the teller.

b) Take the teller to the headquarters or a zonal branch of the Nigerian Copyright Commission and obtain a receipt and the Copyright Notification Form.

c) 2 passport photographs of the applicant is attached to the completed form and taken to the High Court/Notary Public for a sworn affidavit.

d) The completed form (with the sworn affidavit) is then submitted to the nearest office of the Nigerian Copyright Commission with:

- Two photocopies of the forms and receipts
- Complete copies of the work (1 copy for an unpublished work; and 2 copies for a published work and in the case of an artistic work, e.g. a photograph, 2 copies of visual representation of the work).

e) The applicant then checks back at the office of the Nigerian Copyright Commission for the Certificate of Notification.

- You may deposit a copy of your work with a bank or lawyer.
- You could send yourself a copy of your work in a sealed envelope by special delivery post (which results in a clear date stamp on the envelope), leaving the envelope unopened upon delivery.
- Works that are published should be marked with a copyright notice (see page 24).
- It is also advisable to mark your work with specific standard identification numbering systems, such as the International Standard Book Number (ISBN) for books; the International Standard Recording Code (ISRC) for sound recordings; the International Standard Music Number (ISMN) for printed music publications; the International Standard Musical Work Code (ISWC) for musical works of the kind which are within repertoires mostly controlled by collective management organizations; the International Standard Audiovisual Number

(ISAN) for audiovisual works, etc.

How do you protect works in electronic or digital form?

Works in electronic or digital form (e.g., CDs, DVDs, online text, music, movies) are especially vulnerable to infringement, as they are easy to copy and transmit over the Internet, often without any significant loss of quality, if at all. The measures outlined above, such as the registration or deposit at the office of the Nigerian Copyright Commission also apply to such works.

When businesses provide copyright-protected works online, such works are generally subject to a “mouse-click contract” (also called “click-wrap contract”) that seeks to limit what the user can do with the content. Such restrictions typically limit use to a single user and allow that user only to read/listen to a singly copy. Redistribution or reuse is generally prohibited.

In addition, many businesses employ technological measures to protect their

copyright in digital content. Such measures are generally referred to as “Digital Rights Management” (DRM) tools and systems. They are used for defining, tracking and enforcing permissions and conditions through electronic means and throughout the content lifecycle.

There are two ways in which DRM tools and systems can help control copyright in digital works:

- Marking the digital works with information about its copyright protection, owner, etc., which is called “rights management information;” and
- Implementing “technological protection measures” (TPMs) that help to control (permit or deny) access or use of the digital works. TPMs, when used in relation to different types of copyright works, can help control the user’s ability to view, hear, modify, record, excerpt, translate, keep for a certain period of time, forward, copy, print, etc., in accordance with the applicable copyright or neighbouring rights

law. TPMs also ensure privacy, security and content integrity.

Choosing the Right DRM Tools

There are many techniques that can be used to lower the likelihood of copyright infringement through the application of DRM tools and systems. Each has different strengths and weaknesses as well as acquisition, integration and maintenance costs. The choice of particular techniques is best determined by your assessment of the level of risk associated with the use of the work.

Rights management information

There are various ways to identify your copyright protected material:

- You may label the digital content, for example, with a copyright notice or a warning label such as “May be reproduced for non-commercial purposes only.” It is good practice also to include a copyright statement on every page of your business website that spells out the terms and conditions for use of the content

on that page.

- The Digital Object Identifier (DOI) is a system for identifying copyright works in the digital environment. DOIs are digital tags/names assigned to a work in digital form for use on the Internet. They are used to provide current information, including where the work can be found on the Internet. Information about a digital work may change over time, including where to find it, but its DOI will not change. (See www.doi.org).
- A time stamp is a label attached to digital content (works), which can prove what the state of the content was at a given time. Time is a critical element when proving copyright infringement: when a particular e-mail was sent, when a contract was agreed to, when a piece of intellectual property was created or modified, or when digital evidence was taken. A specialized time-stamping service may be involved to certify the time a document was created.

- Digital watermarks use software to embed copyright information into the digital work itself. The digital watermark may be in a visible form that is readily apparent, much like a copyright notice on the margin of a photograph, or it may be embedded throughout the document, just as documents are printed on watermarked papers. Often, it is embedded so that in normal use it remains undetected. While visible watermarks are useful for deterrence, invisible watermarks are useful for proving theft and on-line tracing of the use of a copyright work.

Technological protection measures (TPMs)

Some businesses prefer to use technology to limit access to their works to only those customers who accept certain terms and conditions for the use of the works. Such measures may include the following:

- Encryption is often used to safeguard software products, phonograms and audiovisual works from unlicensed use. For example, when

a customer downloads a work, DRM software can contact a clearinghouse (an institution which manages the copyright and neighbouring rights) to arrange payment, decrypt the file, and assign an individual “key”— such as a password – to the customer for viewing, or listening to, the content.

- An access control or conditional access system, in its simplest form, checks the identity of the user, the content files, and the privileges (reading, altering, executing, etc.) that each user has for a particular work. An owner of a digital work may configure access in numerous ways. For example, a document may be viewable but not printable, or may be used only for a limited period of time.

- Releasing only versions of lower quality. For instance, businesses can post photographs or other images on their website with sufficient detail to determine whether they would be useful, e.g., in an advertising layout, but with insufficient detail and quality to allow reproduction in a magazine.

What protection do you have abroad?

Most countries are members of one or more international treaties to ensure, amongst other things, that a copyright work created in one country is automatically protected in all countries that are members of such international treaties. The most important international treaty on copyright is the Berne Convention for the Protection of Literary and Artistic Works (see Annex III). If you are a national or a resident of a country party to the Berne Convention (see list of members in Annex IV), or if you have published your work in one of the member countries, your work will automatically enjoy the level of copyright protection granted in the Berne Convention in all other countries that are party to this Convention.

Annex III contains a list of the main international copyright treaties to which Nigeria is a member. Nigeria is a party to the Berne Convention. However, copyright protection remains territorial in nature. Therefore your work will

only enjoy copyright protection if it meets the legal requirements of the copyright law of the relevant country. So while your work may automatically be protected by copyright in many countries (because of international treaties), you still have a separate copyright protection system in each country, which varies considerably amongst countries.

Is a copyright notice on the work obligatory?

