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Legal Measures For Effective Growth Of SMES In Creative And Entertainment Industry In Nigeria: The Copy Right Perspective

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ABSTRACT
Legal measures for effective growth of SMEs in creative and entertainment industry in Nigeria: the copy right perspective is one issue that is of the interest of Law makers and entrepreneurs. This is because businesses must constantly innovate to contribute to the growth of the economy, knowing that a weak Copyright protection discourages such innovation. Considering the importance of SMEs in tackling socio-economic issues, like unemployment and poverty, their operation need to be regulated to enable them align with the Legal system which serves as umpire in securing fairness and legalities in those activities. The crux of this paper is to examine the Legal measures as provided by Copyright Act for the effective growth of SMEs in creative and entertainment industry in Nigeria. The paper adopted doctrinal research methodology. It analyzed the Legal measures available under the Copyright regime and examined the importance of SMEs to individuals and the economy. It identified that Copyright protective measures are veritable tools for the effective growth of SMEs. It offered an analysis that focused on what the operators of SMEs need to know to help boost sustainable productivity. As such, SMEs in utilizing the available measures under the new Copyright regime can franchise to other businesses and further boost economic growth.
Keywords: Growth, Copyright, SMEs Legal Measures, Nigeria

INTRODUCTION

Small and Medium Scale Enterprises (SMEs) are increasingly viewed to be the fulcrum of effective economic growth and development. They are recognized as a major sector for promotion of Private Sector development and partnership. As such, SMEs in the entertainment and creative industries are very vital to economic growth, job creation and Foreign Direct Investment (FDI), particularly in the emerging markets. These enterprises range from film production to Music Studios, Craft Businesses, Performing Arts Groups, Event management business etc, which Leverage in creativity and performance expressions to generate revenue and Contribute to the country's Gross Domestic Products (GDP).

Thus, considering the importance of SMEs in tackling socio-economic issues as mentioned above, it becomes imperative that SMEs need to function with Legal Systems which regulate their interaction with the environment in which they operate. In other words, SMEs activities need to be regulated to enable them align with the Legal System which serves as umpire to ensuring fairness, growth and development.

However, to ensure that SMEs are given the adequate attention needed for economic transformation, the Federal Government of Nigeria in 2003 through the SMEDAN Act of 2003 established the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) to promote the development of small businesses across the Country. It was created to help small and medium Scale businesses and business owners by providing them with the rights tools for faster growth. Despite the establishment of SMEDAN

and its associated functions as established by the Policy Guidelines, the SMEs are still operating below the Level envisaged by the policy makers.

Still to Strengthen the SMEs, the Nigerian Government has repealed and enacted the Copyright Act 2022, the Legal framework which provisions are designed to improve the growth of SMEs.

The proper examination of this Legal framework and its provisions and principles, which shall be dealt with in this paper, we shall get a better picture of the measures so provided for the effective growth of SMEs in Nigeria. We shall also look at the factor that may be needed for the growth of SMEs and Point out ways and means in which the factors identified can be used to improving the growth of SMEs for the overall economic development of our country Nigeria.

METHODOLOGY

The methodology adopted for this study is the doctrinal research method. This is because the research is a Legal Research and the best method to conduct a Legal Research is doctrinal method. To this end, the research will be library based, through the analysis of legal doctrines, frameworks, case laws and other literature that are relevant to the topic.

THEORETICAL FOUNDATION AND CONCEPTUAL CLARIFICATION OF SMALL AND MEDIUM SCALE ENTERPRISES (SMEs)

Natural Law School of Thought

The Naturalist Postulation as proposed by St. Thomas Aquinas is used to explain the nexus between variables of the research topic. The major task of the naturalist theory is to attune man-made law to the demand of universal conception of Justice. Thus, every man-made law ought to attain the end of Justice. Arising from the above, it could be said that the national law philosophy is rooted in the recognition of the inherent right of creativity believe that man are given different talents from the Divine Authority. If the receivers of those talents put more efforts in giving expression to those talents it, therefore follows that such expression must be given a legal support. Thus, the Naturalists view is that a labourer should be worthy of his wages,[1] which is in connection with the John Locke's Labour Theory, which states that 'if a person infuses their labour on commonly held resources, they deserve to enjoy natural ownership over the result of their effort. Hence, a person investing time, money, knowledge and other resources in creating intellectual property must receive the ownership right over it as a result of his labour.[2] Nevertheless, creators of intellectual property should be conferred with some right to enable them recoup their expenses, cost and to benefit from their enterprise. These rights when conferred and utilized properly afford the owners from precluding others from meddling with their property and as such create enabling environment for innovations and research and development necessary for the growth of SMEs.

