

The Legal Framework for Conventional and Islamic Banks in Nigeria: A cursory Analysis

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Abstract

The legal framework for Conventional and Islamic Banks reflect the policies adopted in regulating and supervising the banking industry by the executive arm of the government. Hence, this article makes a cursory analysis of those legal framework for the conventional and Islamic Banks in Nigeria the aim of which is to make novel contribution in the body of existing literature. This became imperative considering the fact that Islamic Banks are not in any way exonerated from keeping strict banking standards observed by the conventional Banks and are at the same time expected to meet the Shariah standards which is the origin of their banking principles. The study adopted the doctrinal research method which involves the use of primary and secondary sources of law. Having made a cursory analysis of the legal framework for the conventional and Islamic bank, it was discovered that the primary legislation for the regulation of Banks in Nigeria is the Banks and Other Financial Institutions Act (BOFIA) which, with the Central Bank of Nigeria (Establishment) Act 2007 (CBN Act), gives the Central Bank of Nigeria (CBN) powers to supervise and regulate Banks and other financial institutions in Nigeria. Hence, the creation of profit and loss sharing Banks now called Islamic Banks. It is observed that one of the legal challenges facing Islamic Banks in Nigeria is the problem of legislation. It therefore recommended that the Nigerian legislatures shall make moves to make further legislation to preserve and expand the legislative basis of the Islamic banking institutions in the country.

1.1 Introduction

The legal framework for Conventional and Islamic Banks reflect the policies adopted in regulating and supervising the banking industry by the executive arm of the government.¹ But, as we all know, the Nigerian legal system belongs to the common law jurisdiction with the Constitution of the Federal Republic of Nigeria 1999 as the Supreme law of the country to which every other law is subject.² In Nigeria, the conduct of business is regulated through Federal legislation which is inclusive of the Companies and Allied Matters Act, Cap C20, Laws of the Federation of Nigeria, 2004 (CAMA), a law which regulates the Formation, Incorporation and winding up

¹ O yerokun casebook on law of banking. (Princeton& associates publishing company ltd ikejalagos) 1.

² Section 1(3) of the Constitution of the Federal Republic of Nigeria,1999 (as amended).

of Companies in Nigeria, the Investment and Securities Act 2007, No. 29 (ISA), which is the primary legislation regulating the Nigerian Capital market and the Banks and Other Financial Institutions Act, Cap B3 Laws of the Federation of Nigeria, 2004 (BOFIA) which regulates the activities of Banks in Nigeria. Under these various laws, the bodies entrusted with regulating the conduct of business in Nigeria include the Corporate Affairs Commission, the Securities and Exchange Commission and the Central Bank of Nigeria. The primary legislation for the regulation of Banks in Nigeria is the Banks and Other Financial Institutions Act (BOFIA) which, with the Central Bank of Nigeria (Establishment) Act 2007 (CBN Act), gives the Central Bank of Nigeria (CBN) powers to supervise and regulate Banks and other financial institutions in Nigeria. BOFIA formerly known as BOFID was promulgated as a Federal decree no 25, 1991 by the supreme military council of Nigeria of the military era, it however automatically became an Act deemed to have been concurrently passed by the National Assembly by virtue of section 315 of the Constitution of the Federal Republic of Nigeria 1999. It is presently codified in Cap B3 laws of the federation of Nigeria 2004.³ It is this very legislation that provides for the establishment of profit loss sharing Banks (PLS) which is by extension called Islamic banking.⁴ By way of definition, Islamic banking is defined as the business of financial intermediation, mobilizing savings from the public on the basis of partnership and profit and advancing Capital to entrepreneurs on the same basis⁵. Islamic banking therefore, is a system of banking that complies with the principles of Shari'ah (Islamic law) and its practical application through the development of Islamic economics. Shariah forbids the payment or acceptance of interest fees for the lending and accepting of money respectively.⁶ This is known as Riba (usury). Usury is condemned and prohibited in the strongest possible terms in these two scriptures.⁷

The monopoly status enjoyed by the conventional system of banking and finance changed with the emergence of Islamic system which essentially is based on the principles of shariah. This is because, Islamic banking allows financial transactions deemed lawful according to Islamic legal principles.⁸ It is in the light of the above that this article, analysis the legal frame-work for conventional and Islamic banking in Nigeria.

³ A I Abikan *Essentials of Islamic banking and finance in Nigeria*. (Benchmark publishers ltd, Zaria 2013)107.

⁴ S.52 BOFIA, 1991.

⁵ R.O. Kareem, *Islamic banking in Nigeria: challenges and prospects* available at www.academia.edu. Islamic banking in Nigeria accessed on 15th January 2021 @11:00

⁶ Q 3: 130

⁷ Allah says "Those who devour usury will not stand except as stands one whom the Satan by his touch hath driven to madness. That is because they say trade is like usury, but Allah permitted trade and forbidden usury (interest).

⁸ U.A Oseni, *effective dispute management in the Islamic finance industry in Nigeria: lesson from selected jurisdiction*. (John wiley and sons ltd) 135.

1.2 Aim and Objectives of the Research

The aim of this article is to make novel contribution in the body of existing literature by giving a cursory analysis of the legal frame work for conventional and Islamic Banks in Nigeria.

The objectives of this research are to:

- i. To make a cursory analysis of the legal framework for conventional and Islamic Banks in Nigeria;
- ii- Analyse the legal challenges facing Islamic Banks in Nigeria

1.3 Research Methodology

The methodology employed in the conduct of this research is doctrinal research method for being the prevalent. This involves the use of primary and secondary sources of law. The relevant materials in the libraries such as, books, journals, legal encyclopaedia, news-letter, magazines, periodicals, statute books and law reports would be consulted. The doctrinal method is considered best for this research for a simple reason that the issue to be discussed is associated with a divine law. There are therefore number of books in both academic and public libraries at the disposal of the researcher. The primary sources in the context of this research includes Quran, Hadith of the Noble Prophet (SAW) while the secondary source includes Ijma, Qiyas, and other relevant text usually found in the library (such as journals, text books, periodicals etc).

1.4 The Advent of Conventional Banks in Nigeria

The banking industry in Nigeria started during the colonial era with the establishment of Colonial Banks. In other word, the existence of Banks in Nigeria dates back as far as 1862 when the first Nigerian bank came into being.⁹ There was no banking legislation until 1952; at that time, Nigeria had three foreign Banks and two indigenous Banks with a collective total of forty branches. Despite the set standards by the 1952 Ordinance, the growth of demand deposits was slowed down by the Nigerian propensity to prefer cash and distrust cheques for debt settlements. 1912 experienced the establishment of the West African Currency board which was to help in financing the export trade of foreign firms in West Africa and to issue a West African Currency which could be converted to British pound sterling.¹⁰ The colonial policies barred the local investment of reserves, discouraged deposit expansion, precluded discretion for monetary management and did nothing to educate Africans in developing indigenous financial institutions. This led to a motion by several Nigerian members of the house to establish a Central bank to facilitate economic development.¹¹ Though the motion was defeated, the colonial

⁹ O. Yerokun, *Case book on Law of Banking*. (Princeton& associates publishing company Ltd ikejalagos)1

¹⁰ Ibid.

¹¹ Ibid.

administration appointed a bank of England to study the issue and it advised against a Central bank with emphasis on their effectiveness in an undeveloped Capital market. Another study was conducted in 1957 and this resulted in the creation of a Nigerian Central bank and the introduction of the Nigerian Currency. The role of the Central bank was to establish the Nigerian Currency, control and regulate the banking system, serve as banker to other Banks in Nigeria and carry out the government's economic policy in the monetary field. This policy included control of bank credit growth, credit distribution by sector, cash reserve requirements for commercial Banks, discount rates—interest rates the Central Bank charged commercial and merchant Banks—and the ratio of Banks' long-term assets to deposits. Changes in Central Bank restrictions on credit and monetary expansion affected total demand and income¹². For example, in 1988, as inflation accelerated, the Central Bank tried to restrain monetary growth. During the civil war, the government limited and later suspended repatriation of dividends and profits, reduced foreign travel allowances for Nigerian citizens, limited the size of allowances to overseas public offices, required official permission for all foreign payments, and, in January 1968, issued new Currency notes to replace those in circulation¹³. Although in 1970 the Central Bank advised against dismantling of import and financial constraints too soon after the war, the oil boom soon permitted Nigeria to relax restrictions. The three largest commercial Banks held about one-third of total bank deposits. In 1973 the Federal government undertook to acquire a 40-percent equity ownership of the three largest foreign Banks. In 1976, under the second Nigerian Enterprises Promotion Decree requiring 60-percent indigenous holdings, the Federal government acquired an additional 20-percent holding in the three largest foreign Banks and 60-percent ownership in the other foreign Banks. Yet indigenization did not change the management, control, and lending orientation toward international trade, particularly of foreign companies and their Nigerian subsidiaries of foreign Banks. At the end of 1988, the banking system consisted of the Central Bank of Nigeria, forty-two commercial Banks, and twenty four merchant Banks, a substantial increase since 1986. Merchant Banks were allowed to open checking accounts for corporations only and could not accept deposits below N50,000. Commercial and merchant Banks together had 1,500 branches in 1988, up from 1,000 in 1984. In 1988 commercial Banks had assets of N52.2 billion compared to N12.6 billion for merchant Banks in early 1988. In 1990 the government put N503 million into establishing community Banks to encourage community development associations, cooperative societies, farmers' groups, patriotic unions, trade groups, and other local organizations, especially in rural areas. Other financial institutions included government-owned specialized development Banks: the Nigerian Industrial Development Bank, the Nigerian Bank for Commerce and Industry, and the Nigerian Agricultural Bank, as well as the Federal Savings Banks and the Federal Mortgage

