



**A COMPARATIVE ANALYSIS OF COPYRIGHT LAWS:
NIGERIAN COPYRIGHT ACT COMPARED WITH THE UNITED
STATES, INDIA, AND THE UNITED KINGDOM, WITH A FOCUS
ON THE FILM INDUSTRY**

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Abstract

The need for the protection of the film industries has never been more pressing. In Nigeria, the laws regulating and safeguarding the rights of filmmakers have been criticized over the years for being backward and inadequate in protecting their rights and those of creative in general. However, with the advent of the new Copyright Act of 2022, there is hope that Nigeria may have an improved set of laws aimed at ensuring the protection of creators, especially filmmakers. Nevertheless, some may argue that the Act still lacks compared to other countries with strong copyright laws that adequately protect their film sectors, such as the United States, the United Kingdom, and India.

By comparing the copyright laws of these three jurisdictions to that of Nigeria, this research paper aims to determine if the new Copyright Act is on par with those of its more advanced counterparts and, if not, how the Nigerian Copyright Act can be further improved. This paper delves into the legal protection of films in Nigeria, the United States, the United Kingdom, and India, aiming to illustrate the differences and similarities in their laws by examining specific issues concerning the protection of films, such as originality, bestowed rights, moral rights, performers' rights, and authorship and ownership. The objective is to ascertain whether the Nigerian Copyright Act adequately safeguards filmmakers in the country.

Keywords: Copyright Law, Film Industry, Audiovisual Works, Moral Rights, Comparative Analysis, Authorship.

1.0 INTRODUCTION

The global film industry plays a crucial role in both entertainment and cultural enrichment, providing insights into various countries, lifestyles, and points of view. Through its diverse array of content, it fosters connections among

people of varied backgrounds, facilitating the exchange of values, traditions, and insights across borders. Additionally, the global film industry serves as a substantial economic engine, annually generating substantial revenue in billions of dollars.¹ One of the methods for enhancing the success of this sector is by ensuring that film creators and everyone participating in the filmmaking process can protect their original content. This is where Copyright comes in to play a crucial role.² Copyright is a strategy used by the entertainment and media sectors to safeguard their original content over an extended period, preventing unauthorized access or use.³

Copyright law grants creators sole rights to their creations, enabling them to regulate the use, dissemination, and replication of their works, thereby deterring unauthorized copying, distribution, or use by others.⁴ Copyright laws, as part of intellectual property regulations, are vital for creators as they safeguard their works and allow them to make a livelihood from their creations. Additionally, these laws shield filmmakers from unauthorized usage, ensure proper compensation, including royalties, when works are adapted or translated, and grant licensing rights to film owners.⁵ Lastly, clarity in copyright ownership and use safeguards the interests of all involved parties, streamlines funding and dissemination processes, mitigates the likelihood of expensive conflicts, and minimizes the potential for future legal complications.⁶

There are various countries which boast of an advanced and rapidly growing film making industries, chief of which are the United States and United Kingdom's Hollywood, India's Bollywood and Nigeria's Nollywood. These are the countries of focus in this paper. In all the countries in consideration, there are various laws regulating their film industry but the copyright laws are

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¹ Kiev Kelvin, 'Why the Film Industry is Important: Exploring its Impact on Society and Culture' (Kiev Kelvin, 16 April 2023) <https://kievkelvin.com/blog/why-the-film-industry-is-important/#google_vignette> accessed 4 March 2024.

² Wole Olayinka, 'Understanding Nigerian Copyright Law for Film Makers' (Kurating, 5 September 2018) <<https://kurating.com/understanding-nigerian-copyright-law-for-film-makers/>> accessed 29 February 2024.

³ Nazareth Pantaloni, 'Copyright' (Indiana University Bloomington Indiana Universities Library, 2023) <<https://guides.libraries.indiana.edu/copyright>> accessed 6 March 2024.

⁴ Marios Beqiri 'The Importance of Copyright and Intellectual Property for Creators' (Fangage, 2023) <<https://www.fangage.com/blog/the-importance-of-copyright-and-intellectual-property-for-creators>> accessed 20 February 2024.

⁶ World intellectual Property Organisation, 'How to Make a Living from Movie Copyright' (WIPO Publication, 2022) <https://www.wipo.int/copyright/en/creative_industries/how-to-make-a-living-from-movie-copyright.html> accessed 1 March 2024.

important because Copyright Laws are the go to law that protects creative works which are eligible for copyright

In Nigeria, the Copyright Act is one of the critical pieces of legislation which provides a comprehensive framework for the regulation, protection, and administration of copyright and other related matters through the promotion of creativity, innovation, and investment in the country's creative industries⁷ of which the film industry is a key part. In the United Kingdom, known for its robust film sector, individuals who have produced unique films receive legal protection under UK copyright legislation.⁸ Films are a huge part of Indian households, and the Indian Film Industry has become a global enterprise in recent years by producing the highest number of films⁹.