Sociological School of Thought

The Sociological Theory of law as propounded by Roscoe Pound (1906) and others will be used in justifying the basic of legal measures for effective growth of SMEs in creative and entertainment industries in Nigeria. According to the proponent, the immediate purpose of law is to protect individual interest for the ultimate goal of the society. The assertion of these proponents is in consonance with the Utilitarian Theory which posits that protection of intellectual property is necessary if such protection causes economically positive output in favour of the majority in a society. Thus, intellectual labour should be given due importance so that public good emanates from it as such those concern in making, interpretation and application of law should ensure that social factors that lead to the ultimate good of the society are put into consideration, thereby balancing the competing interest in the society. Flowing from these, it could be said that copyright are limited and are not perpetual (subject to condition).The essence is

[1] *Holy Bible 1stTimothy* 5:18

[2] Neil Netanel, theories of intellectual property <http://www.the ip matters.com/post/theories-of-intellectual-property-rights>Accessed May, 2024.

to create a balance between the benefits accorded to the public and the exclusive rights of the copyright owners[3].

Small and Medium Scale Enterprises

There is no single unified definition of what constitute Small and Medium Scale Enterprises as the definitions rather depend on the nature of industry, industrial capacity, level of development of the country and these vary overtime. The differences amongst the industries could be ascribed to differences in capital requirements of each business. But the basic parameters for the definitions remain the same (number of employees, assets base, turn over and financial strength amongst others). Thus, different departments and organizations have adopted their definitions and according to their standards.

The Centre for Industrial Research and Development (C.I.R.D), Obafemi Awolowo University, Ile-Ife refers Small Scale Enterprise as an enterprise with working capital base not exceeding #250,000 and employing on full time basis 50 workers or less.[4] The CIRD definition concentrated on the working capital and did not recognize the fixed assets base of the enterprise. Working capital comprises the total current assets of the business enterprise minus its liabilities. Current assets are cash and assets that can be converted into cash within one year or normal operating cycle, while current liabilities are money owned that are due within one year.[5]

The Nigeria Bank for Commerce and Industry (NBCI) sees Small Scale Enterprise as one with total capital not exceeding #750,000 (excluding cost of land but including working capital)[6]. The definition differs with the one given by C.I.R.D, based on their capital base. In another development, the Federal Ministry of Industry guideline to NBCI takes Small Scale Enterprise as one with total cost not exceeding #500,000 (excluding cost of land but including working capital).[7] They may equally be regarded as those enterprises whose total assets (excluding land building) are above Ten Million Naira with total employees of above Ten, but not exceeding Forty-Nine employees.[8] By the various definitions given above, it may be safe to say that Small Scale Enterprises are important in the advancement of economic growth because of the low level of capital requirements for their establishment, thus must be protected legally.

Accordingly, medium sized enterprise has been defined as organization with between 100 and 500 employees[9]. This definition based its description on the size of employees. Medium Scale Enterprises are also regarded as those with total capital base of over 50 Million Naira but not more than 500 million Naira including working capital but excluding the cost of land and/or labour size of 101-300 workers.[10]

Having gone through the various definitions above, it could be suggested that definitions of both the small and medium scale enterprises defer among countries and organizations. But for the purposes of this paper work which has growth of small and medium enterprises as its dependent variables, the paper will adopt the definition given by the guidelines for the Small and Medium Enterprise Equity Investment Scheme (SMEEIS), which states, 'for the purpose of this scheme a small and medium enterprise is defined as any enterprise with a maximum asset base of #500 million (excluding land and working capital).[11]

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[3] *Copyright Act s70.*

[4] K O Oduntan, '*The Role of Small and Medium Enterprises in Economic Development: The Nigerian Experience'* <9184EDO314038.PDF> accessed May, 2024.

