

THE EFFECT OF DIGITAL TECHNOLOGY ON COPYRIGHT: A CASE  
STUDY OF ONLINE DIGITAL DISTRIBUTION OF NIGERIAN MOVIES

BY

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## ABSTRACT

*The subject matter of copyright has been evolving over the years. The response of copyright to diverse degrees of technological advancements is without doubt, unparalleled in the field of intellectual property. Copyright law has shown considerable ability to move with the trends even in the face of gushing threats presented by ever changing technology. This research work is a journey into the world of the Nigerian Film Industry on how it has utilized digital technology and the role which copyright plays. The study examined the status of copyright protection for creative owners in the digital era as it relates to distribution of Nigerian movies over the Internet i.e. whether there is adequate legal framework for protection of copyright works in the digital environment under the Nigerian legislation. The current structure and regulation of online digital distributors was also investigated. The purpose of the study is to improve the value capture for right owners over their movies and to project the possible opportunities that the Internet platform possesses to position Nollywood competitively globally if afforded adequate legal backing. The researcher employed a purposive sampling method which involved respondents who by their characteristics are experienced movie practitioners, management level officials of regulatory agencies and a senior official in a digital distribution firm. Data was obtained through semi-structured interviews, electronic mail and secondary online resources. Presented in narrative prose, the qualitative data went through a content analysis of the interviews in order to identify the main themes that emerged from the respondents. The study found that although the subsisting law does not inhibit digital exploitation of their works, it is still not adequate to protect the film industry as a whole in the digital era. The study unveiled how Nigerian movies are distributed online, the main players and level of awareness of movie makers of the Internet as a contemporary distribution platform. The research recommends among other things that Nigeria ratifies the WIPO internet Treaties with reservation, that the Copyright Act be updated to incorporate certain digital rights, and that the Nollywood industry be educated on copyright transactions in order for them to get the most benefits from distribution of their creative works.*

## **DECLARATION**

This research project/dissertation is my original work except where sources have been acknowledged. The work has never been submitted, nor will it ever be, to another University in the awarding of a degree.

STUDENT ..... DATE .....

SUPERVISOR ..... DATE .....

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## **DEDICATION**

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## TABLE OF CONTENTS

ABSTRACT .....	i
DECLARATION.....	ii
COPYRIGHT .....	ii
ACKNOWLEDGEMENT.....	iv
DEDICATION .....	v
TABLE OF CONTENTS .....	vi
LIST OF APPENDICES .....	x
CHAPTER 1 .....	1
INTRODUCTION.....	1
1.0 Introduction.....	1
1.1 Background of the Study .....	2
1.2 Statement of the Problem.....	10
1.3 Purpose of the Study .....	11
1.4 Objectives of the Study.....	12
1.5 Research Questions.....	12
1.6 Significance of the Study.....	13
1.7 Scope of the Study .....	14

1.8 Limitation of the Study .....	15
1.9 Key Words .....	16
1.10 Research Outline.....	16
1.11 Conclusion .....	17
CHAPTER 2 .....	19
LITERATURE REVIEW.....	19
2.0 Introduction.....	19
2.1The Effect of Digital Technology on Copyright.....	21
2.1.1 Nature of Rights in a Cinematographic work/ Film/ Movies/ Audio-visual as a subject matter of Copyright.....	21
2.1.2 The Principle of Territoriality .....	25
2.1.3 Enforcement of Rights and Remedies in the Digital Environment.....	27
2.1.4 WIPO Internet Treaties .....	32
2.1.5 The Liability of Internet Service Providers (ISP).....	35
2.2 On-line Digital Distribution of Cinematograph Work.....	38
2.3 Rights Management in the Digital Environment.....	45
2.4 The Status of Nigerian Law and other Regulatory Frameworks for the Protection of Copyright in the Digital Environment. ....	48



2.5 Conclusion .....	51
CHAPTER 3 .....	53
RESEARCH METHODOLOGY .....	53
3.0 Introduction.....	53
3.1 Research Design .....	54
3.2 Study Population & Sampling .....	56
3.3 Data Collection Procedures .....	57
3.4 Analysing Qualitative Data.....	59
3.5 Conclusion .....	59
CHAPTER 4.....	60
DATA ANALYSIS AND INTERPRETATION .....	60
4.0 Introduction.....	60
4.1 Section 1: Presentation .....	60
4.1.1 Nigerian Movie Producers/Directors .....	61
4.1.2 Online Distributors.....	64
4.1.3 Regulatory Agencies .....	70
4.2 Section 2: Main Findings of the Study .....	75
4.2.1 Awareness of the Internet as Distribution Platform for Nigerian Movies ..	76

4.2.2 Major Players of Online Distribution and Methods of Distribution .....	76
4.2.3 Structure and Regulation of Online Distribution System .....	76
4.2.4 Sufficiency of the Copyright Act CAP C28 LFN 2004 to protect <i>Nollywood</i> and other right holders in the Digital Era .....	77
4.2.5 Rights Management of <i>Nollywood</i> Movies.....	81
CHAPTER 5 .....	85
SUMMARY, CONCLUSION AND RECOMMENDATION .....	85
5.0 Summary .....	85
5.1 Conclusion .....	86
5.2Recommendations.....	87
REFERENCES .....	90

## **LIST OF APPENDICES**

### **APPENDIX I: INTERVIEW GUIDE FOR NIGERIAN MOVIE**

**PRODUCER/DIRECTOR/COPYRIGHT OWNER..... 94**

### **APPENDIX II: INTERVIEW GUIDE FOR ONLINE DISTRIBUTORS OF**

**NIGERIAN MOVIES ..... 96**

**APPENDIX III: INTERVIEW GUIDE FOR REGULATORY AGENCY ..... 98**

## **CHAPTER 1**

### **INTRODUCTION**

#### **1.0 Introduction**

The subject matter of copyright has been evolving over the years. The response of copyright to diverse degrees of technological advancements is without doubt, unparalleled in the field of intellectual property. Copyright law has shown considerable triumph in moving with the trends even in the face of gushing threats posed by ever changing technology. Although one may not entirely allude to the laws' ability to catch up on trends or pre-empt the same; given the history of technology that involves the subject matter of copyright like photocopying machine, VCR (video cassette recorder), analogue television, analogue camera and film among others, copyright continues to develop its capacity to answer to new technologies, new ways of utilising copyrighted works and engaging in newer business models to suit the demands for its consumption ([www.copyrightguru.com/belmont\\_classes](http://www.copyrightguru.com/belmont_classes)).

One way that copyright law proves its ability to withstand contemporary expansion is that, the exclusive rights of creative owners continue to apply regardless of how they are presented in the digital realm. For example, in the case of literary, musical and artistic works; the rights of reproduction, distribution, translation, exhibition which are obtainable in the physical formats are equally obtainable when the works have become digitized. Copyright law presupposes a balance of the rights of creative owners and the rights of users to access the work for the ultimate goal of promoting science, culture and education (Copyright law of the United States & UNESCO).

Therefore, as technology is improving and users of works are able to access same for the benefit of the society, in the long run, copyright owners usually benefit from technological advances. However, the convergence of technology in relation to broadcasting, telecommunications and computer has brought about several challenges to copyright and related rights. It is therefore important to examine the effect of digital technology on the bundle of rights of copyright holders and the consuming public.

This research work is a journey into the world of the Nigerian film industry on how it has utilized digital technology and the role of copyright. This includes the use of digital technology to improve its movie production, reproduction, distribution, communication to the public, making available to the public, employing technical protection measures and digital rights management systems. The study examines the negative implications of the use of these digital technologies by competitors and or users in a manner prejudicial to the interests of the Nigerian movie industry given the contemporary loopholes in the legal regime of copyright protection in Nigeria.

Therefore, the research will examine the Nigerian film industry in the digital environment in light of legal frameworks both at local and international levels.

### **1.1 Background of the Study**

The creative and entertainment industry in Nigeria has become a key driver of national growth. Within 20 years of its feature existence, the Nigerian film industry has contributed to global export of the Nigerian/African culture, created jobs, and has

attracted foreign investment among others. The United Nations Conference on Trade and Development (UNCTAD) reported in 2010 that creative industries are opening up new opportunities for developing countries to leapfrog into high sectors of the global economy thereby increasing their participation in international trade. More specifically on the film sector, Koïchiro Matsuura, former director-general of the United Nations Educational Scientific and Cultural Organization (UNESCO), said that film and video production are shining examples of how cultural industries, as vehicles of identity, values and meanings, can open the door to dialogue and understanding between peoples, but also to economic growth and development. Studies on the film industries globally have shown the industry's potential to contribute to sustainable global economic recovery. Bearing in mind that during the recession, the global creative economy continued to thrive as people continued to go to cinema, museums, listen to music, watch videos, television shows and play video games. On the local Nigerian scene, (Efe Ebelo: 2013) reported that according to Roberts U. Orya, CEO of Nigerian Export Import Bank (NEXIM), the Nigerian film industry has literally upstaged the global movie world through its innovation, imaginativeness, and prolific performance. The industry is thus globally adjudged as the most prolific with consistent production of more than 2000 titles in the country's three major languages rendered every year since 2008. *"This has placed Nollywood as the third in global revenue earnings, with receipts over the years reported to range between US\$300m to US\$800m in the recent past to the extent that the practitioners and businessmen from Hollywood and other global equivalents can no longer ignore the industry as is being manifested in several joint collaboration movie works"* (Robert U. Orya: 2013).

The film industry has very high prospects for growth and sustainable development based on a combination of advantages which include prevalence of high pool of creative talents; strong and growing domestic entertainment industry; established overseas market demand in Africa, UK, USA and the Pacific Islands coupled with huge Diaspora population, among other factors.

The history of film making in Nigeria is a reflection of the development of the Nigerian political economy. The oil booms in the 1970's largely impacted the cinema culture in Nigeria as foreign capital increased from foreign businessmen who invested in the establishment of cinema complexes to develop the industry. Given the increased social spending by the Nigerian State during that time, more citizens had more money to spend in cinema houses and purchasing home television sets. The industry thus grew.

The actual take-off of the *Nollywood* phenomenon (a name that has come to be the brand for the Nigerian counterparts of American '*Hollywood*' and Indian '*Bollywood*') was the result of another shift in the entertainment industry from cinema houses and television sets to video cassettes (<http://www.nificon.org/about/history-of-nollywood/>). The first *Nollywood* films were produced with traditional analogue video such as Betacam SP but today all *Nollywood* movies are produced using digital video technology. Nigerian producers/directors adopt new technologies as soon as they become affordable. Bulky videotape cameras gave way to digital camera's which were subsequently replaced by HD cameras (<http://www.modernghana.com/movie/2472/3>). Editing, music, and other post-production work are done via common computer-based

systems. *Nollywood* films have a large following in Africa and among Africans around the world. They gained popularity during the digital revolution of the early 1990s when camcorders replaced 35-millimeter film cameras, and digital systems replaced celluloid as recording devices. The Nigerian film industry is definitely one to be respected regardless of the one too many crippling features of the industry ranging from less than perfect film pictures, plot themes, low budget hurriedly produced movies among others. However, it shows no signs of slowing down.

The creative depth manifested by *Nollywood* is a testimony to the impacts of the digital age. (Vicci Soroczynsk:2012) on '*Nollywood 2.0 tech tools are boosting Africa's Movie Industry to global leader status*' said Nigeria's ever-expanding film industry is ranked #2 globally after *Bollywood* (#1) and *Hollywood* (#3), by the number of annual film productions (making roughly 40 films per week, at an average cost of \$40,000 per project). Vicci stated that '*This stat still blows me away—this is arguably the most popular content across sub-saharan Africa and the prolificity of this US\$590 million movie industry has all happened in less than 20 years*'.

He adds that the progress of the industry is impressive given the challenges that plague the industry including rampant piracy; poor production quality; inadequate infrastructure; insufficient funding sources and venture capital; lack of reliable electricity; and the disorder of an emerging market.

On the other hand, what in fact is digital technology?

Digital technologies are an extension of the long history of the way we communicate with one another. The innate need to communicate provides the motive and rationale



for the development of technologies that are reflective of the times. Today's digital world deals with creating, sharing, and using information. Digital technology is the process of breaking down audio and video signals into a binary format where the data is represented by a series of 1's and 0's that is transformed into numerical compression of works into digital format (Encarta Dictionary& TechTerm.com).

In modern times, we have seen many changes in technology. One of the most fundamental technological developments relating to the protection of copyright and related rights in recent decades is the use of computers and digital networks for storage, transmission and use of works largely aided by the Internet. (WIPO Intellectual Property Handbook: 2013). The Internet is a global system of interconnected computer networks that uses the standard internet protocol suite to serve several billion of users worldwide. It is a network of networks that consists of millions of private, public, academic, business, and government networks, of local to global scope, that are linked by a broad array of electronic, wireless and optical networking technologies. The Internet carries an extensive range of information resources and services, such as the inter-linked hypertext documents of the World Wide Web (www), the infrastructure to support email, and peer-to-peer networks. Most traditional communications media including telephone, music, film, and television have been reshaped or redefined by the Internet, giving birth to new services such as voice over Internet protocol (VoIP) and Internet protocol television (IPTV). The IPTV technology is used to bring video on demand to television and personal computers. The Internet has enabled and accelerated new forms of human interactions through instant messaging, internet forums, and social networking.

On the Internet, texts, graphics, photographs and sounds can be exchanged between computers at the click of a button and real-time transmission of audiovisual is possible (WIPO Handbook). As new business models are developed to make use of these technical possibilities, the Internet is increasingly taking a central position in the dissemination of works and other protected subject matter to the general public. The number of mainstream technologies that are affordable and accessible is increasing, helping people to access information on the internet not just in their homes but in any location through portable devices. Processing power has increased, software is getting more and more integrated and complex, and the hardware that is needed to run programs is getting smaller and more cost-effective. For the film industry, this means new editing software, more powerful digital imaging programs and new formats like digital projection, DVDs, Blue-rays, Cable/ Satellite broadcasts. With technology, VCDS, DVDs and Blue-ray have now replaced the obsolete VCR of analogue pedigree as the new home entertainment standard while home cinemas with bigger screens and better sound quality have changed the home viewing experience. What should be said of video on demand or streaming of videos over the internet platform?

