

Copyright Law & Piracy – Legal Issues in the Information Society

Lecture Delivered

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Introduction – What is Property?

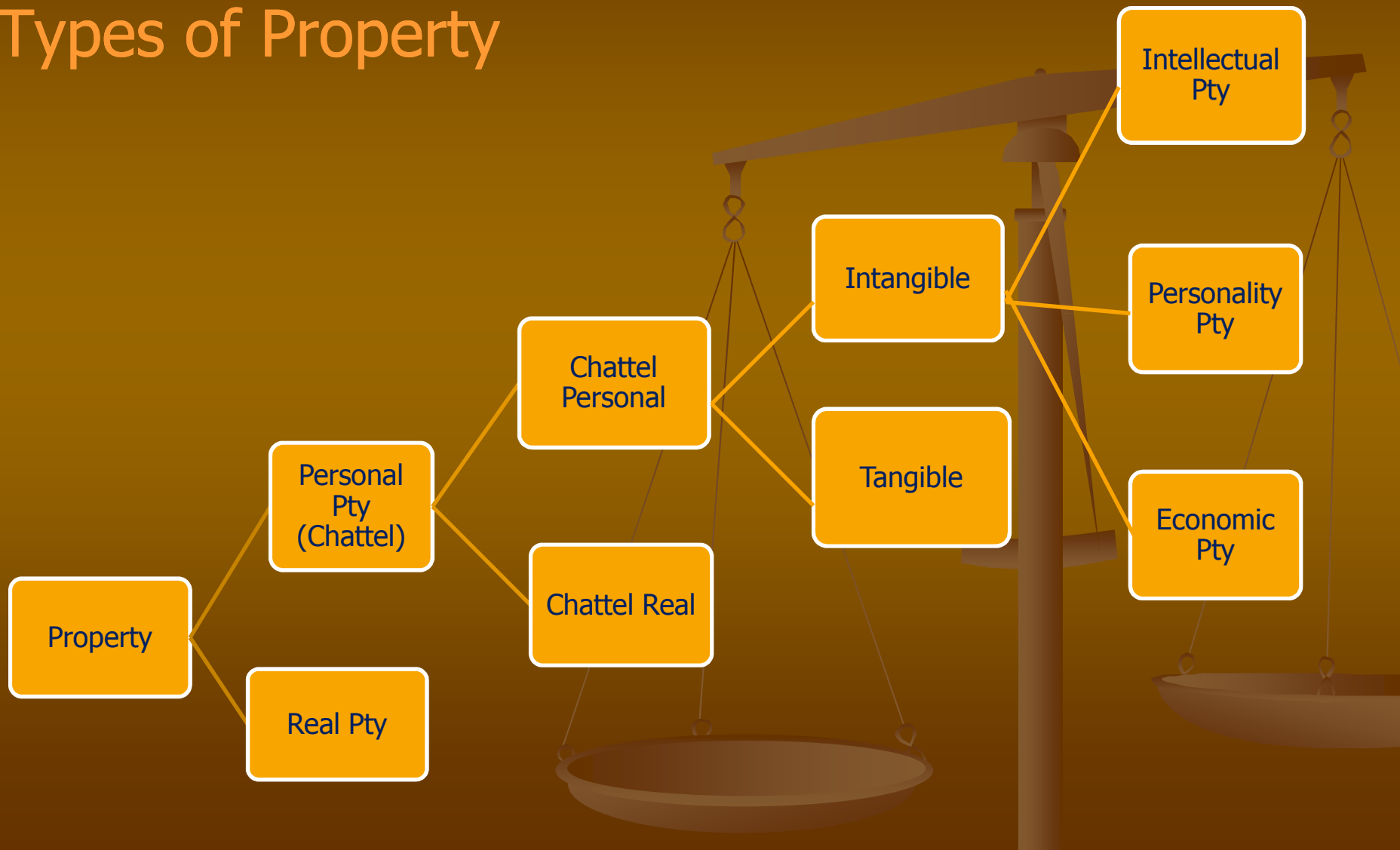


- Intellectual Property is an aspect of the overall concept and law of PROPERTY
- PROPERTY refers to an object (tangible/intangible) which is capable of ownership with all or some of the following rights attendant:
 - Right to use and enjoy
 - Right to exclude others from use and enjoyment
 - Right to part with – wholly, partially, permanently or temporarily
 - Sometimes, even right to destroy, if destructible

Introduction – What is Property?



