



An Appraisal of Damages as a Remedy for Copyright Infringement in Agricultural Research Institutions of Nigeria

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ABSTRACT

Agricultural Institutes, just like other academic institutions are basically research institutes. They carry out researches on different crops, animals, soil, climate or even weather. Scientists in various agricultural research institutes carry out research activities relating to quality, pest control and quantity of various agricultural produce. The research methodology adopted in this paper is doctrinal which involves relevant books on the subject matter, articles, in journal publications, conference papers, judicial authorities, News Paper, magazines and internet materials. However, the statement of problem of this paper is that in most cases researchers in agricultural Institutes and other relevant stakeholders are not aware of the fact that they can make claims for damages when their copyright is infringed. In this like, the objective of this paper is to examine succinctly the extent of the rights of researchers in agricultural institutes with a view to understanding when and how their copyrights can be infringed and what constitutes their claim of assertion of infringement. In the course of research work resulting to this paper, it was found that most scientists in agricultural institutes are not even aware of their general Intellectual Property Rights which seeks to protect their literal works against infringement. Finally, this paper concludes by recommending that there should be continuous academic training in form of workshops and conferences for researchers in Agricultural Institutes on Intellectual Property Right issues so as to make them proactive and keep them abreast with the changing patterns of academic learning and agricultural researches particularly as relates to their Intellectual Property.

Keywords: *Agricultural, Copyright, Infringement, Damages and intellectual.*

INTRODUCTION

Damages are a pecuniary compensation or indemnity recoverable in the courts by any person who has suffered loss, detriment or injury, whether to his person, property or rights, through the unlawful act or omission or negligence of another.¹ Damages could also be recoverable by an organization, parastatal or agency. They are usually granted as final remedies in a successful action of infringement. It is a monetary compensation which accrues from the infringer to the right owner for the financial loss occasioned by the act of infringements to his or her copyright. The National Agricultural Research System (NARS) in Nigeria comprises of scientists who carry out research work in their various areas of specialization and generate a lot of Intellectual Property (IP) in the form of copyright through their journal publications, articles, workshop proceedings, and book editions. Where an infringement of copyright occurs in Agricultural Research in Nigeria, damages will be awarded by the court as in any other similar infringement which occurs either in the university system, or any other related agency or parastatal since the award of damages is of general applicability.

¹ *Black's Law Dictionary (5th Ed.)* by Henry Campbell Black M. A. Published by the Publishers editorial staff St Paul MINN West Publishing Company.1979, p.351



Concept of the Remedy of Damages

The concept of the remedy of damages is hinged on the maxim "*Ubi jus ibi remedium*" which means, there is no wrong without a remedy. This is a principle derived from common law which gives a right or prohibiting an injury. It is today a principle which is enshrined in the Nigerian Copyright Act.² According to this maxim of law, wherever common law³ and the statute⁴ give a right or prohibit an injury, it also gives a remedy. Thus, the law provides for award of damages though inadequate, in copyright infringement of agricultural research publications and other literary works produced by the scientists in agricultural research that are original in nature where there is an infringement. Under the Act⁵ the courts in awarding damages are required to restore the plaintiff as much as it is practicable to the position he would have been, had the infringement not happened. In doing this, the Act requires an objective assessment based on two tests: the flagrancy of the infringement and the benefit derived by the defendant by reason of the infringement.⁶

Nature of the Remedy of Damages

The nature of the remedy of damages has to do with the types of damages as enumerated below.