There has been a quantum leap in technological developments. Whereas before it took a while for developing countries to adopt new technologies; mobile telephony and broadband access have made access and dissemination much easier and cheaper (Marisella Ouma). Technology has created a new currency in content and programming known as access thereby impacting copyright based industries on how to monitor the use of their works as well as enforce their rights. In response to the

magnetic effect of the internet, quite naturally, Nigerian movies have graduated to the internet and acquired a comfortable online platform. The huge online presence of Nigerian movies is attributable to two major factors of improved broadband internet connectivity by mobile telephony service providers and the entrepreneurial drive of some industry participants to meet public need for consumption of popular *Nollywood* movies.

At this point, it is important to also define digital distribution of works on the internet which is the thrust of this research.

Also known as content delivery or online distribution, digital distribution is the delivery of media content without the use of physical media usually over online delivery mediums such as the internet. It became prominent with the advancement of network bandwidth capabilities. Online distribution of movies bypasses the conventional distribution methods like in DVD or blue ray formats (en.wikipedia.org).

Digital technologies have enhanced the widespread popularity of *Nollywood* through easy means of diffusing their works (Joke Oyewunmi: 2011). *Nollywood's* online presence has increased the market for online distribution of her movies. Generally, movie content distributed online may be streamed or downloaded. Streaming involves accessing the content on demand as it is needed by the user. While downloading the content to a hard drive or other form of storage media allows for quick future access of the work by the user. Specialist networks known as content delivery networks help in distributing content over the internet by ensuring both easy

access and high performance. Some websites offering Nigerian movies include [www.izognmovies.com](http://www.izognmovies.com), [www.nigerianmovies.net](http://www.nigerianmovies.net), [www.africanmoviesdirect.com](http://www.africanmoviesdirect.com), [www.hausamovies.com](http://www.hausamovies.com), [www.nigeriafilms.com](http://www.nigeriafilms.com), [www.ibakatv.com](http://www.ibakatv.com) and [www.irokovtv.com](http://www.irokovtv.com) offering both online streaming and downloading.

Nigeria is a huge market for the entertainment industry given the size of its population. At the end of 2013, it was reported that over 55 million Nigerians have internet connection (Nigerian Communication Commission). This figure excludes the number of Nigerians in Diaspora and other *Nollywood* fans around the world.

From the above, it can be deduced that digital technology is a wide subject area. However, the focus of this research is digital technology as it relates to the internet as a platform for distributing digital copies of Nigerian movies. The internet presents several issues given the territorial nature of intellectual property. It provides an avenue for distribution of protected works across the world from which right holders can derive commercial gains.

Due to the dynamic nature of digital technology, the question may arise whether or not the Nigerian movie makers are aware of the benefits and challenges. Also, in light of the potentials of the Nigerian film industry to compete in international trade as a global brand, whether the law is proactive in factoring the internet as a contemporary distribution platform for Nigerian movies.

The purpose of copyright law is to offer protection to creative owners while ensuring equitable access of the works by the public. Without pre-empting the research, it thus appears that the angle of public access to copyright works is always adequately

covered by the drive and utility of digital technologies. However, the other angle of legal protection that guarantees economic returns for right holders is not clear.

In essence, this research would examine the status of copyright protection for creative owners in the digital era. Whether or not the Nigerian law on Copyright (Copyright Act CAP C28 Law of the Federation of Nigeria 2004) provides for protection in the digital environment especially as it relates to the film industry.

## **1.2 Statement of the Problem**

Although Nigerian movies are still largely distributed in physical formats across the country and abroad, it is envisaged that the future of all movie distribution would be the internet given the trajectory of digital technology. The internet has enhanced the widespread popularity of Nigerian movies, however, the unauthorized and unregulated dissemination of movie content has an adverse effect on revenue collection and this would be made worse by a lack of regulatory framework.

Intellectual Property is neither more or less than the sum of the rights granted by law. Therefore, the problem to be investigated in this research is an analysis of the provisions of the Nigerian Copyright Act CAP C28 Laws of the Federation 2004 in relation to the rights of movie makers and other relevant stakeholders within the digital environment. Is there adequate legal framework for protection of copyright works in the digital environment?

It is important to investigate how online movie distribution is currently structured and regulated taking into account the fact that there are several aggregators of Nigerian films on the internet. Importantly, the awareness level of right holders regarding the distribution of their works on the internet will be examined.

Copyright issues that arise over the internet include the incessant challenge of territorial or trans-boundaries distribution, enforcement of rights, infringement problems, liability of internet service providers, measures of controlling the dissemination of protected movies among others.

One clear scenario that could arise in matters of the internet distribution of movies is litigation in cases of infringement. How would the jurisdiction of court, rights of parties, liabilities of parties, place of infringement, remedies and enforcement of rights be determined? Do the subsisting law and other related ones address all or any of these issues?

It goes without saying that such law should take into cognizance international conventions on internet related issues such as the WIPO Internet Treaties so that *Nollywood* can compete globally and be protected in like manner as their counterparts in foreign territories.

### **1.3 Purpose of the Study**

The purpose of this study is to improve the value capture for right owners over their movies and to project the possible opportunities that the internet platform possesses to position *Nollywood* competitively globally if afforded adequate legal backing.

The study would also inform the importance of mainstreaming the industry in the overall national policy through an efficient copyright protection system given the Nigerian film industry's export potential record.

#### **1.4 Objectives of the Study**

The objectives of the study are:

1. To determine the level of awareness of right holders regarding the Internet as a platform for online distribution of their movies.
2. To examine the current online distribution structure of Nigerian movies.
3. To assess the extent of legal protection frameworks of Nigerian movies in the digital agenda.
4. To determine the availability or otherwise of digital rights management schemes and technical protection measures for the effective and efficient distribution of royalties to right holders.
5. To suggest law reform provisions and copyright policy recommendations that may be necessary to effectively respond to the gains and challenges of the Internet.

#### **1.5 Research Questions**

1. What is the level of awareness of right holders regarding the internet as a platform of online distribution of their movies?

2. Who are the major players of online distribution of Nigerian movies and what are their methods of distribution?
3. How are the activities of online distributors of Nigerian movies structured and or regulated?
4. Is the current legal framework of copyright protection in Nigeria sufficient to adequately protect the movie industry in the digital era?
5. What schemes are in place to enable right owners manage the exploitation of their works through an efficient digital rights management system.

### **1.6 Significance of the Study**

The justification of this study is to gain deeper insights on the current activities, structure, opportunities and challenges posed by the Internet for the digital distribution of Nigerian movies. The research may also help the film industry be better positioned to take economic advantage of the internet as a major platform for movie distribution. Statistics indicate that online use of works is on the increase (@internetworldstats.com).

Globally, content development and distribution happens over the web at a rapid pace. The internet is adjudged as the next stage for media entertainment. For example, in Nigeria, television stations are connecting to the internet. Viewers are also no longer limited to the traditional formats of television programming. Since repositories are being moved online to distribute content digitally, there is increased demand for



accessing protected works at a time individually chosen by users. Therefore, in view of the fact that the internet is the next platform for disseminating copyright works created by Nigerian film makers, it is expedient to evaluate the legal framework for distribution of the Nigeria's globally acclaimed movies.

Quite apart from the fact that there is a dearth of academic research on this area of study, this study is warranted because the Nigerian movie industry has shown laudable potential to position the economy beyond the proceeds of crude oil. The economy of Nigeria cannot continue to depend only on crude oil and agriculture. Intellectual property is the next phase for global development and the movie industry can be better positioned to attract as much foreign direct investments than it currently lives on.

The research will add to existing academic resources while the results gathered would be instrumental for the government in collaboration with the industry practitioners to push for law reform and policy measures that are tailor-made to adequately protect the fast growing film industry.

### **1.7 Scope of the Study**

Much as the topic is of a global nature, this particular research is limited to the current situation of the Nigerian Film Industry whose movies are becoming widely distributed on the internet.

The study shall only cover Nigerian movies that are legally placed on the internet and online distribution platforms that are domiciled in Nigeria. The research is also limited to a cross-section of contemporary Nigerian movie producers/directors.

The reason for this scope is to streamline the study among a selection of movie producers/directors that can be easily identified and accessed given the vastness of the film industry.

Also, the scope of the study covers only online distribution platforms that are hosted in Nigeria. This is because it would be impractical for the researcher to investigate all the global content distributors of Nigerian movies.

### **1.8 Limitation of the Study**

The drawback of the study includes the impracticality of investigating all online distributors of Nigerian movies at different regions whether authorised or unauthorised.

The researcher was also encumbered by insufficient time and financial resources to travel to the hub of movie production in Nigeria (the city of Lagos) to conduct more first-hand interviews with movie producers/directors. Equally, apart from access to key informants, there was low response from the identified study population especially the unwillingness of some digital distributors to give information on their business activities.

However, this limitation was largely overcome by taking advantage of technology to reach the study sample.

## **1.9 Key Words**

Digital Technology (Internet), Copyright, Distribution, Nigerian Movies

## **1.10 Research Outline**

Chapter 1 introduces the subject matter of the research. It provides a background on the Nigerian film industry and how it has employed digital technology to compete globally. The chapter sets out the problem of the study which is the adequacy of the Nigerian Copyright Act to protect movie makers and other relevant stakeholders in the digital environment. The objectives, research questions, significance, scope and limitation of the research are all clearly laid out in this chapter.

Chapter 2 is a review of existing literatures on the subject in relation to the research objectives. It conveys the knowledge and ideas that have been established on the subject area including what some of their strengths and weaknesses are.

Chapter 3 is the methodology adopted in gathering data for the research work. It explains the entire research design including the study population and sampling, the data collection procedures of the study and how the data collected would be analysed.

Chapter 4 shall present an analysis of the market and online library data for interpretation in a manner reflective of the current situation in Nigeria regarding the discourse.

And in conclusion, chapter 5 shall bring the research to a logical close by making policy recommendations for the protection of the movie industry in the digital agenda.

### **1.11 Conclusion**

The chapter introduced the subject matter of the research. It provided a background on the Nigerian film industry, defined digital technology in relation to the ‘internet’ being the thrust of the study, described what online distribution entails and overall, how *Nollywood* has employed digital technology to compete globally.

The chapter set out the problem of the study as whether the Nigerian Copyright Act CAP C28 LFN 2004 is sufficient to protect movie makers and other relevant stakeholders in the digital environment.

The objectives, research questions, significance, scope and limitation of the research were also clearly laid out in this chapter.

The rights offered to creative owners are only limited to those provided by law. Protection is determined by the boundaries set in the body of national copyright legislation and international conventions that have been acceded to. Therefore, given the traffic to the internet for the utilization, commercial exploitation and access to

works, would the Nigerian copyright legislation be seen to provide relevant rights to protect right holders in the digital environment?

The next chapter shall be thus be reviewing relevant literatures on the different aspects of distribution of protected works on the internet including legislations that may be compliant and proactive on the activities of the digital environment as it affects exploitation of copyright audio visual works.

In the final analysis, the best way to predict the future of online distribution of Nigerian movies as a modern distribution channel is to study trends across the globe regarding the subject matter which chapter 2 shall endeavour to achieve.

## CHAPTER 2

### LITERATURE REVIEW

#### 2.0 Introduction

Digital technology and digital communications networks, such

as the Internet and personal computers has for some time been a subject of interest to many researchers given their many implications on Copyright Law. Technology, like many innovations, is both promising and potentially harmful to various parties interested in the use and exploitation of works of authorship (Marybeth Peters: 2007). On one hand, it can provide for new and exciting ways for authors to provide copies of their works in convenient, inexpensive ways to a much larger audience than in the past. For instance, a movie producer can put his movie on a website so that it can be accessed by viewers from around the globe, without a large investment in manufacturing, packaging and shipping physical products to remote locations. On the other hand, these new technologies make it easier for those who want to compete illicitly with that author to make and distribute infringing copies of the work.

Some literatures have drawn a link between digital technology and how it affects copyright. According to Stephen A. Merrill & William J. Raduchel (2009), advances in technology for creating and distributing works of authorship has played a critical role in shaping copyright law throughout history.

In this chapter, a number of research works have been reviewed to illustrate the strengths and importance of digital technologies to the movie industry as well as the attendant consequences. In particular, resources on online digital distribution of movies are discussed extensively in addition to an overview of the WIPO Internet Treaties, the United States DMCA and the European Union Copyright Directive for benchmarking purposes.

The Nigerian Film Industry has attained a global image and this would not have been possible without the aid of digital technologies. As a matter of fact, the main reason why *Nollywood* is able to churn out an average of 50 movies per week can only be

attributable to digital technologies. The Nigerian film industry is undoubtedly helping create jobs in a country with an economy that relies mainly on oil and agriculture. Over a million people are currently employed in the industry, making it the country's largest employer after agriculture. In the belief that if the industry is properly protected, managed and regulated, a million more jobs could be created in the sector, the World Bank and the United Kingdom's Department for International Development (DFID) is currently assisting the Nigerian government to create a Growth and Employment in States project to support the entertainment industry, along with other industries (Rebecca Moudio: 2013). Chioma Nwagboso, a World Bank finance and private sector specialist said that the Bank understands the job creation potential of the Nigerian film industry and the need for a fruitful export for the country. *'Without initial support from the government, Nollywood propelled itself to the position it occupies today, and a little lift could take the industry to even greater heights'*, she added.

For that reason, it is pertinent to understand the contemporary realities of the film industry so that the legislative framework is improved and policy decisions that are geared toward positioning the industry for global business are made.