[5] K Rooney (ed), Chartered Management Institute Dictionary of Business and Management (Bloomsbury Publishing Plc 2003) 371.

[6] OJ Olujobi and OD Edafe, *'Operation of small and medium enterprises and the legal system in Nigeria' humanity and social sciences Communications* (7) (74) 2020 <https;//www.nature.com/articules/s41599-202-0053-y> Accessed May (2024)

[7] *ibid.*

[8] T O. Oloko, '*The Role of Intellectual Property Law in the Regulation of Micro and Small and Medium Enterprises'*<ajol-file-journals-479-articles-215312-submission-proof-215312-5653-531086-1-10-20210.

[9] Rooney(n5) 223.

[10]Olujobi and Edafe (n6).

[11]*Guideline for the Study and Medium Enterprises Equity Investment Scheme* <Smesis Guideline.PDF> Accessed May, 2024.

THE ROLE OF COPYRIGHT ACT AND THE GROWTH OF SMEs IN CREATIVE AND ENTERTAINMENT INDUSTRY IN NIGERIA

The various measures provided by the copyright Act aimed at addressing its provisional objectives, which at long run play significant roles in the growth of SMEs in the creative and entertainment industry shall be specifically discussed:

i. **Control of the Commercial Exploitation of Works:** By the provision of *Section* 9(1) of the Act, Copyright in literary or musical work includes the exclusive right to make a work available to the public by wire, or wireless means in such a way that members of the public are able to access the work from a place and at a time independently chosen by them[12]. It means that works protected by copyright and related rights may not be copied or exploited commercially by others without the prior permission of the right owner, unless a limitation or exception applies as provided under the Act[13]. This exclusivity over the use of works protected by copyright helps the SMEs to gain and maintain a sustainable competitive advantage in the market environment, thereby providing platform for training of indigenous entrepreneurs and wealth creation because the authority to do this rests on the person who has copyright over such work and he also has the authority to authorise someone else to do that. This clearly indicates that only the owner of the work in which copyright subsists has the right to put it in the digital space and thus control the commercial exploitation of the work. In the case of *Nigeria Copyright Commission v Chinonso Ugochukwu,*[14] the court held that exposing and offering for sale for purpose of trade and business and being in possession of 578 copies of infringed literary works for which Copyright subsists is a criminal infringment.

ii. **Generation of Income:** The SMEs protected by Copyright may use their rights or transfer them to others by way of sale, gifts or inheritance. Thus, owners can make or sell copies of works (prints of photographs, copies of sound recording) or sell or assign copyright to another person or company. The work can also be licenced to others, which means permitting another person or company to use the copyright right in exchange for payment on mutually agreed terms and condition or lawfully granting permission for doing of an Act controlled by the Act[15]. These ways help the copyright owners operating in the style of Small and Medium Scale Enterprises (SMEs) to boost their business by generating more income which leads to more savings and investment. More investment leads to employment generation and economic growth and development. In the case of *Netflix Inc& Anor v Ezra Enesi*[16]. The Federal High Court upheld section 30(5) and 30(6) of the Copyright Act, 2022, confirmed an assignment or licence of copyright in a composite work granted by one co-owner is valid and lawful to bind and be for the benefit of all other co-owners. The implication of the judgement is that the co-owner (Licensor) who granted such a licence retains the obligation to share all consideration received under the license agreement with other co-owners equally, subject to any prior agreement on revenue split.

COPYRIGHT MEASURES FOR EFFECTIVE GROWTH OF SMEs IN CREATIVE AND ENTERTAINMENT INDUSTRY:

The Copyright Act, 2022 through plethora of provisions for its enforcement has enhanced the growth of SMEs in Nigeria. Under the Act, the Nigerian Copyright Commission, is the body responsible for the administration, registration and enforcement of the provisions of the Act, has the power to investigate and redress cases of infringement of Copyright and Settle the dispute of Copyright[17]. This implies that the right owner whose copyright has been infringed, rather than going to Court to seek redress, which may be time consuming, may choose to petition the authority (Commission) for redress. This is intended to bring

[12] Copyright Act (n1) S9
[13] *ibid* s35
[14] (2013) LPELR 20797 CA
[15] *Copyright Act (n1) s108*

[16] Suit No FHC/L/CS/1691/2021.
[17] *ibid* s78(1)

speedy solution to cases of infringement, which automatically advert delay of Justice considering the fact that Justice delayed is Justice denied.