Types of Property



Introduction – What is Intellectual Property?



- Intellectual Property therefore refers to intangible property owned by a person in the product of his intellectual efforts
- It includes property that affords rights in the following areas:

Creative/Academic Work

- Copyright
- Database right

Trade/Business/Economic Interests

- Trademark
- Industrial Design
- Confidential Information & Trade Secrets
- Goodwill

Invention

- Patent
- Topography right
- Plant breeders right

Introduction – What is Intellectual Property?



- Intellectual Property could also be categorised as follows:

Those Created/Protected by Statute

- Copyright
- Database right
- Trademarks
- Topography right
- Patent
- Industrial Design
- Plant breeders rights (US)

Those Created/protected by Common Law

- Confidential Information/Trade Secrets
- Goodwill

Introduction – What is Intellectual Property?



- Further still, Intellectual Property could also be categorised as follows:

Registrable Rights

- Trademarks
- Patent
- Industrial Design
- Topography right (Canada, Finland, Ukraine)
- Plant breeders right (US)

Non-registrable Rights

- Copyright
- Database right
- Topography right (US, UK)
- Confidential Information/Trade Secrets
- Goodwill

Introduction – Legal Framework



- The Legal framework for Intellectual Property Protection in Nigeria can be found in both statute & case law:

Statutes:

- Copyright Act, Cap C28 Laws of the Federation of Nigeria, 2004
- Trademarks Act, Cap T13, LFN, 2004
- Patent & Design Act, Cap P2, LFN, 2004

Case Law:

- Contract – Confidential Information
- Tort – Malicious/Injurious Falsehood, Passing Off
- Equity – Breach of Confidence

What is Copyright?



- Copyright is the right which the CREATOR of an ORIGINAL creative/academic WORK has against the whole world, usually for the duration of his/her LIFETIME and for some time afterwards, in preventing UNAUTHORISED ACTS OF REPRODUCTION of such a work.
- It is NOT A REGISTRABLE right in the sense that it comes into existence by mere reason of creating the original work and not by registration.
- It is therefore a NEGATIVE right, which affirms an existing/inherent right of a person by preventing the doing of an act by other persons.
- The essence is that other persons may do any of the prohibited acts ONLY BY THE AUTHORISATION of the right owner.



Which works are Protected?

- The following classes of work are protected under the Copyright Act
- Literary works – books, computer programmes, letters, reports, tables/compilations etc
- Artistic Works – paintings, maps, diagrams, sculpture, photography, Architectural drawing etc
- Musical Works – compositions and accompaniments
- Cinematographic films – films and soundtracks
- Sound recordings; and
- Broadcasts – Radio, TV, satellite, cable wireless etc

– *Section 1, Cap C28, LFN, 2004*

What Rights are Afforded?



- For Literary works, copyright gives **EXCLUSIVE RIGHT** to control the following:
 - Reproduction in any material form
 - Publishing
 - Public performance
 - Production of translation
 - Film making
 - Distribution to public by rental, lease hire etc
 - Broadcast
 - Adaptation
 - Doing any of the foregoing with its translation or adaptation – *Section 6 (1)(a), Cap C28, LFN, 2004*

What Rights are Afforded?



- For Artistic works, copyright gives **EXCLUSIVE RIGHT** to control the following:

- Reproduction in any material form
- Publishing
- Inclusion in Film
- Adaptation
- Doing any of the foregoing with its translation or adaptation
- In the case of architecture, erection of any building based on the drawing

– *Sections 6 (1)(b) & 3, Cap C28, LFN, 2004*

What Rights are Afforded?