¹² www.cbn.gov.ng accessed on 16th January 2021@10:00am

¹³ O. Yerokun, *Case book on Law of Banking*. (op cit)

Bank.¹⁴ Also active in Nigeria were numerous insurance companies, pension funds, and finance and leasing companies. Nigeria also had a stock exchange (established in Lagos in 1961) and a number of stockbrokerage firms. The Securities and Exchange Commission (SEC) Decree of 1988 gave the Nigerian SEC powers to regulate and supervise the Capital market. These powers included the right to revoke stockbroker registrations and approve or disapprove any new stock exchange. Established in 1988, the Nigerian Deposit Insurance Corporation increased confidence in the Banks by protecting depositors against bank failures in licensed Banks up to N50, 000 in return for an annual bank premium of nearly 1 percent of total deposit liabilities¹⁵

1.5 Modus Operandi of Conventional Bank

Conventional Banks are quasi –public institutions for the custody and loan of money, the exchange and transmission of the same by means of Bills and drafts and issuance of its own Promissory notes (Cheques) payable to bearer, as Currency, or for the exercise of one or more of these functions not always necessarily Chartered but sometimes so, created to serve public ends. A bank is wholly the creation of statute to do business (for profit) by legislative grace, and the right to carry on a banking business through the agency of a corporation is a franchise which is dependent on a grant of corporate powers by the state.¹⁶ The law that regulates banking in Nigeria is a species of the law of contract. It follows, therefore, that for a contract to exist between Bank and its Customers there must be an offer and an acceptance of that offer.¹⁷ The relationship in law between a bank and its customer has been that of a debtor and a creditor. This is because, when a bank credits the current account of its customer with a certain sum the bank becomes a debtor to the customer in that sum and conversely when a bank debits the current account of its customer with a certain sum, the customer becomes a debtor to the Bank in that sum.¹⁸ The Bank can use these funds for investment and other purposes regardless of Shariah prohibition. Free of cost services are offered to customer which tantamount to interest. No specific underlying mode is used in Saving Account. The Bank can use these funds for investment and other purposes regardless of Shariah prohibition. In Debtor-Creditor Relationship, Interest Lease commences the very day on which the price is paid by the Bank, whether the Customer has taken the delivery or not. Expenses incurred in the process of purchase of asset are paid by the Customer Lease does not differentiate between wear & tear or losses caused by the negligence of Customer and Customer is liable for cost incurred due to natural disasters. Penalty charges are taken from Customer on late payment. They are taken as income by the Bank. In a lease agreement it has been noticed that unrestricted power has been given to Bank to

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Wema Bank V. Osileru (2008)10 NWLR150

¹⁷ Owoeye V. Wema Bank Ltd. (2001)9 NWLR5.

¹⁸ Yesufu V. African Continental Bank (1981) 1 SC74 at 92.

terminate the lease unilaterally conventional Banks are in the business of lending & borrowing money based on interest. In Conventional Banks, we see no such restrictions. Interest is the back-bone of this system and short selling, sale of debts and speculative transactions are common.¹⁹

In conventional Banks, all types of industries are financed, only businesses deemed illegal by the law of the land are not supported. Generally, conventional Banks do not involve themselves in trade and business as they act only as money lenders. In conventional Banks almost all the financing and deposit side products are loan based. Conventional Banks treat money as a commodity and lend it against interest as its compensation. Relation of customers and Banks is creditor-debtor compensation is always interest.²⁰

1.6 Governance in Conventional Banks

To prevent avoidable incidents of mismanagement and attain high professional ethical standards in the banking sector, the appointment and official activities of Banks' Directors, managers, secretaries and other personnel are subject to strict control. Accordingly, the appointment of

Any person as Chief Executive Officer or a Director of any Bank can only be made subject to obtaining the written consent of the Central Bank of Nigeria (CBN). When such a request is made, the CBN is expected to conduct thorough independent investigations as regards the competence and character of the proposed officer.²¹ In order to ensure that only qualified persons of high moral integrity are engaged in the day-to-day management and operations of a Bank, Bank and other financial institutions Act (BOFIA) prohibits the appointment of some persons as Director, secretary or an officer of a Bank. Such persons include:

- a person of unsound mind or persons in Capable of discharging their functions owing to ill health;
- a declared Bankrupt or a person who has suspended payment or compounds with his

Creditors; a convict of any offence involving dishonesty or fraud;

- a person guilty of serious misconduct in relation to his duties; or
- a professional disqualified or suspended from practising his profession in Nigeria by competent authority.²² Similarly, Banks are prohibited from appointing a person whose appointment with a Bank was terminated or who was dismissed for fraud.²³

¹⁹ <https://aims.education/study-online/difference-between-islamic-banking-and-conventional-banking-aims-uk> accessed on 16th January 2021@10:00am

²⁰ Ibid.

²¹ Section 48(1) BOFIA *opp cit*

²² Section 48(2) BOFIA *opp cit*.

In addition, no person who has been a Director or directly concerned with the management of a Bank wound up by the court is qualified for a fresh or further appointment except with the express authority of the governor of CBN. The Act also prohibits the management of a Bank by a person engaged in any other business or vocation or a Director of any other company not being a

subsidiary of the Bank²⁴. However, with the approval of the CBN, a Director of any other Bank or of any corporate body with voting rights in excess of 10 per cent of all shares of the Bank may be appointed a Director. In addition, every Director of a Bank is required to sign a code of conduct prescribed by the CBN, while other officers of the Bank must sign a code of conduct approved by the Board of Directors. The usual fiduciary duties of company officers are imposed by BOFIA on Bank managers, Directors and other officers. For instance, they are prohibited from having any personal interest in any advances or proposed advances, loan or credit facilities extended by the Bank, or permitting any person to overdraw from any account with the Bank without proper authorisation or compliance with rules and guidelines for that purpose. In addition, no secret profit, benefit or reward may be obtained by such an officer²⁵.

On the other hand, where an officer has any personal interest in any proposed or actual advance, loan or credit facility, he is required to disclose to the Bank or its Board of Directors the nature and extent of such interest(s). A general notice to the Board of Directors which must be circulated by the Board's secretary is deemed to be a sufficient declaration of interest by such officer.²⁶

Justifiably, this requirement is limited to personal interest in any proposed or actual advance, loan or credit facility. An officer may not be required to disclose personal interest where he merely introduces a customer to the Bank for other purposes other than that listed in BOFIA. The court²⁷ in interpreting this requirement held that the interest referred to under the requirement must be circumscribed within or limited to any advances, loan or credit facility or proposed advance loan or credit facility from the Bank. Nevertheless, the grant of any advance, loan or credit facility by any officer must be made subject to the rules and regulations of the Bank.²⁸ where collateral is required for such grant, it must first be obtained and deposited with the Bank before the facility is extended, otherwise such an officer will be guilty of an

²³ Section 48(4) BOFIA *opp cit*

²⁴ Section 48(3) BOFIA *opp cit*.

²⁵ Section 18 BOFIA *opp cit*

²⁶ Ibid.

²⁷ In the case of Co-operative Development Bank Plc v Joe GoldayCoLtd (2003) LPELR-1617(SC)

²⁸ Section 18(5) BOFIA.

offence²⁹. The essence of these provisions is to reduce or eliminate the incidence of having to contend with non-performing credit portfolios and ensure proper securitisation and collateralisation of such obligations. In other words these provisions enjoin every Bank's personnel to protect the Bank against all risks connected to any of such loan transactions by imposing an obligation to adhere to the Bank's internal credit risk management rules. What is more, Banks' Directors in handling Banks' funds are subject to close scrutiny of the CBN. Accordingly, Banks' Directors (jointly or severally) are not permitted to owe the Bank outstanding, unsecured advances, loans or unsecured credit facilities, of an aggregate amount in excess of 50,000 Naira without the prior approval in writing of the CBN. This restriction extends to a Director's wife, husband, father, mother, brother, sister, son, daughter and their spouses. Also included are any firms, partnership or private Company in which the Bank or anyone or more of its Directors is interested as Director, partner, manager or agent or any of its Directors is a guarantor. And with regard to public company, if the Bank or any of its Directors jointly or severally maintains shareholding of not less than 5 per cent either (directly or indirectly), the restriction applies. Similarly, a Bank is prohibited from allowing to be outstanding to any its officers and employees any unsecured advances, loans or unsecured credit facilities, the amount of which in the aggregate for anyone officer or employee exceeds one year's emolument to such officer or employee.³⁰

1.7 Advent of Islamic Banking in Nigeria

Islamic Banks emerged on to the financial scene in early 1970s³¹ when the Muslims started to realize that the current system of banking and economy was based on *Riba* that is interdicted in Islam and is categorically forbidden in all its shapes whether commercial or non-commercial; and there should be an alternate system where its operations, products and services conforms to the principles of Shariah. During the last 50 years the Islamic financial industry has shown remarkable progress both from a theoretical and practical perspective. Even though Islamic Banks emerged in response to market needs of Muslim clients, they are not religious institutions. Like other Banks, they are profit-seeking institutions. However, they follow a different model of financial intermediation. The most important distinguishing feature of the Islamic Banking model apart from the prohibited Acts is the use of risk-sharing models of finance. Islamic scholars working with practical Bankers have developed a number of such models, including Mudarabah, Musharakah, Murabahah, Salam, Istisnaj, leasing and Sukuk.