2.0 THE NIGERIAN COPYRIGHT ACT

In recent years, Nigeria has implemented several copyright laws that have faced widespread criticism for various reasons. These critiques often revolve around their failure to address emerging issues like digitization, online use of copyrighted works, and online infringement.¹⁰ However, on March 17, 2023, General Muhammadu Buhari, the President of the Federal Republic of Nigeria, enacted the Copyright Bill of 2022, replacing the previous Copyright Act of 2004. This action ratified pending copyright treaties and incorporated fresh provisions into the legislation.

The goals of the Act encompass protecting authors' rights to ensure they are duly acknowledged and rewarded for their creative endeavours, establishing reasonable limitations and exceptions to ensure access to creative works, facilitating adherence to pertinent international copyright agreements, and bolstering the Nigerian Copyright Commission's ability to efficiently oversee, manage, and enforce the Act's provisions.¹¹

Although the new copyright act largely retains the provisions of the previous legislation, it also introduces some noteworthy additions. Nevertheless, the Act in total remains the go to act protecting rights of creatives in Nigeria. The features of the new act as distinct from the old one yet combined together show a reinforced zeal by the countries' legislators to protect the rights of creatives and with the new copy right act containing positive changes

⁷ Anita Ezike, 'An Overview of the Significant Innovations Introduced by the Copyright Act 2022' (Mondaq, 2022) <<https://www.mondaq.com/nigeria/copyright/1434680/an-overview-of-the-significant-innovations-introduced-by-the-copyright-act-2022>> Accessed 1 April 2024

⁸ Warner Solicitors, 'The Importance of Creative Copyright Law' (Warner Solicitors UK, 2022) <<https://www.warnersolicitors.co.uk/importance-creative-copyright-law/>> accessed 20 April 2024.

⁹ The Legal affair, 'The Application and Influence of Copyright Law on Film Industry' (Legal Affair, 2022) <<https://thelegalaffair.com/the-application-and-influence-of-copyright-law-on-film-industry/>> Accessed 14th of March 2023

¹⁰ Kodichi Anigbogu and Adeyemi Owoade, 'The Copyright Act 2022: Innovations for the Creative Industry' (Jackson Etti & Edu, 2022) <<https://jee.africa/wp-content/uploads/2023/07/The-Copyright-Act-2022-Innovations-for-the-Creative-Industry.pdf>> accessed 15 March 2024.

¹¹ Section 1 of the Nigerian Copyright Act, 2022.

affecting legal areas that impact the Nigerian Film Industry. Some of which include;

Definition of Film

Under the New Act, “Cinematograph films” is replaced with “Audiovisual Works”, which is defined as the “aggregate of a series of related visual images with or without sound, which is capable of being shown as a moving picture by means of mechanical, electronic or other device and irrespective of the nature of the material on which the visual images and sounds are carried and includes the soundtrack but does not include broadcast¹²” This change from cinematograph films to audiovisual is occasioned by the fact that the term cinematograph films is inadequate and limits its application. Audiovisual works encompass a broad range of media characterized by the integration of both auditory and visual elements. Examples include slide-tape presentations, movies, TV shows, corporate meetings, religious gatherings, theatre performances, online streaming, video conferencing, and live broadcasts.¹³

Rights of Film Creators:

The Nigerian Copyright Act provides for the nature of the rights of an audiovisual work which are basically the economic rights of the author or film creator. Section 11 stipulates that copyright for an audiovisual creation encompasses the exclusive rights to perform or authorize the following actions:

- a. Duplicate the audiovisual content;
- b. Present the audiovisual content publicly, comprising visual elements for viewing and auditory elements for listening;
- c. Transmit the audiovisual content to the public;
- d. Air the audiovisual content;
- e. Duplicate the soundtrack of the audiovisual creation;
- f. Provide access to the public via wired or wireless means, allowing individuals to access the content at a place and time of their choosing;
- g. Commercially distribute copies of the creation to the public, through sales or other means of ownership transfer, provided such distribution hasn't been authorized by the copyright owner;
- h. Create adaptations of the audiovisual work;
- i. Produce translations of the audiovisual work or its components;
- j. Undertake any of the specified acts concerning a translation or adaptation of the work as outlined in this section.

¹² Section 108 of the Nigerian Copyright Act, 2022.

¹³ Editorial, ‘7 ways the Copyright Act 2022 benefits creatives’ Business Day (Lagos, 29 January 2024) <<https://businessday.ng/news/legal-business/article/7-ways-the-copyright-act-2022-benefits-creatives/>> accessed 1 April 2024

Hence, should someone who is not the copyright owner try to do any of the above listed actions, they would have infringed on the right of the film creator.