- For Cinematographic Films, copyright gives **EXCLUSIVE RIGHT** to control the following:

- Making a copy
- Showing and airing in public
- Making record of the soundtrack
- Adaptation
- Distribution to public by rental, lease hire etc

– *Section 6 (1)(c), Cap C28, LFN, 2004*

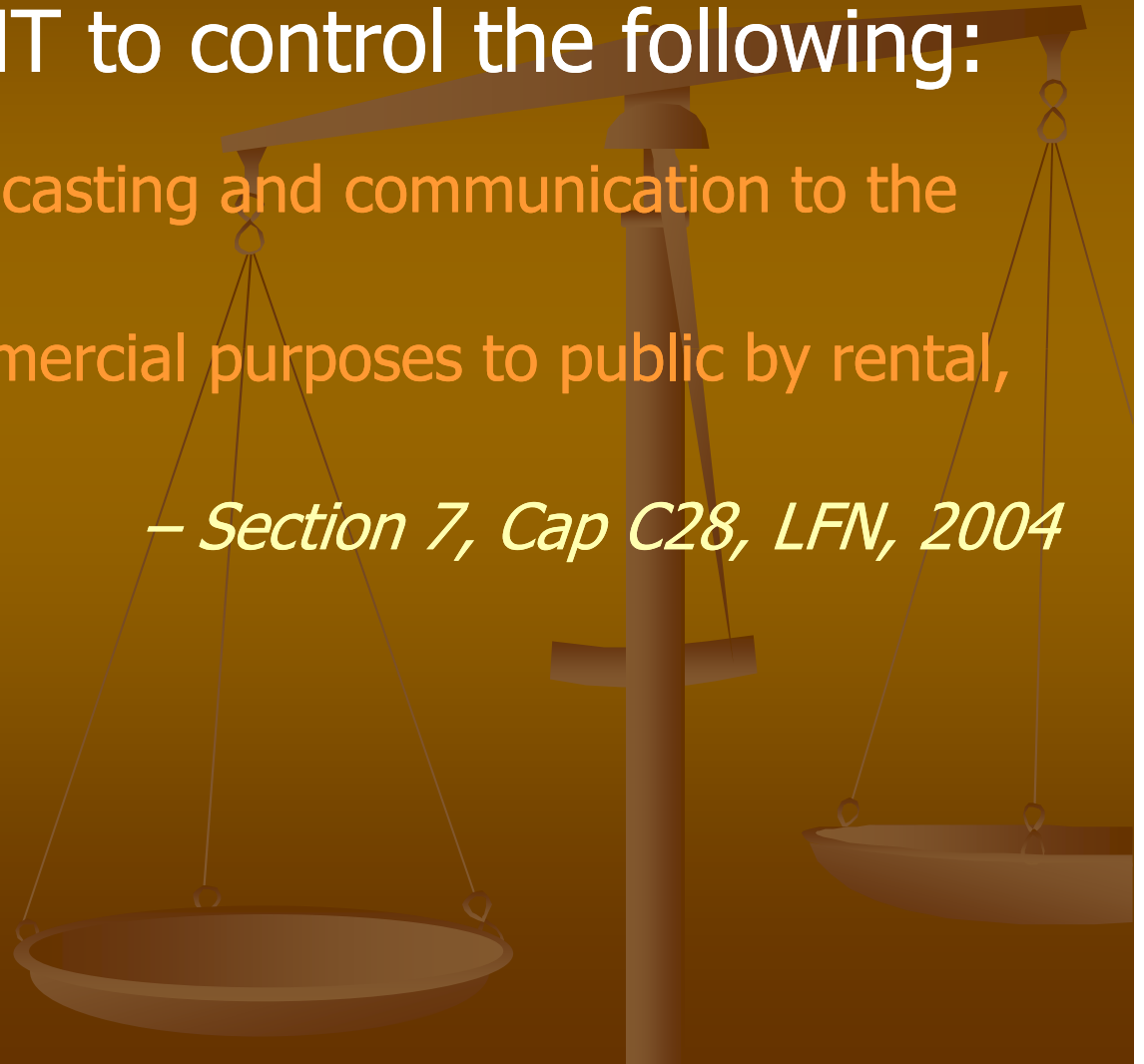


What Rights are Afforded?