²⁹ https://www.researchgate.net/publication/342872542_Legal_Framework_for_Risk_Management_in_the_Nigerian_Banking_Sector_Lessons_from_the_Past_Financial_Crises accessed on 15th January 2021@12:00

³⁰ Ibid.

³¹ M. A Ali, *The Roots & Development of Islamic Banking in the World & in Pakistan*. South East Asia Journal of Contemporary Business, Economics and Law, (2015). 7(1), 58–63.

The emergence of Islamic Banks in several Muslims and non-Muslims Countries raised a lot of concern for its delayed emergence in Nigeria. Hence, this informed the enormous efforts being made over the years to ensure the establishment and operation of Islamic Banks in the country in view of the economic and financial potentials it holds for the country.³² In view of this, the 1990s witnessed the agitations mood, which eventually led to the granting of two licences in 1992. However it is important to state that the promulgation of the Banks and other Financial Institutions Decree (BOFID) 24 and 25 of 1991 which replaced the Banking Act of 1969 actually signalled a new dawn for Banking operation in Nigeria because of the landmark provisions made for the establishment of non interest Banking in the country.³³ Unfortunately, even with the granting of two licences, none could commence operation until 1999 when the former Habib Nigeria Bank Limited (previously Bank PHB and now Keystone Bank) started a non-interest Banking window. Similarly, Jaiz Bank International Plc which was incorporated in April 2003 but opened its door to the public in January 6, 2012 on the heels of the most recent Banking reforms in the Country.³⁴

Notwithstanding all these setbacks, the recent circular released by the CBN on the frame work for non-interest financial institution (NIFI)³⁵ has added a lot of optimism to the Islamic Banking project in the country. For instance, the introductory aspect states clearly the various non-permissible transactions, contracts and instruments. In the same vein, section 5.0 also spelt out unambiguously the recognised and permissible modes of financing.³⁶ According to the CBN Islamic Banking as one of the models of non interest Banking serves the same purpose of providing financial services as do the conventional financial institutions save that it operates in accordance with the principles and rules of Islamic commercial jurisprudence that generally recognizes profit and loss sharing and the prohibition of interest, as a model.

³² D Mustapha and M Y Ibrahim Essentials of Islamic banking and finance in Nigeria. Benchmark publishers ltd, Zaria 2013 .86

³³ Ibid.

³⁴ Ibid

³⁵ According to the Central bank of Nigeria, the acronym NIFI means a Bank or other Financial Institution (OFI) under the purview of the Central Bank of Nigeria, which transacts banking business, engages in trading, investment and commercial activities, as well as the provision of financial products and services in accordance with the principles and rules of Islamic commercial jurisprudence. The CBN further states that the objectives of the framework is simply to provide the minimum standards required for the operation of non-interest banking and financial services in the Country. Importantly the revised version on the newly released NIFI guidelines categorized the finance model into two: i non-interest banking and finance based on Islamic commercial jurisprudence. And ii non-interest banking and finance based on any other established non-interest principle.

³⁶ This is indicated in the appendix A.

1.8 Modus Operandi of Islamic Banks

An Islamic Bank is a deposit-institution whose scope of activities includes all currently known Banking activities, excluding borrowing and lending on the basis of interest. Islamic Banking Product ranges from Mudarabah (Passive Partnership), which is a contract between two parties, a Capital owner and an investment manager. Profit is distributed between the two parties in accordance with the ratio that they agreed upon at the time of the contract; Musharakah (Active Partnership) which is similar to Mudarabah but both partners participate in the management and provision of Capital and also share in the profit and loss. Profits are distributed in accordance with agreed ratios but the loss must be distributed in proportion to the share of each in total Capital; Diminishing Partnership: This is a contract between a financier (the Bank) and a beneficiary in which the two agree to enter into a partnership to own an asset, but on the condition that the financier will gradually sell his share to the beneficiary at an agreed price at the agreed time. Murabahah (Sales Contract at a Profit Mark-up): In this contract the client orders an Islamic Bank to purchase at a specific cash price, promising to purchase such commodity from the Bank once it has been bought, but at a deferred and agreed upon price and profit margin called mark-up in favour of the Bank. Ijara (leasing): The subject matter in a leasing contract is the usufruct generated over time by an asset, such as machinery, airplanes, ships or trains. This usufruct is sold to the lessee at a predetermined price. The lessor retains the ownership of the asset with all the rights as well as the responsibilities that go with ownership. A Lease Ending in the Purchase of the Leased Asset: Leasing that ends in the purchase of the leased asset is a financing contract which is intended to transfer ownership of the leased asset to lessee at the end of the lease agreement. Al-Istisna' (Contract of Manufacture): Al-Istisna' is a contract in which a party orders another to manufacture and provide a commodity, the description of which, delivery date, price and payment date are all set in the contract³⁷

1.9 Governance in Islamic Banks

Governance in Islamic Banks is a rule-based incentive system. Compliance with the rule guarantees good governance which ensures social order and justice in the society. In an Islamic system, the observance of rules of behaviour is a guarantee for the internalisation of stake holders' interest alongside that of the society as a whole. No other institutional structure would be needed if there were complete adherence to Islamic rules.³⁸ It is in the light of this that in Islamic Banking and financial institution there is a shariah Board system which oversees the operation in order to ensure that they are in compliance with the rules of shariah.³⁹

³⁷[ResearchGate | Find and share research](#) accessed on 15/January 2021

³⁸O.y. Abdul. *Corporate governance and Islamic banking in Nigeria* (benchmark publishers ltd kano, Nigeria 2003)155.

³⁹ Shariah board usually consist of Scholars in shariah matters.

1.10 The Legal Frame Work of Islamic Banking in Nigeria

The legal framework is other essential aspects to be considered by the government to ensure a vibrant and efficient Islamic financial system. To experience a sustainable growth of the anticipated Islamic Banking system, a comprehensive legal infrastructure should be put in place. As discussed earlier, the primary legislation for the regulation of Banks in Nigeria is the Banks and Other Financial Institutions Act (BOFIA) which, with the Central Bank of Nigeria (Establishment) Act 2007 (CBN Act), gives the Central Bank of Nigeria (CBN) powers to supervise and regulate Banks and other financial institutions in Nigeria. BOFIA formerly known as BOFID was promulgated as a Federal decree no 25, 1991 by the supreme military council of Nigeria of the military era, it however automatically became an Act deemed to have been concurrently passed by the National Assembly by virtue of section 315 of the Constitution of the Federal Republic of Nigeria 1999. It is presently codified in Cap B3 laws of the federation of Nigeria 2004.⁴⁰ It is this very legislation that provide for the establishment of profit loss sharing Banks (PLS) which is by extension called Islamic Banking.⁴¹ Pursuant to relevant provisions of the CBN Act, 2007 and BOFIA 1991 as amended empowering the Central Bank governor to make rules and regulations for the operation and control of all institutions under the supervision of the Bank, the CBN issued regulations for non-interest financial institution in Nigeria in January, 2011. Although the framework attracted a lot of criticism, particularly from the non-muslims populace on allegation of promoting religious ideals in a secular state, nonetheless, it laid good foundation for a smooth take-off of Islamic financial system in Nigeria. The framework covers operations of full-pledge Islamic Bank, micro finance Bank, non interest subsidiary, window or branch of a conventional and non-interest mortgage and finance institutions. It also established the CBN Shariah Council (known as Financial Regulation Advisory Council of Experts (FRACE) as advisory body on shariah regulatory matter. Two guidelines have also been issued in support of the framework.⁴² All these regulations and guidelines paved ways for the issuance of the operating license to the first full-fledge Islamic Bank in Nigeria in June 2011.

1.11 Challenges of Islamic Banks in Nigeria

Islamic Banks are not in any way exonerated from keeping strict Banking standards observed by the conventional Banks. In addition they are expected to meet the Shariah standards as the origin of their Banking principles is Shariah commercial jurisprudence. This places an additional burden on the Banks of keeping up with these dual responsibilities. To ensure constant compliance with the Banking laws and

⁴⁰ A I Abikan *Essentials of Islamic banking and finance in Nigeria*. (Benchmark publishers ltd, Zaria 2013)107.

⁴¹ S.52 BOFIA, 1991.