Duration and Formality:

The Act has officially adopted the global principle from copyright treaties, which states that copyright protection shouldn't necessitate any formal procedures. Its incorporation into the legislation offers enhanced legal support and brings it in line with the foremost global standards and agreements.¹⁴ Section 4 of the copyright acts provide that eligibility for copyright under this Act will not require any formality. This is in line with provisions in Berne.

The Duration of copyright for audiovisual works are protected for 50 years after the end of the year in which the work was first published.¹⁵

Authorship and Ownership

Section 28 of the copyright act stipulates that initially; the author shall hold the copyright. The recent legislation defines the creator of an audiovisual work as the individual “by whom the arrangements for the making of the audiovisual work were made, unless the parties to the making of the audiovisual work, provide otherwise by contract between themselves”¹⁶. This shows that the person who organizes the creation of an audiovisual work, such as a film producer, automatically holds the copyright for it, even if those involved in creating the work haven't explicitly transferred their rights to the creator. This provision ensures that individuals who invest resources into assembling an audiovisual work are granted copyright automatically. However, contributors to the work still maintain copyright over their specific contributions within the audiovisual piece. For instance, while the film producer holds copyright over the film, the original writer of the story adapted into the film retains copyright over the story unless they transfer this right to the producer.

Defining authorship in relation to the facilitation of film production prompts investigation into what constitutes 'arrangements' within the framework of these regulations. This holds significance as identifying the author of a film is crucial, particularly when both the director and producer may lay claim to authorship of the audiovisual work. Are these arrangements primarily financial, creative, or based on other factors? Typically, both the producer

¹⁴ Sandra Eke and others, 'A Review Of The Nigerian Copyright Act' (Mondaq, 2022) <<https://www.mondaq.com/nigeria/copyright/1356178/a-review-of-the-nigerian-copyright-act-2022#:~:text=The%20objectives%20of%20the%20Act,compliance%20with%20relevant%20international%20copyright>> accessed 8 March 2024.

¹⁵ Section 19(1c) of the Nigerian Copyright Act, 2022.

¹⁶ Section 108 of the Nigerian Copyright Act, 2022.

and director are predominantly responsible for orchestrating the film's production. Although the producer typically handles financial and logistical matters, the director primarily concentrates on creative guidance and execution.¹⁷ The producer assumes financial responsibilities, while the director serves as the creative foundation by aligning actors with roles, supervising creative elements, and ensuring the film's professional and successful completion. The question of who better fits into the role of author so as to be the owner in first instance as noted under the Act¹⁸ can be answered as the person who is responsible for its general production.¹⁹

Performer's Rights

The New Act defines a performer to include Individuals such as actors, singers, musicians, dancers, and others who engage in activities like acting, singing, delivering, reciting, playing, interpreting, or otherwise presenting literary or artistic works or expressions of folklore, regardless of whether the work was recorded or only captured during live performance.²⁰ This widens the scope of protection and allows more performers to benefit from the rights which they are now granted under the New Act

The Act grants performers the right to manage the recording and duplication of their live performances. The circumstances allowing for exclusive control over the duplication of a recording are applicable only when;²¹

- i. A recording was created initially without the performer's authorization.
- ii. The duplication is generated for intents diverging from those the performer agreed upon regarding the initial recording or any subsequent reproductions.
- iii. The initial recording was executed following the regulations of section 68, and the reproduction is generated for objectives not encompassed by said regulations.

In addition, Performers possess the exclusive right to regulate the dissemination and availability of both recorded and live performances to the general public. This encompasses actions such as selling or transferring duplicates of their recorded works, transmitting their performances (unless previously aired), and making their recorded performances accessible to the public through wired or wireless methods, thereby enabling individuals to reach them at their discretion, regardless of time or location.

The law also states that unless there's a specific agreement stating otherwise, when a performer agrees to have their performance broadcasted, it's

¹⁷ Benson Okwuchukwu, Okoro, 'Resolving Ownership Rights in The Copyright Works of Cinematograph Film and Sound Recording in Nigeria' *IJOCLLEP* (2020) 2.

¹⁸ A.O. Oyewunmi, *Nigerian Law of Intellectual Property* (University of Lagos Press and Bookshop limited, 2015) 70-71.

¹⁹ J.O. Odion and N.E.O, *Essays on Intellectual Property Law* (Ambik Press Ltd, 2010)

²⁰ 63(3) of the Nigerian Copyright Act.

²¹ Section 63 of the Nigerian Copyright Act, 2022.

understood that they also consent to it being rebroadcasted with authorization, recorded for broadcasting purposes, and reproduced for the purpose of broadcasting from that recording.²²

Moral rights

In addition to the economic rights outlined in section 11 of the copyright act, the Berne Convention for the Protection of Literary and Artistic Works of 1886 (Berne Convention) recognized and established a separate dimension of rights for copyright authors, known as moral rights.²³ Moral rights safeguard the creations resulting from an author's intellect and effort against unwanted interference from publishers, specifically those who bring the author's work to the public sphere.²⁴

Section 14 of the new copyright legislation addresses the moral rights of authors explicitly. It states that authors of copyrighted works have the right to (a) assert authorship of their work, particularly concerning audiovisual works, and (b) oppose and seek remedy for any alteration, distortion, or derogatory treatment of their work that could harm their reputation or honour.