- For Sound Recording, copyright gives **EXCLUSIVE RIGHT** to control the following:
 - Reproduction, broadcasting and communication to the public
 - Distribution for commercial purposes to public by rental, lease, hire etc

– *Section 7, Cap C28, LFN, 2004*

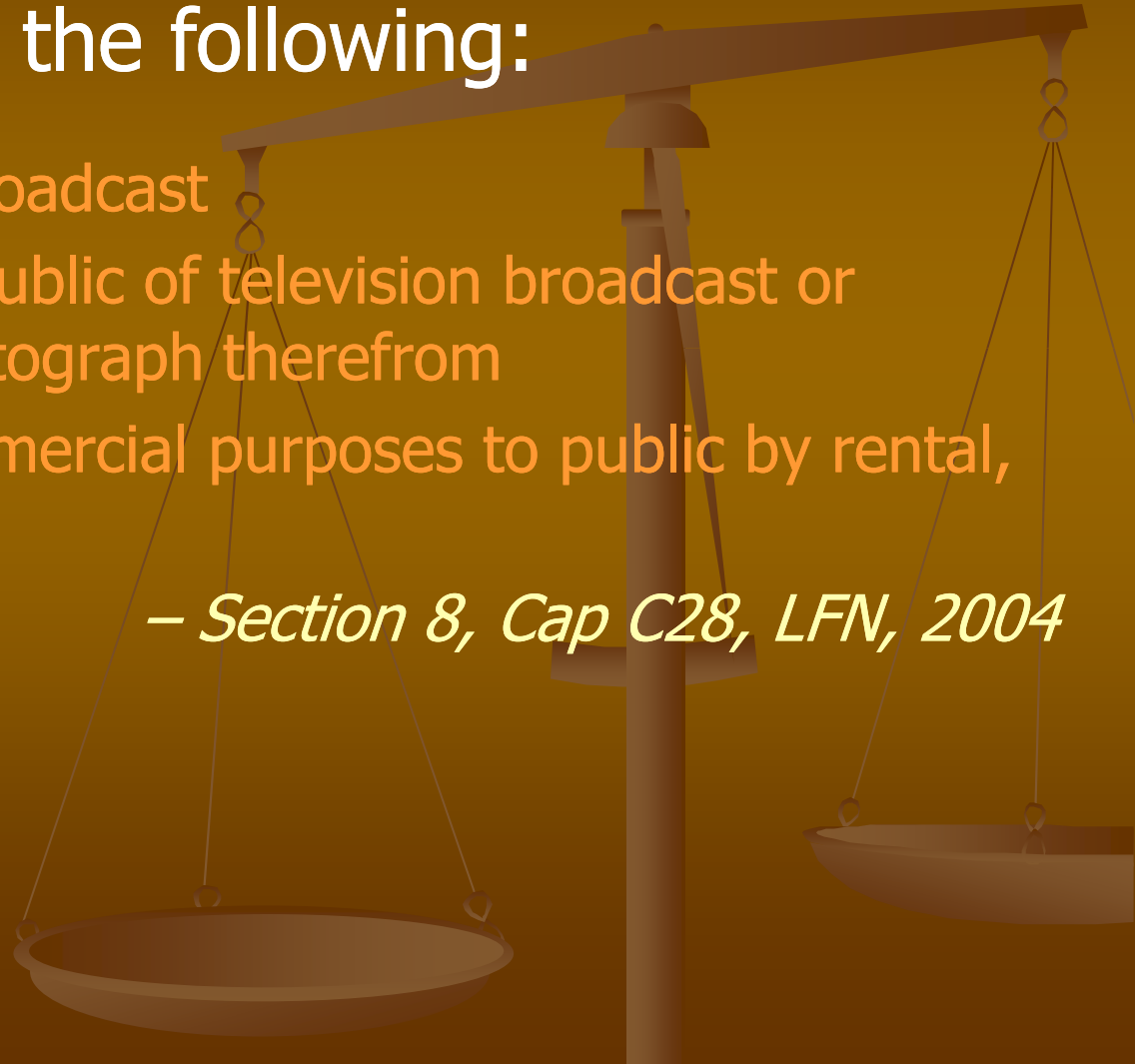


What Rights are Afforded?