General Damages

General damages can otherwise be referred to as nonspecific damages. This accrues when the plaintiff cannot prove the actual or specific act of infringement. In fact, these are damages which flow naturally from the defendant's conduct and its quantum need not be pleaded or proved as it is generally presumed by law. However, the plaintiff has to give evidence which will assist the court. The compensatory damages for copyright infringement can however easily be worked out by the plaintiff adducing evidence to show his/her diminutive rate of sales as well as his loss of profit and earnings as a result of the act complained of. This is only possible when the plaintiff's claim is founded on his economic rights, in an action based on moral rights. The damages would be at large. It was held in the Nigerian case of *Plateau Publishing Company Ltd vs. Adolphy*⁷ that in an action for infringement of copyright, damages are at large and it is not necessary to prove actual or specific damage. This statement of the law was based on the decision in the case of *Exchange Telegraph Co Ltd. vs. Gregory Ltd.*⁸ which followed an earlier decision in *Fenning Film Service Ltd. vs. Wolverhampton, Walsall and District Cinema Ltd.*⁹ The *ratio decidendi* in all these cases is that damages are at large and are not limited by any scale or provision of the law. This means that there can hardly be exact award of damages

² Section 16 (1) Copyright Act, , Cap C. 28 Laws of the Federation of Nigeria (LFN) 2004

³ *R. v. Leicester Guardians* (1899) 2 QB 632

⁴ Sections.16 and 17 Copyright Act, Cap C. 28 LFN, 2004.

⁵ Section.16 (4) Copyright Act, Cap C. 28 LFN, 2004

⁶ *Ibid* Paragraphs (a) and (b)

⁷ (1986) 4 NWLR (Part 34) p. 205 at 225

⁸ (1986) 1 QB 147

⁹ (1914) 3 QB 1171



by the courts in compensation for copyright infringement. This is as a result of the difficulty in ascertaining the exact number of copies infringed and the exact profit made as a result of the infringement of copyright even when the plaintiff adduces evidence to assist the court in awarding damages.

However, other reported cases show the application of a different formula in assessing such damages in copyright. In the case of *Sutherland Publishing Co. Ltd vs. Caton Publishing Co. Ltd*¹⁰ the depreciation caused by the infringement to the values of the copyright as a chose in action, was used as the yardstick of damage and the measure of damages awarded thereby. In *Pike VS. Nicholas*,¹¹ the yardstick used was the profit which the plaintiff would have made from the sale of the infringing materials. In this case, it was further held that "the defendant is to account for every copy of his book sold as if it had been a copy of the plaintiff's and to pay the plaintiff the profit he would have received for the sale of so many additional copies."¹² A different approach was again used in deciding the case of *Redwood Music Ltd. vs. Chappell & Co.Ltd.*¹³ where the computation of damages was based on what would have been paid as royalty, if instead of acting illegally, the defendant has acted legally. On the whole, what the learned judge opined in the case of *Beloff vs. Pressdram Ltd*⁴ in the following words seems to say it all: "... the process is not by meticulous qualification of individual items, as the damage cannot generally at any rate, be ascertained by an accounting operation... They are a matter of impression rather than scientific or mathematical calculation"¹⁵

The opinion of the learned judge in the above quotation highlights the problem associated with the calculation of damages in copyright infringements which is also why damages awarded in copyright infringement cannot be commensurate to the infringement. This also makes the award of damages in copyright infringements in agricultural research, allied institutions and universities where most intellectual property is generated in form of literally works inadequate. The above English cases might have been responsible for the award of ₦5,000.00 damages awarded by Tofowomo J. in the Nigerian case of *Island Records Ltd. vs. I. C. Okalla Commercial Enterprises Nig. & Ors.*¹⁶ In this case, 3,200 infringing copies of records were alleged to be involved. There was evidence of a royalty payable at the rate of 14% on every 5,000 copies sold. Thus 14% of ₦18,400 being the cost of the 3,200 infringing copies, was mathematically arrived at ₦2,576. All the above analysis attests to the principle that damages are at large and not limited by any specific provision of law or scale.