Thus, the Commission is empowered to constitute a Dispute Resolution Panel to resolve any dispute arising from;

a. Payment of royalties
b. Terms of license
c. Any Matter in respect of which a determination by the Commission is required under the Act[18].

With these new provisions, right owners can now have a wide range of disputes settled or resolved without the need of going to Court.

The Commission is also empowered by the Act to appoint Copyright Officers to do any of the following act without warrant;

a. Enter into a premises, inspect and examine at any reasonable time any building or premises it reasonably suspect is being used for infringement of Copyright,
b. Arrest any person it reasonably suspect has committed an offence relating to copyright,
c. Demand the production of any record required to be kept[19]. It therefore follows that these duties of the Copyright Officers can be performed without a warrant, just like the Police, but restricted to Copyright issues. Thus, the Officers can seal up a premises where there is a reasonable suspicion that Copyright infringement is taking place. All these provisions introduced in the Act, may bring positive change to the growth of SMEs when guided jealousy.

In another development, to provide for greater protection and strengthen enforcement of Copyright Works, the Act provides that the owners of a work in which Copyright is infringed in the digital space, may send notice of such infringement to the Internet Service Provider (ISP) requesting the service provider to take down the work or disable access to the infringing content or link hosted in its system. It follows that if the form is followed as provided under the Act, the infringing content in the digital space would be disabled[20].

The effect of the above is that upon the receipt of such notice from the ownership of the Copyright Work, the Service Provider must act promptly by notifying the Subscriber of such content and also expeditiously take down or disable such infringing content[21]. The Internet Service Provider may block the account of a repeated infringer, having been warned and the Subscriber (infringer) persists in infringing other people's content[22]. The NCC may either directly or indirectly (with the help of any person) lock or disable access to any content link or website hosted on any system or network which is reasonably believed infringe Copyright under the Act[23].

The above actions to be taken as introduced under the Act is to forestall online infringement of Copyright Works and enhance the ability of the Nigeria creative and entertainment industry to be more efficient. Thus, following the need to protect and enforce the copyright provisions, the Commission has embarked on several initiatives and innovations such as establishing, registering and approval of Collective Management Organization[24], to regulate the conduct of Collective Management of Rights[25]. It has also initiated collaboration support strategies with other relevant stakeholders such as, the Nigeria Customs Service (NCS), the Federal Road Safety Corps (FRSC), the Vehicle Inspection Officers (VIO), the Nigeria Police Force (NPF), the National Film and Video Censor Board (NFVCB), the Nigerian Publishers

[18] Copyright s90(1)(a-c)
[19] *ibid* (n1)s86
[20] *ibid* s54
[21] *ibid* s55
[22] Copyright (n1)s56
[23] *ibid* s61
[24] *ibid* s88
[25] *ibid* s78

Association (NPA) etc[26]. The Commission has also in several occasion issued directives and advisories to relevant stakeholders in the entertainment and creative sector aimed at protecting copyright works[27].

As regards the regulating the conduct of Collective Management of Rights, the Commission has registered and approved the Musical Copyright Society of Nigeria (MCSN) as one of the approved Collective Management Organizations (CMO) in Nigeria for musical works and sound recordings. The MCSN has more than Fifty (50) thousand songwriters, composers, music publishers, performers, producers and record labels, with the responsibility of licensing and collecting of royalties for the usage of sound recording and musical works performed publicly, broadcast or used in Nigeria and other territories through their global partnership.