- For Broadcast, copyright gives **EXCLUSIVE RIGHT** to control the following:
 - Recording and re-broadcast
 - Communication to public of television broadcast or making of still photograph therefrom
 - Distribution for commercial purposes to public by rental, lease, hire etc

– Section 8, Cap C28, LFN, 2004



What Rights are Afforded?



- Generally, for all categories of work, the author is entitled to a perpetual, inalienable and imprescriptible MORAL RIGHT which is two-fold:
 - Paternity Right – Right to claim authorship and to be identified as author of the work
 - Integrity right – Right to object to distortion, mutilation, modification of, or derogatory action on, the work where such action would prejudice author's honour and reputation

– Section 12 Cap C28, LFN, 2004

Limitation, Exclusion of Rights



- **Limitation** – Copyright protection is limited to the lifetime of the author + 70 years after his death in the case of Literary, Artistic and Musical works or + 50 years after first publication or broadcast in the case of cinematographic films, photography, sound recording and broadcast.

- See 1st Schedule of Cap C28, LFN, 2004

- **Exceptions** – Copyright shall not include right to control, inter alia:
 - fair dealing for purposes of research, private use, criticism, or review
 - Educational broadcast
 - Etc

- See 2nd & 3rd Schedules of Cap C28, LFN, 2004

Elements of Copyright



- Its protects an ORIGINAL work of the author
- The work must have been PUBLISHED (reduced to material form or definite medium, not just an idea) – *Walter v. Lane [1900]AC, 539, HL*
- The first ownership of copyright is enjoyed by the AUTHOR of the work, unless a contract of employment or apprenticeship with a publisher stipulates that it belongs to the employer – *See Section 10*
- A first owner of copyright may however transmit it, or any right therein by Assignment, Will (for any agreed period or over any specified territory) or operation of law – *See Section 11*

Copyrights Infringement



- Copyright infringement occurs when a person not being the owner (author or licensee/assignee) performs, with respect to a work WHOLLY or SUBSTANTIALLY, any of the acts which may not be so performed without the authorisation of the owner.
- It ranges from minor acts of infraction which nonetheless are actionable to big-time, wholesale infringement for illicit commercial purposes, referred to as PIRACY

Copyright Infringement



- The most important acts of Piracy in Nigeria are the following:
 - Pirate Optical Disc Production – It is stated that pirate plants in Nigeria have capacity to turn out hundreds of millions of copies, which have been exported as far as Algeria, Senegal and South Africa
 - Business Software Piracy
 - Book Piracy
 - *See International Intellectual property Alliance (IIPA) 2009 Special 301 Report on Copyright Protection & Enforcement*

Copyright Infringement



- The most important acts of Piracy in Nigeria are the following:

NIGERIA

ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY (IN MILLIONS OF U.S. DOLLARS)

AND LEVELS OF PIRACY: 2004-2008³

INDUSTRY	2008		2007		2006		2005		2004	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music	NA	NA	55.0	95%	52.0	95%	52.0	95%	50.0	99%
Business Software	67.0	81%	63.0	82%	56.0	82%	46.0	82%	30.0	84%
Books	NA	NA	NA	NA	8.0	NA	6.0	NA	4.0	NA
Motion Pictures	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
TOTALS	67.0		118.0		116.0		104.0		84.0	