¹⁰ (1936) Ch. 323 at p. 336

¹¹ (1969) 5 Ch. 251

¹² *Ibid* at p.252

¹³ (1980) 2 ALL ER 817 Or 919820 F.S.R. 109

¹⁴ (1973) R.P.C. 765

¹⁵ *Ibid* at p. 1311

¹⁶ Suit No. FHC/PH/17/84, Ruling on 13/12/85



Special Damages

Special damages may be defined as damages which are actual or specific. They are damages which the law does not presume, but must be specially pleaded and proved. In *Dumes (Nig.) Ltd. VS. Ogboji*¹⁷, the Supreme Court emphasized thus' It is axiomatic that special damages must be strictly proved and (unlike general damages, where, if the plaintiff establishes in principle his legal entitlement to them, a trial judge must make his own assessment of the quantum of such general damages)...so far as special damages are concerned, a trial judge must act strictly on the evidence before him which he accepts as establishing the amount to be awarded¹⁸. The Nigerian Copyright Act does not make specific provision for special or specific damages. However the USA Copyright Constitution¹⁹ provides for Actual Damages and Profits. The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement and he is entitled to any profit of the infringer that is attributable to the infringement and is not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work. It is opined that even in Nigeria where the copyright owner is aware of the exact copies infringed and can prove the amount of profit made on sale of copies of his work, he/she can claim special or actual damages.

Nominal Damages

Nominal damages will be awarded in agricultural research and in any other cases where the plaintiff establishes the violation of his/her rights by the defendant but is unable to show that he/she suffered any actual damages as a result of the defendants' wrongdoing. Nominal damages may also be awarded where damages have been proved but no evidence has been given as to its extent so that the assessment of compensatory damages is impossible. For example where a postgraduate student copies the work of a staff of the institute without acknowledging the source, nominal damages could be awarded to the institute/staff.

Exemplary or Punitive Damages

This class of damages is not intended to compensate the plaintiff, but to punish the defendant and to deter him from similar behavior in the future. In *Masterpiece Investment Limited & Anor vs. Worldwide Business Media Limited & Anor*.²⁰ Odunuwa J. said; On a claim for exemplary or punitive damages the trend of both judicial and juristic opinion is that the court may award additional damages for such matters as the author's reputation

¹⁷ (1973) 3 U.I.L.R. p. 306.

¹⁸ *Ibid* at p. 311

¹⁹ Section 1 (2) (b) USA Constitution

²⁰ (1997) F.H.C.L.R p. 496



or feeling, the vulgarization of the work, economic loss, unjust enrichment by the defendant as a result of the act of infringement, the conduct of the defendant and the means of the parties etc. Nonetheless the amount to be awarded must not be excessive...²¹ Where in an action under the law an infringement of copyright is proved or admitted and the court in which the action is brought is satisfied that effective relief would not otherwise be available for the infringement, shall have power to award such additional damages as the court may consider appropriate in the circumstances.²² In fact, the Copyright Act also has a converse provision to the effect that if at the time the infringement was committed, the defendant was not aware and had no reasonable grounds to suspect that copyright existed in the work to which his action relates, the court will deny the plaintiff's right to damages.²³ This means that action for award of damages in copyright infringement is not a strict offence. It is humbly submitted that this legislative immunity is uncalled for. Copyright by its nature would exist and crystallize in a work upon its original creation without regard to anyone knowing that copyright exists in the work and this includes the defendant. Ignorance of the law should not be a justifiable excuse. However, by the above provision of the law the defendant is being excused.

EXEMPTION TO AWARD OF DAMAGES IN COPYRIGHT INFRINGEMENT

The Copyright Act contains extensive provisions on exceptions to the legal rights of the owner of copyright in Nigeria.²⁴ The purpose for these exceptions are to enable specified groups and as in other matters sometimes the entire society in general, to use creative works under certain conditions, without injuring the legal rights of the copyright owner. In the main, the exceptions are intended to aid research and scholarship, especially with regards to literary and artistic works. On the whole, there are 19 exceptions to copyright works of literary, artistic, musical, sound recording and broadcasting under the Second Schedule to the Act, and 8 other special exceptions in respect of a sound recording of a musical work under the Third Schedule to the Act of particular relevance. However, the following exceptions are of particular relevance to agricultural research in Nigeria and of general nature to virtually all the works protected by copyright in Nigeria.