⁴² Guidelines on shariah governance for non-interest financial institutions in Nigeria 2011; and guidelines on non-interest window and branch operations of conventional Banks and other financial institutions, 2011.

ethics, the laws of the state usually provide for a body to oversee the activities of conventional Banks with powers inter alia to revoke the license of a failing Bank, take over or wind up any as the case may be. However what seem to be a missing link between Islamic Banking in Nigeria and its future is The term *Islamophobia* coined from the words Islam and phobia⁴³. Consequently, *Islamophobia* is viewed as an irrational or obsessive fear of Islam or simply the general feelings that everything about Islam is bad, and it is better to stay away from everything that has to do with Islam. The above misconception is further compounded by the horrific deeds of some so called Islamic fundamentalist who wrongly use, Islam as justification for their dastard acts. Based on the above misunderstanding and prejudice about Islam, any term or concept associated with Islam is automatically opposed by many without objectively studying the concept before arriving at a more rational decision. This is the same fate Islamic banking is suffering in Nigeria despite it benefit to both the entire Nigeria economy and Nigerian's at large. One of the legal challenges facing Islamic Banks in Nigeria is the problem of legislation. In the face of the recent wave in Islamic Banking, the Nigerian legislature has not made moves to make further legislation to preserve and expand the legislative basis of the Islamic Banking institution. The CBN had to scuttle under the existing BOFIA with its limitations and dared the ensuing barrage of zealous opposition. Though the supervisory functions of the CBN over Islamic Banks are similar in many respects with that of the conventional Banks, it may be necessary to suggest the creation of a separate statutory body as the regulatory authority for specialized Banks where Islamic Banks would be adequately provided for. The statute establishing the body would equally provide extensively for Islamic Banking matters, viz its peculiar economics, judicial operation, insurance institutions as related to Islamic Banking and all other related matters. This will secure a flourishing Islamic financial market which is good for innovation and diversity in the Nigerian financial market. Another legal challenge identifiable with Islamic Banking in Nigeria is the area of adjudication. The existing legal framework may be less than adequate in dispute resolution. This is because disputes that pertain to Islamic Banks are only open to litigation before the regular conventional courts and tribunals which are not trained in the Islamic commercial jurisprudence. Because of this lack in qualified judges, it is argued that the need to encourage the growth of Islamic Banks is as important as the need to train specialists in dispute resolution mechanisms as specifically applicable to Islamic Banks because of the complexities involved in Islamic Banking and finance disputes. It is observed that the current practice where Islamic Banking and finance disputes are heard and determined by the civil or common law courts with lopsided judgments will be counterproductive to the practice of Islamic Banking and finance. It is therefore suggested the development of Alternative Dispute Resolution (ADR) processes within the Islamic legal paradigm, a number of which was suggested to include Sulh

⁴³ A. Bello & M. Abubakar *Challenges and Solutions to Islamic Banking System in a pluralistic – secular country like Nigeria*. Mediterranean Journal of Social Sciences vol. 5 No. of 6.

(negation/mediation), Tahkim (arbitration), Med-Arb (a combination of sulh and tahkim), Muhtasib (ombudsman).

1.12 Conventional Banks versus Islamic Banks

The conventional and Islamic Banking system share the same objective that is to generate maximum profit though their approaches and executions are a bit different than the other. The main difference often speculated by economists in both mode of Banking system is the involvement of interest also known as *Riba*. Unlike the conventional Banking system, the Islamic Banking system prohibits the engagement of *Riba* in any of its transactions. Also, Islamic banking operates under different principles and they have different risk profiles. The Islamic banks have regulations of two types; first is the government and the central bank that govern the conventional banks as well and the other is the Shariah Supervisory Board that approves the products of the Islamic banks and keeps a check over the implementation of the rules defined by the board. The central bank defines some rules which are specific to the Islamic banks. For example, minimum capital requirements are higher to establish an Islamic bank than the conventional banks⁴⁴. Islamic banks have to pay more taxes and registration costs because it is asset-based banking and the bank has to own the goods it further sells which eventually are paid by the client, but it increases the cost⁴⁵.

On the other hand, the regulations, laws, rules and transactions of conventional banking system are fully manmade. Investors are encouraged by maximum interest rate. The aim of conventional banking system is to earn profit. Therefore In case of any default by the investors it charges extra amount of money.⁴⁶ However, despite the above differences many conventional banks also open Islamic banking window or moves towards Islamic banking due to change in the trend of banking.⁴⁷

1.13 Observation

This research is an original contribution to the body of knowledge and the following are its major observations:

- i- One of the legal challenges facing Islamic Banks in Nigeria is the problem of legislation. In the face of the recent wave in Islamic Banking, the Nigerian legislature has not made moves to make further legislation to preserve and expand the legislative basis of the Islamic Banking institution.

⁴⁴ A. Salman, *Islamic financial system and conventional banking: A comparison*. Arab economic and business journal volume 13 2018

⁴⁵ Ibid.

⁴⁶ A. Bello & M. Abubakar *Challenges and Solutions to Islamic Banking System in a pluralistic – secular country like Nigeria*. Mediterranean Journal of Social Sciences vol. 5 No. of 6.

⁴⁷ J. Sole, *Introducing Islamic Banks into Conventional Banking Systems* available at www.imf.org/external/pubs/ft/wp/ accessed on 23rd April 2021.

- ii- There is a need to secure a flourishing Islamic financial market which is good for innovation and diversity in the Nigerian financial market.
- iii- Another legal challenge of Islamic Banks in Nigeria is in the area of adjudication. This is because disputes that pertain to Islamic Banks are only open to litigation before the regular conventional courts and tribunals which are not trained in the Islamic commercial jurisprudence

1.14 Recommendation

In line with the above observations made, this research hereby recommends as follows:

- i- The Nigerian legislatures shall make moves to make further legislation to preserve and expand the legislative basis of the Islamic Banking institutions in the country.
- ii- There should be established a separate statutory body as the regulatory authority for specialized Banks where Islamic Banks would be adequately provided for.
- iii- The government should strengthen the judiciary through training, support, discipline and enabling environment with a view to ensuring speedy and proper application of matters concerning Islamic commercial jurisprudence.

1.15 Conclusion

This article analysed the legal framework for conventional and Islamic Banking in Nigeria using the doctrinal research method in which the primary and secondary sources of law as well as the relevant materials in the libraries such as, books, journals, legal encyclopaedia, news-letter, magazines, periodicals, statute books and law reports were consulted. The article revealed that Banking business is one of the fastest growing sectors of the Nigerian economy which requires a fundamental framework that will enhance the business and to regulate its operations to meet the challenging aspect of the sector. The coming into force of the revised Banks and Other Financial Institutions Act in the year 2007 has sent a signal to all players of the sector that Banking business must be in conformity with the relevant laws and therefore no Bank in Nigeria will start business without recourse to the Act which is the enabling law of the sector.

An Appraisal of Performers Right and its Implication to Copyright Ownership in Nigeria

By

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Abstract

The Nigeria Copyright Act Introduce a species of right that are concentrated to be similar to, but the laid down laws are not the same as copyright. These rights, which are related to copyright, are generally referred as performer's right in musical performance, reading and recitation of literary and or any similar presentation which has been given international recognition in many International treaties or conventional. The right of performance and those or moral rights arising in respect of the works that are performed at the works that results from the exercise of recording rights i.e. in any sound recording or live performance. This article is also aimed examining the right of authors, owners and the limitation and exception to authors and ownership under the Act. There is certain precondition or precedent provided for by the Act to authors or any person having the right to make a work of the owners of copyright. In essence, authors of copyright is the owner of the right therein, but same there are instances in which an author may denied of his ownership of copyright. This critical study will delve in to insight of these circumstances and situation with a view of presenting the difference, similarities and conflict. The study has essentially adopted a doctrinal methodology to evaluate statutory provisions and highlight the findings toward concrete suggestions.

Keywords: Performing Rights, Copyright, Ownership, Implication, Nigeria

1.1 Introduction

Like every other property, copyright protects the results of artistic, literary, musical and dramatic effort especially in performance right of an author. It also requires the existence of a work that has been recorded through some unusual form. So, if someone present a poem, without having been written down or recorded in some other fixed form, no copyright will arise to protect the poem. In essence, protection in any live performance is same with any copyright works that are being performed.¹

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Sometimes in 1988 the act substantially improved the position of performance and those who entered into exclusive recording contracts with performance' giving civil rights of action against persons during certain acts in relation to a life performance (including recording that performance) without a prior consent. The position of the performance was further improved by the copyrights Acts 2004 more recently and includes certain property rights which brings the performer's right closely in line with the copyright protection. As a result, those article focuses on the performance right in literary or musical works and sound recording which has been also provided by Act,² and which gave recognition to this right when the vest on owners of literary or musical works and sound recording the exclusive control of public performance of their works. In addition it's also gave recognition on the international convention for the protection of performance, producers of literacy and Artistic works protect the rights of authors, the convention protects the right of performers, producers of phonograms and broadcasting organization. These rights are described as right related to copyright because they protect the intermediaries in production, recording or broadcasting of the works of copyright owners.³ On the other hand the ownership and authorship are two different thing in copyright law especially in exploiting the fruits in a work and laying claim to copyright protection. The term ownership derives from authorships. The person who makes the work is normally the first owner of the copyright in the work in the course of employment, in which case his employer will be the first owner of copyright.⁴ As a matter of facts in civil action the question as to whether or not who is the actual owner of the work are bound to raise to determine owner at the material time the infringement occurred.