In order to find suitable answers to the identified research questions in chapter 1, the focus of this review has been grouped under 4 subheads to wit:

1. The effect of digital technology on copyright
2. On-line digital distribution of cinematograph work
3. Rights management in the digital environment

4. The status of Nigerian Law and other regulatory framework for the protection of copyright in the digital environment.

## **2.1 The Effect of Digital Technology on Copyright**

### **2.1.1 Nature of Rights in a Cinematographic work/ Film/ Movies/ Audio-visual as a subject matter of Copyright:**

Article 2(1) and 14bis of the Berne Convention for the Protection of Literary and Artistic works jointly protects cinematographic work as an original work of copyright. The nature of rights embedded in a cinematographic work is enshrined in the relevant national legislation based on international agreements that such country may be party to. International treaties seek to unify various national laws by requiring the countries that join the treaties to grant certain rights to authors on a non-discriminatory basis. The scope of these rights is important insofar as it determines the types of activity which, unless done with the copyright owners consent, amount to an infringement of the owner's copyright. Generally, the primary rights granted to copyright owners include the following:

- i. To copy the work (reproduction right)
- ii. To issue copies of the work to the public (distribution right)
- iii. To rent or lend the work to the public (rental or lending right)
- iv. To perform, show or play the work in public (public performance right)



- v. To communicate the work to the public
- vi. To make an adaption of the work or do any of the above acts in relation to an adaption (right of adaptation) or
- vii. Authorize others to carry out any of these activities.

According to Lionel Bently and Brad Sherman (2009), one of the most consistent themes in the history of copyright law is that the types of activity that fall within the copyright owners control have steadily expanded. For instance, with the advent of broadcasting, the 1956 edition of the English Copyright law added a specific right of broadcast to the copyright owner. Since then, further rights to distribute, rent, lend copies, communicate the work to the public have been added.

The researcher agrees with Lionel and Brad that for the most part, the rights have developed in a piecemeal way in response to external pressures; notably to technological change. As long as human beings continue to exist in the face of the earth, there shall be no end to new expressions of creativity which inevitably would interpret how copyright law will evolve.

In 1996, in order to address some of the issues raised by technological changes, the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty added:

- viii. the right to make works available to the public in such a way that members may access the work from a place and a time individually chosen by them ('making available' right)

- ix. legal protection against the circumvention of effective technological measures used by authors to protect their works; (anti-circumvention right) and
- x. adequate remedies against those who tamper with rights management information.

It should however be noted that the particular rights that are granted to copyright owners vary depending on the type of work which is protected. In particular, while the rights of reproduction and the right to issue copies of the work to the public exist in relation to all types of works, the other rights may only apply to certain of them (Bently Sherman: 2009).

More specifically, the nature of right in a cinematograph film according to Section 6(1)c of the Nigerian Copyright Act CAP C20 LFN 2004 is the exclusive right to control the doing in Nigeria, that is, in the case of cinematograph film, to do or authorise the doing of any of the following acts:

- i. make a copy of the film (reproduction right)
- ii. cause the film, in so far as it consists of visual images, to be seen in public and in so far as it consist of sounds, to be heard in public (communication to the public right)
- iii. make any record embodying the recording in any part of the sound track associated with the film by utilising such soundtrack, (synchronisation right) and

- iv. distribute to the public, for commercial purposes, copies of the work by way of rental, lease, hire, loan or similar arrangement (distribution right).

Section 51 of the Act defines cinematograph films as ‘including *the first fixation of a sequence of visual images capable of being the subject of reproduction, and includes the recording of a sound track associated with the cinematograph film*’.

At this point, it is pertinent to note that the rights embedded in the cinematographic work under the Nigerian Act do not yet expressly provide for the exploitation in digital forms.

Under the Copyright Act Chapter 130 of the Laws of Kenya, *Copyright in a literary, musical or artistic work or **audio-visual work** shall be the exclusive right to control the doing in Kenya of any of the following acts, namely the reproduction in any material form of the original work or its translation or adaptation, the distribution to the public of the work by way of sale, rental, lease, hire, loan, importation or similar arrangement, and the communication to the public and the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original.*

The ‘right of distribution’ over movies among other rights has thus been established to be exclusively reserved in the copyright owner. Depending on the national legislation, the rights may reside in the director of the movie, or subject to contractual agreement, in the producer (Nigerian Copyright Act) and as is the case in Britain, both director and producer (Bently Sherman:2009)

The question therefore arises whether digital technology affects the nature of this right?

Copyright laws around the world were clearly designed with analogue technology in mind. The arrival of digital technology presented these copyright laws with a set of clear challenges (WIPO Academy DL 201e course material).

Digital technology is known to enable the transmission and use of all protected materials in digital form over interactive networks; however, irrespective of the fact that these exclusive rights exist in the analogue formats of exploiting the work, copyright protection continues to apply in the digital realm. Copyright still applies to all works published on the Internet. We simply need to apply the existing copyright rules to the Internet (WIPO Academy DL 201e course material).

Consequently, although the Nigerian Copyright does not expressly attribute digital rights to the copyright holder, it is presumed that 'analogue' rights would apply when the works are exploited digitally like on the Internet.

### **2.1.2 The Principle of Territoriality**

Intellectual property rights are by their characteristics territorial in nature. It is a matter for national legislation to designate the scope of rights to be enjoyed by its citizenry.

The Internet on the other hand has been described as a global village; where there are no physical boundaries, restrictions or limitations on how works are circulated and exploited (WIPO DL 202e Course material). The Internet operates at a transnational

level. Works are transmitted across national borders, copies and modifications are made, and the same works are once again sent across national borders.

This is in sharp contrast with the traditional national and territorial approach of copyright which has posed a major challenge to copyright practice making it difficult to determine the extent or degree to which protected works can be utilized across borders to the detriment of the right holders.

Some literatures have been written on the practicability of strictly retaining the principle of territoriality given the evolving character of digital technology. One of such resources is that authored by Graeme B. Dinwoodie (2009). In her work *'Developing a private International Intellectual Property Law: the demise of territoriality'*, she said the principle of territoriality has always received excessive doctrinal purchase in intellectual property law.

She presupposes that one can adhere to the basic premise that underlie territoriality without supporting the full range of private international law rules that are said to reflect the principle. She said that the 'power of a nation to fully regulate within its own borders has declined both normatively and descriptively, requiring an acknowledgment of the interdependence of nations'. Therefore, in the researcher's view, since digital technology is blurring the intellectual property principle of territoriality, the stage is set to accept nations' interdependence.

Graeme went further to hold that when treating the issue of territoriality in intellectual property discourse, trans-border activity and power of private non-state actors must be factored in given the upsurge of 'private ordering' by users of works. Private ordering is particularly as a result of the application of digital rights management techniques by right holders and the prominence of multinational

intermediaries, such as internet service providers or search engines in controlling access to information products.

The researcher agrees with Graeme's succinct point that it is the activities and structure of international business actors that would determine whether norms will be developed and enforced across borders notwithstanding the nominal commitment of nation states to territoriality and their formal claims of legal sovereignty.

In the same vein, in a document forecasting how copyright would play out in year 2020 (Background note of Irish Presidency of the council of the European Union: 2013), the European Union, presently preparing a framework to enable its right holders and users to capitalise on the potential of the Internet, noted that territoriality is often pointed to as causing fragmentation of the market on the part of right holders or distributors (such as broadcasters or digital service providers) along national borders. Since content is made available across borders to various extents in the different content sectors, the still frequent restrictions on cross-border access are increasingly hard for EU citizens to understand. Nonetheless, the EU region is gearing to achieve its full potential as a facilitator and catalyst of creation and innovation in the proposed 2015 well-functioning 'digital single market'.

### **2.1.3 Enforcement of Rights and Remedies in the Digital Environment**

Following the general principle of territoriality, rights can be enforced in a manner determined by domestic law and if sought to be enforced by a foreigner, upon the principle of national treatment as enshrined in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) 1994. The TRIPS Agreement establishes the general obligation for every Contracting State to provide

protection within the context of their normal judicial system, effective, fair and swift enforcement procedures for intellectual property infringement cases. This is inclusive of expeditious remedies that will at the same time deter further infringement and offer adequate compensation to the right holder: Article 41 TRIPS.

Enforcement of rights does not necessarily happen only when infringement has occurred; enforcement is broadly the adoption of mechanisms that enable the right holder to assert his exclusive rights in the work. For example, use of ‘technological protections measures’ (TPM) like encryption, watermarking etc to protect the work against unauthorized use. It is in light of this that the researcher considered how enforcement of rights interfaces with digital technology.

Many issues arise relating to enforcement mechanisms in the digital environment.

They include:

1. How copyright owners can protect their works (movies) in the digital environment?
2. Whether traditional methods of enforcement are applicable in the digital environment?
3. The applicable laws and jurisdiction of court to determine cases of infringement on the internet?

Andre Lucas (2005) said that “private international law is a discipline in which it is often difficult to achieve certainty, and that is particularly true of the Internet, whose worldwide scope poses the traditional problem anew’. The researcher agrees with this statement. Generally, enforcement of rights is a sensitive and complex issue, no wonder TRIPS came to the rescue in its own way. However, the issue of enforcement of copyrights has further become blurred by technological breakthroughs. But

according to the assertion of the French international law expert ‘Batiffo’ who said it is futile to wish to eliminate the problems of the conflict of laws on the ground that they are too complex since “reality will take upon itself the task of demonstrating that problems cannot be resolved by ignoring them if they are real problems”, it is important to take steps to find workable solutions within the ambit of the law.

A clear example of how digital technology affects contemporary copyright system is on the issue of applicable law. Put simply, how would copyright infringement cases on digital networks be determined? According to Andre Lucas, would it be based on the law of the country of transmission or the laws of the different countries of reception? (It being understood that the use of plural for the **laws** of the **countries** of reception is necessary since it is in the very nature of digital networks to disseminate worldwide).

Firstly, he said for a precise appraisal of some of the difficulties raised by the digital environment, it would be necessary to present the general principles governing the determination of the applicable copyright law. Article 5(2) of the Berne Convention establishes the principle that “the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed”.

However, given the peculiarity of the internet, different scenarios come to play on the propriety or otherwise of applying the law of the country where protection is claimed. In any case, if the law of the country of origin is applied, the security of relying on the uploading site, which is by its nature open to all sorts of manipulation, is questionable. Also, if the place of business of the operator responsible for the site



is designated, that would be unsafe because the Internet is not a structured network and the location of operators, which may be very small, is even more difficult to determine on the Internet. Perhaps the author's domicile or residence may work. However, this is also not easy to apply when, as is very frequently the case in audiovisual works, for example, there are several authors.

For the most part, the researcher finds Mr. Andre Lucas conclusion on the intricacies of applying either the law of country of transmission or the laws of the countries of reception to be *political* as an excellent conclusion.

His reasons are accentuated as follows: that ideally, to follow the technical approach would be to simply identify the country of transmission on the basis of definition of communication to the public or making available to the public as set out in the 1996 WIPO treaties.

The flip side is the application of the different laws of the countries of reception.

In the ensuing argument about adopting either the law of the country of transmission or the different laws of the countries of reception, Andre highlighted in his book that in the views of the supporters of adopting the laws of the countries of reception, they contend that in the field of copyright, all acts of exploitation are targeted at an audience and that it is therefore natural to localize the centre of gravity of a given exploitation on the basis of that target. They maintain that this analysis is all the more justified in the case of exploitation through digital networks as there is an active 'consumer' who takes the initiative in each use made of the network, which is not the case, for instance, in satellite broadcasting. Above all, they object that the

exclusive application of the law of the country of transmission on the basis of technical localization would permit all sorts of manipulations.

Focusing on the real issue at stake, Andre said there is likelihood of placing liability on countries of transmission with a lower level of protection given the significant differences between national laws, particularly in regard to exceptions to the exclusive rights, and the great ease with which the uploading site can be manipulated in digital networks.

This objection is sufficiently serious to cause most supporters of the law of the country of transmission to change tack and opt, not for the place of material uploading onto the network, but for the place of business of the person responsible for dissemination, which is less open to manipulation and also has the advantage of being easier to identify.

Leaving legal technicalities, Lucas further tilted his argument to the side of the distributor of works on the internet. He highlighted that those who argue in favour of the law of the country of transmission rely on the legal security of the distributor, maintaining that the distributor may not be bound to respect practically all the laws in the world, which would be the case if the differing laws of the countries of reception were applied. However, those who support the latter system respond that it is completely arbitrary to prefer the legal security of the distributor to that of the right holder and that if the solution can only be achieved by choosing a single law, then the law of the place of residence of the right holder (or the collective management society to which the right holder belongs) could be an equally workable solution. In this sense, the traditional territoriality of criminal law, which is closely linked to the

civil law provisions related to copyright, also comes into play, as does the fact that the exclusive application of the law of the country in which the person responsible for the transmission is established would enable that person to export that law throughout the world, which is hard to accept for States that are overly protective of their sovereignty, for they know well that the system would favour developed countries where the distributors will in most instances be located.

Both arguments in favour of law of the country of transmission or against it as elucidated by Mr Andre Lucas in his contribution on enforcement in the digital environment published in UNESCO eCopyright bulletin seem well-balanced. This means that the choice that tips the scales one way or the other is indeed political.

The work of Andre Lucas brings perspective to the inherent challenges of determining the applicable law in matters of copyright enforcement where digital technology is concerned. In this study, given that the researcher shall be investigating the adequacy of the law to protect copyright owners in the digital environment, Andre Lucas findings would guide the researcher in determining which law would be applicable regarding enforcement of copyright in the case of online distribution of Nigerian movies by digital distributors hosted in Nigeria.