1. Fair dealing for purpose of research, private use, criticism, review or reporting of current events, subject to the condition that if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its authorship.²⁵
2. The inclusion of the work in the collection of any other works if the collection bears a statement that it is for educational use and both title and authorship are acknowledged.²⁶
3. Public recitation of any work which is made for non-commercial purposes.²⁷

²¹ *Ibid* at p. 511

²² *Ibid* Section.16 (4)

²³ *Ibid* Section.20

²⁴ *Second and Third Schedules to the Copyright Act 2004*

²⁵ *Paragraph a Second Schedule to the Copyright Act*

²⁶ *Ibid* Paragraph (e) (f) and (h)

²⁷ *Ibid* Paragraph (j)



4. Use made by or on the order or direction or control of the government or by such public libraries or non-commercial centers or scientific institutions for public interests where no revenue is derived from such use.²⁸
5. Any use made of a work for purposes of judicial proceedings or of any report of such a proceeding.²⁹
6. Any use of a work for the purpose of aiding a disabled person or for an establishment responsible for the welfare of such persons.³⁰

Looking at the many exceptions provided under the Act, there appears to be an erosion of the rights earlier conferred on the owner of a copyright work thereby affecting the award of damages that could be claimed. This is so because the many exceptions which are actually not exhausted in this paper make it extremely difficult for a plaintiff to succeed in his or her claim for damages and where successful, to have minimal award of damages for the copyright infringement. This is also applicable in award of damages in agricultural research in Nigeria.

ENFORCEMENT OF DAMAGES

Enforcement of damages awarded for copyright infringement in agricultural research in Nigeria will be done through the following enforcement agencies.

- a. Judicial enforcement
- b. The Nigeria Police
- c. Nigerian Copyright Commission (NCC)
- d. Administrative enforcement
 - The Strategic Action Against Piracy (STRAP)
 - The Copyright Litigation Assistance and Mediation Programme (CLAMP)
 - Collecting societies
 - The Nigeria Customs Service
 - The general public.
- e. International collaboration

Judicial Enforcement

Intellectual Property Protection and in particular the award of damages is effected in the civil courts in Nigeria. The Federal High Courts are vested with exclusive original jurisdiction for the trial of offences and disputes relating to copyright in Nigeria³¹. The Federal High Court which was initially established as the Federal Revenue Court³², is a court with a special power to adjudicate over certain matters which are of national economic importance. Copyright is a matter within the Federal Exclusive Legislative List³³ and this

²⁸ *Ibid* Paragraph (k)

²⁹ *Ibid* Paragraph (p)

³⁰ *Ibid* Paragraph (s)

³¹ Sec. 16(1) Copyright Act Cap C28 LFN 2004

³² As per Decree No. 38 of 1971

³³ Item 13, part in the second schedule to the 1999 constitution



becomes one of those items within the exclusive jurisdiction of the Federal High Court. Copyright in this regard enjoys a high point of constitutional recognition. The role of this court in administering copyright in Nigerian is to give effect to the statutory provisions of the law on copyright in its civil and criminal jurisdictions. It is the only single avenue for original judicial interpretation of the law on this subject. To carry out his function, the court is divided into various judicial divisions across the country. The court relies not only on the substantive law but also on the adjective laws in the course of its adjudication. Thus, it employs the civil procedure rules³⁴ of its court in civil actions and for all criminal proceedings, it has recourse to such other rules as:

- a. The Criminal Procedure Act³⁵ for such offences triable in any of its divisions in the Southern States of Nigeria;
- b. The Criminal Procedure Code³⁶ for the offences triable in any of its divisions in the Northern States of Nigeria, including the Federal Capital Territory³⁷