Since registration is not-a pre-requisite precedent to the recognition and protection of copyright, the question of who is the owner or author of copyright is an existing work, artistic or broadcasting often resolves around issues of evidence if the matter led to a litigation on the court of law. Hence the incidence of ownerships subject to any contractual agreement that may exist between the author and other presumption of ownership is always subject to any contrary agreement in writing, in favour of the author. Although the Nigerian copyright law clearly recognize moral and economic rights of the author to paternity and the safeguard of integrity of his work.⁵ Equally too there are core copyrights (as set out in the Berne convention) these rights can be described differently in different countries sometimes the rights differ between countries as some countries might give copyright owners greater rights than the maximum specified in the Berne convention. For example, Japan has a display or

¹Oyewole, O, Nigeria: No filming or photographs please, performers right, available at <[mandaq.com/Nigeria/intellectual property/293354/no-filming](http://mandaq.com/Nigeria/intellectual%20property/293354/no-filming)> visited on 15/03/2021

²Section 6 and 7 copyright Act Cap C28 (LFN) 2004

³Collective management of copyright and Related Rights, WIPO, 2

⁴C. O. Nwabachili and C.C. Nwabachili "journal of law policy and Globalization vol. 34, (2015) p.1

⁵C. Morgan, "An Introduction to copyright law" General Manager, Corporate services Division, Copyright Agency Limited, Austria.

exhibition right for artistic work but that right doesn't exist in a country like Nigeria⁶ Thus in Nigeria performers right is to control and not authorize,⁷ even though, the Act also gave the performer exclusive right to authorize only the performing, broadcasting, recording, adaptation of the performance and reproduction in any material form⁸

1.2 Definition of Terms

- i. **Performers;** Generally, in intellectual property law especially in copyright, the copyright Act does not specifically define the term “performers”,⁹ but it contains a definition of performance for this purpose. The Act goes further to define a performance to including
 - a) dramatic performance (which includes adduce and mime); (b) A musical performance; and (c) a reading or recitation of literary act or any similar presentation which is or so far as it is a live performance given by one or more individual.¹⁰ Although the Rome conventional provides the following crucial definitions to, includes.¹¹
 - b) Performers “means actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works;
 - c) “Phonogram” means any exclusively aural fixation of sounds of a performance of other sounds.
 - d) “Producers of phonograms” means the person who or the legal entity which, first fixes the sounds of performance or other sounds;
 - e) “Publication” means the offering of copies of the phonogram to the public in reasonable quantity.
 - f) “Reproduction” means making of a copy or copies of fixation.
 - g) “Broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds;
 - h) “rebroadcasting” means the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization”.

The definitions contained in Article 3 of the Rome convention have been largely replicated in the laws of most member states, for instance, the copying right Act

⁶ C. Kasahara & R. Kanemura, Japan: Copyright 2017 available at <http://www.mondaq.com/copyright/562772/copyright-2017> visited on 15/03/2021

⁷ See s, 26 of the Copyright Act 2004 (hereinafter called the Act)

⁸ See s, 28 of the Act

⁹ The Rome convention defines “performers” to mean “actors, singers, musicians, dancers, and other person who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic work”

¹⁰ Section 23(2) C28 (LFN) 2004.

¹¹ Article 3 of the Rome convention, 1961 (International convention for the protection of performers, producers of Phonograms and Broadcasting Organization.

Trinidad virtually reproduces the above definition of a “reference”. The Trinidadian legislation substitutes the words “sound recording” for the word “phonogram” occurring in the convention. The legislation further defines sound recording as ;

“Any exclusively aural fixation of the sounds of a performance or of other sounds, regardless of the method by which the sounds are embodied but does not include a fixation of sounds and images, such as the sound track of an audiovisual work”.¹²

Although, the Trinidadian definition is more extensive than the definition of a “phonogram” in the convention, both definitions basically focus exclusively about recordings. The above legislation also defines a producer of a sound recording as the natural or legal person who makes the arrangement necessary for the sound recording to be made.¹³ Under the copyright law, an award presentation ceremony, an election campaign or sporting events will most likely not enjoy performer rights, because they do not have the requisite dramatic, musical or literary character.¹⁴ For a person to come within the definition of person having recording right in a performance, that person must be a qualifying person who has been granted exclusive recording right by the performer. The law defines exclusive recording rights as the right to record a performance for commercial exploitation to the exclusion of every one including the performer.¹⁵

- ii. **Ownership;** Make every other property, copyright possesses some attributes of ownership through transmission by testamentary disposition or by operation of law, as movable property.¹⁶ In essence, an assignment or testamentary disposition of copyright may be limited so as to apply to only some of the acts which the owner of the copyright has the exclusive right to control, or to a party only of the period of the copyright or to some specified country or other geographical area.¹⁷

An assignment, license or testamentary disposition be effectively granted or made in respect of a future work or an existing work in which copyright does not yet subsist; and the prospective copyright in any such work shall be transmissible by operation of law as movable property.¹⁸ The copyright Act, further provides as a general rule that the author of a work is the first owner of the copyright.¹⁹ This

¹² section 3 of the copyright Act of Trinidad

¹³ Ibid.

¹⁴ J.O. Asein “Nigerian copyright law and practice (2003) published in Nigeria by Nigerian copyright Commission Abuja Nigeria

¹⁵ Ibid.

¹⁶ Section 10 (1) of the Act

¹⁷ Ibid, sub section (2)

¹⁸ . Ibid sub section of the Act

¹⁹ Ibid section 10 of the Act

will apply in a good number of cases, for instance to persons creating work for their own pleasure or amusement, independent not employed under a contract of employment and even to employ persons if the work in question has not been created in the course of their employment. However, there are some exceptions to this general rule, and where a literary, dramatic or artistic work is made by an employee in the course of his employment, his employer is the first owner of the copyright subsisting in the work subject to any agreement to the contrary.¹⁶²⁰ For example in the decided case of *Noah v Shuba*¹⁷ where it was held that the copyright in a work created by an employee in the course of his employment could still belong to the employee on the basis of term implied on the ground of test practice. If the employee's name appears on the work or copies of the work, there is a presumption that the work was not made in the course of employment. In *Attorney Generals V Guardian Newspaper et al*²¹ in that case Lord Goff stated that "the copyright in the book including the film right, are held by him on constructive trust for the confider". This has been upheld where there was such a fiduciary relationship between an employer and his employee as to impose an obligation of trust in favour of the former.²²

In view of the above, "owners of copyright" should understand in a generic term to include creators of the copyrighted works and those whom they assigned their rights or granted exclusive license over same.²³ Thus under the Nigerian Act, An owner assigns or exclusive license of copyright is entitle to bring an action for damages, injunctions, accounts, or other such reliefs as are available to owners of their proprietary rights, for infringement of copyright.²⁴ As regard to the term co-owner, one may draw inferences from the provision of the Act²⁵ "co-owners" an a copyright described as a person who share a joint interest in the whole or any part of a composite production on i.e. a production consisting of two or more workers. In other words, co-owners either have a joint interest in the copyright are merged into a composite work.

- iii. **Authors;** The term authorship can refer to the creator or originator of an idea (for example, the author of the theory of relativity) or the individual or individuals who develop and bring to fruition the product that disseminate intellectual or creative works (for example, the author of a poem or a scholarly article).²⁶

²⁰ Ibid.

²¹ (1991) FSR P. 14

²² (No. 2) (1988) ³ All E.R P.545

²³ Section 11 copyright Act allows authors to assign or grant, interracial exclusive licenses over their copyright.

²⁴ section 16 copyright Act, which shares similarity with the copyright Designs, and patent Act of 1988, United Kingdom, section 96(1) of the Act

²⁵ Ibid, section 10 (6) of the Act.

²⁶ DOI: <http://doi.or/10.24318/cope> cited as "COPE DISCUSSION on Document; Authorship" September, 2019.

Authorship, as a creative process in the production of copyright work, is a theme in copyright law. The above meaning may not have received sufficient attention to allow scholars of copyright law to view property rights granted under the law as rights belonging to authors of copyrighted works act of creativity.²⁷ Thus, authors and owners of copyrighted works are often thought of collectively as the Right holders of creative works.²⁸ In 1990, the world intellectual property Organization (WIPO) in the draft “model provisions for legislation in the field of copyright” attempted to provide a definition of the term, which would incorporate the divergent views of what would amount to authorship. This draft law raised significant disagreement among member states and interest holders and WIPOs work on producing a draft model law ceased.²⁹ Treaty produced in 1996, although making protection of authors its principal focus did not also define the term authorship.³⁰ it therefore implies that an attempt to define the term “author” must of necessity take us into a voyage to national copyright laws generally.

Therefore, the definition of the term in some national and international set forth, at least some indications of kind of activities that make one an author;³¹ For example, under the United Kingdom law, it is declare that “Author, in relation to a work, means a person who creates it.”³² Authorship encompasses, therefore not only those who do the actual writing but also those who have made substantial contributions to study. Substantial professional contributions may include formulating the problem or hypothesis, interpreting the results, or writing and major portion of the paper. For example scientifically the above contribution may include such supportive functions as designing or building the apparatus, suggesting or advising about the statistical analysis, collecting or entering the data, modifying or structuring a computer program etc., but conducting routine observation or diagnoses for use in studies do not constitute authorship.³³ In essence authorship is an exploit way of assigning responsibility and giving credit for intellectual work. Authorship practices should be judged by law honestly they reflect the actual contribution to the final product “that’s why authorship in academic medical centers usually concern published right of original scientific

²⁷ A. Ng, “Authors and Readers: conceptualizing Authorship in copyright law” Mississippi college school of law, legal studies Research Papers no. 2008-05) available at/http:ssrn-com-Com/abstract=113760(accessed on 17th June, 2019)

²⁸ Goldstein International copyright, principles, law and practice (2001) p.205.

²⁹ D. Driacheba, legal mechanism for enforcement and Regulation (copyright and Neighbouring Rights the Berne convention and Beyond 2006) 358.