#### **2.1.4 WIPO Internet Treaties**

As background, the international bureau of WIPO published a document highlighting the advantages of ratifying the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The purpose of passing the treaties

was to update the major existing WIPO treaties on copyright and related rights, namely the Berne Convention for the Protection of Literary and Artistic Works and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations known as the Rome Convention, primarily in order to respond to developments in technology.

Both treaties require member states to provide a framework of basic rights, allowing creators to control and/or be compensated for the various ways in which their creations are used and enjoyed by others in the digital environment. The two treaties ensure that the owners of those rights will continue to be adequately and effectively protected when their works are disseminated through new technologies and communications systems such as the Internet. The treaties thus clarify that existing rights continue to apply in the digital environment.

According to WIPO Document on the ‘impact of the internet to intellectual property law’, it was said that the implementation of the treaties would be beneficial for developing countries in particular although many of the developing countries are yet to fully mature into the Internet. An undisputable advantage for developing countries is that it encourages foreign investment and puts in place a legal framework that will enable competition on a level playing field once the barrier of initial access to digital networks is passed. Such a framework provides incentives for local creators, performers and producers, facilitating the capacity building and development of cultural expression. With the support of an adequate system of rights, creators/authors will be able to exploit safely their creations on the Internet, marketing them to consumers in countries around the world without the need for the

costs of foreign intermediaries, transportation facilities or physical manufacturing infrastructure.

Further on the benefits of ratifying the treaties is the issue of offering protection to foreign works. As an example, the treaties require other countries to provide full protection within their territories to your own country's right holders when their creations are exploited abroad, thereby protecting their interests and ensuring that local creators and enterprises enjoy the economic rewards from outside the country. These benefits are particularly important in the era of global digital networks, when the distinction between the domestic and foreign markets is blurring, if not disappearing, as the dissemination of works and other subject matter cannot be limited to within national borders.

More specifically, the provisions of the WCT and WPPT that touch on distribution of copyright protected content like movies are in Articles 8 and 14 of the WCT and WPPT respectively which clarify the extent of rights holders' control when their works, performances and phonograms are made available to the public for downloading or accessed on the Internet. Article 8 of the WCT provides:

*'without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, 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'*

This type of transmission differs from broadcasting, in that the material is not selected and delivered by an active transmitter like a broadcaster to a group of passive recipients. Rather, it is transmitted interactively, that is, on demand from individual users, at a time and place of their choosing. The treaties require that an exclusive right be granted to control such acts of ‘making available’ while leaving it to individual countries to decide how to categorize this right under national law. How this plays out in reality is anticipating the ‘video on demand’ feature of the Internet where audio-visual works which are hosted on websites can be watched online or downloaded by the consumer at a time of his choice.

Finally, the adequacy of the WIPO Internet Treaties in year 2014 may be called to question given that a lot has transpired since 2002 when it came into force. A market survey would then be essential to identify technological progresses or legal changes that may have gained ground to warrant the establishment of new rights, modification of rights, or finding other avenues that may be instrumental to protecting works over the internet.

#### **2.1.5 The Liability of Internet Service Providers (ISP)**

It would be a serious omission to discuss a subject as this without mentioning the role of internet service providers (ISP) in digital transactions that carry protected works.

When a work is transmitted from one point to another, or made available for the public to access, numerous parties are involved in the transmission. These include entities that provide Internet access or online services including telecommunication operators. ISP's are necessary at every stage of an internet transaction (Longe *etal*: 2008). Therefore, when such service providers participate in transmitting or making available materials provided by another which infringe copyright or related rights, would they be liable for infringement? Such liability could arise in one of two ways: if the service provider itself is found to have engaged in unauthorized acts of reproduction or communication to the public, or if it is held responsible for contributing to or making possible the act of infringement by another.

The liability issue has significant international implications because the Internet is a borderless medium and its markets are global.

After the 1996 conference that culminated into the WIPO Internet Treaties which was evasive about the liability of ISP's, a number of legislative solutions to the issue have begun to emerge.

According to WIPO Document, the Statutes are said to differ as to whether they address copyright only or take a 'horizontal approach' to cover not only copyright infringement but also other laws such as libel or obscenity. There are laws now in force in Germany and Sweden, which approach the issue from a horizontal perspective. Japan also introduced the "Provider Liability Law" which states that a provider is liable only if it is technically possible to prevent transmission of the infringing material; and the provider knows of the existence of the material and (i)

knows that it is infringing or (ii) reasonably ought to know that it infringes. A person whose rights have been infringed can ask a provider to disclose information about the person transmitting the material if the information is necessary for a legal claim or other legitimate reason.

The European Community also adopted a Directive on Electronic Commerce with provisions that harmonize the treatment of liability among its Member States, again using a horizontal approach.

The alternative approach of implementing copyright-specific laws to determine online service provider liability has been adopted by other countries, including Hungary, Ireland, Singapore and the United States of America. In the United States of America, the Congress enacted copyright-specific legislation as part of the 1998 Digital Millennium Copyright Act (DMCA). As part of the DMCA, the ‘Online Copyright Infringement Liability Limitation Act’, establishes ‘safe harbours’ to shelter ISPs from liability for copyright infringement in certain circumstances. The DMCA sets down guidelines with respect to copyright infringement online, although it does not define when a provider is liable for copyright infringement and, in this respect, the existing principles of U.S copyright law would apply. Instead, the DMCA defines those categories of provider activity that are exempt from liability for damages provided that the provider is merely acting as a ‘passive conduit’ for the information, is not the producer of the information, and has responded expeditiously to remove or disable access to infringing material upon notice from the copyright holder (the so-called ‘notice and takedown’ provisions). To qualify for immunity, the provider must also implement a policy that terminates the subscriptions of repeat



infringers, and accommodate and not interfere with technical measures put in place to protect and identify copyright works. (WIPO IP Survey on Internet issues at <http://www.wipo.int/copyright/en/ecommerce/IP-survey>).

Has Nigeria developed any law to address the liability of ISP's as it relates to distribution of Nigeria movies? In light of the WIPO document here, the researcher shall make findings in this regard at chapter 4 of this study.

## **2.2 On-line Digital Distribution of Cinematograph Work**

Peter B. Kaufman and Jen Mohan (2008) said film and video distribution has entered the digital age with a fury. In their study of the 'Economics of Independent Film and Video Distribution in the Digital Age' for Tribeca Film Institute, their findings revealed that 20% of all U.S. Internet users and a third of all Internet users between ages 18 to 29 watch or download a video online every day. The number of video viewing sites has proliferated from YouTube, Yahoo, and MySpace to the network and studio websites (Fox, Viacom, Disney, and Turner) and to the start-ups (Metacafe, DailyMotion, Veoh, Joost and Hulu). It is said that 20% of American homes now have digital video recorders linked to their television sets and an even greater percentage of homes have digital storage units capable of holding video files tied to their computers. 47% have broadband connection. Video cameras are in virtually every cell phone and laptop, portable video cameras and video editing

software are in almost every laptop while Apple's iMovie and Windows Moviemaker have been labelled the new tools of speech in the digital age.

The acceleration of online demand for moving images had been such that Cisco Systems, a leading provider of networking technology, predicted that video streaming and downloads would grow from 9% of all consumer internet traffic in 2006 to 30% by 2011. Most importantly, online film and video distribution is acclaimed to be where the money is.

According to Paul Messaris (2008) on the trajectories of past American cinema history in contrast to what is happening today, he said '*now, as then, the theatrical motion picture industry is facing competition from new developments in the world of visual of entertainment*'. Those developments include the increasing popularity of videogames and the increasing accessibility video on the Web. In short, *we are talking about the proliferating ramifications of digital media*. In the United States, the videogame industry has had annual revenues exceeding a billion dollars since the beginning of the 1990s, but its' perceived threat to Hollywood reached a symbolic threshold in 2007, when the annual sale figure for games alone (i.e., excluding consoles and other hardware) experienced an annual increase of 34% and began to seriously rival the total domestic box-office for theatrical motion pictures -- \$ 8.64 vs. \$ 9.66 billion ("Video Games vs. Box Office," 2008).

Widespread broadband access to the Web is a more recent phenomenon. At the beginning of the present decade, fewer than 10% of US households had such access. By 2007, that figure had grown to over 80% (according to Nielsen data reported in "OECD Broadband Report Questioned" 2007).

In a work attributed to Jack Lule and Flat world knowledge (2012), it was reported that Hollywood has also suffered major losses from online piracy. Since 2007, studios have been teaming up to turn the potential threat into a source of income. Now, instead of fans illegally downloading their favourite movies from file-sharing sites, they can go to legal, commercial-supported sites like Hulu.com, where they can access a selected variety of popular movies and TV shows for the same price as accessing NBC, ABC, and CBS free. In April 2010, Hulu announced it has already launched the Hulu Plus service, in addition to its free service, for users who want access to even more programs, such as *Glee*. Hulu doesn't allow viewers to download the films to their home computers, but it does provide a home-viewing experience through online streaming of content.

Also in the European context, author of 'the impact of digital distribution' Philippe Kern (2009), in an attempt to structure and list the issues confronting the European film community given the emergence of digital distribution of movies as a new window of exploitation or a complete economic paradigm for film production and distribution, explored the 'video on demand' (VOD) market in Europe. He described VOD as non-linear distribution service of dematerialised audio-visual content. Where non-linear means that the content may be consumed independently of a programme at the time chosen by the consumer.

The methods of access of a VOD are varied: to be viewed once or several times, downloadable on a media to own, rent, or rented for a given period. He established that VOD is certainly a new method of distribution of audio-visual content as separate from traditional systems of film distribution including theatrical release, DVD formats, cable television pay per view etc. Streamed or downloaded, Video on

Demand is a growing presence, with for instance the BBC's iPlayer accounting for 5% of all UK Internet traffic.

This new method of distribution is by law subject to the authorisation of right holders and theoretically to their willingness to invest in the new method of distribution. However, the development of this new market is also conditioned by the attitude of the traditional players in the value chain, the impact of illegal peer- to-peer file sharing and the readiness of digital distribution platforms to support the enforcement of copyright rules.

I could agree no less with Philippe's submissions. Much as video on demand is becoming a main stream platform for distribution of film content, the challenges that come with it cannot be overlooked. This raises the question of whether beyond the potential financial benefit that exploitation of copyright works on the internet promises due to pervading online traffic, Nigerian right holders are willing and ready to explore this window?

Perhaps we could evaluate why there is a growing appeal for video on demand over the internet. According to Philippe Kern again, globally, consumers spend more and more time online. They like the interactivity of the medium and the choice and freedom it offers. The medium competes for audiences' limited time attention with other media, including films. For obvious reasons, the digital shift cannot be ignored. Some predict that more viewers will move from broadcast and cable TV to ad-supported online video. The social network which is based on content sharing is fast replacing the broadcast network. Digital distribution has given consumers more control over how to access content particularly in terms of scheduling.

An interesting side to this development is that, in the digital economy, money is not necessarily the main term of exchange. Film, like music or picture is a main commodity in the 'sharing economy' whose aim is merely to constitute social networks. The sharing economy is an economy in which trade takes place for no monetary gains. It is best illustrated by Wikipedia wherein people participate to the building of the encyclopaedia just for the fun of it. This development however needs to be apprehended by the industry as it is confronted with a situation in which people exchange digital files as part of a network (file sharing) with no intention to make money as distributor of content or to pay, as consumers. It is the 'en masse' sharing that gives value to the product. It gives opportunity for artists in the case of music to get their works distributed but may limit the industry's return on the investment.

On the other hand, Kern finds that the platform also provides new marketing opportunities in particular for smaller films by making 'the word of mouth' marketing possible. Reputation, measured against traffic would become the main currency which would be monetised essentially through advertising. Invariably, it is the audience that would dictate the terms of trade.

As a result of this new economic paradigm, the way films are made and distributed would change. The role of traditional business intermediaries may become less relevant.

In Kern's submission, he recognized the all-important role of copyright enforcement as being the only way to implement the different versioning schemes that will enable economic benefits of VOD versions to right holders. This is because all the main actors in the value chain (including ISPs and telecommunication companies) will have an interest in copyright enforcement.

Like record companies, film producers rely on copyright to exercise control over commercial exploitation. An important feature of VOD is the fact that deals are made on a non-exclusive basis; a new feature in commercial exploitation of films where deals are made for package of films instead of single films. Therefore, it is the ability to aggregate catalogue that is important in order to be able to leverage a better bargaining position and extract better terms with VOD platforms. The Internet is about scale.

In order to provide a basis for understanding the implications of these emerging trends in Nigeria, according to Olufunmilayo Arewa (2012) it is important to establish how film is traditionally distributed in Nigeria. Typically, after a film production is completed, it goes directly to video stores for rental and sales. There is very limited theatrical release due to (1) the severe dearth of theatres across the country, and (2) the specific audience of these films, the rural and urban poor, who cannot afford to go to theatres. According to her, this situation is significantly different from other film industries like Hollywood where the main source of revenue comes from box office receipts. Such that, DVD release is postponed till the production company feels that they have made enough revenue from theatrical releases.

In Nigeria however, there are limited options for formal distribution channels, a phenomenon that has given rise to scores of informal distribution channels which make and distribute illegal copies of the DVDs. There is almost no formal channel for distribution to international markets. Olufunmilayo Arewa (2012) equally noted that although *Nollywood* films are distributed within Africa largely through sale of

physical discs, many *Nollywood* films are now available on YouTube and other Internet sites at no cost.

She further found that despite extensive physical distribution of *Nollywood* films in Africa, *Nollywood* distribution networks as a whole have attributes that make them more akin to a decentralized traditional and digital era. Using *Hollywood* as example; traditional distribution networks for commercial films that developed prior to the digital era were largely dominated by hierarchical and centralized industry, controlled distribution models or models centred around movie studios as financing and distribution hubs. In the case of Nigeria, *Nollywood* distribution models and lack of industry control over distribution have facilitated the viral spread of *Nollywood* films within Africa and among Diasporic communities, which has given *Nollywood* a large global footprint in Africa, Europe, and the U.S. *Nollywood* production and distribution models have significant implications for unauthorized distribution of films that many characterize as ‘piracy’.