The moral right's scope encompasses "author of a work in which copyright subsists" which encompasses cinematographic films or audiovisual creations.²¹ under the copyright act. Once a work meets the criteria for copyright protection, the author's moral rights are automatically granted and are described as "perpetual, inalienable and imprescriptible".²² The moral rights acknowledged within the copyright act are (i) right of paternity; and (ii) right of integrity.

The right to paternity rights could involve the author's choice to include their name on copies, such as title pages, fly leaves, or film subtitles.²⁵ On the contrary, the right to integrity can yield significant advantages for society, particularly when a piece of work becomes part of the public domain. This serves as a safeguard for cultural heritage throughout the lifespan of the work.²⁶

²² Ibid, Section 65

²³ Article 6bis, Berne Convention for the Protection of Literary and Artistic Works, 1886.

²⁴ Michael B. Gunlicks, 'A Balance of Interests: The Concordance of Copyright Law and Moral Rights in the Worldwide Economy', *Fordham Intell. Prop. Media & Ent. L.J.*, (2001) 11(3), p. 608. <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1220&context=iplj>> Accessed 17 March 2024.

²⁵ World Intellectual Property Organisation, 'Guide to the Berne Convention for the Protection of Literary and Artistic Works' (WIPO Publication, 1978), 41-42. <www.wipo.int/edocs/pubdocs/en/copyright/615/wipo_pub_615.pdf> accessed 16 March 2024

²⁶ Mira T. Sundara Rajan, 'Moral Rights: Principles, Practice and New Technology', Oxford University Press, (2011), 5 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1805395> accessed 15 March 2024.

Section 66 of the copyright act also protects a performer’s moral rights. Essentially, this means the right to be recognized as the performer whenever the recorded performance is used, as well as the authority to prohibit any alteration of their performance or recording. While the performer is alive, these rights are non-transferable, as this section does not acknowledge the assignment of such moral rights.

3.0 THE AMERICAN COPYRIGHT ACT

The U.S. Constitution bestows upon Congress the power to enact laws concerning copyright.²⁷ Specifically, the Constitution declares that authority shall be vested in Congress “to promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.”²⁸ The copyright law,²⁹ enacted by Congress in 1976, remains influential and forms the fundamental basis of copyright legislation in the United States, having undergone alterations through subsequent amendments.

Definition

The provision within the US statute defines audiovisual works as those that “consist of series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied”³⁰. Within the US Copyright Act, there is another definition concerning motion pictures, which specifies that they “are audio visual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any”³¹ The reason behind the presence of two distinct definitions in the US Copyright Act is rooted in the fact that motion pictures, which are alternatively referred to as films, represent only a segment of audiovisual works.

Exclusive rights

The United States Copyright Act stipulates that the copyright owner under this law holds sole rights to perform and grant permission for the following actions:³²

²⁷ Kent M.H & Kaufman J.J, ‘An Associate’s Guide to the Practice of Copyright Law’ Oxford University Press, (2009)
<[https://books.google.com.ng/books/about/An Associate s Guide to the Practice of.html?id=IlxBAQAAlAAJ&redir](https://books.google.com.ng/books/about/An_Associate_s_Guide_to_the_Practice_of.html?id=IlxBAQAAlAAJ&redir) > Accessed 17 April 2024.

²⁸ Article I, Section 8, Clause 8, The Constitution of the United States, 1788.

²⁹ 17 United States Code, Section 10, Copyright Act of 1976.

³⁰ Ibid, Section 101

³¹ Ibid.

³² Ibid, Section 106

- i. Reproducing the copyrighted material in copies or recordings.
- ii. Creating new works based on the copyrighted material.
- iii. Distributing copies or recordings of the copyrighted material to the public through sales, transfers of ownership, rentals, leases, or loans.
- iv. Publicly performing the copyrighted material for literary, musical, dramatic, choreographic works, pantomimes, motion pictures, and other audiovisual works.
- v. Publicly displaying the copyrighted material for literary, musical, dramatic, choreographic works, pantomimes, pictorial, graphic, or sculptural works, including individual images from motion pictures or other audiovisual works.
- vi. Publicly performing the copyrighted sound recordings through digital audio transmission.

