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THE REGULATORY FRAMEWORK AND THE CHALLENGES OF ENFORCEMENT FOR BREACH OF INTELLECTUAL PROPERTY RIGHTS IN THE ENTERTAINMENT INDUSTRY IN NIGERIA

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ABSTRACT

Entertainment law involves a dexterous interplay of contract law, labour or employment law, fashion law, intellectual property law, sports law and many others. This paper discusses the copyright protection in the entertainment industry in Nigeria with the objective of analysing existing legal framework of copyright owners in the entertainment industry on the various legal remedies both civil and criminal in an event of breach. Therefore, the paper using doctrinal method of research highlighted laws relevant for the protection of intellectual property in entertainment industry such as the provisions of section 8(2), 20(2) (a)-(d) and Section 144 of the Copyright Act, Cap C.28 LFN, with a view to finding the challenges of enforcement for the breach of the rights. It is the finding of this paper that, there is dearth of judicial decisions on intellectual property enforcement as well as lack of proactivity of National Assembly to develop an up-to-date and robust entertainment law, this necessitated lawyers using intellectual property law to depend the interest of their clients in case of breach; and therefore the paper recommends for the need to have a specialised law on entertainments industry.

KEYWORDS: *Challenge, Enforcement, Entertainment, Framework, Regulatory*

1. INTRODUCTION

Over the past decade, the understanding of intellectual property and its economic benefits to the society have increased significantly. This is largely due to the expansion of research conducted across all disciplines.[1] One of the strengths and foundation of every civilization is its creativity, innovation, and invention, which will invariably boost the economy of a nation.[2] Copyright is one of the fields of intellectual property dealing with creative works of human intellect. Copyright protection exists from the moment a work is created in a fixed and tangible form of expression, and it is original. It relates to literary and artistic works. The aim of such protection is ensuring that no one reaps the fruits of another man's labour without authorization. Entertainment law, also commonly referred to as media law or media and entertainment law is the entire collective mass of legal framework and services devoted to the entertainment industry. It involves the representation of artist and producers, the negotiations of contract and the protection of intellectual property rights.[3] Entertainment law at its early stages of development is used to be considered indistinguishable from intellectual property law but in reality, both areas of law are not coterminous. This is because intellectual property law is only an ambit of entertainment law. In theory and practice, entertainment law involves a dexterous interplay of contract law, labour or employment law, fashion law, intellectual property law, sports law and many [4]

This Paper therefore discusses the various intellectual property protections in the entertainment

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[1] Xuan L, *(et al) Intellectual Property Enforcement: International Perspectives,* (Edward Elgar Publishing, 1999), Pp3-4

[2] Nwogu I.O (2014). 'The Challenges of the NCC in the Fight against Copyright Piracy in Nigeria' *Global Journal of Politics and Law Research,* Vol.2 No 5, Pp 22-34

[3] Ibid, pg. 38

[4] Ibid, p. 13

industry in Nigeria, and examines the frameworks provided for an effective enforcement regime; and the role of institutions and agencies in fighting infringements in the entertainment industry.

2. THE MEANING OF ENTERTAINMENT LAW

Entertainment law is a broad area of law (with sub-areas) that deal particularly with the Entertainment industry. This part of the paper gives a general overview on the meaning of Entertainment law, types and areas of law closely associated with it. The Black's Law Dictionary defines Entertainment Law as 'the field of law dealing with the legal and business issues in the entertainment industry (such as film, music and theatre) and involving the representation of artists and producers, the negotiation of contract and the protection of intellectual property rights.'[5]

It can be gleaned from the foregoing, that Entertainment Law goes beyond intellectual property. It is the entirety of legal services devoted to the entertainment industry. Some writers like Jon M. Garon, see entertainment law from the perspective of regulations specifically designed to regulate the entertainment industries. It encompasses the entire legal framework and issues associated with the entertainment industry.[6]

The entertainment industry includes, *inter alia* (among others) the film, television, music recording, radio, theatre, publishing, and sports industries. These industries are often faced with certain commercial and business obligations that necessarily involve various areas of law including, copyright, trademark, trade secret, rights of privacy and publicity, labour and employment law, securities, tax law, tort, corporate law, constitutional law, and even international law. Entertainment law, like every other broad area of law, has specific aspects of the field.