The movie industry may not be said to be acutely aware of the tremendous growth of web video, and the American proponents of theatrical 3D have explicitly voiced their intention to fight the competition by offering viewers an experience that the small screen cannot emulate. One of those proponents, James Cameron, was quoted very widely by the media earlier when he made the following statement: ‘*I’m not going to make movies for people to watch on their cell phones. To me, that’s an abomination*’ (Frazer, 2006). Unfortunately, recent experience has shown that the current trend of exploitation of movies has migrated to almost every technology enabled device through the power of the Internet.

### **2.3 Rights Management in the Digital Environment**

The digital revolution has empowered consumers to use digital content in new and innovative ways thereby making it nearly impossible for copyright holders to control the distribution of their property. Music, film, video games and any other media formats can be digitized and passed around over the web.

Digital rights management (DRM) is a systematic approach to copyright protection for digital media (WIPO Document). It is a general term used to describe any type of technology that aims to stop, or at least, mitigate the practice of piracy. The central purpose of DRM is to prevent the unauthorized redistribution of digital media and restrict the ways consumers can copy content they've purchased or accessed. DRM is implemented by embedding codes that prevents copying, specifying time periods in which the content can be accessed or limiting the number of devices the media can be installed on. Although digital content is protected by copyright laws, policing the internet and catching law-breakers has proven to be very difficult. DRM technology therefore focuses on making it impossible to steal content in the first place, and thereby providing a more efficient approach to the problem than the 'hit-and-miss' strategies aimed at apprehending online illegal distributors after the fact. In effect, DRM systems aim to automate the process of licensing works and of ensuring that license terms are complied with by users of works. The legal support for DRM systems is found in the WCT and WPPT. Because technology holds the promise of curbing rampant piracy of copyright works, right holders have placed a great deal of faith in DRM and technological protection measures in particular, as a means of enforcing their rights in the digital environment.



According to 'Microsoft Developer Network' (@msdn.microsoft.com), the DRM scenarios that can arise on the internet while utilizing protected content includes:

1. Live Streaming (VOD): It sends content directly to the computer or device without saving the file to a hard disk. A live stream is only available while it is being broadcast. Internet television and radio are examples of live streaming.
2. Progressive Download: It lets users play back the media while it is downloading. The main difference between progressive download and live streaming from a user's point of view is that progressively downloaded content is stored on the user's computer or device, at least temporarily.

Offline Scenarios allows users to be offline while they play the content. For instance, with an *offline Silverlight runtime* installed on a user's computer, and an initial intermittent online access in order to initially download the content and renew subscriptions, the following scenarios may play out.

1. Download File Offline (onetime purchase): The user downloads the content from the Internet and later plays it by using an offline with *Silverlight* player. For example, an online video store charges customers to download a video file which users can play back in an offline Silverlight player whenever they want. The DRM software can restrict redistribution of the video file to one or more.
2. Rental: DRM licenses can specify time limits in order to limit playback of content. For example, an online video store might offer

their videos for rent. Once the rental is purchased and the license downloaded, the license will expire 30 days after it is issued or 24 hours after content is first played, whichever occurs first.

3. Subscription: the DRM system can enable customers to playback content based on a subscription model. For example, customers of the online video store may pay a monthly fee to watch up to 100 hours of television content online, download up to 20 episodes or watch a specified number of movies. In order for users to renew their subscription, they need to pay the monthly fee and connect to the service at least once a month because the subscription license expires every 45 days.

On the issue of relevance of collective management organization in light of DRMs: it has been argued by that information technology and the Internet are a threat to collective rights management organizations, because technology would enable right holders to control and measure the use of works directly by themselves. However, in WIPO's book on 'Intellectual Property on the Internet: A Survey of Issues'; instead of resigning to the challenges posed by the internet, an informed view would be to require collecting societies to re-engineer their business models and operating procedures, rather than jeopardize their very existence by this phenomenon. In part, the difficulty results from the fact that collective rights management organizations, like much of the intellectual property system, are organized on the basis of territoriality. The entities in question are often organized on a national basis, each of them having competence to grant licenses for their territory. However, if a person

residing in a particular territory makes a work available on the Internet, it immediately becomes globally accessible. In an effort to resolve this problem, certain collective management organizations have been working towards enabling their system of mutual representation to make available to users global Internet licenses. The researcher considers this move to be laudable in order for CMO's to maintain their relevance and ensure that creative owners are adequately remunerated for economic exploitation of their works in all territories.

It is a matter for further research to understand how collective management of rights now work on the internet in light of issues raised by the advent of digital technology. And as a matter of fact, this research work would inquire into the models that may be operational currently in paying royalties to movie right holders for works exploited on the internet commercially.

#### **2.4 The Status of Nigerian Law and other Regulatory Frameworks for the Protection of Copyright in the Digital Environment.**

There is little literature on the effect of digital technology on copyright protection for the entertainment industry in Nigeria and how it interfaces with the internet.

In her work 'towards sustainable development of Nigeria's entertainment industry in the digital age: the role of copyright law and administration', Joke Oyewunmi (2011) evaluated the adequacy of the Copyright Act to the demands of digital technology and the emerging responses to the phenomenon. Much as she examined the current regulatory framework for 'new' digital technologies (these are the Copyright (security devices) Regulation 1999 to address the issue of piracy through the use of

tamper proof hologram stamps on films intended for sale, rent or other distribution to the public for commercial purposes, Copyright (optical disc plants) Regulation 2006 to facilitate the monitoring and control of the production of optical discs with a view to entrenching high standards of copyright practice through the use of source identification codes (SID code), an anti-piracy device that helps to identify the producer); in my opinion, the current realities of internet connection and migration by copyright business-minded producers, exploitation of Nigerian movies have grown beyond these regulatory frameworks.

Rightly so, the author acknowledges the importance of creating new rights to accommodate the uploading, downloading and dissemination of works in the digital environment; that the existing copyright Act does not anticipate the right of communication for digital transmission neither is it clear that an interactive transmission or other form of making available (like VOD) constitutes a distribution or communication within the meaning of the Act.

The researcher in departing from the submission of Adebambo Adewopo (2008) that ‘due to the broadness of Section 15, it is presumable that copyright on the internet as well as those available in physical or tangible objects is protected’, the law must establish clear rights to the advantage of creative owners. Instead of presuming, the law must be explicit. In my view, he was right on point when he latter added that more is required to protect copyright works on the internet.

Further on the subject matter of discussion was the paper delivered at the first national conference on ‘CyberCrime and Cyberlaw: online infringement of copyright works’ under the STRAP initiative held at Abuja, Nigeria in 2008. Adebambo

Adewopo (incumbent Director General of Nigerian Copyright Commission at the time of event) said, *the existence of cyberspace has made intellectual property rights more vulnerable to violations. The use of the internet is increasing in Nigeria. Cybercrime which includes intellectual property violations and piracy is also escalating. The protection of intellectual property rights in this medium and the need for cyber security has become very important*’.

In agreement with earlier points raised, Adebambo asserted that Internet facilities create opportunities for Nigerian creators to exploit and disseminate copyright works. However, copyright violations and cybercrimes increase with the use of the internet to download information, music, videos.

He explained further that there are different categories of cybercrimes which includes violations of intellectual property related works. Copyright violations are easily accomplished by the click of a mouse to download intellectual works available on the internet. Sometimes copyright infringers are not aware of the crime committed, they unknowingly step on someone’s ‘cyber toes’. On the other hand, he said there are committed copyright infringers who have resorted to different methods of copyright violations for financial gains; either by the reproduction or distribution of the copyright work for sale or personal use in order to avoid paying for the same item if purchased directly from the copyright owners or those authorized to sell.

Given Oyewunmi’s thoughts on the dissemination of Nigerian movies over the internet, some for a fee and others simply for free, one can only begin to imagine the level of infringement taking place in the cyber space while the law currently play no role. The researcher is hopeful that by the end of this study, the data collected can be

relied upon to show the value of legal and illegal distribution of Nigerian movies over the internet.

## **2.5 Conclusion**

The ways in which art is created, produced, distributed, marketed, preserved and supported are shifting and in fact, transformed, in relation to the transition to a digital society (David Poole: 2011)

This chapter has been enriched by a number of relevant resources and gaps in Nigerian literatures on the subject matter have been accentuated in the course of this review. There are so many opportunities for Nigerian right holders in the online utilization of their movies owing to increase in broadband connectivity. Nevertheless, the Internet represents a quantum leap forward in piracy tools (Adebambo Adewopo: 2008). Past concerns about widespread piracy may have proven to be exaggerated, but this time, the magnitude of the threat is unprecedented. For instance, digital copies of movies are often copied by unauthorised persons who use compression software to stream protected works or offer for download. It is therefore imperative to look inwards into how the law may be positioned to adequately protect industry practitioners.

This is why the researcher is motivated to embark on a research work of this nature in order to provide field evidence and resources on the practice of online distribution of Nigerian movies in order to add to academic resource on the subject. The

researcher has drawn a wealth of knowledge from the literatures reviewed and they have provided guidance and perspective on how to carry on with the field work.

## **CHAPTER 3**

### **RESEARCH METHODOLOGY**

#### **3.0 Introduction**

This chapter is very vital to the study as it provides support justification for the different approaches the researcher employed to gather data from the identified study population and relevant library resources.

In the previous chapter, literatures were reviewed to show how digital technology plays a specific role and affects how copyright protected movies are distributed worldwide. Gaining more insight and guidance from the resources, the researcher was able to glean out the following issues for investigation:

1. The prevailing method of distribution of Nigerian movies on the internet
2. The main distributors and other players in the chain of distribution
3. The structures or regulations in place to guide their activities
4. Whether the right holders are aware of this new method of distribution and are taking advantage of the platform
5. The mechanisms adopted by distributors to manage the rights of movie makers in the digital environment
6. The role of the law in adequately protecting the right holders in the digital age including liability of ISP's.



### 3.1 Research Design

As a guide to developing the methodology of this study, the entire research involved the formulation of the problem to be investigated, identification of relevant literatures, selection of a suitable research design, choosing and applying appropriate procedures for data collection and analyzing the findings through a report to be presented in the latter chapter.

According to Yogesh Kumar Singh (2006), *‘research design is a mapping strategy. It is essentially a statement of the object of the inquiry and the strategies for collecting the evidences, analysing the evidences and reporting the findings’*. Therefore, the ‘research methodology’ and ‘research design’ which according to Yogesh (2006) *have the same meaning*, refers to the overall strategy and research decisions taken by the researcher within the framework of determinants peculiar to the research study (De Beer:1999).

With particular reference to the problem of this study and the objectives which were identified in chapter 1, it is clear that the researcher seeks to understand the experience of copyright holders and describe the current avenue for distributing their movies with the purpose of identifying areas of the law that need to be updated to improve the value capture for the industry, of which a qualitative research is most suited. (Polit and Hungler: 1995) said *‘qualitative research describes unique and changing life experiences in a holistic way within the life world of the informant’*.

That it aims to create an understandable gestalt by using a variety of methods, which are mainly unstructured or semi structured.

This is a descriptive study as it endeavours to systematically describe the phenomenon of contemporary digital distribution of Nigerian movies over interactive networks.

Where emphasis is on an in-depth description of a situation (Mouton and Marais: 1990), by presenting a profile of a group, or describing a process, mechanism or relationship, a descriptive study is ideal. (Pamela Machakanja: 2013) said descriptive research is used to gain an insight into the changing social and economic circumstances of population groups which directly supports the objective of this study.

The researcher adopted the semi-structured interview method being the most suitable approach for gathering descriptive information in a qualitative research (Hancock B., Windridge K., and Ockleford E: 2007). This involved the use of formal lists of questions directed toward the different categories of study population. The method enabled the researcher to collect different kinds of information being an open question format. The open ended nature of the questions defined the topic under investigation but provided opportunities for both the researcher and respondent to discuss some other relevant topics or areas in more detail. In cases where the respondent had difficulty answering a question or provided only a brief response, the researcher was able to use cues or prompts to encourage the respondent to consider the question further. Also, being a semi structured interview, the researcher had the

freedom to probe the interviewee to elaborate on an original response or to follow a line of inquiry introduced by the interviewee (Hancock B. etal: 2007).

### **3.2 Study Population & Sampling**

A range of 25 respondents comprising primarily movie producers, online distributors hosted in Nigeria and Regulatory agencies whose mandate touches on the subject matter of research. (They are the Nigerian Copyright Commission, Nigerian Film and Video Censors Board and the Nigerian Communications Commission).

Sampling: The researcher is usually able to draw conclusions about large groups by taking a sample where a sample is a segment of the population selected to represent the population as a whole.

On the whole, a purposive sampling method was used in selecting the sample population. This is a form of non-probability sampling in which decisions concerning the individuals to be included in the sample are taken by the researcher, based upon a variety of criteria which includes specialist knowledge of the research issue, or capacity and willingness to participate in the research (Paul Oliver: 2006).

The selected respondents were by their characteristics experienced movie practitioners, management level officers of regulatory agencies and a senior official of digital distributing firm. Given their knowledge and experience, they were also able to offer information on other people who could be usefully interviewed by the researcher.

The samples of movie producer/directors were representative enough to allow the researcher to make accurate estimates of the thoughts and behaviour of the larger population of Nigerian movie practitioners. They had good prospects for accurate information being industry experts and ambassadors for the film industry. And the choice of sample was mostly directed to the ones whose movies were being exploited on the internet based on the researcher's general observation.