In Nigeria, a copyright notice is not required for protection. Nevertheless, it is strongly advisable to place a copyright notice on or in relation to your work. Placing a copyright notice is a very cost-effective safeguard. It requires no significant extra expense, but may end up saving costs by deterring others from copying your work, as well as facilitating the process of granting prior permission by making it easier to identify the copyright owner.

There is no formal procedure to put the notice on your work. It can be written, typed, stamped or painted. A copyright notice generally

consists of:

- The word “copyright”, “copr.” or the copyright symbol ©;
- The year in which the work was first published; and
- The name of the copyright owner.

In addition, it is not compulsory but it is advisable to add the words “All rights reserved”.

Example: ABC Ltd, Copyright 2006

Copyright Protection for Websites

Websites involve combinations of many different creative works, such as graphics, text, music, artwork, photographs, databases, videos, computer software, the HTML code used to design the website, etc. Copyright may protect these elements separately, e.g., an article at a website may have its own copyright. Copyright may also protect the particular way that these diverse elements are selected and arranged to create the total website. For

further information, see: www.wipo.int/sme/en/documents/business_website.htm

4. OWNERSHIP OF COPYRIGHT

Is the author always the owner of a copyright work?

The meaning of 'authorship' and of 'ownership' is often confused. The author of a work is the person who created the work. If the work was created by more than one person, then all the creators are considered as co-owners or joint-owners. The issue of authorship is especially relevant in connection with moral rights and in order to determine the date on which protection expires.

The Copyright Act defines the author of each type of work:

- Literary, artistic or musical works: the creator of the work;
- Photographic works: the person who took the photograph;
- Cinematograph films: the person by whom the arrangements for making of the film were made, (unless the parties to the making of the film provide otherwise by contract within themselves);

- Sound recordings: the person by whom the arrangements for the making of the recording were made (unless the parties to the making of the sound recording provide otherwise by contract);
- Sound recordings of musical works: the artist in whose name the recording was made (unless in either case the parties to the making of the sound recording of the musical work, provide otherwise by contract);
- Broadcasts: in the case of broadcast transmitted from within any country, the author is the person by whom the arrangements for the making or the transmission from within that country were undertaken.

Copyright ownership is a different issue. The owner of the copyright in a work is the person who has the exclusive rights to exploit the work, for example, to use, copy, sell, and make derivative works. Generally, in Nigeria, copyright in a work initially belongs to the person who actually created it, that is to say, the author. However, this position may be altered by contract.

Works created by an employee: here, the work belongs to the employee, except the contract of employment or some other contract specifically provides for the transfer of the copyright to the employer.

However, in the case of employment in journalism, and in respect of a literary, musical or artistic work as it relates to the employment, the work belongs to the employer except there is an agreement that the work will belong to the employee.

Commissioned works/works for hire: where a work is commissioned by a person who is not the author's employer under a contract of employment, the copyright in the work will belong to the author/creator except the parties agree otherwise in writing.

Who owns the moral rights?

Moral rights always belong to the individual creator of the work (or his/her heirs and successors-in-title). As noted above, (see page 13), this right is perpetual, inalienable and imprescriptible, and so cannot be waived by contract or some other means.

Companies cannot have moral rights. For example, if the executive producer of a film is a company, then only the actual producer (originator or creator) and in some cases, the director and screenwriter will have moral rights in the film.

Works Created For Governments

In Nigeria, where a work is made under the direction and control of a government, government authority or prescribed international body, that government, authority or body will be the owner of copyright in the work. However, an author who has been commissioned to do a work by any of these bodies may contract to ensure that the copyright in the work belongs to him/her.

Example: You outsource the creation of an advertisement for your company. At the time, you intend to use it to promote your new product at a trade show. Under most national laws, the advertising agency will own the copyright, unless it was expressly agreed otherwise in the contract. Some time later,

you want to use parts of the advertisement (a graphic design, a photo or a logo) on your new website. You must seek the permission from the advertising agency to use the copyright material in this new way. This is because the use of the material on your website was not necessarily envisaged at the time of the original contract.

Who owns the copyright in works created by several authors?

A basic requirement of co authorship is that each co author's contribution must itself be copyrightable subject matter. In the case of co-authorship, the rights are usually exercised on the basis of an agreement between all the co-authors. In the absence of such agreement, the following rules generally apply:

- **Joint works.** When two or more authors agree to merge their contributions into an inseparable or interdependent combination of the individual contributions, or if two or more persons share a joint interest in the whole or any part of a copyright, a "joint work" is created.

An example of a joint work is a textbook in which two or more authors contribute separate components that are intended to be combined into a single work.

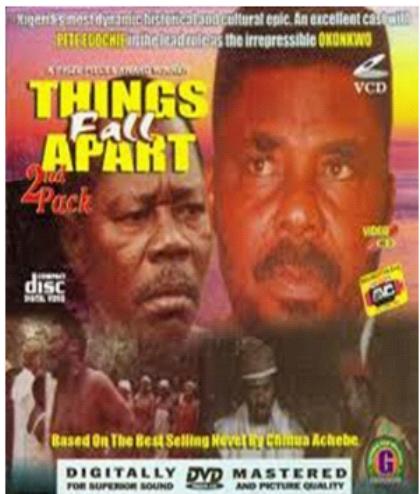
In a joint work, the contributing authors become the co-owners of the entire work. Under Nigerian law, any one of the co-owners may exploit the work without permission of the other co-owners (but will have to share the profits generated from such use). A written agreement among the authors or owners is usually the best course of action, specifying such issues as ownership and use, rights to revise the works, marketing and sharing of any revenue, and warranties against copyright infringement.

- **Collective works.** If the authors do not intend the work to be a joint work and would like their contributions to be used separately, then the work will be deemed to be "collective." Examples of collective works are a CD, which is a compilation of songs by various composers, or a magazine containing articles by freelance

authors. In that case, each author owns the copyright in the part he/she created.

- **Derivative works.** A derivative work is a work based on one or more pre-existing works, such as a translation, musical arrangement, art reproduction, dramatization or motion picture version. Making derivative works is an exclusive right of the copyright owner. However, a derivative work itself can qualify for separate copyright protection, although the copyright extends only to those aspects, which are original to the derivative work.





The Things Fall Apart movie is a derivative work of the Things Fall Apart book. Therefore, the producer of the Things Fall Apart movie required Chinua Achebe's permission to make and distribute the film.

5. BENEFITING FROM COPYRIGHT AND NEIGHBOURING RIGHTS

How can you generate income from creative works?