³⁰ Rickson and Ginsberg, International copyright and Neighbouring right Ibid

³¹ D, O. Orikhocba lecturer department of public law university of Benin authorship, ownership and Enforcement of copyright. The Nigerian situation “published in 2015) 3South African fulllecial property journal 40-54

³² Copyright Designs and patent Act (CDFA), 19884C Section 91

³³ Authorship and Publication credit from (APA) publication manual 5th Edition, page 350-351.

research.³⁴ However, the same principles apply to all intellectual products; word or image; in paper or electronic media; whether published as prepared for local use. In scientific disciplines or the humanities and whether intended for the dissemination of new discoveries and ideas for published reviews of existing knowledge or for educational programs.³⁵ Although, authorship practices differ from one setting to another, and individual situation in each case often require judgment, variation in practice should be listed as an author through the following:³⁶

- i) Everyone who is listed as an author should have made a substantial, direct, intellectual contribution to the work for example (in the case of research report) they should have contributed to the conception design, analysis and or interpretation of data.
- ii) Everyone who has made substantial intellectual contribution to the work should be an author. And everyone who has made others substantial contributions should be acknowledged.
- iii) When research is done by teams whose members are highly specialized individual contributions and responsibility may be limited to specific aspect of the work.
- iv) All authors should participate in writing the manuscripts by reviewing drafts and approving the final version.
- v) One author should take primary responsibility for the work as a whole even if he or she does not have an in-depth understanding of every part of the work.

According to the Nigerian copyright Act, a scholar has rightly argued that it is a question of fact as to whether a person created a work or not and that mere copying might not qualify the copier of the work as an author. Infact, in all cases recourse must be made to the concept of originality which requires some level of labour and intellectual input toward the person side.³⁷

1.3 The Right of Reformers, Ownership or Authorship Under the National and International Convention

Under International, European and National Legislations, Performers are granted a protection for their performance in the field of music, audio visual, dancers or any

³⁴Ombuds office “the meaning and Authorship Guidelines, university of Harvard medical, Dental and public Health school adopted December 17th, 999 Ombuds person, melissabrodrick @hms.harvard.edid164 Longwood Avenue, Boston massachuses 012115.

³⁵ Ibid

³⁶ Ibid

³⁷A.Adewopo, Nigerian copyright system; principle and perspective (2012) xmi;A.Adewopo, according to the Intellectual property: a pro-development vision of the law and the Nigerian Intellectual property law and policy Reform in the knowledge era,(2012)2; The Role of copyright in economic Development: A Review from kenya (2012)1(2) NIALS Journal of Intellectual property page65.

other category of performing acts. These rights are generally called performers right.³⁸In the United Kingdom till recently there was no copyright Performance.³⁹Erstwhile in U.K, copyright Act 1976 have sufficiently protected performers by using criminal sanctions without giving them a copyright or neighbouring right. Under the Nigerian copyright Act, a performers right is infringed by a person who, without the performers consent or authorization in writing, does any of the following that is:⁴⁰

- a. Makes a recording of the whole or substantial part of a live performance;
- b. Broadcast live, or includes live in cable programme, the whole or substantial part of the live performance;
- c. Performs in public the whole or a substantial part of the live performance.
- d. Shows or plays in public the whole or a substantial part of the performance for commercial purposes.
- e. broadcast, or includes in a cable program, a substantial party of the performance by means of recording which is, and which that person knows or has reason to believe was made without performers consent.
- f. Inputs into the country otherwise than for this private or domestic use.
- g. In course of business or trade, sell or let for hire, offers distributes or displays for safe or hire a recording of performers work;

In line with the above, Nigerian copyright Act does not define a performer, rather the Act considered performance right to includes a dramatic performance (which includes dance and mime); i. a musical performance ii. A recording performance (equally in broadcasting, and iii. A reading or recitation of literary act or any similar presentation which is or so far as it is, a live performance given by one or more individual.⁴¹ Thus the Act in Nigeria largely aligned itself with the Bern convention.

The Act also provides that the infringement of a right protested under section 23 is actionable “by the person entitled to the right”.⁴²This is understandable as an appropriate reference to the owner of the right either as performer or as an assignee or transferee of the right. A person having only a recording right may not authorize the adaptation of the performance nor will he justify authorizing another to record beyond his own authorization. The rights are independent of any copyright as stated by the Act. so, unauthorized recording of a live performance, is an infringement of

³⁸Performer’s Right in International and European Regulations situation and Elements for improvement” AEPO ARTIS December (2014).

³⁹Krishnaswani, ”performer’s Rights and the copyright law (1986) “Indian Bar Review, vol. xiv, I, 608 at p.609.

⁴⁰Section 25 of the copyright Act 28 laws of the Federation of Nigeria 2004.

⁴¹Ibid, section 23 of the Act.

⁴²Section 26 of the Act.

the performer's right in the live performance of the underlying work is, say, a protected musical work then the unauthorized recording would also constitute unauthorized and therefore an infringement of the performer's rights. Thus, the reproduction and therefore a copyright infringement of the musical law.⁴³

However, under the convention especially the Rome convention there are a series of rights for performers, producers of phonograms and Broadcasting Organization to include the following;

The rights of performers are recognized because their creative intervention is necessary to give life, for example, to musical works, dramatic and choreographic works, and reaction pictures, and because they have a justifiable interest in the legal protection of their individual interpretation. The right of production of recordings are required because their creative, financial and organizational resources are necessary to make recorded sound available to the public in the form of commercial phonograms (tapes, cassette, CDs, Mini Disc among others). They also have a legitimate interest in having the legal resources necessary to take action against and unauthorized uses, whether it be through the making and distribution of unauthorized copies (piracy) or communication to the public of their phonograms.

Likewise, the right of broadcasting organizations are recognized because of their roles in making works available to the public and in light of their justified interest to controlling the transmission and retransmission of their broadcasts.⁴⁴

Furthermore, the Rome Convention granted a lot of right to performers of copyright and the convention states that protection given to the performer shall include the possibility of preventing the following;

- “a. the broadcasting and communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;
- b. Fixation without their consent of the unfixed performance;

⁴³ J. O. ASEIN (N.10) Ibid.

⁴⁴ A. Tejan-case “Articles on International copyright law- par II: The Rome convention for protection of performers, producers of phonograms and Broadcasting Organization (DL-101) 8.

- c. the production without their consent, of fixation of their performance
 - i. If the original fixation was itself made without their consent;
 - ii. If the production is made for purposes different from those for which the performance gave their consent;
 - iii. If the original fixation was made in accordance with the provision of Article 15, and the reproduction is made first purposes different from these referred to those provisions.⁴⁵ However, the purpose of using the word expression include the possibility of preventing” was aimed at allowing member state the freedom of utilizing other means of protection the minimum rights of performers. For example the use of the word “performers” in this context refers to a live performance by one person or group of person.⁴⁶ In a nutshell, from an international perspective, the debate as it whether or not a performance can also be copyrighted works seems a bit confusing nowadays because performers right are protected as related or neighboring rights, that is rights related t, or neighboring on copyright proper.⁴⁷

Also, it is rightly to say that the Nigerian law has ample provisions on performer’s rights, but the Act is silent on the right of separate individuals connected with a performance especially where an aspect of a performers right is owned by an individual’s jointly for same reason. Whereas the right of separate individuals connected with a performance has been given a judicial recognition by the competent court of jurisdiction in line with international standard⁴⁸

⁴⁵ Article 7(1) of the Rome convention.

⁴⁶ P. Torrenmans and J. HOTYORK, Intellectual property law, second Edition, Butterworths, 254.

⁴⁷ The expression “neighboring rights “is commonly used to refer to rights” granted by the Rome convention to performers, producers of phonogram and broadcasting organization”. World international property organization guide to the convention and the phonograms convention 7(1981) (herein after J. Reference is made to the International convention for protection of performers, producers of phonograms and Broadcasting. Organization, Oct.26, 1961,496 H. NTLs-43, available at <http://www.wipo.int/treaties/en/ip/rome/pdf/trtdocwo024.pdf>) hereinafter Rome convention).The expression related right is used by the European union and the world Trade organization’s. Agreement on trade related aspects of intellectual property right including trade-in counterfeit Goods: General Agreement ontariffs and trade multilateral trade Negotiations(The Uruguay Round)33 I. LAM-81 ART 13 (December 15,1993), available at <http://www.noto.int/English/blocks—e/legal/27-trips-pdf> (hereinafter Trips Agreement).

⁴⁸ Experience Hendrix LLC vs, Purple Haze Records Limited, (2007) F.R.S, 31

In a right related to ownership and authorship, the Nigerian copyright Acts is based on the philosophy of protecting the creator of the work from those who commission him to do the work. Accordingly, the provision of the Act confers the first ownership of the copyright work on the author.⁴⁹ In essence, copyright is often referred to as a bundle of right, which means that copyright is a set of rights to manage and control particular uses of workers. If the use of the work is not one that is specified as a copyright use, the copyright owner or another does not control that particular use of their works. Although there are some set of copyright ownership and authorship rights (as set out in the Berne convention) those right can be seen differently in different countries, as some countries might give copyright owners or an author a greater rights than the one specified by the Berne convention. For instance, Japan has a display or exhibition right of artistic work but that right does not exist in a country like South Africa or Austria.⁵⁰

Generally, the author of a work may be described as the person who created the work or made production of the work possible, whereas the owner, on the other hand, is the person, human or juristic, on whom the right to exercise control or conferred upon as provided by the Acts.⁵¹ Thus, authors and owners of copyrighted works are often thought of collectively as the Right trader's holders of creative works.⁵² The right of the owners" and that of the "authors" can be classified into the following:-

- (a) The moral right of the author or a creator always protects the creator even after the assignment of copyright work to others either fully or partially moral rights grant an author the right to have name kept on the work forever and protects the experience from any distortion or modification of the work, or other offensive action in relation to the work, which would be damaging to the authors reputation.⁵³ Therefore, the moral rights of the author of a copyright work, as distinct from the rights of ownership of the copyright.
- (b) Paternity right is the right of the author of a literary, dramatic, musical or artistic work and the right of a director of a film to be identified as such whenever the work is performed in public, issued or communicated to the public, or commercially exploited. For the

⁴⁹ Ibid, section 10(1).