The limitation faced by the researcher in investigating the study population was that, given the nature of the work of movie producers, although the researcher sensed their willingness to participate as active respondents in the study, they were constrained by busy schedules as they were mostly at film locations during the period of the study. On the part of online distributors, some of them were reluctant to grant interviews on the fear of being scrutinized regarding their business activities.

Telecommunication companies were also investigated on how their platform is used for movies distribution including mobile apps for watching these movies on smart devices.

It was easy to identify the regulatory agencies and to approach officers who can supply the necessary information regarding the organizations mandate and role (if any) in digital distribution of Nigerian movies.

### **3.3 Data Collection Procedures**

The researcher devised a combination of two convenient methods of data collection comprising personal interviews with the aid of interview guides (through skype video calls, telephone calls, and face to face interviews) and electronic mails.

The researcher carefully constructed relevant semi-structured discussion/interview guides in the form of open questions specific to each respondent type i.e. Producers, Distributors and Agencies.

The advantage of this approach was that the researcher could collect large amounts of information at little or no extra cost to the respondents. The researcher took advantage of internet connection bandwidth package offered by Nigeria's mobile telecommunication companies. And since most of the study population have access to smart phones and internet connection, it was possible to engage them via the internet. Also, it was especially convenient for respondent's who can answer when they have time since they often travel round to film location's and events.

Equally, for some respondents who were contacted through emails, they requested to answer the open-ended mail questionnaires at their own pace. And given that the researcher wasn't present to bias their responses, it is taken that the answers would be reliable.

With telephone interviewing being a very quick method, it was more flexible as the researcher could explain questions not understood by the respondents. Depending on the respondent's answer, the researcher was also able to skip some questions and probe more on others which allowed greater sample control response rate.

The drawback to telephone call was that it was expensive for the researcher.

Finally on collection of data, the researcher relied heavily on secondary data available on the internet and peer reviewed journals.

### **3.4 Analysing Qualitative Data**

The purpose of analysing data is to summarize the collected data and organize the answer in a manner that they answer the research questions derived from the objectives of the study.

Qualitative data analysis follows a general inductive approach whereby the data are allowed to speak for themselves by the emergence of conceptual categories and descriptive themes (Zhang Y. and Wildemuth B.M.: 2009).

To be presented in narrative prose, the qualitative data analysis would go through a content analysis of the interviews in order to identify the main themes that emerge from the responses given by the respondents (Pamela Machakanja: 2013). Qualitative content analysis has been defined as a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns (Hsieh and Shannon: 2005)

The researcher shall present the findings in a clear and unambiguous manner such that the target policy makers, industry stakeholders, academicians among others would be able to use the material.

### **3.5 Conclusion**

Now that the research methodology has been presented, the stage is set for the implementation of data collection from the sample and to analyse the data received with other necessary secondary data to be obtained from library resources which the next chapter shall be seen to achieve.

## **CHAPTER 4**

### **DATA ANALYSIS AND INTERPRETATION**

#### **4.0 Introduction**

The thrust of this chapter is to present the data that was obtained from the sample population, including supplementary information obtained from relevant online resources, for the purpose of analysing and interpreting them to answer the objectives of the research.

The chapter is divided into two sections. Section 1 would present the data received from the sample population using the researcher's log books and reflective journals while Section 2 shall summarize the main findings of the study based on the research questions specifically.

#### **4.1 Section 1: Presentation**

To be able to analyse the data in a simple and clear manner, the market data would be presented under the 3 different categories of respondents that were interviewed.

The 3 categories of respondents were:

1. Producers/Directors
2. Online distributors and
3. Regulatory Authorities.

#### **4.1.1 Nigerian Movie Producers/Directors**

As have been clearly established in this research work, the Nigerian movie makers are the most important set of stakeholders in this study. This is because; the presence or absence of effective copyright protection system directly affects them as the initial authors and or copyright holders in the movies they create. It is upon this premise that the researcher selected a representative sample from them for questioning.

A range of 21 questions (see ‘Appendix 1’) were prepared by the researcher for the interview sessions with the movie producers. This group of people were very responsive during the interviews.

The first set of questions was to find out their level of knowledge on their legal status as authors deserving of copyright protection, their level of awareness of online distribution of their works and the legal protection available when their works are exploited on the internet.

As per the respondents’ legal status as authors and or copyright holders, all the 15 respondents in this category were authors of the movies in accordance with Section 51 of the Nigerian Copyright Act which defines ‘author’ of a cinematograph film as the person by whom the arrangements for the making of the film was made. Such persons are always known in the movie industry as producers. 10 out of the 15 respondents however doubled both as producers and directors of their respective works.

Apart from 5 respondents who had less than 9 years in the movie industry, the other 10 have over 20 years experience in movie production.



All the respondents are aware of online distribution of their works. They identified the internet as one of the methods of distribution of their works and for those yet to officially engage in internet distribution, they acknowledged the internet as a prospective avenue. In some of the words of the respondents, *‘the internet is the biggest distribution channel now’*. For Nollywood, *‘technology is the way out!’*

However, none of the respondents see the internet as a safe place to do business yet. They expressed several misgivings about the platform in its current state. They were of the opinion that it is not yet a viable business model given the challenges that plague the requisite Nigerian legislations and the lack of infrastructure. They identified some challenges as including insufficient access to internet broadband service by most Nigerians, online- payment problems encountered by subscribers because foreign partners would not permit local payment cards given the perceived reputation of Nigeria, poor electricity, lack of will by the government to enforce the law irrespective of how weak it may be at the present.

When asked how their movies got to the internet, the producers said that they negotiated licenses with online distribution outfits including iROKOTv, iBAKAtv and Dobox.tv. Some other producers said they have their personal websites where they release their movies, and a monetized YouTube channel through which they are able to make money from the adverts that run on their contents.

The respondents said they either negotiate online rights directly with the distributors or engage marketers who help with the transaction; the agreement is usually based on a sharing formula or on a designated percentage.

They can give the rights to distribute online to as many distributors as they wish. However, some of their movies have been found on unauthorised websites for which they took steps to inform Google/You-tube to take down the infringing work or website.

At the 2<sup>nd</sup> phase of the question, the respondents were required to provide information on the measures taken to protect their works online, the appropriate financial implication and the legal framework.

Just a few of the 15 producers knew about technical protection measures. Most said they simply give the movies to the licensed online distributor in hard copy format and it is the distributor who then converts into a digital format necessary for online distribution. So they are not involved with the technical process of placing any digital protection measures on the work.

The minority who know about rights management information and technical protection measures explained that there is a back-end monitor that automatically records a purchase transaction of the distributed work and simultaneously alerts the copyright owner electronically to ensure payment of appropriate royalties based on the sharing percentage.

Quite interestingly, the producers said the absence of express digital rights in the Copyright Act has not limited them from exploiting their works on the internet. In the words of one of the producers, he said *'once you have a document that proves your stake in the work, the issue of online rights do not arise during negotiation'*. Despite this position, the researcher is of the opinion that express rights that touch on

technological exploitation of creative works be reserved in the Copyright Act so that when infringement arises for instance, reliance would not be based solely on contract law or other areas of laws to determine the extent of rights of the copyright holder but that the copyright law would in fact be the crux of basic protection. The provisions of copyright law must be adequate and reflect the capacity to protect creative owners.

Finally, the producers agreed that if the mandate of the Copyright Act is to protect content, then the Nigerian law should take advantage of contemporary digital laws to protect authors and copyright holders in the digital era.

They equally expressed the view that there is a lot of migration to the internet for access to movie content and irrespective of the inherent challenges; right holders should be ready to capitalize on the advantage of the internet while calling upon the government to create an enabling environment for economic returns from creativity.

#### **4.1.2 Online Distributors**

The researcher identified 5 major online distributors and platforms whose company names came up during the interview sessions with the film makers/producers. Contacts were established with all of them for questioning purposes but only ‘iROKOTv’ responded (‘Appendix 2’ shows the list of questions for the distributors).

In addition to iROKOTv’s response, the researcher thereafter resorted to obtaining verifiable online data in order to have a wider perspective of how online digital distribution operates regarding Nigerian movies.

The following is a presentation of iROKOTv's responses via electronic mail.

According to 'iROKOTv', they have been in the business of streaming full length Nigerian movies for just over 3 years through their website platform at [www.iROKOTv.com](http://www.iROKOTv.com). The web company is said to be building a modern distribution engine for the second largest movie industry in the world by volume i.e. *'Nollywood'*.

On how they obtain the Nigerian movies that are streamed on their website, they said they work directly with movie producers to purchase online licenses from them. Sometimes, they visit the popular 'Alaba international market' in Lagos State, a commercial hub for copyright film business, cutting deals with independent film producers and marketers. They scrub the content to remove copyrighted content like sound recordings that infringe others copyrights, where necessary they add English subtitles to the movie if rendered in local language, enter all the metadata, convert it from outdated formats, enter all the relevant information in a IMDB-like database, and upload it for hundreds of millions of people in the Nigerian Diaspora to rapidly consume.

On the territorial dynamics of the internet, they said majority of their subscribers are outside Nigeria. That their customers are predominantly based in the United Kingdom and United States of America. To become a subscriber from anywhere in the world, all a person needs is to click 'play' on any of the movies uploaded on their website for free.

The ‘free’ strategy for accessing content on ‘iROKOTv’ or ‘iBAKAtv’ for instance has been worrisome for the researcher, consumers, and other practitioners alike given the general understanding that, copyrighted materials should be remunerated for.

To understand this approach, the researcher sought to know what the business strategy or rationale behind offering Nigerian movies for free on their website was? They simply responded that *‘we support this’*. Jason Njoku, the brainchild of iROKOTv, has been quoted to say *‘we have so much content and people love it and I’m paying for it to put it on YouTube for free’*. This means that iROKOTv pay to buy the digital rights from the film makers and put the works on free on its website. The strategy is thus simply based on the ability to pull traffic to the website which is very crucial for internet business.

However, for audiences’ *who want to watch the brand new movies, they can subscribe to iROKOTv PLUS for \$7.99 a month and they get 12 brand new movies a month, without adverts’*.

During the research period, iROKOTv do not offer or sell downloadable movies. They identified that their primary mode of distributing movies is by video on demand (VOD).

iROKOTv is standalone platform although they have a partnership agreement with ‘Panasociviera’ to have an ‘iROKOTv app’ on their television boxes.

When asked about the laws that regulate their organizations activities regarding online distribution of Nigerian movies and about the measures they take to protect the movies offered on their website i.e. technical protection measures, adopting rights management information etc, no answers were proffered.

But under the ‘terms of use’ page of iROKOTv’s website page, the following was gleaned: *‘the services provided by iROKOTv includes but is not limited to making video content available via online streaming for transmission which is intended for reception and viewing simultaneously by the user with **the use of effective technological measures to prevent the contents from being stored by the user**’ (bold italics mine).*

Given that the company is in itself a copyright holder having obtained authorization from right holders to distribute their works online; the question about what the framework was for monitoring competitors who may not be licensed to distribute the movies, iROKOTv said it has a software program to detect illegal distributors of their acquired contents.

On how economic returns are made to the authors in respect of their works, iROKOTv said they make a one-off payment for the license rights based on a mostly exclusive license agreement.

Juxtaposing the producer’s responses about a ‘sharing formular’ and iROKOTv’s response of a ‘one-off payment’, it shows that perhaps low income producers are more willing to yield their rights on a one-off payment plan since it secures return on investment but which may totally rob them of the right to control all available digital avenues for exploiting their creative works.

iROKOTv is not aware of any representatives or collecting management societies who act on behalf of right holders to monitor or manage the movies distributed on the internet across territories.

iROKOTv is of the opinion that it is both the responsibility of the producers and the distributors to protect the movies on the internet.

On the question of who their Internet service providers are, they said they are not sure. On the issue of liability of internet service providers in cases of internet piracy, they said they have no knowledge of that and they are not aware of any ISP that has been held responsible in Nigeria for cases of copyright infringement. This position calls to mind the need to develop the copyright law to be at sync with the developed countries. According to Gbenga Sesan (2012), *in Nigeria, ISP/Intermediary liability is currently not addressed in existing Nigerian laws. Considering that it was only in 2011 that amendments to Nigeria's Evidence Act made provision for the admissibility of digital evidence and signatures in law courts; the absence of intermediary liability in Nigerian legislation does not come as a surprise. However, ongoing work on various legislative bills point to the possibility of the inclusion of clauses on liability of intermediaries in laws under review or new bills.*

This notwithstanding, the researcher found a document titled '**Legal Guidelines for the provision of Internet Service**' published pursuant to Section 70(2) of the Nigerian Communications Commission Act 2003. Section 5(d) of the Guideline under Part II titled 'Investigation and Enforcement' is to the effect that ISP's have a duty to inform their users of acts that constitute violation of intellectual property rights. The guideline equally establishes that ISP's must cooperate with enforcement and regulatory agencies investigating cybercrime or other illegal activities. Section 11 and 12 of the Guideline contains the 'Liability of ISP's as Content Intermediaries' and 'Take-down Notices' respectively which is very similar to the provisions of the United States Digital Millennium Copyright Act on the subject matter.

The question of what their challenges have been in the business of distribution of movies, iROKOtv's representative said internet connectivity has been an issue in Nigeria. According to her words, *'when we first started the company, Jason had to jump on a plane back to london to upload the films onto the back end of the site'*. Given the incessant infrastructure challenges in Nigeria, iROKO's back-end server is said to be located abroad.

Finally on iROKOtv, they said the law can help to ensure a more regulated business environment for their distribution organization. That there should be enforceable laws and regulations around the protection of intellectual property to safeguard the interests of investors, authors and copyright holders generally.

From the researcher's observation on trends of copyright movie distribution in Nigeria and available materials on the internet, they show that in Nigeria, mobile telecommunication companies now offer Nigerian movies for rent on consumer's mobile phones. For instance, the 'Afrinolly app' which was developed in Nigeria by Fansconnect Online Limited has emerged as Africa's most downloaded entertainment app for *Nollywood* movies, short films, documentaries, music videos, entertainment news and African celebrity profiles. Currently, this app comes pre-loaded on internet enabled smart phones to enable access to Nigerian movies and music videos at no extra cost to mobile internet data plan subscription.