These sub-areas such as music law, art law, sports law and others are usually identified based on their respective fields in the entertainment industry. Since entertainment law overlaps with intellectual property, the law of copyrights, trademarks, trade secrets and patents each play a role in protecting creative rights.[7]

Legal issues arise such as the emergence and application of digital technology in the late 20th century and another issue/challenge is the fact that copyright in Nigeria has not been adequately addressed by law/policy or enforcement throughout the creation process of entertainment works. This spans from the production stage where formal contracts are drawn to set forth the respective rights of the parties involved in an entertainment work, to the licensing and distribution stage. In short, entertainment law is the entire collective mass of legal framework and services devoted to the entertainment industry.[8]

3. ENTERTAINMENT LAW IN NIGERIA

While the past decade proved favourable for the entertainment sector in Nigeria, the next promises to be even more favourable. The Nigerian Film Industry, popularly referred to as Nollywood is globally recognised as the second-largest film producing industry in the world.[9] The music industry which is manned by thousands of talented creators is projected to rise from 13.4% Compound Annual Growth Rate of $73 million in 2021 to $86.4 million in 2025.[10] The

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[5] Bryan, A G., *Black's Law Dictionary* 9th edn, (USA West Publishing Co, 2004) 611
[6] Jon, M. G, '*Entertainment Law'* 76 (TULANE L. REV, 2002) 559, 561.
[7] Ibid, p. 562
[8] Ibid, p. 601
[9] Adodeji, A. (2002) Optimizing the use of Copyright and International Communication Technology (ICT) in Nigerian Banks. Journal of Internet Banking and Commerce 5(3), 55-57
[10] Femi, O., (2017). 'The Business of Entertainment Harnessing growth opportunities in entertainment, media, arts and lifestyle', (InfoComms, Entertainment & Media National Branding Conference October) p. 10

radio, video games and television aspects of the industry, have played their own roles in ensuring the industry's significance in the Nigerian economy.[11] The Entertainment Industry like every other industry with contractual and financial obligations requires the aid of lawyers to enable them to fulfil these obligations.

While there is no specific legislation on entertainment law in Nigeria, other legislations ancillary to the activities connected therewith give force of law to the entertainment industry. Some of these legislations include: The Copyright Act,[12] The Trade Marks Act,[13] The Patent and Design Act,[14] The Companies and Allied Matters Act,[15] the various Income Tax Acts,[16] and most importantly, the Constitution of The Federal Republic of Nigeria. Legal Practitioners in the industry also play important roles and have assisted greatly in the development of entertainment law in Nigeria.

3.1 Classifications of entertainment Law in Nigeria

At this juncture, the paper will discuss the various branches/classifications of entertainment law that are derived from various sectors in the industry in Nigeria as follows:

3.1.1 Sports Law

The legal framework at work in the world of both amateur and professional sports is collectively referred to as sports law. It refers to a specialized practice focused on l the sports industry. The sports industry with an economic dimension, which offers products, services, places, and ideas related to sport, fitness or leisure time to its consumers. Sports law, which is sometimes considered as an important aspect of entertainment law overlaps with labour law, contract law, antitrust law, and tort law. Issues like defamation and privacy rights are also an integral aspect of sports law.[17]

The establishment of sports law as a separate area of law goes back only a few decades and is attributable to the rise of player-agents, increased media scrutiny of sports law topics and increased audience and interest in sports competitions. Sports law refers more to the target industry rather than a separate body of law-with only a few unique legal issues arising in professional sports leagues. In Nigeria, Sports which have had a significant impact on the social and economic life of the citizens have overtime been regulated by a series of frameworks.[18]

The framework began with the Sports Development Policy of 1989, aimed at promoting the development of sports in Nigeria. The federal laws which have a bearing on sports are the National Institute for Sports Act,[19] Social Development Act[20] and Nigeria Football Association Act.[21] These enactments, however, provide no comprehensive platform for the practical pursuit of sports development.[22] The National Institute for Sports (NIS) Act establishes the National Institute for Sports, with the objectives of advancing learning in specialized areas of sports development, conducting professional coaching courses, seminars, workshops, including the

[11] Femi O., op cit. 12
[12] Cap C28 LFN 2004
[13] Cap T13 LFN 2004
[14] Cap P2 LFN 2004.
[15] Cap C20 LFN 2004
[16] The Companies Income Tax Act Cap C21 LFN 2004 and Personal Income Tax Act Cap P8 LFN 2004.
[17] Akunne, O. 'Sport Law and Music Art Industry in Africa', *The Journal of the World Intellectual Property* [2019], Vol. 2, Issue (1), p. 109
[18] Ibid, p. 20
[19] Cap. N52, Vol.14, Laws of the Federation of Nigeria 2004.
[20] Cap. S7, Vol.14, Laws of the Federation of Nigeria 2004
[21] Cap N110, Vol.12, Laws of the Federation of Nigeria 2004. This act which is considered as the most elaborate effort in terms of sports development is sadly, only limited to regulation of football
[22] Kelvin, C. O. *The Legal Framework for Sports Development in Nigeria*. (Star Publishers, Enugu 2018). P. 27

advancement of sports knowledge and skill.[23]