If your company owns copyright in a work, you automatically have a complete bundle of exclusive rights. This means that only your company may reproduce the protected work, sell or rent copies of the work, prepare derivative works, perform and display the work in public, and do other similar acts. If others want to use or commercialize your copyright material, you may license or sell a part of one, various or all of your exclusive rights, in exchange for payment(s). The payment(s) can be one time or recurring. This will often add up to much greater profits for your business than direct exploitation of your copyright by the author, creator or copyright owner.

There are many ways to commercialize creative works:

- You may simply sell the works that are

protected by copyright, or make copies and sell the copies; in both cases, you retain all or most of the rights arising out of copyright ownership (see next paragraph);

- You may allow someone else to reproduce or otherwise use the works. This can be done by licensing your economic rights over the works; and
- You may sell (assign) your copyright over the works, either entirely or partly.

If you sell your work, do you lose copyright over it?

Copyright is distinct from the right of possession of the physical object in which the work is fixed. Merely selling a copyright work (e.g., a computer program or a manuscript) does not automatically transfer copyright to the buyer. Copyright in a work generally remains with the author unless he expressly assigns it by a written agreement to the buyer of the work.

What is a copyright license?

A license is a permission that is granted to others (individuals or companies) to exercise one or more of your economic rights over a work protected by copyright. The advantage of licensing is that you remain the copyright owner while allowing others to make copies, distribute, download, broadcast, webcast, simulcast, podcast, or make derivative works in exchange for payment. Licensing agreements can be tailored to fit the parties' specific requirements. Thus, you may license some rights and not others. For example, while licensing the right to copy and use a computer game, you may retain the rights to create derivative works from it (e.g., a movie).

What is the difference between an exclusive and a non-exclusive license?

A license may be exclusive or non-exclusive. If you grant an exclusive license, the licensee alone has the right to use the work in the ways covered by the license, this means that no one, not even you, may use the work in the ways

covered by the licence. In Nigeria, an exclusive license must be in writing in order to be valid and effective. An exclusive license may also be restricted, for example, to a specified territory, for a period of time, for limited purposes, or the continuation of the exclusivity may be conditional upon other types of performance requirements. Exclusive licenses are often a good business strategy for getting a copyright product distributed and sold on the market, if you lack the resources to effectively market your work yourself.

On the other hand, if you grant a non-exclusive license to a company, you give that company the right to exercise one or more of your exclusive rights, but this does not prevent you from allowing others (including yourself) to exercise the same rights at the same time. Thus, you may give any number of individuals or companies the right to use, copy or distribute your work. As with exclusive licenses, non-exclusive licenses may be limited and restricted in all ways. In Nigeria, a non-exclusive license may be written, oral or inferred from conduct.

However, a written agreement is preferable.

- It is noteworthy that an assignment or licence granted by one copyright owner shall have effect as if granted by his co-owner also, and, subject to any contract between them, fees received by the grantors shall be divided equitably between all the co-owners.
- While there is no requirement that a licence agreement be registered with any government authority, however, it is advisable to register the work under the Copyright Notification Scheme at the Nigerian Copyright Commission (see page 22).

What happens when you sell your copyright?

An alternative to licensing is to sell your copyright in the work to someone else, who then becomes the new copyright owner. The technical term for such a transfer of ownership is an “assignment.” Whereas a license only grants a right to do something, which in the absence of the license would be unlawful, an

assignment transfers the total interest in your right(s). You may either transfer the entire bundle of rights, or just part of it. In Nigeria, an assignment must be in writing and signed by the copyright owner to be valid.



possible to grant any number of licenses to other interested users for identical or different purposes on identical or different terms and conditions.

Sometimes, however, absolute control over a work represents a business security for the licensee or an essential part of its business strategy. In such situations, an exclusive license or an assignment of all your rights in exchange for a one-time fee may be the best deal. But you should consider such negotiations only after having exhausted all other possible alternatives, and make sure that you are paid adequately for it. Once you assign the copyright in a work you lose all its future income-earning potential.

Licensing Strategy

By granting a license, you give the licensee the permission to do certain things as specified in the license agreement that otherwise would not be permissible. Therefore, it is important to clearly define the scope of the activities permitted under the license agreement as precisely as possible. Generally, it is better to grant licenses that are limited in scope to the specific needs and interests of the licensee. Grant of a non-exclusive license makes it

What is merchandising?

Merchandising is a form of marketing whereby an intellectual property right (typically a trademark, industrial design or copyright) is used on a product to enhance the attractiveness of the product in the eyes of the customers.

The merchandising of products by relying on copyright may be a lucrative additional source of income:

- For businesses that own copyright works (such as strip cartoons or photographs), licensing out copyright to potential merchandisers can generate lucrative license fees and royalties. It also allows a business to generate income from new product markets in a relatively risk-free and cost-effective way.
- Companies that manufacture low-priced mass produced goods, such as coffee mugs, candies or T-shirts, may make their products more attractive by using a famous character, artistic work, or other appealing element on them.

Merchandising requires prior authorization to use the various rights (such as a copyright protected work, an industrial design or a trademark) on the merchandised good. Extra caution is necessary when celebrities' images are used for merchandising, as they may be

protected by privacy and publicity rights.

How do you license your works?

As a copyright or neighbouring rights owner, it is up to you to decide whether, how and to whom you may license the use of your works. There are various ways in which licensing is managed by copyright holders.

One option is to handle all aspects of the process of licensing yourself. You may negotiate the terms and conditions of the licensing agreement individually with every single licensee or you may offer licenses on standard terms and conditions that must be accepted as such by the other party if it is interested in exploiting your copyright or neighbouring rights works.

Administering all your rights yourself will most frequently involve considerable administrative workload and costs to gather market information, search for potential licensees and negotiate contracts. Therefore, you may consider entrusting the administration of some

or all of your rights to a professional licensing agent or agency, such as a book publisher or a record producer, who will then enter into licensing agreements on your behalf. Licensing agents are often in a better position to locate potential licensees and negotiate better prices and licensing terms than you may be able to do on your own.

In practice, it is often difficult for a copyright or neighbouring rights owner, and even for licensing agents, to monitor all the different uses made of their works. It is also quite difficult for users, such as radio or TV stations, to individually contact each author or copyright owner in order to obtain the necessary permissions. In situations where individual licensing is impossible or impracticable, joining a collective management organization (CMO) may be a good option, if available for the specific category of works involved. CMOs monitor uses of works on behalf of creators of certain categories of works, and are in charge of negotiating licenses and collecting payment. You may join a relevant CMO in Nigeria, and/or

in other countries.