In either of the proceedings i.e. whether civil or criminal, the action must begin in the division's jurisdiction of the court where the infringement occurred and or where the defendant resides³⁸. By this provision it is intended that in the event of an infringement anywhere in Nigeria, there will be an applicable rule under which the action may begin. Alternatively, the action may begin in the divisional jurisdiction where the defendant resides, irrespective of where the infringement occurred. By virtue of Nigeria acceding to the international copyright conventions, foreign nationals and companies operating in such member states have themselves become subject to the jurisdiction of this court. As a result, they can sue and be sued for copyright infringements committed anywhere in Nigeria. In accordance with Nigeria's extradition treaties with other nations, foreigners and their works have become liable to Nigerian laws as Nigerians are treated under the international laws. Under the rules of judicial precedence, appeals lie from the decisions of the Federal High Court on copyright matters to the Court of Appeal and where desirable, further to the Supreme Court of Nigeria. Infringement of copyright shall be actionable at the suit of the owner, assignee or an exclusive licensee of the copyright. All such reliefs by way of damages, injunction, accounts and otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights. Where an infringement of copyright in agricultural research is proved or admitted, and the court in which the action is brought, having regard to the flagrancy of the infringement and any benefit shown to have accrued to the defendant by reason of the infringement is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, shall have power to award such additional damages as the court may consider appropriate in the circumstances. For example injunction, forfeiture, accounting for profit, seizure and conversion.

³⁴ Sec. 1 and 3 and order 10 of the Federal High Court (Civil Procedure Rules) decree no, 23 of 1999

³⁵ Cap 80. Laws of the Federation of Nigeria 2004

³⁶ Criminal Procedure Code of Northern Nigeria 1960

³⁷ By virtue of decree no 12 of 1984, the Criminal Procedure Code is made applicable to the Federal Capital Territory, Abuja

³⁸ Sec 16 (2) Copyright Act Cap C28 LFN 2004



The Nigerian Police

It is noteworthy that criminal liability also accrues for breach of intellectual property resulting to conviction and also fine.³⁹ Apart from the general duties of the Nigeria Police to maintain law and order in the society⁴⁰, the copyright law in Nigeria has expressly listed the Nigeria Police among those organs charged with the responsibility of copyright administration in the country⁴¹. The Nigeria Police is represented on the Governing Board of the Nigerian Copyright Commission (NCC), thereby indicating the importance of the police in copyright administration⁴². Until the recent amendment of the law granting powers to copyright inspectors,⁴³ the Nigeria Police had the sole authority, upon warrant to search and seize any property relating to copyright infringement. They now share this responsibility with the copyright inspectors, while retaining the general powers to maintain law and order in the society. It is important to observe that the above statutory powers of the Nigeria Police have not been matched with action in the practice of copyright enforcement in Nigeria. Though the Nigeria Police have the power and duty in law to arrest anyone who commits an offence in their presence, copyright infringement is one such offence that has been commuted in the view of many policemen who have failed to challenge this, let alone arrest suspect infringers. It may be argued for the police that in the absence of a formal complaint by an aggrieved party, they cannot rely on mere suspicion. For it takes more than the police to keep law and order in the society⁴⁴. The police is responsible for enforcing copyright infringement cases where the liability is criminal. Criminal liability accrues in any instance where there is an infringement of copyright as provided by the Nigerian Copyright Act.⁴⁵ All criminal charges for infringement of copyright are prosecuted by the Nigeria Police in Nigeria. It is important that in order to ensure justice and proper judicial procedure the police should be adequately trained to get them acquainted with the criminal laws and be able to apply them in prosecuting cases without fear or favour⁴⁶.

Nigerian Copyright Commission (NCC)

The Nigerian Copyright Commission (NCC) has power, with the consent of the Minister of Justice, to prescribe any design, label, mark, impression or any other anti-piracy device for use on, in or in connection with any work in which copyright subsists. The NCC therefore enforces copyright protection through anti-piracy measures as provided by the Copyright Act⁴⁷

³⁹ *Ibid* sec 20

⁴⁰ Cap 359 Laws of the Federation of Nigeria 1990

⁴¹ Sec 22(1) and 31 (1)(a) respectively

⁴² Sec 35 (e) Copyright Act 2004

⁴³ Sec 32A incorporated in Cap 68 Laws of Federation of Nigeria 1990.