Also, MTN Nigeria (a mobile telecommunication company) partnered with DO Media to launch the 'MTN Dobox mobile app' which can be downloaded by sending 'dobox' to 131 on MTN network to allow subscribers have access to the latest and most exclusive Nigerian movies on their mobile phones.



This trend is different from the huge online access to Nigerian catalogue of movies through video on demand stream or downloading on platforms like iROKOTv, Dobox.tv, iBAKAtv, and ‘Afrotainment’ which according to Wikipedia, in the United States of America, viewers can watch *Nollywood* and other West African movies on ‘Afrotainment’ platform.

#### **4.1.3 Regulatory Agencies**

The following government agencies play important roles regarding the subject matter of research. The researcher was able to secure interview sessions with management level officials of the organizations.

##### **4.1.3.1 Nigerian Film and Video Censors Board**

A collection of 10 questions as contained in the interview guide (see ‘Appendix 3’) helped in eliciting relevant information from the Head of legal services of the National Film and Video Censors Board (NFVCB) that specifically answers research objective 2 of this study.

On the mandate of the board, he said according to NFVCB Act 1993, CAP N40 Laws of the Federation, the Board censors films and classifies video works; license distributors of film and video works; license exhibitors i.e. cinema houses; register exhibition premises; and approve jackets, trailers and posters.

He said he is aware of movie distribution on the internet. That apart from personal observation, the Board has a monitoring unit that checks into trends. The monitoring

unit has reported the trend of the internet as a means of distributing and exhibiting Nigerian movies.

He was quick to assert that online distributors have not obtained licenses or registered with them as a distributor following the mandate of the Board to register or grant license to operate. That before a movie can be exhibited or distributed by an exhibitor or distributor, such enterprise must have been approved by the Board.

Also, that a lot of the movies and trailers on the online platform have not been screened and approved for viewing purposes by the Board. Distributors are only permitted to air approved movies.

He brought clarity between the definition of an exhibitor and a distributor. He said a distributor sells, rents or supplies movies. That in the online environment, a distributor gives a clip of the movie for the purpose of propelling people to buy. Whereas, an exhibitor shows the full movie (like in a cinema house).

Therefore, an organization like iROKOTv is both a distributor and an exhibitor.

However he noted that the NFCVB Act is not digitally compliant as there is no subsisting provision yet for approving internet distributors or exhibitors of Nigerian movies. He said plans to completely review the law are underway to include specific provisions for the administration and regulation of online distribution.

On the question of what the take of the Board is on works that offend specific provisions of the NFVCB Act, he said that it is a herculean task to pull down infringing works exhibited on such unlicensed platform because their law do not suggest this. That the Board have written to the Nigerian Communications Commission (NCC) on many occasions to help take down infringing websites and contents being the regulatory agency in charge of telecommunication and internet

services, but NCC declined to act upon this on the premise that the communications commission is not charged with matters of contents. Instead NCC referred the Board to National Broadcasting Corporation, another government agency responsible for broadcasting protected contents.

On a final note, he expressed the impossibility of regulating activities on the internet. And that it is important for all relevant government agencies to collaborate in order for the Board to be able to deliver on its own functions.

#### **4.1.3.2 Nigerian Communication Commission (NCC)**

This government body was established to regulate the services of telecommunication companies and to protect Nigerian consumers; to set standards of operations for telecommunication companies, to promote competition within the industry; to license internet service providers to provide internet services within Nigeria among others.

The assistant director, legal and regulatory department of the Commission said he is aware of distribution of works on the internet. He said NCC does not deal with issues of content. That it is the NFCVB and Nigerian Broadcasting Corporation (NBC) that are responsible.

According to him, NCC only deals with internet service providers to the extent that whatever passes through the ISP must not be offensive and seditious. NCC has no responsibility to checkmate copyright issues that may be going on using an ISP's platform. When complaints about contents are brought to NCC, they are passed over to NBC to address. However, NCC has the power to completely take down the infringing ISP when it has aided a crime. Also, he said that on regular basis, NCC

carries out enforcement checks on ISP's to check compliance with the 2006 NCC 'ISP Guidelines'.

There is a current effort to develop a new Information Communication Technology (ICT) policy that would create a new body comprising of National Broadcasting Corporation (NBC), National Film and Video Censor's Board (NFVCB) and Nigerian Communication Commission (NCC) to effectively regulate contents in the digital environment.

As discussed earlier, the researcher noted that by ISP Guidelines published by Nigerian Communications Commission, issues of contents are in fact within the purview of the NCC to deal with being the licensors of the ISP/Intermediaries. The guidelines recognizes the violation of intellectual property rights as criminal; that ISP's are only excluded from liability to the extent that they acted only as a mere conduit, cache or host; and ISP's are required to *have in place a procedure for receiving and promptly responding to content related complaints, including any notice to withdraw or disable access to identified content issued by the Commission or other legal authority ("takedown notices")* Section 12.

#### **4.1.3.3 Nigerian Copyright Commission (NCC)**

According to Section 34(3) of the Copyright Act, CAP C28 Laws of the Federation 2004, the Nigerian Copyright Commission (NCC) is responsible for all matters affecting copyright in Nigeria.

During an interview session with a senior official of the Commission in a directorate level, he shared very useful thoughts on the subject matter.

He said he is aware of online distribution of Nigerian movies. That based on some enquiries he made regarding distribution of Nigerian movies on the internet, he found that some copyright owners said they signed agreements with iROKOTv to distribute their works.

He said by Section 45(4) of the Copyright Act, the Commission has powers to regulate the operations of businesses which involve the production, public exhibition, hiring or rental of any work in which copyright subsists. However, there is no move at the moment by the Commission to regulate digital exhibitors or rental platforms like dobox.tv, iROKOTv, MTN dobox and Afrinolly mobile apps among others.

The Commission is currently reforming the entire copyright system of Nigeria necessary to position Nigeria's creative industries for greater growth, facilitate access to new markets and strengthen the capacity of the various sectors to compete more effectively in the global market place; a programme that was officially launched in November 2012 under the leadership of the current Director General, Mr. Afam Ezekude.

As part of the reform agenda, a statutory reform to improve the Copyright Act Cap C28 and other subsidiary legislations through the preparation of a copyright reform bill is ongoing. The Copyright Reform Bill is said to contain take-down notices by internet service providers, includes protection against the circumvention of technical protection measures and rights management information.

Also, the reform would introduce an electronic registration (e-registration) scheme for copyright works in order to give stronger rights to authors beyond the current 'notification' of copyright scheme. On this, he said the Commission organized

various stakeholder meetings to present the proposed registration system for copyright works and there was no refusal by the industry stakeholders.

He also disclosed that a group of audio-visual owners has applied to the Commission for license to operate as a collecting management organisation for audio-visual works.

The researcher contacted the consultants working on the Nigerian copyright reform system and the following reports were gathered in respect of the study. In the view of the consultants, their proposal to revamp the copyright industry through statutory, regulatory and institutional reforms is such that absolute care must be taken in adopting global practices that may not be best suited for the Nigerian industry. For instance, on the issue of fully complying with some international obligations like that of WIPO Internet Treaties; when the researcher probed about the ‘right of making available to the public’ they said the propriety of that right is beginning to be challenged by the courts at the west given that it affects the interest of the public.

In the same vein, a session with the director of enforcement revealed that although the Commission has a mandate to investigate and prosecute copyright infringement, from the side of movie makers or their licensees, no formal complaints has been made to the Commission, neither has there been any enforcement actions against unauthorised distribution or sale of Nigerian movies on the internet.

## **4.2 Section 2: Main Findings of the Study**

Building upon the previous section which presented the various data that were collected, this section would be summarizing the main findings of the research under 5 themes in a way that they directly answer the research questions.

#### **4.2.1 Awareness of the Internet as Distribution Platform for Nigerian Movies**

The movie makers, regardless of the number of their years of practice in the movie industry, are all aware of the widespread distribution of Nigerian movies digitally on the internet. They all agree that the internet is a good platform for contemporary distribution of movies.

75% said they have licensed all their digital rights to online distributors under certain contract terms which the researcher was unable to cite to determine the extent and enforceability.

#### **4.2.2 Major Players of Online Distribution and Methods of Distribution**

iROKOTv, iBAKAtv, Dobox.tv are the main distributors of Nigerian movies on the internet from responses gotten from the movie makers. They also identified 2 mobile apps (Afrinolly and Dobox) which link subscribers to movie contents on the web.

#### **4.2.3 Structure and Regulation of Online Distribution System**

The NFVCB is by its mandate responsible for licensing movie distribution and exhibition within Nigeria. Any organization in the business of distribution or exhibition of Nigerian movies must be registered and licensed by the Board.

Given the peculiarity of the internet being a platform that cuts across territorial borders, the mandate of NFVCB may be beyond its purpose if digital distribution

over the internet is imported into its enabling law. In any case, NFVCB do not at the moment have specific regulations in place for digital distributorship or exhibition business on the internet. A draft bill to review NFVCB Act has been submitted to the supervisory minister for presentation at the National Assembly. The Bill is said to contain provisions that bother on regulation of digital distribution.

Any distribution structure currently available can only be attributable to ‘intermediaries’ like iROKOTv who seem to be spear-heading a more formal digital distribution network for *Nollywood* movies.

Regarding liability of internet service providers, although the legal guidelines for ISP addresses the issue, market data show that NCC would not interfere or enforce issues relating to ISP liability as it involves copyright contents.

#### **4.2.4 Sufficiency of the Copyright Act CAP C28 LFN 2004 to protect *Nollywood* and other right holders in the Digital Era**

At the time the subsisting Copyright Act came into force, much of the digital revolution was not anticipated. Although the Act is very comprehensive in offering basic rights to all categories of creative authors, it would not be wrong to tag the Nigerian Copyright Act LFN 2004 as ‘analogue’, in light of the current realities of technology and how it has permeated the entire way copyright is utilized (Note: the last revision of the Act was in year 1999).

To answer research question 4, the researcher carefully reviewed the Copyright Act in order to extract the likelihood of rights protection in the digital environment for the film industry film. The following are the findings:



1. Firstly, by Section 1 of the Act, Cinematograph films are included in works eligible for copyright. They are protected for a period of '*50 years after the end of year in which the work was first published*'(Schedule 1)
2. Section 51 defines cinematograph film as '*including the first fixation of a sequence of visual images capable of being shown as moving picture and of being the subject of reproduction...*'
3. While the author of a cinematograph is the "...*person by whom the arrangements for the making of the film were made, unless the parties to the making of the film provide otherwise by contract between themselves*' by the same section. Section 10(5) also provides that the author of a cinematograph film '*... shall be obliged to conclude, prior to the making of the work, contracts in writing with all those whose works are to be used in the making of the work*'
4. Combined effect of Sections 2 and 3, that copyright shall be conferred on a cinematograph film that is authored by a Nigerian citizen (or person domiciled in Nigeria) and which is first published in Nigeria or in a country that is party to an obligation in a treaty to which Nigeria is a party: Section 5(1)b
5. Section 6(1) establishes the rights of the copyright holder (the producer or director as the case may be): '*... copyright in a work shall be the exclusive right to control the doing **in Nigeria** of any of the following acts, that is:*

*(c) in the case of cinematograph film, to do or authorise the doing of any of the following acts that is:-*

*(i) make a copy of the film*

*(ii) cause the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;*

*(iii) make any record embodying the recording in any part of the soundtrack associated with the film by utilising such sound track;*

*(iv) distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan, or similar arrangement.*

*Section 6(2): “the doing of any acts referred to in subsection (1) of this section shall be in respect of the whole or a substantial part of the work either in its original form or in any form recognisably derived from the original”*

But on particular rights that are relevant in the digital era, nothing in the law is suggestive of such a case. Perhaps only to the extent that ‘importation without authorisation from right holders of infringing copies (physical copies of VCD’s enabled by digital technology) possessing machines and equipment for distributing, selling etc of infringing copies of protected cinematograph films, is an infringement: Section 20.

However, as found in the earlier chapters of this study, these rights do not change in the digital environment. The rights to reproduce the film, communicate it to the public and distribute for commercial purposes is still reserved irrespective of new

mediums for utilising it. In the words of John Perry Barlow, *“Intellectual property law cannot be patched, retrofitted, or expanded to contain digitized expression any more than real estate law might be revised to cover the allocation of broadcasting spectrum. We will need to develop an entirely new set of methods as befits this entirely new set of circumstances”*. Copyright has always evolved in response to new technologies, new ways of using copyrighted works & new business models. Exclusive rights apply regardless of what technology is used to exercise them although digital technology poses many challenges.

The internet is providing a newer platform for disseminating copyright works to a larger audience. Access to work by the public is one of the pillars of intellectual property in order to promote culture, education and science. Copyright over a work shouldn't change; the variation or modality of how the work is disseminated to the public may change to the ultimate advantage of both the maker and user.

The ideal situation should be that copyright law be seen to balance the owner's desire to protect works used in new ways while ensuring broad dissemination to the public.

The ultimate question therefore is, since it is the law that determines the rights or protection to be enjoyed by copyright holders, if such law is specifically tailored for the internet in light of global trends, can the exploitation of digital rights by Nigerian film right holders be 'legitimate'? I'd say yes. Legitimate in the eye of business and to all purposes and intents for granting copyright protection in the first place.

Experience has shown that business grows first while the law seem to catch up with it. But it is important for the law to measure up so that the business opportunities are protected from free riders. Joke Oyewunmi (2011) said beyond offering welfare to

*Nollywood* by the government, creation of a conducive environment for the sustainable development of the industry to develop it for greater future prosperity and global relevance is central. She said *‘to achieve this, the ability of the sector to adapt to new technology, by maximising the opportunities presented by such technology for the production and profitable distribution of creative works, while also taking steps to safeguard the works from unauthorised commercial exploitation’*.