⁵⁰ Ibid, c.morgan (n.4).

⁵¹ Section 39(1) of the copyright Act party Cap C 28(LFN) 2004 "unless the context otherwise requires; artistic work includes, irrespective artistic quality, any of the following works or work similar thereto, painting, drawings, etchings, lithographs, wood cuffs, engravings, prints; maps, plan, and diagrams;

⁵² Ibid, p. Gradstein (n.25)

⁵³ A. Reddy and L. Aswath understanding copyright laws; infringement protection and exception "International general of research in literary science volume 2, Issue 2,(January – June2016) p.48-53.

right to exist. An assertion must be made in an assignment of the copyright in the work or in some other written development.⁵⁴

- (c) Right to object to derogatory treatment, this type of right (sometimes called the right of integrity) arises automatically and does not need to be asserted. It applies to the same copyright works as the paternity right. A derogatory treatment is an addition to deletion from or alteration to or adaptation of copyright work which distorts or mutilates the work or is in any way prejudiced to the honour or reputation of the owner or author.⁵⁵
- (d) The economic rights provides ownership and author to enjoy the financial benefits. The creator can earn royalty by assigning rights to others either fully or partially.⁵⁶
- (e) Statutory rights or negative rights; copyright law provides an exclusive legal or statutory right to the original owner or author on his creation of work. It imposes a negative duty on others that prohibits from using or getting benefit from the work without the consent of the owner or author.
- (f) Right of privacy in photographs and films, the (specific right is to protect private commissioners of photographs and films most typically in shows and wedding's among others). Under the 1956 copyright Act a commissioner of photographs, who paid for the commission was the owner of copyright in those photographs. Under the copy right Act1988, all commissioned copyright works (including photographs) are owned by the author. This would have left the private consumer who commissioners' photographs of essentially private events (weddings, christening etc) unprotected from commercial exploitation of those photos. The section further provides to reinstates some protection by leaving the copyright with the photographer but given the commissioner in this case a moral right to prevent the photographs being issued to or communicated to the public, or exhibited in public for same purpose.⁵⁷

In a nutshell, as regard to the other rights, dealings in copyright as well as moral right cannot be downplayed because, most of the moral right cannot be assigned, they only attached to the original author or owner of the work and can only be asserted or waived by that person i.e. the author or the owner of the copyright. Moral rights can however, pass under a testamentary disposition (save for false attribution, which remains with the personal representatives of the deceased), and can be bequeathed independently of the ownership of the copyright in the work to which they relate.

⁵⁴ T. hart Fezzan and S. Clark International property law "Forth Edition (2006).palgrieve Macmillan publishing Hound mills Basing tose New York, N, N. Y.10010.

⁵⁵ Ibid, T. hart

⁵⁶ Ibid, (n-47) A. Ready.

⁵⁷ Section 85 of the copyright Act of 1988.

Therefore, in relation to the duration of moral right, most of the moral rights last for as long as the copyright in the work to which they relate lasts, except for the false attribution right, which lasts until 20 years after the death of the person entitled to that right.⁵⁸ The right to false attribution is not the right to have work falsely attributed rather is also an automatic moral right and applies to literary artistic, musical and dramatic works and films as decided in the case of *Clark (Alan)*⁵⁹ *Associated Newspaper Ltd* held that, in relation to the work in question a false attribution of ownership was infringed but it was not merely something which was or might be understood by some or more people to be a false attribution. In whatever situation copyright works are proprietary rights in nature and as such they are protected for the exclusive exploitation of the author or the owner. In fact, there are instances where the author may be different from the owner. The first owner of a copyright in a work is the author, but the author may assign transfer or License his right to another. The author can be said to have moral rights while the owner has economic right. The authorship and ownership of copyright is distinct and each attracts its own peculiar right.⁶⁰ It is worth noting, also that, moral rights do not apply to the following terms:-

- i. Where the work is a computer program;
- ii. Where ownership of a work is originally vested in an author's employer;
- iii. Where the material is being used in newspapers or magazines;
- iv. Reference works such as encyclopedias and dictionaries;
- v. Where the work is for typefaces;⁶¹
- vi. Copyright owners do not protect against independent development only against copying, thus, if for instance "A" and "B" independently write identical sonnets, without any copying, both 'A' and "B" own a copyright in that work notwithstanding who came first or that the works are the same.⁶²
- vii. Copyright authors or owners do not protect ideas, only the way ideas are expressed. This is often referred to as the "idea or expression" dichotomy.⁶³
- viii. Copyright owners do not protect individual words and short phrases;⁶⁴
- ix. Copyright authors or owners do not protect procedures, processes, systems, concepts or methods of operation that are embodied in words; only the particular way they are expressed.⁶⁵
- x. In ownership or ownerships, if there is only one or very few ways to express an idea, the expression is deemed to be "merged" with the idea, and it is not

⁵⁸ Ibid, In part p. 215.

⁵⁹ (1998) AALLER 959.

⁶⁰ Ibid

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Ibid

protected against copying. This “merger” doctrine prevents copyright from being used to monopolize ideas;⁶⁶

- xi. In authorship there is what is known as “standard treatments” of a subject within a genre of works (known as “scenes a faire”) are not protected. (Example: the gun duel on a dusty main street in a cowboy movie). The scenes a fair doctrine bars protection for features or elements of a computer program, standard programming practices, the requirement of the relevant computing environment, etc;⁶⁷

Copyright ownership does not protect “facts” or data. But the selection and arrangement of facts (example in databases) can be protected as a “compilation”. In that event, copying the underlying facts is not an infringement, so long as the creativity residing in selecting or arranging the facts is not appropriated by the copier. Thus, extracting or data from website (so-called” screen scraping is usually not a copyright violation. keep in mind, however, that) It might nonetheless violate the web site’s terms of use which may or may not be enforceable under the contract law. And if automatic software example “robots” or spiders were used to collect masses of state law claim for trespass to chattel”.⁶⁸

1.4 What Amount to Ownership of Copyright

Foremost in determining what amount to ownership of copyright are the two requirements of eligibility of the work and whether the author is qualified. Thus, the statutes expressly provide that for copyright to subsist in any work, the work shall be eligible for copyrights.⁶⁹ Furthermore, the author or in the case of joint authorship one of must be a Nigerian or domiciled in Nigeria."Broadly speaking therefore copyright is vested in the author of the work that is recognized as eligible, and the meaning of the term 'author' varies and can be inferred from the nature of type of the eligible work.⁷⁰ Thus, in the case of literary, artistic or musical works the author is the creator of the work and therefore the owner. Whereas in the case of photographic work, the author is the person who took the photograph and not the person whose picture appear in the photo. For example, where a photographer was privately commissioned to take a photograph can exhibit that photograph in advertising his expertise and dexterity.⁷¹ But it could be argued that it will certainly amount to violation of constitutional right to privacy of who commissioned the taking of the photograph privately?

Conversely, in the work of cinematograph film or sound recordings the author is the

⁶⁶Ibid

⁶⁷Ibid

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰Section 2 Copy Act.

⁷¹AdewoleAdedeji, Protecting copyright owners in Nigeria, in A. O. Popoola and E. O. I. Adodo (Eds) Current legal developments

person by whom the arrangement for the film or sound recording was made. While in the case of broadcast the author is the person by whom the arrangements for the making or transmission from within that country were undertaken. It should be noted that authorship/ownership of copyright are also vested in institutions, for example, where the work eligible for copyright is made by or under the direction or control of the government, state department or a prescribed international body." Thus ownership of copyright can also be vested in corporate organizations which include registered associations and incorporated trustees.⁷²

It is important to note the concept of first ownership/authorship and its intricate complexities, thus where a work is made in the course of author's employment, but was commissioned by a person who is not the author's employer under service contract or apprenticeship or not having been so commissioned, the copyright shall in the first instance be vested in the author except otherwise established in writing.⁷³ Although, the foregoing is the position of the law, yet the English courts have developed the concept of 'equitable copyright' thus, where from the circumstances, dealings and scenario connecting parties the intention is inferred that copyright should be vested in the person commissioning the work, it is deemed that the copyright is vested in him, regardless to the fact that there is no written agreement to that effect.⁷⁴ This principle of law was squarely applied in the case of *Pastfield v. Denham*.⁷⁵

However, in the case of *Joseph Ikhuria v. Campagne services Ltd & Anor*,⁷⁶ Where the first defendant used the sketch photograph of the plaintiff his layout finish artist, for advertisement purposes of the second defendant, while the plaintiff had since resigned. When the plaintiff claimed authorship of the photograph the first defendant: relied on clause 6 (4) of the standard condition of service which plaintiff before taking up appointment with the first defendant. The provision has clearly and expressly vests the employer with authorship of that photograph. In the same vein the case of *Beloff v. Pressdram*.⁷⁷ Thus in the preceding case where the court held that a journalist who wrote internal memoranda to his colleagues about possible article was held to be acting strictly within course of her employment.

1.5 What Amount to Performers Rights

The Act⁷⁸ did not define who is a performer but the simple inference is that anybody who performs is a performer.⁷⁹ Therefore a performer shall have the exclusive right

⁷²Copyright Act.