⁴⁴ *The Law and Practice of Copyright in Nigeria*. By Peter A. Ochene 1st Published in 2000 by ABU Press p. 141

⁴⁵ Sec 20(1-5) Copyright Act, Cap C28 LFN 2004

⁴⁶ *Ibid* Sec 20

⁴⁷ *Ibid* Sec 2 1 (2&(3) and sec 24(4)



Administrative Enforcement

Administrative enforcement is carried out through the Strategic Action against Piracy (STRAP), The Copyright Litigation Assistance and Mediation Programme (CLAMP), and by copyright owners. The general public also has a duty in enforcement of copyright.

(i) The Strategic Action against Piracy (STRAP):

In appreciation of the evil effect of piracy and the urgent need to fight that scourge, the NCC initiated the Strategic Action against Piracy (STRAP). STRAP is a national anti-piracy campaign initiated by the NCC to ensure effective protection against piracy and all forms of intellectual property theft. It is also a proactive and sustainable anti-piracy campaign initiative created to reinvigorate public and private sector collaboration in the fight against piracy. It was inspired by the current need for change and the creation of vibrant copyright based industries that will give maximum returns on investment both to creators and investors alike. For the NCC, STRAP represents a deep determination to make creativity a worthwhile venture in Nigeria for national prosperity. It signals a strong expression by Government that Nigeria can no longer accommodate this group of economic saboteurs. It is a clarion call on every well-meaning Nigerian and corporate organizations particularly those within the copyright industries to realize that piracy must be stamped out for creativity to thrive as an engine for development in the country. STRAP is basically a platform to be used by all stakeholders in realizing the dream of stemming the tide of piracy and creating most conducive environment for sustainable growth and wealth creation for creators, investors and the nation. STRAP was conceived to achieve the following objectives: to combat all forms of piracy of music, film, software, books and all other protected works in order to create jobs, reduce poverty and sustain our cultural heritage; to create an environment conducive for copyright protection for all categories of works; to empower local industries, create opportunism for legitimate distribution of protected works and attract foreign investment; through a sustained campaign, to restore the image of Nigeria as a country that upholds the ideals of creativity and abhors international crimes; to promote the virtue of hard work, industry and culture of respect for creativity among Nigerians and facilitate the changing of people's hitherto passive mindset to becoming supportive of creativity and the fight against piracy; STRAP has three main components to achieve its objectives, namely; public enlightenment; enforcement; and administration of rights. This is encouraging to the Agricultural Research System in Nigeria since the scientists can now be sure of protection for their copyrights⁴⁸.

(ii) The Copyright Litigation Assistance and Mediation Programme (CLAMP)

It is also essential to mention, the principle of CLAMP – the Copyright Litigation Assistance and Mediation Programme. This provides for the mediation of disputes between parties under the Alternative Dispute Resolution (ADR) Programme. This may not involve the intervention of the court. It is imperative also that copyright owners know

⁴⁸ Report of one year of Enforcement/Administration of Rights Under the Strategic Action against Piracy (STRAP) vol. 1 (May 2005-April 2006). A publication of the Nigerian Copyright Commission 2006, p. 12-14



that they are at liberty to personally institute and diligently prosecute civil claims by themselves without waiting for the Commission to institute criminal proceedings. Here, the claimant may claim and receive damages for infringement.