How do collective management organizations work?

CMOs act as intermediaries between users and a number of copyright owners who are members of the CMO. Generally, there is one CMO per type of work and per country. However, CMOs exist for only some types of works, such as film, music, photography, reprography (all kinds of printed material), television and video, and visual arts. On joining a CMO, members notify the CMO about the works that they have created or own. The core activities of a CMO are:

- 1) Documentation of works of its members
- 2) Licensing and collecting royalties on behalf its members
- 3) Gathering and reporting information on the use of works
- 4) Monitoring and auditing, and
- 5) Distribution of royalties to its members.

The works included in the repertoire of the

CMO are consulted by persons or companies interested in obtaining a license for their use. To enable the copyright or neighbouring rights owners to be represented internationally, CMOs enter into reciprocal agreements with other CMOs throughout the world. The CMOs then grant licenses on behalf of their members, collect the payments, and redistribute the amount collected, based on an agreed formula, to the copyright owners.

The practical advantages of collective management are as follows:

- Collective licensing has many benefits for users and rights-holders. A one-stop shopping greatly reduces administrative burden for users and rights-holders; not only does collective management provide right-owners access to economies of scale with respect to administration costs but also in making investments in research and development for creating digital systems that allow a more effective fight against piracy. Further, collective licensing is a great equalizer; without a collective system in which all market

operators participate, small and medium-sized right-holders and small and medium-sized users would be simply locked out of the market.

- It also allows owners of protected works to use the power of collective bargaining to obtain better terms and conditions for the use of their works as a CMO is able to negotiate on a more balanced basis with numerous, more powerful and often dispersed and distant user groups.
- Businesses that want to use others' copyright or neighbouring rights are able to deal with only one organization and may be able to get a blanket license. A blanket licence allows the licensee to use any item in the CMO's catalogue or repertoire for a specified period of time, without the need to negotiate the terms and conditions for the rights of each individual work.
- Many CMOs also play an important role outside of their immediate licensing business. For example, they are involved in enforcement

(anti-piracy); provide education and information dissemination services; interface with legislators; stimulate and promote the growth of new works in different cultures through cultural initiatives; and contribute to social and legal welfare of their members.

- Details of the relevant CMOs in a country may be obtained from an international federation of CMOs (see Annex I), from a national copyright administration/office (see Annex II), from the relevant industry association or from one of the international non-governmental organizations listed in Annex I.

may even be mandated by law.

Collective Management in the Music Industry

Collective management of rights plays a central role in the music business due to the different types of rights in the music business chain. Mechanical rights collected on behalf of authors, composers and publishers; performance rights collected on behalf of authors, composers and publishers; and performance rights collected on behalf of performers and phonogram producers. No wonder, thousands of small and medium-sized record companies, music publishers and artists in their respective countries rely on local and/or distant collective licensing organizations to represent their interests and negotiate with powerful users of music (large communication groups, radio, TV, telecom groups or cable-operators) to ensure an adequate reward for their creative activities. At the same time, all licensees, regardless of size, have access to all repertoires without having to negotiate with a large number of individual right holders.

Managing Copyright and Neighbouring Rights

The rights granted by copyright and neighbouring rights may be managed by:

- The owner of the rights;
- An intermediary, such as a publisher, producer or distributor; or
- A collective management organization (CMO). In some cases, management by a CMO



CMOs of performers (music and audiovisual) have been managing rights on the Internet since the beginning, mainly simulcasting and webcasting, and from now on, will address the "making available right".

In Nigeria, a broadcasting corporation must pay for the right to broadcast music. The payment is made to the copyright owner, but generally in an indirect way. In practice, the copyright owner assigns his or her rights to an organization (CMO), which negotiates with all those interested in publicly performing music. The CMO, representing a membership of a large number of copyright owners, pays royalties to its members in accordance with the number of times a particular work is performed in public. Broadcasting organizations negotiate an overall

annual payment to the CMO and provide the CMO with sample returns from individual stations, which allow the calculation, for the purpose of paying royalties to composers, of the number of times a record has been played.

In Nigeria, the CMO responsible for all types of rights associated with musical works and sound recording is the Copyright Society of Nigeria (COSON) (see page Annex I).

A public performance license is necessary for any broadcast of a television program that contains music. The performance right must be licensed from the copyright owners or publishers of the composition and the sound recording used. A blanket license is traditionally secured, usually from a performing rights society.

6. USING WORKS OWNED BY OTHERS

When do you need a permission to use the works of others?

Businesses often need to use works protected by copyright or neighbouring rights works to support their business activities. When using the work of others you must first determine if copyright permission is required. In principle, you will need authorization from the copyright owner:

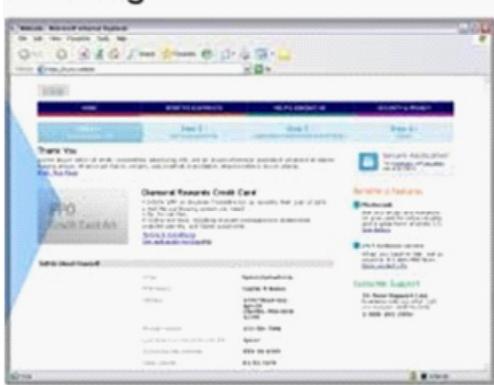
- If the work is covered by copyright and/or neighbouring rights law(s);
- If the work is not in the public domain;
- If your planned exploitation implies the use of all or part of the rights granted to the copyright and/or neighbouring rights owner; and
- If your intended use is not covered by “fair dealing” or by a limitation or exception specifically included in the national copyright or neighbouring rights law.

Remember that you may need specific permission for using other people's content outside your business premises (investor “road show,” company website, annual report, company newsletter, etc.), and inside your business premises (distribution to employees, product research, in-house meetings and training, etc.). And, even if you use just a part of a copyright-protected work, you will generally need prior permission.

Do you also need permission to make electronic or digital use of the works of others?

Copyright protection applies to digital use and storage in the same way as it does to any other uses. Therefore, you may need prior permission from the copyright owners to scan their works; post their works on an electronic bulletin board or a website; save their digital content on your enterprise's database; or publish their works on your website. Most websites list the e-mail address of a contact person, making it relatively easy to request permission to reproduce images or text.

Web Page



Current technology makes it easy to use material created by others – film and television clips, music, graphics, photographs, software, text, etc. – in your website. The technical ease of using and copying works does not give you the legal right to do so.