(Source) IIPA 2009 Special 301 Report on Copyright Protection & Enforcement

Remedies

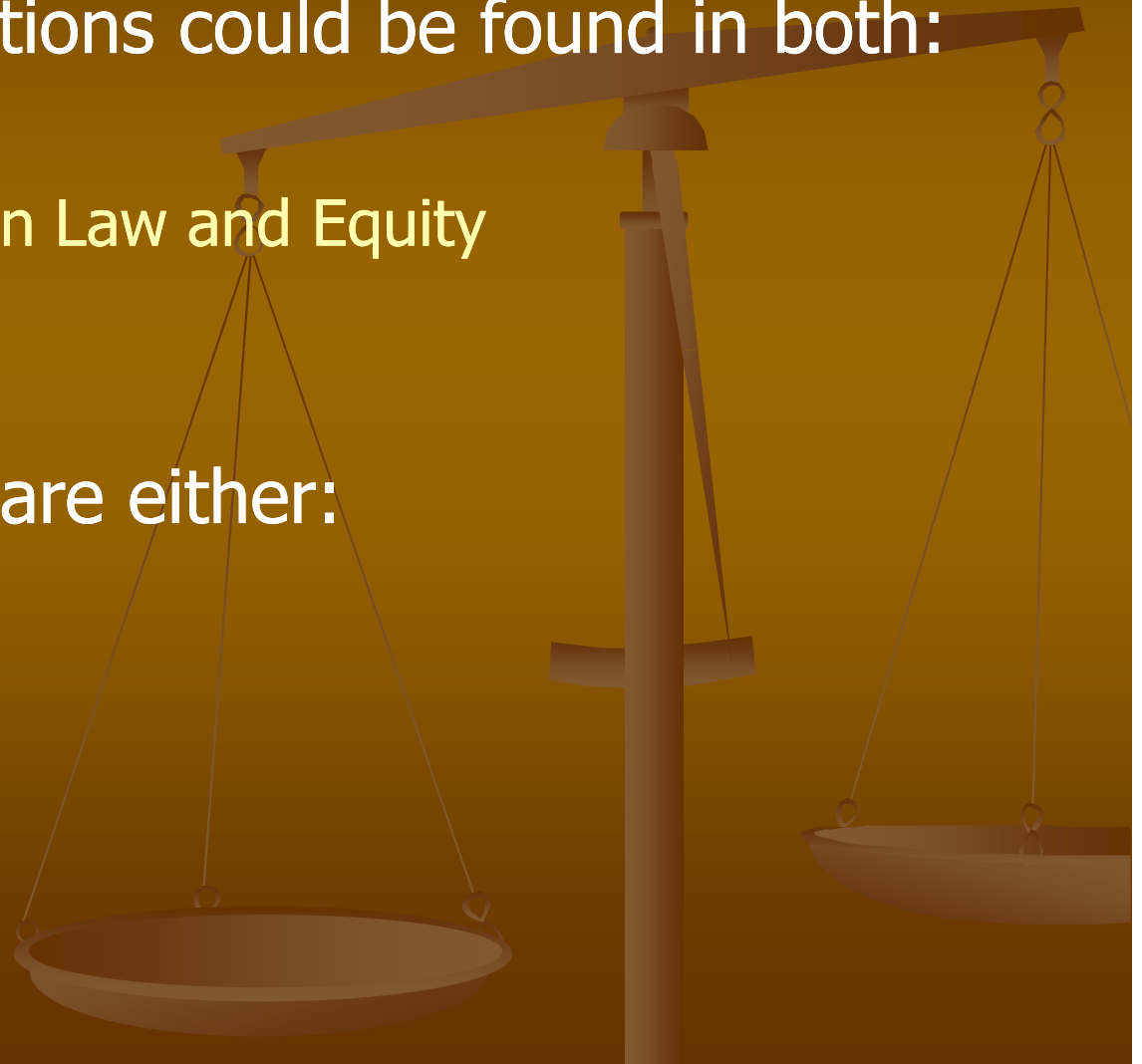


The remedies and reliefs available to a copyright owner against violations could be found in both:

- Statute
- Case Law – Common Law and Equity

Remedies and reliefs are either:

- Administrative
- Criminal
- Civil



Remedies



Administrative Remedies:

- Part II of Cap C28, LFN, 200e establishes the Nigerian Copyright Commission (NCC)
- NCC's functions include responsibility for matters affecting copyrights as well as monitoring and supervision of Nigeria's position within the international regime
- NCC's Administrative remedial powers include:
 - **Prescription of Anti-Piracy Measures:**
 - Design, label, mark, impression or any other anti-piracy device

Remedies



Administrative Remedies:

NCC's Administrative remedial powers include:

- **Appointment of Copyright Inspectors with powers to:**
 - Enter, inspect and examine at reasonable time buildings and premises suspected to harbour infringement
 - Arrest persons reasonably suspected
 - Inquire into compliance with the Act
 - Require production of and inspect statutory register
 - make requisition from persons found on premises
- **Registration of Collecting Societies with powers to represent owners:**
 - negotiating, granting of licenses
 - Collection and distribution of royalties

■ - *See Sections 38 & 38, Cap C28, LFN, 2004*

Remedies



Criminal Remedies:

Any of the following acts is an offence in Nigeria, punishable by fine or a term of imprisonment:

- Manufacture or importing or possessing equipment for manufacture of an infringing copy of copyrighted work (Punishment is fine of N1000 per infringing copy or term of imprisonment not exceeding 5 years)
- Trading in and possessing, other than for private/domestic use, infringing copy (Punishment is fine of N100 per infringing copy or term of imprisonment not exceeding 2 years)
- Unauthorised distribution of literary, cinematographic, sound recording and broadcast works (Punishment is fine of N100 per infringing copy or term of imprisonment not exceeding 6 months)

- See Section 20, Cap C28, LFN, 2004

Remedies



Criminal Remedies:

Any of the following acts is an offence in Nigeria, punishable by fine or a term of imprisonment:

- **Trading in works in violation of Anti-Piracy measure** (Punishment is fine of N100,000 or term of imprisonment not exceeding 12 months or both)
- **Importation and possession of works in violation of Anti-Piracy** (Punishment is fine of N500,000 or term of imprisonment not exceeding 5 years or both)
- **Unauthorised possession, reproduction and counterfeiting of Anti-Piracy device** (Punishment is fine of N50,000 or term of imprisonment not exceeding 5 years or both)
- **Failure to keep, or making of false entry in statutory register or knowingly tendering or producing same** (Punishment is fine of N10,000)

- See Sections 20 & 21, Cap C28, LFN, 2004

Remedies



Civil Remedies:

COMMON LAW & EQUITY afford the following remedies:

- Injunction

- Injunctions are granted on the following bases:

- There must be a serious issue
- Damages will not suffice
- Balance of convenience is in favour of applicant
- Court's discretion

- . - *See American Cyanamid v. Ethicon (1975)*

Remedies



Civil Remedies:

COMMON LAW & EQUITY afford the following remedies:

- Anton Piller Order
- A special specie of Injunction is the Anton Piller order, an ex parte order which allows applicant to enter onto premises and seize infringing materials or evidence:
 - There must be a strong prima facie case
 - Damage, actual or potential must be serious
 - Strong evidence of infringing materials or other evidence and real possibility it may be destroyed

■ . - *See Anton Piller KG v. Manufacturing Processes (1975)*

Remedies



Civil Remedies:

COMMON LAW & EQUITY afford the following remedies:

- Damages
- This is to restore the owner to the position as though the injury was never committed:
 - Would owner have charged a licence fee for the work
 - Would he have received royalties
 - . - *See General Tire v. Firestone (1975)*

Remedies



Civil Remedies:

COMMON LAW & EQUITY afford the following remedies:

- Account of Profit
- Alternative to damages, owner may claim account of profit made by the defendant under the equitable doctrine of unjust enrichment
 - . - *See Potton v. Yorkshire (1975)*

Issues for Information Resource Managers





THANK YOU



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