(iii). Collecting Societies

In the collective administration system of copyright industry, collecting societies made up of individual copyright owners protect the interests of their members in all ramifications through a civil process in court whenever his/her right has been injured by a deceit or a crime⁴⁹. The collecting society has as its principal objectives the negotiating and granting of licenses, collecting and distributing of royalties in respect of copyright works. Other duties include: to identify prospective users of the works of its members, to negotiate and issue licences to prospective users of the works of its members, to monitor and regulate the use and abuse of the works of its members and in the event of an abuse, to take steps to remedy same in accordance with legal procedures. The legal and economic justification for a collecting society operating in the copyright system may be founded on two or more pillars. First, copyright law provides the basis of authors to receive remuneration and or compensation from those who use their works legally or illegally. Secondary, the fact that these works are likely to be used at different locations and for various reasons, individual authors find it difficult, if not impossible, to monitor where and how their works are being used, let alone being able to collect the compensation for such uses. Thirdly, where the individual author may have known of all the users of his works lawfully and unlawfully, he still faces no less task in redressing abuses to his works because these abuses may occur in many forms at different places and at the same or different times.⁵⁰ In response to these problems, the copyright industry, like in most other intellectual property fields, has evolved the *modus operandi* of collecting societies. A collecting society is itself a collection of authors engaged in identical works for the purpose of meeting their common challenges. The use of a collecting society is a more convenient and economical way for individual authors getting their due share from the exploitation to which their works are exposed. These economics accrue by way of royalties' payable by lawful users and levies/damages payable by unlawful users.⁵¹ The Agricultural Research System through the Agricultural Research Council of Nigeria (ARC/N) could also benefit from the activities of collecting societies.

(iv). The General Public

As beneficiaries of the creative works of other intellects, and in order to sustain those creators and encourage future artistes, the general public have the following suggested roles to play in copyright administration in Nigeria.

1. Duty to recognize and respect intellectual works in the same degree as in real properties.
The general public owe copyright owners the duty of recognition and should respect the

⁴⁹ Section 39(1) Copyright Act, Cap C. 28 Laws of the Federation of Nigeria, 2004

⁵⁰ *The Law and Practice of Copyright in Nigeria* by Peter Ocheve. Published and Printed in Nigeria by Ahmadu Bello University Press Limited, Zaria. P.133-134

⁵¹ *Ibid* p.134



- works of such creative minds, if for nothing else, so as to boost their careers which will in turn enrich the corporate entity of the country.
2. Duty to compensate for honest commercial use of others' work of arts, while retaining the right to freely use the same for private purposes
 3. Duty to discourage, disapprove and resist the commercial abuse of others' works; this is a composite duty deriving from 1 and 2 above.
 4. Duty to co-operate with law enforcement agents in the copyright regime. The general public has the civic responsibility of prompt intervention, reporting abuses within their knowledge.
 5. Duty to promote, protect and preserve the values contained in others' creative works, thereby upholding, and promoting collective cultural heritage; by way of setting public standards and encouraging a conscious national and international copyright regime, the general public owe a collective duty to uphold the values underlying each creative art.⁵²

(v). The Nigeria Customs and Excise Department in Copyright Administration

The Copyright Act specifically provides for a procedural intervention by officers of the Customs and Excise Department against illegal importation of more than two infringing copies of a copyright work into Nigeria.⁵³ In fact, the Act stipulates that these interventionary regulations shall have the same effect as if it had formed part of the Customs and Excise Management Act.⁵⁴ The essential duty of this Department in the administration of copyright is to treat as prohibited, and restrict the importation of any goods or copies of a work, upon receiving notice from the copyright owner whose right is infringed by the importation of any such goods or copies of a work which is made outside Nigeria and for which the person giving the notice has a right under the law to protect.⁵⁵ Given this procedure, the Customs Department can only act to restrict the importation of any copy of a copyright work (whether infringing or not) upon receipt of a written notice from an injured or threatened copyright owner. It goes without saying that the Department cannot on its own volition either treat as prohibited or restrict the importation of any infringing copy of work. It depends upon the complaint lodged by an aggrieved party before it can do anything. The required written notice must state that the informant is the owner of the copyright in the work to which the infringing copy being imported relates. He should request the Department for a period of not more than 5 years, to treat as prohibited; copies of such work which if it had been made in Nigeria would have been an infringing copy of his work. This procedure may require the asserting party to prove to the satisfaction of the Department his title to the said work in respect of which he is seeking the restriction of the