If you have bought a work protected by copyright, are you free to use it as you wish?

As explained above, copyright is separate from the right of possession of the work (see page 42). Buying a copy of a book, CD, video or computer program by itself does not necessarily give the buyer the right to make further copies or play or show them in public. The right to do these things will generally remain with the copyright owner, whose permission you would need to do those acts.

Licensing Software

Standardized packaged software is often licensed to you upon purchase. You purchase the physical package but only receive a license for certain uses of the software contained in it. The terms and conditions of the license (called "shrink-wrap license") are often contained on the package, which may be returned if you do not agree with the stated terms and conditions. By opening the package you are deemed to have accepted the terms and conditions of the agreement. Otherwise, the licensing agreement may be included inside the packaged software.

Often, the licensing of software also takes place on-line by means of "click-wrap licenses." In such licenses, you accept the terms and conditions of the agreement by clicking on the relevant icon on a webpage.

In all such cases, you should carefully go through the licensing agreement to find out what you may and may not do with the software you have bought.

What content or material are you entitled to use without permission?

Authorization from the copyright owner is not needed:

- If you are using an aspect of the work which is not protected under copyright law. For example, if you are expressing the facts or ideas from a protected work in your own way, rather than copying the author's expression (see page 9);
- If the work is in the public domain; and
- If your use is covered by the concept of 'fair dealing' or by a limitation or exception specifically included in the national copyright law.

When is a work in the public domain?

If no one has copyright in a work, that work belongs to the public domain and anyone may freely use it for any purpose whatsoever. The following types of works are in the public domain:

- A work for which copyright protection

period has expired (see page 20);

- A work that cannot be protected by copyright (e.g., title of a book) (see page 9); and
- A work for which the copyright owner has explicitly abandoned his rights, for example, by putting a public domain notice on the work.

Absence of a copyright notice does not imply that a work is in the public domain, even if the work is available on the Internet.

How do you find out whether a work is still protected by copyright or neighbouring rights?

In accordance with moral rights, an author's name will normally be indicated on the work, whereas the year in which the author died may be available in bibliographic works or public registers. If that search does not give clear results, you may consult the copyright register of Nigerian Copyright Commission to check for any relevant information, or you may contact the relevant collective management organization or the publisher of the work. Remember that

there may be several copyrights in one product, and these rights may have different owners, and with different periods of protection. For example, a book may contain text and images that are protected by several and separate copyrights, each expiring at a different date.

When can you use a work under a limitation or exception to copyright or under the concept of “fair dealing”?

The Copyright Act includes a number of limitations and exceptions, which limit the scope of copyright protection, and which allow either free use of works under certain circumstances, or use without permission by way of fair dealing. The exceptions and limitations include the use of a quotation from a published work (that is, to use short excerpts in an independently created work), some copying for private and personal use (e.g., for research and study purposes), some reproduction in libraries and archives (e.g., of works out of print, where the copies are too fragile to be lent to the general public), reproduction of excerpts of works by teachers for use by the students in a class, or

the making of special copies for use by visually handicapped persons.

The limitations and exceptions on fair dealing are described exhaustively in the Copyright Act, which should be consulted for guidance. Otherwise, you should seek expert advice.

What is a levy system for private copying?

Individuals copy large amounts of copyright material for their own personal, non commercial use. Such copying creates a profitable market for the manufacturers and importers of recording equipment and media. However, private copying cannot by its very nature be managed by contract: private copies are made spontaneously by people in the privacy of their own homes. Therefore, in some countries, copying for private use is simply permitted under an exception; no prior permission needs to be sought. But in exchange, a number of such countries have set up a payment system of levies to reimburse artists, writers and musicians for such duplication of their works.

A levy system may be composed of two elements:

- Equipment and media levy: a small copyright fee is added to the price of all sorts of recording equipment, ranging from copying and fax machines to CD and DVD burners, video cassette recorders and scanners. Some countries also provide for a levy on blank recording media, such as photocopying paper, blank tapes or CD-Rs or flash cards.
- Operator levy: a “user fee” is paid by schools, colleges, government and research institutions, universities, libraries and enterprises making a large volume of photocopies.

Levies are usually collected by a collective management organization from manufacturers, importers, operators or users, and then distributed to the relevant right owners.

In Nigeria, individuals may copy copyright material for their private, non commercial use without seeking prior permission from copyright

owners. However, the Copyright Act provides for the existence of a system of the payment of levies on any material used or capable of being used to infringe copyright in a work. This levy will be paid into the fund of the Nigerian Copyright Commission to be distributed to copyright owners through collective societies.

Can you use works protected by technological protection measures (TPMs)?

Businesses need to use care when making commercial uses of works protected by TPMs if this would require circumventing the TPM, an action that is now prohibited by law in many countries. Circumvention of a TPM would occur, for instance, if you hack into someone’s digital rights management system in order to use the protected content without authorization, or if you decrypt a copyright work without authorization. Circumvention of TPMs is not directly prohibited in Nigeria; however, the regular rules of copyright infringement still apply.

How can you get authorization to use protected works over which rights are owned by others?

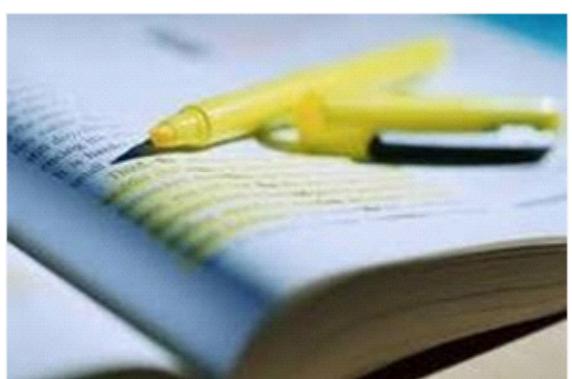
There are two primary ways to go about obtaining permission to use the copyright or neighbouring rights-protected work: using the services of a CMO, or contacting the copyright or neighbouring rights owner directly if contact details are available.

The best way is probably to first see if the work is registered in the repertoire of the relevant CMO, which considerably simplifies the process of obtaining licenses. CMOs generally offer different types of licenses, for different purposes and uses. Some CMOs also offer digital licenses.

If copyright or neighbouring rights in the work is/are not managed by any CMO, you will have to contact the copyright or neighbouring rights owner directly or his/her agent. The person named in the copyright notice is probably the person who was the initial copyright owner, but over a period of time, the economic

rights of copyright or neighbouring rights may have been transferred to another person. By searching the databank of the Nigerian Copyright Commission you may be able to identify the current copyright or neighbouring rights owner. In case of written or musical works, you may contact the work's publisher or the record producer, who often owns the right to reproduce the material.