Ownership/Authorship and the Case of Originality

According to the US copyright law, original works of authorship gain copyright protection automatically once they are recorded in a tangible medium, without the need for any notice or registration..³³ The three statutory conditions for legal safeguarding are: (1) the creation must be unique, (2) it must reflect the creator's expression in some form, and (3) it must be recorded in a tangible form.³⁴

Under the existing US copyright legislation, cinematic creations are categorized as "works made for hire." Therefore, unless there is a contract stating otherwise, the individuals behind the film such as the director and screenwriter, referred to as the creators or authors, do not possess any rights. Instead, by law, all rights to the film are held by the producers.³⁵ Copyright protection can extend to legal entities recognized by law, such as film studios, which are acknowledged under American law as the primary copyright holders of their audiovisual works, possessing both authorship and ownership rights. According to the American Copyright Act, the producer(s) of a film, whether individuals or corporations, are considered its creators, with all participating artists treated akin to employees in the creative process.³⁶ If a film is produced collaboratively by two or more individuals or entities,

³³ 17 United States Code, Section 102, Copyright Act, 1976.

³⁴ Sotiris Petridis, 'Comparative Issues on Copyright Protection for Films in the US and Greece' *Journal of Intellectual Property Rights*, (July 2014), 19, 282-292 <<https://ikee.lib.auth.gr/record/292796/files/Petridis%20%20Comparative%20Issues%20on%20Copyright%20Protection%20for%20Films%20in%20the%20US%20and%20Greece.pdf> > accessed 2 March 2024.

³⁵ Roggero C, 'Colourisation and the right to preserve the integrity of a film: A comparative study between civil and common law', *Entertainment Law Review* (2011), 22 (1), 25, 29 <<https://www.dandi.media/en/colourisation-right-preserve-integrity-film-comparative-study-civil-common-law/>> accessed 12 April 2024

³⁶ Ibid

typically the co-producers allocate rights based on each party's relative contribution to the production.³⁷

Duration

In the United States, copyright lasts for the duration of the author's life, plus an additional 70 years. For works created by corporations, which is frequent in industries like film, copyright extends for either 95 years from the first publication or 120 years from creation, whichever comes first.³⁸

Moral Rights

On a global scale, the Berne Convention affords authors the right to assert their authorship (known as the right of paternity) and to prevent any alterations to their work that could damage their reputation (known as the right of integrity). Despite the United States having ratified the Berne Convention, its Copyright Act lacks provisions for moral rights. The moral rights of visual artists have been safeguarded via the legal interpretation of numerous copyright, trademark, privacy, and defamation laws, as well as through the Visual Artists Rights Act of 1990 (VARA), codified as 17 U.S.C. §106A.³⁹

However, there have been certain court rulings that support moral rights in films. Among these, the most significant and earliest chronologically is the case of *Fairbanks v. Winik*.⁴⁰ When Douglass Fairbanks, a renowned actor from the silent era of Hollywood and a co-founder of the United Artists studio, began to rise to prominence, the value of his early films increased. Majestic Studio, the original owner of the copyrights to these films, transferred them along with all associated rights to the Triangle Film Corporation. Subsequently, in 1922, Triangle attempted to sell the rights to re-edit the films into shorter, serialized versions. Fairbanks, despite not holding the copyrights, sought an injunction to halt Triangle's actions. He contended that the suggested new editions, presented in a less esteemed two-reel serial style, would negatively impact his professional standing since he had solely starred in feature films spanning five or more reels. The court scrutinized Fairbanks's agreement with Majestic for direction, which afforded him the privilege to assess the final edit of his movies. As a result, the ruling sided with Fairbanks, affirming that the contract indefinitely protected his artistic vision.⁴¹ This legal ruling indirectly safeguarded the moral rights of

³⁷ Moullier B and Holmes R, 'Rights, Camera, Action! IP Rights and the Film-Making Process' WIPO Publications, (2007), 2, 81.

³⁸ 17 United States Code, Section 302, Copyright Act of 1976.

³⁹ Betsy Rosenblatt, 'Moral Rights Basics' Harvard Law School (2019)

<[https://cyber.harvard.edu/property/library/moralprimer.html#:~:text=Under%20American%20Law%2C%20moral%20rights,Act%20of%201990%20\(VARA\)](https://cyber.harvard.edu/property/library/moralprimer.html#:~:text=Under%20American%20Law%2C%20moral%20rights,Act%20of%201990%20(VARA))> accessed 19 March 2024.

⁴⁰ [1922] 198 N.Y.S. 299, 299.

⁴¹ Decherney P, 'Hollywood's Copyright Wars: From Edison to the Internet' Columbia University Press, (2012), 108-109 <<https://cup.columbia.edu/book/hollywoods-copyright-wars/9780231159470>> accessed 13 March 2024.

an artist, despite the fact that the protection stemmed from an interpretation of the contractual agreement in question, and moral rights regarding audiovisual works were not officially recognized within the legal framework of the United States. Nevertheless, even as artists demand such kind of protection, it appears that moral rights are something that are not going to be included in the Copyright Act in the US anytime soon.