⁵² *Ibid* p. 147-149

⁵³ Sec 36 Copyright Act Cap C28 LFN 2004

⁵⁴ *Ibid* sub-section (9)

⁵⁵ *Ibid*, sub-section (2)



alleged infringing copies. The law has also eased the burden of proof by enabling the admission of affidavit evidence, if, of course, there is no counter affidavit.⁵⁶

(e). International Collaboration

Before the advent of modern techniques such as cinematography, mechanical recording and broadcasting, all of which have given an immense impulse to the international exchange of works, it had long been recognized that the reasons which dictated the national protection of authors' works quite imperative at the international level. Copyright, therefore, is essentially, international in character. Works of art, literature and music have for centuries been used in countries other than their origin. Author's artistes and musicians have, from early times, been very concerned about the fate of their works copied in foreign countries. They have always desired to have the royalties that accrue from the use of their works in such countries other than theirs. Protection at the international level is needed now more than ever before, due to the advancement in global communication. A book or novel or periodical, for example, may be read in many countries and in many different languages into which it is translated. Artistic works, if unhindered by problems of language and culture, may be enjoyed and copied regardless of national boundaries.

i. Special Requirements Related to Border Measures

The Trade Related aspects of Intellectual Property (TRIPS) agreement provides for certain enforcement procedures related to border measures, to enable a right-holder who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application for the suspension by the customs authorities of the release into free circulation of such goods. Guidelines are established with respect to suspension of release by customs authorities, application for such procedures, security or equivalent assurance, notice of suspension, duration of suspension, indemnification of the importer and of the owner of the goods, right of inspection and information, *ex officio* action, remedies and *de minimis* imports. The TRIPS agreement requires that members provided for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or piracy on a commercial scale.⁵⁷ They also have to provide for remedies such as imprisonment, monetary fines and seizures, forfeiture and destruction of the infringing goods and of any materials and implements predominantly used for the commission of the offense.⁵⁸

CONCLUSION

Having appraised the remedy of damages for copyright infringement in Agricultural Research System of Nigeria and realized the fact that most scientists are not aware of the fact that they can claim damages for infringement of their copyright on personal publications, it is imperative that scientists in Agricultural Research Institutes and Allied

⁵⁶ Sec 44 Copyright Act Cap C28 LFN 2004

⁵⁷ Section 4 and 5 Article 51-60 TRIPs Agreement

⁵⁸ Section 6(4) TRIPs Agreement 1915



Institution must acquaint themselves with instruments protecting their intellectual property and copyrights in particular. More sensitization campaigns on copyright issues, protection and enforcement in Nigeria particularly in the NARS and other allied institutions, agencies and universities where most IP is generated on literary works and new innovations or technologies is needed. There is need to create awareness on the facts that the law provides protection on original literary works, when a person's copyright is infringed and provides a remedy depending on the quantum of copyright infringed by an infringer. The enforcement of the remedy of damages in cases of copyright violations and others will curtail cases of violations resulting to diminutive rate of sales as well as loss of profit and earnings as the law does not provide adequate compensation to the copyright owner in event of an infringement. The numerous exceptions to award of damages do constitute difficulty to successful litigation, amounting to difficulty in claiming substantial award of damages by copyright owners in copyright infringements. This is not encouraging at all in motivating research to generate IP. A defendant who claims he or she was not aware and had no reasonable grounds to suspect that copyright existed in the work to which his action relates, should also be made to pay damages as ignorance of the Law should not be an excuse. This is important so that the scientist in agricultural research institutes and other allied institutions will be motivated to carry out and document more research activities resulting to more discoveries innovations, creations or breaking of new ground knowing that their intellectual property generated will be properly utilized for enhanced agricultural activities.