As there might be several "layers" of rights, there may be several different right owners from each of whom licenses are required. For example, there may be a music publisher for the composition, a recording company for the recording of music, and often also the performers.



You need authorization from the copyright owner whose works you want to use. Authors often transfer their rights to a publisher or a

CMO to manage the economic exploitation of their works.

How can your business reduce the risk of infringement?

Litigation for copyright infringement can be an expensive affair. Therefore, it would be wise to implement policies that help avoid infringement. The following are recommended:

- Educate the staff employed by your company so that they are made aware of possible copyright implications of their work and actions;
- Obtain written licenses or assignments, where needed, and ensure that staff are familiar with the scope of such licenses or assignments;
- Mark any apparatus that could be used to infringe copyright (such as photocopiers, computers, CD and DVD burners) with a clear notice that the apparatus must not be used to infringe copyright;
- Prohibit your staff explicitly from downloading any copyright-protected material

from the Internet on office computers without authorization; and

- If your business makes frequent use of products protected by technological protection measures (TPMs), develop policies to ensure that employees do not circumvent TPMs without authorization from the copyright owner, or do not exceed the scope of the authorization.

Summary Checklist

- Maximize your copyright protection. Register your works with the national copyright office, where such optional copyright registration is available. Put a copyright notice on your works. Employ digital rights management tools to protect digital works.
- Ascertain copyright ownership. Have written agreements with all employees, independent contractors and other persons to address the question of ownership of copyright in any works that are created for your company.
- Avoid infringement. If your product or service includes any material that is not entirely

original to your company, find out whether you need permission to use such material and, where needed, get prior permission.

- As a rule of thumb, get the most out of your copyright. License your rights, rather than selling them. Grant specific and restrictive licenses, so as to tailor each license to the particular needs of the licensee.



7. ENFORCING COPYRIGHT

When is your copyright infringed?

Anyone who engages without the prior permission of the copyright owner in an activity, which the copyright owner alone is authorized to do or prohibit, is said to have violated the owner's copyright, and is said to have "infringed" copyright.

In Nigeria, the economic rights may be infringed if someone, without the licence or authorization of the copyright owner:

- 1) Does or causes any other person to do an act, the doing of which is controlled by copyright;
- 2) Imports or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy;
- 3) Exhibits in public any article in respect of which copyright is infringed;
- 4) Distributes by way of trade, offer for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed;

- 5) Makes or has in his possession, plates, master tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work;
- 6) Permits place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be used is not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;
- 7) Performs or causes to be performed for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

It is not a defence for a person to claim that he did not know that he was infringing a copyright protected work.

There may be copyright infringement, even if only a part of a work is used. An infringement will generally occur where a "substantial part"

– that is an important, essential or distinct part – is used in one of the ways exclusively reserved to the copyright owner. So, both the quantity and quality matter. However, there is no general rule on how much of a work may be used without infringing copyright. The question will be determined on a case-by-case basis, depending on the actual facts and circumstances of each case.

The moral rights may be infringed:

- If your contribution, as author of the work, is not recognized; or
- If your work is subjected to derogatory treatment or is modified in a way that would be prejudicial to your honor or reputation.

One single act may violate the rights of many right holders. For example, it is an infringement of the right in the broadcast to sell tapes of broadcast programs. Of course, this action would also infringe the copyright of the composer of the music and the record company, which produced the original recording. Each

right holder may take separate legal actions.

What should you do if your rights are likely to be or have been violated?

The burden of enforcing copyright and neighbouring rights falls mainly on the right owner. It is up to you to identify any violation of your rights and to decide what measures should be taken to enforce your rights.

A copyright lawyer or law firm would provide information on the existing options and help you to decide if, when, how and what legal action to take against infringers, and also how to settle any such dispute through litigation or otherwise. Make sure that any such decision meets your overall business strategy and objectives.

If your copyright is infringed, then you may begin by sending a letter (called a "cease and desist letter") to the alleged infringer informing him/her of the possible existence of a conflict. It is advisable to seek the help of a lawyer to write

this letter. In some countries, if someone has infringed your copyright on the Internet, you may have the option:

- To send a special cease and desist letter to an Internet Service Provider (ISP) requesting that the infringing content be removed from the website or that access to it be blocked ("notice and take-down"); or
- To notify the ISP, which in turn notifies its clients of the alleged infringement and thereby facilitates resolution of the issue ("notice and notice" approach).

Sometimes surprise is the best tactic. Giving an infringer notice of a claim may enable him to hide or destroy evidence. If you consider the infringement to be willful, and you know the location of the infringing activity, then you may wish to go to court without giving any notice to the infringer and ask for an ex parte order that allows for a surprise inspection of the infringer's premises and the seizure of relevant evidence.

The law in Nigeria allows the court to issue an interim injunction by which the court may order, pending the final outcome of the court case, the alleged infringer to stop his infringing action and to preserve relevant evidence.

Bringing legal proceedings against an infringer is advisable only if: (i) you can prove that you own the copyright in the work; (ii) you can prove infringement of your rights; and (iii) the value of succeeding in the legal action outweighs the costs of the proceedings.

Under Nigerian law, infringement or likely infringement is actionable at the suit of the owner, assignee or an exclusive licensee of the copyright. The court responsible for copyright matters in Nigeria is the Federal High Court exercising jurisdiction in the place where the infringement occurred.

The remedies that courts may provide to compensate for an infringement include damages, injunctions, conversion rights, orders to account for profits, and orders to deliver up

infringing goods to right holders. The infringer may also be compelled to reveal the identity of third parties involved in the production and distribution of the infringing material and their channels of distribution. In addition, the court may order, upon request, that infringing goods be destroyed without compensation.

The Copyright Act also imposes criminal liability for making or commercially dealing with copies of infringing works. The penalties for infringement may be a fine or even imprisonment.

In order to prevent the importation of pirated works, you should contact the national customs authorities. Nigeria has order enforcement measures, which allow copyright owners and licensees to request the detention of suspected pirated and counterfeit goods.