The Commission through its supervision and regulation, has urged the MCSN to know that at the heart of any musical or copyright estate lies the management of rights, royalties and the distribution of assets and for that purpose, the MCSN has designed its operational model in such a way that the rights to royalties and other related Copyright works of its members who pass away can be comfortably and without delay transferred to their legal successors, upon fulfillment of the legal requirements. In follow up to the above, the Commission has on the 30th of April, 2024, issued advisories to the business entities or business owners on the need to obtain appropriate license or authority for the use of copyright contents, such as music and audiovisual works in their operations[28]. All these efforts are incompliance with its provisional objectives Copyright to enhance the capacity of SMEs for effective growth. Still on the agency collaboration to boost implementation of copyright, the Commission has engaged the National Film and Video Censor Board (NFVCB) to formalize their partnership for enhanced regulation, enforcement and awareness creation in the industry. The two agencies agreed that in the renewal of their longstanding relationship both agencies would respect their separate but complementary mandate and support each other to succeed in effective service delivery in line with the Federal Government development plan for the creative sector, the agencies subscribed to an MoU on Tuesday the 18th day of August, 2020[29].

Based on the powers of the Nigerian Copyright Commission to make regulations to combat the menace of copyright piracy which has affected the fortunes of copyright owners, the Commission deployed litigation proceedings to hold violators accountable. In the case of *Nigerian Copyright Commission v Ugochukwu*[30], the Court OF Appeal convicted the defendant on two count charges for criminal copyright infringement of exposing and offering for sale for purposes of trade and business 578 copies of literary works in which copyright subsists and for being in possession of 578 infringing copies of literary works in which copyright subsist, other than for private or domestic use. The basis of the judgement was that it is the only the owner of the work or the assignee or licensee that has right and control over the exploitation of the work.

Also, in *NCC v Kadiri (2015)*[31], the Court also held that the piracy of broadcast right o HITV is in contravention of the copyright Act. Thus, it could be wise to state that enforcement of IPL has a positive impact to the growth of SMEs in that it promotes societal development, creativity and innovation by giving statutory expression to the rights of creators and innovators in their creations and innovations as required for economic growth and prosperity.

CONCLUSION

It could be said that Copyright Act 2022 has measures for the growth of SMEs in Nigeria, especially SMEs in creative and entertainment industry. This is evident in the inclusion of provisions such as;

[26] NCC Newsletter, 'Copyright matters' (Abuja, July-September 2021 No.11), <copyright matters 2021 issue No. 11 pdf> Accessed 14/10/2024

[27] MSCN, 'New and insight' https://www.mcsnigeria.org Accessed 30-01-2025

[28] MCSN News and Insight (n27)

[29] NCC Press Release, 'NCC, NFVCB Renew Partnership on Anti-piracy' (August 21 2020) <Copyright.gov.ng/ncc-nfveb-renew-partnership-on-anti-piracy> Accessed 30/01/2025

[30] (2023) LPELR 20797 CA

[31] Unreported case

protection of digital works and enforcement of their infringement,[32] enhancement of the power of NCC to make regulations such as, appointment/constitution of Dispute Resolution Panel, [33] expansion of the power of the Copyright Officers etc. [34] All these inclusion and expansion are to strength the SMEs in creative and entertainment industry in Nigeria through adequate protection of their works and ensuring that they are sufficiently rewarded for their creative and innovative efforts.

These enables the SMEs in Nigeria to compete with others in developing nations by creating jobs for the unemployed, promoting growth, providing platforms for capacity building and reducing poverty which are important roles to rapid development in an economy.

RECOMMENDATIONS

Having enumerated the measures as provided under the copyright regime for effective growth of SMEs. It now lies on the SMEs operators to take full advantage of the measures so provided by taking the following necessary steps:

1. SMEs operators should consider joining a Collective Management Organization (CMO) in their sector for collection and distribution of royalties.
2. Adopt alternatives dispute resolution by applying to Dispute Resolution Panel to resolve issues in respect of which a determination by the Commission is required under the Act, instead of rushing to the court which may be time consuming.
3. The SMEs operators should also seek appropriate counsel for clarification on the provision of the new Act as may be required from him to time as to know the appropriate time to go to court to seek redress.

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[32] Copyright (n1) s54
[33] *ibid* s90
[34] *ibid* s86