Performer's Rights

In the United States, the only federal law that specifically address performers' creative rights are the 1994 anti-bootlegging provision codified as section 1101 of the copyright statutes⁴². This section pertains only to artists involved in a "live musical performance" seeking recourse for copyright infringement against individuals who, without their permission:

- i. Record the performance in audio or audiovisual format,
- ii. Transmit the sounds or sounds and visuals of the performance to the public, or
- iii. Distribute unauthorized recordings of the performance.⁴³

Although this section may not have a direct impact on actors in the film industry, it becomes relevant in cases where a film producer violates a musician's rights. Apart from this legal safeguard, the economic and moral rights of performers in the projects they contribute to largely hinge on the agreements they strike with producers. Given their limited leverage in negotiations, most performers struggle to secure substantial rights beyond what collective bargaining agreements ensure. Non-union performers, in particular, often find themselves without even these baseline protections.⁴⁴

4.0 THE INDIAN COPYRIGHT ACT

The Indian Copyright Act of 1847 stands as among India's earliest legislative statutes, originating during the rule of the East India Company. In 1911, a new Copyright Act was introduced, superseding all prior legislation on the matter across British colonies, including India. Following alterations, the Indian Copyright Act was re-enacted in 1914 and remained in force until its substitution by the Copyright Act of 1957.⁴⁵

Definitions:

Cinematograph films are defined in the Copyright Act of India as involving visual and sound recording, capturing moving images stored in electronic and

⁴² 17 United States Code, Section 1101, Copyright Act of 1976.

⁴³ 17 United States Code, Section 1101 (a)(1) -(3), Copyright Act of 1976.

⁴⁴ Mary LaFrance, 'Are We Serious About Performers' Rights?' (Scholarly Works, 2015) 1180 <<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=2204&context=facpub>> accessed 4 April 2024.

⁴⁵ Muskaan Agarwal, 'Copyright Law and Film Industry', SSRN (2022) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3972801> accessed 23 March 2024.

physical form. In order to qualify for copyright protection, the movie needs to demonstrate original creative expression, and the producer holds the copyright for these kinds of works.⁴⁶ Section 2 of the copyright act defines the expression “visual recording” which means any recording by any medium or any method. This also encompasses the retention of such content through any electronic medium, enabling its perception, reproduction, and communication through various methods.

Originality

The act does not explicitly mention the requirement of "originality" for films. However, as per Section 13 (3) (a) of the Copyright Act 1975, copyright protection cannot be granted if a significant portion of the film infringes upon the copyright of another work. In the case of *MRF Ltd. v. Metro Tyres Ltd*⁴⁷., it was established that under Section 13 of the Act, a film must possess originality to qualify for copyright protection. Hence, reproducing a film without the owner's consent constitutes copyright infringement.

Economic Rights

Section 14 of the Copyright Act of 1957 bestows specific rights upon the copyright owner, known as economic rights because of their ability to generate financial returns through the exploitation of the creator's work. These rights afford the copyright holder authority to govern their creation, enabling the potential for financial gain. The creator possesses the ability to personally use these rights for profit or authorize others via licensing to use one or multiple of these rights, usually in return for compensation, which might be arranged as royalties or a lump-sum payment.

Section 14(d) stipulates that for cinematograph films, the owner is entitled to:

- i. Reproduce the film, encompassing capturing any image within it.
- ii. Distribute, rent out, or advertise for the sale or rental of any copies of the film, regardless of prior transactions.
- iii. Transmit the film to the public.

Moral Right

Article 57 of the Copyright Act of 1957 protects the moral rights of a creator. These rights remain with the author even if they have transferred their economic rights. Moral rights include the right to claim authorship (right to paternity) and the right to safeguard the work's integrity (right to integrity), underscoring the unbreakable link between the creator and their work. Unlike economic rights, which cover the reproduction and distribution of the work and can be assigned to others, moral rights are inalienable and reflect the author's personal connection to their creation. This ensures that the author can always be recognized as the creator and can protect their work against any

⁴⁶Section 2(f) of the Indian Copyright Act, 1957 as amended in 1944.

⁴⁷ [2019] 79 PTC (368).

modifications that might harm its reputation or their own artistic vision, regardless of who owns the economic rights.

In *Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd*⁴⁸, The plaintiff, a renowned author, penned "Aap Ka Bunty," a novel narrating the tale of a child who goes missing but is eventually found, leading to a joyful family reunion. The accused requested authorization to transform the novel into a film, intending to introduce minor changes. However, the movie adaptation included derogatory language and ended with the child's demise, portraying the parents mourning in a morgue. The author claimed this adaptation not only inflicted harm but also disparaged the reputation of her work and her personal image, causing considerable distress. The Court determined that the film's deviations from the original story surpassed what is typically allowable for creative adjustments, violating the writer's moral rights. Consequently, the Court ordered the defendant to excise and alter specific parts of the film.