The owner of a copyright in any published literary, artistic or musical work or sound recording, may give notice in writing to the Department of Customs and Excise that he

is the owner of the copyright in the work and that he requests the Department during the period specified in the notice, to treat copies of the work (which if it had been made in Nigeria, would be an infringement copy of the work) as prohibited goods.

practice to include mediation and/or arbitration clauses in licensing agreements. For more information, see the website of the WIPO Arbitration and Mediation Center at: arbiter.wipo.int/center/index.html.

What are your options for settling copyright infringement without going to a court?

In many instances, an effective way of dealing with infringement is through arbitration or mediation. Arbitration generally has the advantage of being a less formal, shorter and cheaper procedure than court proceedings, and an arbitral award is more easily enforceable internationally. An advantage of both arbitration and mediation is that the parties retain control of the dispute resolution process. As such, it can help to preserve good business relations with another enterprise with which your company may like to continue to collaborate or enter into a new licensing or cross licensing arrangement in the future. It is generally good

ANNEX I

Useful Internet Links

- World Intellectual Property Organization: www.wipo.int
- WIPO's Division of Small and Medium-sized Enterprises: www.wipo.int/sme/en/
- WIPO's Website on Copyright and Neighbouring Rights: www.wipo.int/copyright/en/index.html
- WIPO's Website on Enforcement: www.wipo.int/enforcement/en/index.html
- To buy publications from the WIPO electronic bookshop: www.wipo.int/ebookshop. These include:
 - Guide on the Licensing of Copyright and Neighbouring Rights, publication no. 897
 - Collective Management of Copyright and Neighbouring Rights, publication no. 855
- To download free publications: www.wipo.int/publications. These include:
 - Understanding Copyright and Neighbouring Rights, publication no. 909
 - From Artist to Audience: How creators and consumers benefit from copyright and neighbouring rights and the system of collective management of copyright, publication no. 922
 - Collective Management in Reprography, publication no. 924
- Directory of National Copyright Administrations: www.wipo.int/news/en/links/addresses/cr/index.htm
- Nigerian Copyright Commission
 - Website: www.nigcopyright.org
 - Email: info@nigcopyright.org
- Industrial Property Office:
 - Registry of Trade Marks, Patents and Designs
 - Ministry of Trade and Investments

Email: iponigeria@yahoo.com
kandibrah@yahoo.com

- Copyright Society of Nigeria
Website: www.cosonng.com
Email: info@cosonng.com
- Nigeria Customs Service
Website: www.customs.gov.ng
Email: info@customs.gov.ng
pro@customs.gov.ng

International Non-governmental Organizations

- International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM; acronym derived from the original French name): www.biem.org
- Business Software Alliance (BSA): www.bsa.org
- International Confederation of Societies of Authors and Composers (CISAC; acronym from French name): www.cisac.org
- International Federation of Film Producers Associations (FIAPF; acronym from French name): www.fiapf.org
- International Federation of Reproduction Rights Organizations (IFRRO): www.ifrro.org
- International Federation of the Phonographic Industry (IFPI): www.ifpi.org
- Independent Music Companies Association (IMPALA): www.impalasite.org
- International Publishers Association (IPA): www.ipa-uie.org
- Software & Information Industry Association (SIIA): www.siiainc.org

ANNEX II

Website Addresses of National Copyright Administrations

Algeria	www.onda@wissal.dz
Andorra	www.ompa.ad
Argentina	www2.jus.gov.ar/minjus/ssjyal/autor
Australia	www.ag.gov.au
Barbados	www.caipo.gov.bb
Belarus	vkudashov@belpatent.gin.by ncip@belpatent.gin.by
Belize	www.belipo/bz
Bosnia and Herzegovina	www.bih.nat.ba/zsmp
Brazil	www.minc.gov.br
Canada	cipo.gc.ca
China (Hong Kong - SAR)	www.info.gov.hk/ipd
Colombia	www.derautor.gov.co
Croatia	www.dziv.hr
Czech Republic	www.mkcr.cz
Denmark	www.kum.dk
El Salvador	www.cnr.gob.sv
Finland	www.minedu.fi
Georgia	www.global-erty.net/saqpatenti

Germany	www.bmj.bund.de
Hungary	www.hpo.hu
Iceland	www.ministryofeducation.is
India	copyright.gov.in
Indonesia	www.dgip.go.id
Ireland	www.entemp.ie
Kyrgyzstan	www.kyrgyzpatent.kg
Latvia	www.km.gov.lv
Lebanon	www.economy.gov.lb
Lithuania	www.muza.lt
Luxembourg	www.etat.lu/EC
Malaysia	mipc.gov.my
Mexico	www.sep.gob.mx/wb2/sep/sep_459_indautor
Monaco	www.european-patent-office.org/patlib/country/monaco/
Mongolia	www.ipom.mn
New Zealand	www.med.govt.nz
Niger	www.bnnda.ne.wipo.net
Nigeria	www.nigcopyright.org
Norway	www.dep.no/kd/
Pakistan	http://www.ipo.gov.pk/
Peru	www.indecopi.gob.pe
Philippines	ipophil.gov.ph

Republic of Korea	www.mct.go.kr/english
Russian Federation	www.rupto.ru
Singapore	www.gov.sg/minlaw/ipos www.ipos.gov.sg/
Slovakia	www.culture.gov.sk
Slovenia	www.sipo.mzt.si/
Spain	www.mcu.es/Propiedad_Intelectual/indice.htm
Sri Lanka	http://www.nipo.lk/
Switzerland	www.ige.ch
Thailand	www.ipthailand.org
Turkey	www.kultur.gov.tr
Ukraine	www.sdip.gov.ua www.uacrr.kiev.ua
United Kingdom	www.patent.gov.uk
United States of America	www.loc.gov/copyright

Note: For up-to-date information visit website at the following URL: www.wipo.int/directory

ANNEX III

Summary of the main international treaties dealing with copyright and neighbouring rights

The Berne Convention for the Protection of Literary and Artistic Works (The Berne Convention) (1886)

The Berne Convention is the main international copyright treaty. The Berne Convention establishes, amongst other things, the rule of “national treatment,” meaning that in every country, foreign authors enjoy the same right as national authors. The Convention is currently in force in 162 countries. A list of contracting parties and the full text of the Convention are available at www.wipo.int/treaties/en/ip/berne/index.html.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (The Rome Convention) (1961)

The Rome Convention extends protection to neighboring rights: performing artists enjoy rights over their performances, producers of phonograms over their sound recordings and radio and television organizations over their broadcast programs.

The Convention’s membership is currently signed by 83 countries. For a list of contracting parties and full text of the Convention, see www.wipo.int/treaties/en/ip/rome/index.html.