⁷³Copyright Act Ibid, section (1) & (2)

⁷⁴Ibid, Adewole Adedeji, at 174

⁷⁵(1999) F. S. C, 168

⁷⁶(1986) F. H.C.R, 308 9 (1973) 1, All E.R, 241

⁷⁷Ibid, section 23(3) copyright Act

⁷⁸Copyright Act ", 6

⁷⁹Bankole Sodipo, "Infringement and Remedies under Nigerian copyright law", Paper presented at the national workshop on

to control, in relation to his performance the following acts; performance, recording, broadcasting live, and reproducing in any material form and adaptation of the performance.⁸⁰ It should be noted that 'performance' includes dramatic performance which involves dancing and miming, musical performance and reading or recitation of literary or any similar presentation by one or more individuals.⁸¹

1.6 Justification, Limitation and Exceptions to Copyright Performers, Ownership and Authorship.

Generally, the essence of intellectual property rights is to give the holders the Exclusive right to use the intellectual property and the power to prevent other people from exploiting it without permission.⁸² In respect to the justification and exception to the copyright, there are moral persuasions why the creator of an intellectual property on ownership and authorship should enjoy protection over their intangible products or works of the mind. This is because, according to John Locke, everyone has a property right in the labour of his own body and brain that the application of human intellect to an unowned objective gives a property right becomes very relevant because of the over rising economic benefits derived by those who are not usually the owners, author or the inventors but are pirates benefitting immensely from the owners or inventors works.⁸³

This justification and exceptions allows modern copying laws grant authors, performers and owners a broad set of rights to control exploitations of their work.⁸⁴ until the early 20th century, copyright laws typically granted authors a fairly narrow set of exclusive rights and those exclusive rights were in general, narrowly construed. When rights were narrow, there was unnecessary to create exception to limit those rights. As legislatures expanded authorial rights to cover a broader array of activities, the need to create limits on the exclusive rights became apparent.⁸⁵ For example under the convention and the united states? sometimes in 1965 when the Register issued a supplementary report to accompany redrafted legislation.⁸⁶ many changes were evident as to the issue of performance, ownership and authorship under

copyright held at the national art theatre Lagos, 26 - 27 March 1990, p, 7

⁸⁰ Ibid, section 26 (1) copyright Act.

⁸¹ 26 (2) copyright Act.

⁸² T.Y. Oloko and O. S. Oyekunle "Real and Intellectual property transaction, Reflections on common thread" Lasu law journal Vol. vi issue 1 (2008) Pp.174.-183 at p.175.

⁸³ G.I. Uloko "A critical Appraisal of the Remedies in intellectual property litigations in Nigeria" (2008) Nigerian Journal of public law vol.1, pp 267-273 at p.267.

⁸⁴ R.M.Sherman A distinguished professor of law "justification for copyright and exception, Berkeley law school (2004).

⁸⁵ P.Samuelson "justifications for copy right limitations and exception" (2004).

⁸⁶ Register's supplementary Report, As the House Report (the approach of the bill, as in many foreign laws, is first to state the public performance right and other nonprofit uses) H.L. REP.NO. 94-147, 94TH CONG, 2D SESS (1976) @ 62.

the new revision bills,⁸⁷ for instance, authors would have five exclusive rights application to all work as an exception i.e. a reproduction right, derivative work right, a distribution to the public right, a public performance right and a public exhibition right.⁸⁸

Furthermore, there are at least some exemptions from the public performance and exhibition rights that would affect non-profit uses and user these include;

1. Face to face class room teaching.
2. For closed circuit educational broadcasting of literary and musical works;
3. For performance of literary and musical works during religious services;
4. For merely receiving broadcast programming in a public place;
5. For other non -profit educational, religious or charitable events under certain conditions.

Therefore, the general rule highlighted above is also subject same exception and limitation under the convention especially in U.S. these includes the following:-

- A. Promoting ongoing Authorship: Authorship is an ongoing process of communicating knowledge and culture among authors and their readers, viewers, and listener. All authors draw upon pre-existing works in the process of creating new ones. To promote ongoing authorship, the Berne convention for the protection of literary and Artistic works requires member state to adopt a right of fair quotation in the national laws.⁸⁹
- B. Fostering the public interest in Access to information” that is normally occurred whenever an author forgoes the opportunity to refuse portions of another authors work out of fear that the use might be challenged as infringing, there is a loss not only to that author, but also to the general public at large. Many national copyright laws including Nigeria have specific limitation and exception provision that permit some re-uses of copyright materials in the course of news reporting or other means of providing information to the public on current political or economic events.⁹⁰ The Berne convention recognizes that member states might decide to permit the reproduction by the press, the broadcasting or communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same

⁸⁷Ibid, Berne convention; art. 1011.

⁸⁸ See s, 6, 26, 28 of the Act

⁸⁹ Ibid, Berne convention; art. 1011.

⁹⁰Register’s supplementary Report, As the House Report (the approach of the bill, as in many foreign laws, is first to state the public performance right and other nonprofit uses) H.L. REP.NO. 94-147, 94TH CONG, 2D SESS (1976) @ 62.

character. In most jurisdiction especially in Nigeria the exception in regard to the issue of photograph.⁹¹

For example as provided by the Act, they include (i) where the working question is made by rounder the direction or control of the Federal government, state government, a state authority (including a federal agency) or a prescribed international body, the ownership of such work rest first and foremost in the government, the state authority or the prescribed international body.⁹² (ii) where the work (literary, artistic or musical)is made in course of the authors employment by a newspaper magazine or similar periodical in so far as the copyright releases to the publication of the work in any newspaper, magazine or similar periodical or to their production of the work for the purpose of its being so published.⁹³ (iii) where there is a stipulation in writing under contract of engagement that the first ownership of ⁹⁴ an emanating work shall not belong to the author in the first place.

C. Fulfilling social and cultural policy Goals:

Generally, all National copyright laws have some limitation and exception aimed at fulfilling certain social and cultural policy appeals. The limitation and exceptions that allow teachers and student to make instructional use of copyrighted works obviously promote societal objectives to educate students to expose them to their cultural heritage and to prepare them for their future roles as members of society.⁹⁵

1.7 Recommendation

1. The need to protect copyright owner's article their national boundaries gave birth to Treaties and conventions between Nations requiring state contracting parties to accord protection in their own countries to the copyright of nationals of other signatories.
2. We observe further, a close study of the conventions leaves the impression that performing rights are not decided the same protection other species of copyright. There is need under the Act that performers must understand the need to campaign for added protection. WHY?

⁹¹ Ibid, Berne convention for the protection of literary and Artistic works art.10 (1)

⁹² J. O. Asein Ibid

⁹³ Asein (A. 39)

⁹⁴ Section 9(1) of the Act

⁹⁵ The importance of enhancing access to works disabled person has recently been recognized in an international treaty. See

Marrakesh Treaty to Facilitate Access to published works for person who are Blind virtually impaired, or otherwise print Disabled Wipo Doc. VIP/DC/8 CER (June 27, 2013, available at <http://www.point/edoes/induced> copyright/ea./VIP/dc/VIP/dc8rev. pdf).

3. In order for the authors or owns of work to have a proper protection from afforded by copyright law, it is not enough merely to show that has name appears in the work as such rather if possible, to register their work for some certain period of years in order to serve as an evidence.
4. Under same international conventions, the practice is that authors and owners of copyright are allow to specify in their manuscripts a description of the contributors of each author and how they have assigned the order in which they are listed so that readers can interpret their roles correctly, but the Act does not include this as such??
5. Further recommend that, an author who is not employee in a contract of service should agree to the terms of contract that will reserve the ownership of his copyright in him and not on his employee” so there is need to amend the Act to include it.

1.8 Conclusion

In conclusion, this article examined the performing right, ownership and authorship and its implication to copyright in Nigeria and some International convention. The conventional protection for performers, producers of phonograms and broadcasting organizations, by virtue of the fact that it has been adhered to by only a fraction of the contracting states of the Berne convention. The above deficiency in copyright protection can be remedied by the convention which gives performers the right to prevent the fixation or recording, without their consent, of their unfixed performance.⁹⁶Therefore, the adherence to the provisions of the convention has been boosted by the adoption of the TRIPS Agreement. This world Trade Organization (WTO) administered agreement reproduction or makes reference to the minimum right, conditions, limitations.⁹⁷The position of the law in Nigeria is that, author or the owner as the case may be have the right to protect their copyright works from exclusive exploitation against copying dispute the two are different and each attracts its own peculiar right as a result of the above, the negotiation of authorship and ownership in copyright should be an exciting and positive experience when participating individuals are demonstrate respect for other individual abilities and contributions. At this point an agreement or any terms of a contract and conditions between the parties on procurement of resources would play a major role in protecting the copyright of authors and owners which is in line with the provision of section 9 and 11 of the Act. Accordingly, the provision of section 10(1) of the Act confers the first ownership of copyright work on the author, that is why the general English law position especially under the International convention has been altered in Nigeria especially section 10(5) of the Act which states that, an assignment or license granted by one copyright owner, shall have effect as if granted by hid co-owners. This article also has been paid attention to National copyright laws today

⁹⁶Article 7(1) (6)of the Berne convention.

⁹⁷Article 14(6) of the TRIPS Agreement.

which need limitation and exceptions to provide flexibility in their laws in an era of rapid technological change. Under both National and International laws, legislators today cannot possibly foresee all of the developments that may have implications for copyright authors and owners in an era of rapid technological change. For instance in an independent report prepared for the UK Intellectual Property Office, Professor Hargreaves recommended that the UK adopt a flexible copyright limitation designed to accommodate future owner “the term flexibility can also be achieved if court rule against infringement claims of authorship or ownership in copyright.