Authorship and Ownership of Copyright in Films

Section 17 of the Copyright Act of 1957 stipulates that unless specified otherwise in the Act, the initial copyright owner of a work is its original author or creator. However, if a cinematograph film is created for valuable consideration at the request of another individual, that individual shall be considered the first copyright owner unless there exists a contrary agreement.⁴⁹

An owner is defined as someone who has invested financially in the making of the film. This investment isn't limited to simply providing funds; it also encompasses the assumption of financial risk, meaning the individual or individuals who stand to lose money if the film doesn't succeed at the box office. In the case of **Ramesh Sippy v. Shaan Ranjit Uttam Singh**⁵⁰, the court held that for any person who has funded the project and took the risk of making the work, that person is the owner of the copyright. After the amendment in 2012, things have changed. Now, the rights of authors of original literary, drama, music and artistic works which play a huge role in a cinematograph film, their rights shall be unaffected. This implies that even if a cinematograph film is made at the instance of a film producer, the rights of authors of the creative underlying works would remain unaffected.⁵¹

Terms of Duration

In India, the Copyright Act of 1957 safeguards the copyright of a film for a duration of sixty years from its publication. However, the legislation does not

⁴⁸ [1987] AIR 13.

⁴⁹ Shristi Choudhary, 'Copyright Law in India: An Overview of the Copyright Act', SSRN (1957) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4694983> accessed 18 March 2024

⁵⁰ [2012] 4 ALLMR 910.

⁵¹ The Legal affair, 'The Application and Influence of Copyright Law on Film Industry' (Legal Affair, 2022) <<https://thelegalaffair.com/the-application-and-influence-of-copyright-law-on-film-industry/>> accessed 14 April 2024

explicitly address the protection of unpublished films as section 13(2)(ii) of the Copyright Act includes provisions for safeguarding copyrights of unpublished films, it does not specify a definite term for their protection.

Performer's Rights

Section 38 of the Act⁵² provides first for a performer right by noting that if any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" and that such right shall subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made.

The rights include; performer's right to make sound or visual recording; performer's right to produce the sound or visual recording; performer's right to broadcast performance and performer's right to communicate the work other than by broadcast

In *Fortune Films International v. Dev Anand*⁵³, the court famously dismissed the claim for performers' rights in a cinematograph film, marking an early instance where such rights were denied legal recognition. In the case, the court ruled that actors lack the authority to dictate how their performance in a film is used. Once compensated for their work, producers have unrestricted freedom to use the performance as they see fit. However, following the 1994 amendment to the Copyright Act, performer rights were acknowledged.⁵⁴ Subsequently, Indian courts began acknowledging these rights, albeit few cases have been documented.⁵⁵

The UK copyright Act; Overview, Key features as they relate to film

The United Kingdom copyright law is governed by the Copyright, Designs and Patents Act 1988. The following works are protected under the law⁵⁶:

Definition:

Film is defined in section 5 of the CDPA as "a recording on any medium from which a moving image may by any means be produced.

Economic Rights

Duration

Copyright for a film expires at the end of the period of 50 years from the end of the calendar year in which it is made, or if it is release before the end of that period, 50 years from the end of the calendar year in which it is released. A film is released when it is first shown in public.

⁵² Indian Copyright Act, 1957, as amended in 1994.

⁵³ [1978] 80 BOMLR 263.

⁵⁴ Shreyansh Gupta, Performer's Rights Under Copyright Law (IPLeaders, 2021) <<https://blog.ipleaders.in/performers-rights-under-copyright-law/>> Accessed 1 April 2024.

⁵⁵ See *Super Cassettes Industries v. Bathla Cassette Industries* [2004] 1 RAJ 69.

⁵⁶ Section 1 of Copyright, Designs and Patents Act, 1988.

Moral Rights

In the United Kingdom, moral rights receive safeguarding through the Copyright, Designs and Patents Act 1988 (CDPA). These protections extend to a range of creative works such as literature, theatre, music, and visual arts, alongside films, recordings, and broadcasts.

These moral rights primarily involve four fundamental elements:

- **Right to be identified as the author** – This right guarantees that the originator is recognized as the creator of a piece when it is used or made public.⁵⁷
- **Right to object to derogatory treatment** – Creators have the right to protest if their creations are altered or damaged in a manner that negatively impacts their dignity or standing.⁵⁸
- **Right to object to false attribution** – If an individual falsely asserts authorship of a piece, the genuine creator has the right to raise objections.⁵⁹
- **Right to object to the issuing to the public of a distorted work** – This right enables the creator to raise objections if their work is presented to the public in a manner that damages their dignity or reputation.⁶⁰

According to the CDPA, the duration of these rights aligns with copyright protection, typically spanning the author's lifetime plus an extra 20 years' post-mortem. This prolonged timeframe ensures ongoing safeguarding of the author's legacy and association with their creations, even beyond their demise.⁶¹

Authors and Ownership

In the case of film, the author is the person who creates it⁶², that is the person by whom the arrangements necessary for the making of the recording or film are undertaken;⁶³ The owner of the copyright in a work has the exclusive rights including the copying of the work, issue copies out, rent them and make adaptations. In *Re F.G. (Films) Ltd*⁶⁴ it was held that the author was the person responsible for the financial arrangements for the making of the work. In other words, 'arrangement' was interpreted to refer to financial arrangements, and the author was therefore the producer.