Agreement on Trade Neighbouring Aspects of Intellectual Property Rights (The TRIPS Agreement) (1994)

Aiming at harmonizing international trade hand in hand with effective and adequate protection of IP rights, the TRIPS Agreement was drafted to ensure the provision of proper standards and principles concerning the availability, scope and use of trade-neighbouring IP rights. At the same time, the Agreement provides means for the enforcement of such rights. The TRIPS Agreement is binding on all 149 members of the World Trade Organization. The text can be read at the website of the World Trade Organization: www.wto.org/english/docs_e/legal_e/27-trips.doc.

WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (1996)

The WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) were concluded in 1996 in order to adapt the protection of the rights of authors, performers and phonogram producers to the challenges posed by the advent of the digital world. The WCT supplements the Berne Convention for the Protection of Literary and Artistic Works, adapting its provisions to the new requirements of the Information Society. This means firstly that all regulations in the Berne Convention are applicable mutatis mutandis to the digital environment. It also means that all WCT Contracting Parties must meet the substantive provisions of the Berne Convention, irrespective of whether they are parties to the Berne Convention itself. The WCT extends authors' rights in respect of their works by granting them three exclusive rights, i.e., the right to:

- authorize or prohibit the distribution to the public of original works or

copies thereof by sale or otherwise (right of distribution);

- authorize or prohibit the commercial rental of computer programs, cinematographic works (if such commercial rental has led to widespread copying of such works, materially impairing the exclusive right of reproduction) or works embodied in phonograms (right of rental); and
- authorize or prohibit communication to the public of their original works or copies thereof, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them (right of communication to the public).

The WCT entered into force on March 6, 2002, and currently some 59 states are members of the WCT (see: www.wipo.int/treaties/en/ip/wct/index.html).

In contrast to the WCT, the WPPT deals with holders of neighbouring rights, its purpose being the international harmonization of protection for performers and phonogram producers in the information society. However, it does not apply to audiovisual performances. The WPPT mainly protects the economic interests and personality rights of performers (actors, singers, musicians, etc.) in respect of their performances, whether or not they are recorded on phonograms. It also helps persons who, or legal entities which, take the initiative and have the responsibility for the fixation of the sounds. WPPT grants rights holders the exclusive right to:

- authorize or prohibit direct or indirect reproduction of a phonogram (right of reproduction);
- authorize or prohibit the making available to the public of the original

or copies of a phonogram by sale or other transfer of ownership (right of distribution);

- authorize or prohibit the commercial rental to the public of the original or copies of a phonogram (right of rental); and
- authorize or prohibit the making available to the public, by wire or wireless means, of any performance fixed on a phonogram in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them, e.g. on demand services (right of making available).

With regard to live performances, i.e., those not fixed on a phonogram, the WPPT also grants performers the exclusive right to authorize:

- broadcasting to the public;
- communication to the public; and
- fixation (of sound only).

The WPPT came into force on May 20, 2002; 58 states are currently member of the WPPT (see www.wipo.int/treaties/en/ip/wppt/index.html).

ANNEX IV

List of countries party to the Berne Convention for the Protection of Literary and Artistic Works (Status as of June 16, 2006)

Albania	Côte d'Ivoire
Algeria	Croatia
Andorra	Cuba
Antigua and Barbuda	Cyprus
Argentina	Czech Republic
Armenia	Democratic People's Republic of Korea
Australia	Democratic Republic of the Congo
Austria	Denmark
Azerbaijan	Djibouti
Bahamas	Dominica
Bahrain	Dominican Republic
Bangladesh	Ecuador
Barbados	Egypt
Belarus	El Salvador
Belgium	Equatorial Guinea
Belize	Estonia
Benin	Fiji
Bhutan	Finland
Bolivia	France
Bosnia and Herzegovina	Gabon
Botswana	Gambia
Brazil	Georgia
Brunei Darussalam	Germany
Bulgaria	Ghana
Burkina Faso	Greece
Cameroon	Grenada
Canada	Guatemala
Cape Verde	Guinea
Central African Republic	Guinea-Bissau
Chad	Guyana
Chile	Haiti
China	Holy See
Colombia	Honduras
Comoros	Hungary
Congo	Iceland
Costa Rica	India
	Indonesia
	Ireland
	Israel
	Italy
	Jamaica
	Japan
	Jordan
	Kazakhstan
	Kenya
	Kyrgyzstan

Latvia	Samoa
Lebanon	Senegal
Lesotho	Serbia and Montenegro
Liberia	Singapore
Libyan Arab Jamahiriya	Slovakia
Liechtenstein	Slovenia
Lithuania	South Africa
Luxembourg	Spain
Madagascar	Sri Lanka
Malawi	Sudan
Malaysia	Suriname
Mali	Swaziland
Malta	Sweden
Mauritania	Switzerland
Mauritius	Syrian Arab Republic
Mexico	Tajikistan
Micronesia (Federated States of)	Thailand
Monaco	The former Yugoslav Republic of Macedonia
Mongolia	Togo
Morocco	Tonga
Namibia	Trinidad and Tobago
Nepal	Tunisia
Netherlands	Turkey
New Zealand	Ukraine
Nicaragua	United Arab Emirates
Niger	United Kingdom
Nigeria	United Republic of Tanzania
Norway	United States of America
Oman	Uruguay
Pakistan	Uzbekistan
Panama	Venezuela
Paraguay	Vietnam
Peru	Zambia
Philippines	Zimbabwe
Poland	
Portugal	
Qatar	
Republic of Korea	
Republic of Moldova	
Romania	
Russian Federation	
Rwanda	
Saint Kitts and Nevis	
Saint Lucia	
Saint Vincent and the Grenadines	
Saudi Arabia	

(Total: 162 States)

Note: For up-to-date information visit website at the following URL: www.wipo.int/treaties/en/ip/berne

**For more information contact the
World Intellectual Property Organization**

Address:

34, chemin des Colombettes
P.O. Box 18
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Switzerland

Telephone:

+41 22 338 91 11

Fax:

+41 22 733 54 28

e-mail:

wipo.mail@wipo.int

or its New York Coordination Office at:

Address:

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Suite 2525
New York, N.Y. 10017
United Nations of America

Telephone:

+1 212 963 6813

Fax:

+1 212 963 4801

e-mail:

wipo.@un.org

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Switzerland

Fax:

+41 22 733 87 60

e-mail:
sme@wipo.int

web page:
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