Without a law that clearly designates enforcement mechanisms for the protection of copyright works and the need for the law to be positively responsive to the digital era, the industry would be susceptible to threats associated with digital technology.

At the end of the day, it is the value capture for industry investor’s that counts. In essence, the purpose of the law is to ensure that right owners get returns for their investment and creativity while at the same time ensuring that the public have access to the works in a manner that is reflective of the times.

Trends in global copyright world show the importance of reviewing copyright legislations to incorporate specific rights and measures to protect copyright works in the digital environment. Some provisions in the WIPO internet Treaties are instructive in this regard.

#### **4.2.5 Rights Management of *Nollywood* Movies**

The researcher found that technical protection measures necessary to protect the movies against unauthorised uses is not such a concern to the movie makers. This is because the distributors/digital licensees are the ones with technical expertise and are

made responsible for enforcing all the copyright in respect of the digital exploitation of the work.

An examination of the ‘terms of use’ of works by iROKOtv subscribers relating to TPM’s, the website contains the following clause:

*Users are prohibited from reproducing, copying, uploading, exporting, transferring, selling, forwarding or transmitting the Contents on the Website other than in accordance with the license granted and further not to reproduce any information of the Website on any other website. Hence, Users may only access and view the Contents personally and for a non-commercial purpose in compliance with these Terms. Users may not either directly or through the use of any device, software, internet site, web-based service, or other means remove, alter, bypass, avoid, interfere with, or circumvent any copyright, trademark, or other proprietary notices marked on the Contents or any digital rights management mechanism, device, or other content protection or access control measure associated with the Contents including geo-filtering mechanisms. Users may not either directly or through the use of any device, software, internet site, web-based service, or other means copy, download, stream capture, reproduce, duplicate, archive, distribute, upload, publish, modify, translate, broadcast, perform, display, sell, transmit or retransmit the Contents unless expressly permitted by IPL in writing. Users may not incorporate the Contents into, or stream or retransmit the Contents via, any hardware or software application or make it available via frames or in-line links unless expressly permitted by IPL in writing. Furthermore, Users may not create,*

*recreate, distribute or advertise an index of any significant portion of the Contents unless authorized by IPL. Users may not build a business utilizing the Contents, whether or not for profit...*

This contract term is governed by the Law of England and Wales. Also, *'the Courts of England and Wales shall have exclusive jurisdiction to determine any dispute in connection with such terms or use of the Website'*. Although a registered Nigerian company operating from its headquarters in Lagos, Nigeria, and particularly holding rights that are created by Nigerians, the laws that govern its activities are those of the United Kingdom and United States of America regarding copyright enforcement. The company offers a notice and take-down system wherein if a copyright holder or agent asserts that any contents of the website infringes on their copyright *'pursuant to 17 U.S.C 512(c)(3), Digital Millennium Copyright Act of 1998 ("DMCA")'* they can submit a notification to iROKOTv. The researcher is constrained to believe that the reason for this is because of the robust nature of copyright protection laws of these countries and aggressive enforcement that legal recourse is made to them.

Also, depending on the law that governs the contracts between the distributor and copyright owner (producers); for the purposes of protecting a distributor like iROKOTv, if the applicable law is not sufficient to guarantee protection on rights acquired, it limits a 'legitimate' online distributor like iROKOTv who invests considerable money in obtaining digital rights licenses from the movie makers. Of what use is a right that cannot be enforced globally? Obviously, this would in turn have a negative impact on the industry.

Also, the research found the high likelihood that creative producers are completely robbed of the right to control their works when exploited on a platform like the internet by digital distributors.

Finally, the researcher couldn't not get first-hand market evidence from other online distributors to ascertain the legitimacy of their activities i.e. whether they have obtained authorization from the respective copyright holders to upload, stream, sell or rent their works to the public.

## CHAPTER 5

### SUMMARY, CONCLUSION AND RECOMMENDATION

#### 5.0 Summary

The research investigated an aspect of the effect of digital technology on the subject matter of copyright. Specifically, the case study was on the internet distribution of Nigerian movies created by the popular Nigeria Film industry known as '*Nollywood*'.

The internet has enhanced the widespread popularity of Nigerian movies, however, the unauthorized and unregulated dissemination of movie content has an adverse effect on revenue collection and this is made worse by a lack of regulatory framework.

Intellectual property rights, like other fields of practice, are neither more or less than the sum of rights granted by law. Whether in light of technological advancements experienced by the Nigerian film industry regarding this new distribution network, the Nigerian law is able to provide sufficient protection is the problem of this study.

In Chapter 1, the subject matter of copyright, digital technology and the Nigerian film Industry as they relate to this research were introduced. The literature review identified the gaps in existing Nigerian literature to the extent that no market research of this nature have been carried out to show the adequacy or otherwise of the Nigerian Copyright Act to protect the film industry in the digital environment.



Based on the researcher's methodology which was defended in chapter 3, a market data analysis of the incidence of online digital distribution and how it affects copyright including the regulatory framework was given in chapter 4.

## **5.1 Conclusion**

This research has further unveiled the potential that digital technology has to erode the relevance of copyright. Whereas digital technology should be aiding the dissemination and exploitation of copyright works, the lack of adequate laws that is specific to the digital agenda makes copyright holders unable to take advantage of the internet to position their creativity competitively globally.

Copyright holders, for example, authorised online distributors like iROKOtv should be protected adequately under the Copyright Act, so that the economic returns that Nigerian film producers get from licensing their works to these named distributors can be guaranteed. Protection also ensures that enforcement of rights in other jurisdiction

As Nigeria's internet services is being developed and metamorphosed into a competitive market making electronic distribution of movies more possible, while it is hoped that other infrastructures like electricity can be improved upon, an effective copyright system through the collaboration of respective government agencies must be available and well positioned as contents transferred over these networks are subjects of copyright protection.

On a final note, this study has shown to the researcher that there are still so many questions that are left unanswered beyond the adequacy of legislation to protect copyright owners in the digital environment. One such area is the propriety of ratifying the entire body of WIPO Internet Treaties. In the course of this research, the researcher found that the ‘right of making available’ provided in the WIPO Internet Treaties which seem to be amenable for the digital environment, has generated quite a bit of debate among courts in some foreign jurisdictions.

It would be beyond the scope of this study to look into such divergent subject matters. The researcher therefore identifies this area for further research.

## **5.2Recommendations**

The following are some recommendations based on the findings of this research work:

1. Firstly, that it would be beneficial for Nigeria to ratify the WIPO Internet Treaties in order to protect the interests of the film industry. However, the ratification should be with reservation given that not all the provisions of the Treaties are of benefit to Nigeria at this time.

The provisions of the WCT and WPPT that are referred to by the researcher are the types of technological adjuncts that are intended to ensure that right holders can effectively use technology to protect their rights and to license their works online. The first right, known as the ‘anti-circumvention’

provision, help tackles the problem of hacking. The Internet Treaties requires countries to provide adequate legal protection and effective remedies against the circumvention of technological measures used by right holders to protect their rights. The second type of technological adjuncts safeguards the reliability and integrity of the online marketplace by requiring countries to prohibit the deliberate alteration or deletion of electronic rights management information. This is the information that accompanies protected material and which identifies the work, its creators, performer, or owner, and the terms and conditions for its use.

2. A statutory reform of the Nigerian Copyright Act that would reserve clear reproduction and distribution rights that anticipates the needs of the digital environment. Also, a clear provision for notice and take-down by ISP's including enforcement provisions in that regard should be incorporated into the Act.
3. That the Nigerian government through the Nigerian Copyright Commission organize capacity building programmes to empower the cinematograph film copyright sector on issues involving licensing, assignment or sale of their rights to online distributors on fair and just terms. A model contract should be developed by the Commission to guide right holders during such negotiations. It is trite that no law can remedy a bad contract. Therefore, the importance of that right holders still retaining control of the use of their works when exploited on a platform like the internet cannot be over-emphasized. To achieve this, education of the sector is essential. For

avoidance of doubt, such capacity building should be titled towards educating that either the producers themselves run their own independent website for the distribution of their works or they license the rights instead of giving it away completely to online digital distributors. There should be perfect competition among the players in the entire process so that the right holders are not short-changed by digital distributors or intermediaries.

4. Proactive and aggressive enforcement by the government to monitor distribution of Nigerian movies on the internet with collaborations with foreign government.
5. The NFVCB should enter into agreements with foreign agencies to help regulate distribution of Nigerian works within their territories
6. That a joint taskforce of the Nigerian Communication Commission, National film and Video Censors Board, National Broadcasting Corporation and the Nigerian Copyright Commission be inaugurated to be responsible for acts of copyright violations that are committed on the internet and the issue of ISP/ Intermediary liability.
7. That in the on-going copyright reform bill, enforcement powers should be clearly reserved in the Nigerian Copyright Commission alongside other regulatory agencies saddled with the responsibility of movie distribution or regulation of internet activities.

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## **APPENDIX I: INTERVIEW GUIDE FOR NIGERIAN MOVIE PRODUCER/DIRECTOR/COPYRIGHT OWNER**

1. Are you a producer/director?
2. How long have you been in the industry?
3. Mention all the avenues for distributing your movie e.g. Cinema, VCD/DVD, Cable television, Air transportation etc
4. Is the Internet one of the methods for distributing your works?
5. Are you aware of the distribution of your movies on the internet including on some mobile network platforms?
6. How did your movies get to the Internet?
7. How many movies have you authorised for online distribution? To whom? How was this transacted?
8. Do you give your rights to only one digital distributor or to several? Have you observed whether your movies are on several websites?
9. Do you negotiate licenses with online distributors by yourself or you have representatives who help in managing your VOD (video on demand) licenses for example?
10. Does your relationship with your work terminate soon after you have licensed it for online distribution?
11. What measures do you put in place to safeguard your works? Or do you know of any medium adopted by your authorised online distributors to protect the works given to them e.g. Technical protection measures, rights management information etc
12. Do you know the rights/protection you enjoy over your movies? Mention some. What law regulates these rights?
13. Do you think the absence of express digital rights in the copyright act limits the exploitation of your work on the internet? What is the level of awareness of your rights in the digital environment?

14. Have you observed any infringement of your works on the internet? And what steps did you take to enforce your rights?
15. In the absence of effective laws, do you think it is sustainable to do business on the internet at this rate?
16. What is your opinion on internet distribution given the potentials of global broadband connectivity in Nigeria and abroad?
17. Do you think it is a viable option of distribution? Does it generate good returns yet? Any opportunities or success factors in view?
18. What are some of the challenges of releasing your movie on the internet?
19. What is the financial/royalty payment mode on the internet? e.g. is it like terrestrial TV log sheets or one-off payment (like music), back-end mode etc?
20. Do you know of the existence of any audio visual collecting society that distributes royalties in respect of your movies that are exploited beyond Nigeria (over the internet)
21. If content distribution of movies in the digital environment is properly included in the copyright act, what opportunities or benefits do you think it would yield to the industry?

## **APPENDIX II: INTERVIEW GUIDE FOR ONLINE DISTRIBUTORS OF NIGERIAN MOVIES**

1. What is the name of your organization?
2. What are the functions of your organisation?
3. For how long have your organization been involved in movie distribution?
4. Describe how you come in contact with the Nigerian movies you distribute on your website?
5. Who are the people involved in this transaction? Producers/directors, marketers, telecommunication companies etc
6. What are the different modes of distributing Nigerian movies on your website? E.g. Video on demand/streaming, downloading, renting etc
7. Does your organization interface with telecommunication companies in distributing Nigerian movies e.g. Afrinolly and Dobox offered by MTN?
8. Who are your major customers? Where is their location?
9. How can one become your customer?
10. What is the cost of watching Nigerian movie on your website? What is the cost of full download of a movie?
11. What is the business strategy or rationale behind offering Nigerian movies for free on your website? (if applicable)
12. What laws regulates the activities of your organization regarding distribution of Nigerian movies on your website?
13. What measures does your organization take to protect the Nigerian movies offered on your website? E.g. Technical protection measures, adopting rights management information etc
14. What sort of licence is given to you by the right holders? Exclusive or non-exclusive?
15. What is the framework for monitoring your competitors who may not be licensed to distribute the movies you are given by right holders.

16. How does your organization compensate or make financial returns to right holders? What is the modality? e.g. one-off payment or 'royalty' based on customer viewing?
17. Are you aware of any representatives or collecting management societies on behalf of right holders who monitor or manage the movies distributed across territories on the internet?
18. Who are the internet service providers for your organisation? Where is your site hosted?
19. In your opinion, whose responsibility is it to protect the movies on the internet?
20. In cases of infringement of your rights or internet piracy, has the internet service providers been held responsible?
21. What have been the challenges your organization have been facing in this distribution business?
22. Do you think the law can help in any way to ensure a more regulated business environment for your organization?

### **APPENDIX III: INTERVIEW GUIDE FOR REGULATORY AGENCY**

(NIGERIAN COPYRIGHT COMMISSION, NIGERIAN FILM AND VIDEOS CENSORS BOARD, NIGERIAN COMMUNICATION COMMISSION)

1. What is your designation?
2. How long have you worked in this organization?
3. What is the mandate of your organisation?
4. What law regulates the mandate of your organization?
5. Are you aware that Nigerian movies are distributed on the internet?
6. What role does your organization play in facilitating, protecting, regulating or monitoring these activities?
7. Are there plans/reforms/bills or regulations underway to regulate internet business as it affects Nigerian movies?
8. In these bills/documents, what provisions specifically touch on entertainment industry?
9. What is your take on the liability of internet service providers?
10. Is there any other thing you would like to share regarding your knowledge of this research work?