Performer's Rights

In the past, performers in the UK lacked adequate legal protection. It wasn't until 1925 with the Dramatic and Musical Performers' Protection Act of 1923 that laws were established to punish unauthorized recording of their

⁵⁷ Section 77 Copyright, Patent and Design Act, 1988.

⁵⁸ *Ibid*, Section 80

⁵⁹ *Ibid* Section 84

⁶⁰ *Ibid*, Section 85

⁶¹ Lawbite, 'Moral Rights' (Law Bite UK, November 2023) <<https://www.lawbite.co.uk/resources/blog/moral-rights>> accessed 2 March 2024.

⁶² Section 9(1) Copyright Design and Patent Act, 1988.

⁶³ *Ibid*, Section 9(2)

⁶⁴ [1953] 1 WLR 383.

performances.⁶⁵ In the present, Part II of the Copyright, Designs and Patents Act 1988 (CDPA 1988), provides for performers to receive specific rights regarding their performances, which are distinct from any copyright or moral rights associated with the performed material (or its film or sound recording). Performers' rights prohibit individuals from:

- Recording or broadcasting a live performance without permission
- Recording directly from a broadcast of a live performance
- Duplicating recordings of the performance
- Distributing copies of the recording to the public
- Renting or lending copies of the recording to the public
- Uploading the recording to the internet for public viewing without authorization

5.0 FINDINGS AND CONCLUSION

While it can be said that the copyright laws of Nigeria, India, and even the United States all originate from that of the United Kingdom through the Statute of Anne 1710 and international conventions such as the Berne Convention and the Rome Convention, to which each of these countries is a party, one can argue that it is for this reason that these laws exhibit significant similarities. However, they are also distinctly different from each other, and these variances and resemblances strongly influence the rights of filmmakers within their respective jurisdictions.

In general, these laws bear the greatest resemblance concerning film production and copyright matters such as originality, definition, authorship, ownership, and even formalities, with each adhering to international laws and accepted procedures.

While the provisions for copyright in these areas are often similar, some countries exhibit closer parallels than others. For example, both Nigeria and America's copyright acts employ the term "audiovisual" to describe films. However, America specifically categorizes motion pictures as a type of audiovisual in its copyright act. Conversely, India and the United Kingdom both utilize the term "Cinematograph film." One could argue that Nigeria and America are more accurate in their terminology, as "audiovisual" is considered more encompassing, covering media with both sound and visual elements.

Regarding authorship, ambiguity persists in practice in Nigeria's copyright concerning who the author and owner of a film is, despite the act stating it is the person who makes arrangements for it. In contrast, India and the United

⁶⁵ MacQueen, H & Waelde, Audio-Visual Performers' Rights in the UK. (WIPO Publication, 2003) <https://www.pure.ed.ac.uk/ws/portalfiles/portal/18765416/MacQueen_Waelde_Audio_visual_performers_UK_report_to_WIPO.pdf> accessed 3 April 2024.

Kingdom are explicit: the producer, not the director as often confused in Nigeria, holds the rights as both owner and author of the film.

One notable difference to consider is the treatment of moral rights. While the copyright acts of Nigeria, India, and even the United Kingdom adequately and explicitly address the moral rights of filmmakers in alignment with the Berne Convention, the United States diverges by hesitating to include provisions for moral rights in its copyright legislation. This omission on the part of the United States impedes the adequate protection of filmmakers within its jurisdiction. The significance of recognizing the moral rights of artists cannot be overstated, as it ensures the preservation of the creative value of their work. It is commendable that Nigeria's legislators understand this importance and safeguard this right in the Copyright Act of 2022.

It is also noteworthy that the United States' stance on moral rights extends to the rights of performers, which are also not adequately provided for. While this right is relatively new across all examined countries, as in the past it was not recognized, it is an improvement that in recent times, these rights are now being considered in the United Kingdom, India, and most recently, Nigeria.

Lastly, it can be said that Nigeria's New Copyright Act of 2022 is on par with its counterpart, as ultimately, its main purpose, which is the adequate protection of the rights of filmmakers, is provided for.

In conclusion, having compared the Nigerian Copyright Act with those of the examined countries, one can rightly say that indeed the new Copyright Act of 2022 adequately provides protection and proper regulation for the rights of filmmakers in the industry. Its provisions are not significantly different from its counterparts, and it may even take into consideration the rights of its film creators better than some.