3.1.2 Music Law

Music Law simply refers to the legal aspects of the music industry. The industry includes record labels, music publishers, merchandisers, the live events sector and of course performers and artists. Indeed, music law covers a range of traditional legal subjects including intellectual property law (copyright law, trademarks, image publicity rights, design rights), competition law, bankruptcy law, contract law, defamation and, for the live events industry, immigration law, health and safety law, and licensing.[24]

3.1.3 Art Law

Art is the expression or application of human creative skill and imagination, typically in a visual form such as painting or sculpture, producing works to be appreciated primarily for their beauty or emotional power. Art law, simply put, is the body of laws, involving numerous disciplines, that protects, regulates, and facilitates the creation, use, marketing, and distribution of art. Although "art" in the broad sense of the term includes "the arts" (music, film, theatre, literature, et cetera), art law as traditionally defined concerns only works of fine art and/or the visual arts.[25]

4. REGULATORY FRAMEWORKS OF ENTERTAINMENT INDUSTRY IN NIGERIA

It should be noted that, every major area of law has a set of rules or enactments which make up its regulatory framework. Therefore, at this juncture the paper highlights more on the regulatory framework for the protection of copyright, trademark, patent, and design in the entertainment industry in Nigeria.

4.1 The Copyright Act

Copyright is one of the four major areas of intellectual property law,[26] which serves as an important aspect of entertainment law. It is a right granted to the author or originator of certain literary or artistic productions which actually covers musical, literary, artistic and cinematographic works, sound recordings and broadcast rights over all these sorts of works., whereby the producer/author is invested, with the sole and exclusive privilege of multiplying copies of the literary or artistic works and publishing or selling them.[27]

Copyrights are a group of exclusive rights granted by the federal government, which can be obtained for a variety of intellectual works from movies to literature.[28] Copyright law strives to balance two competing interests: the interests of authors in protecting their works from unauthorized copying and the interest of the public in having the greatest possible access to works of authorship. Copyright laws create automatic protection for major works created by authors in the entertainment industry, ranging from movie scripts (literary works) to cinematograph films, musical works, sound recordings, and broadcasts.[29]

The Entertainment industries have perhaps been the most obsessed with copyright protection. Often, at the beginning of movies or music videos, we see warnings like: “This film

[23] Section 5, of the National Institute for Sports Act

[24] Kumu, A. *Understanding the Legal Aspects of the Music Industry*. (Newly Publishers Lagos, 2019), p. 83.

[25] Robert, C. et al, *Art and Museum Law: cases and materials,* Durham, N C: (Carolina Academic Press 2002). Pp.72-80.

[26] Alongside patents, trademarks and industrial design.

[27] Bryan, A G., *Black’s Law Dictionary* 9th edn, (USA West Publishing Co, 2004). 611

[28] Sandi, T. R. *Media and Entertainment Law* (Delmar, Cengage Learning, 2009). P. 73

[29] Deborah, E. B., *Intellectual Property: the Law of Trademarks*, *Copyrights, Patents, and Trade Secrets,* (4th edn, (Delmar, Cengage Learning, 2013) p. 213

and soundtrack have been licensed under the copyright laws of Nigeria. No duplication, rental or broadcast of the contents of this videotape or Compact Disk or Digital Video Disc should be done without the permission of the copyright owners. Pirates Beware!" Their insecurities are not unfounded. The prevalence of piracy of entertainment works has rendered authors who invested time and money; reap little or no gain from such invested. Therefore, the whole essence of copyright laws is that "a man should not be allowed to appropriate the results of another man's sweat".[30]

In the case of Liberty Williams (A.K.A. Pupayannis) vs. MTN Nigeria Communications Limited & Ors.[31] Pupayannis (the Plaintiff), a musician, filed a Suit at the Federal High Court in Abuja on October 12, 2016, against MTN Nigeria Communications Limited and others. The subject of the suit was Copyright Infringement of his song "Love is Everything." In his Statement of Claim, the Plaintiff alleged that MTN has been collecting money for caller tunes for his song and had not compensated him for its use. The Plaintiff indicated that although he had a relationship with a record company, he did not give copyright to his past works including 'Love is Everything' and that the sale or offer for a fee of the Plaintiff's song to MTN subscribers or customers without his consent constituted copyright infringement. The Plaintiff asked the court to award the sum of N200,000,000 as general damages and N100,000,000 as aggravated and punitive damages. Unfortunately, the parties have settled out of court which deprived the outcome of the judgement, its dimension, and effects. In the case, the parties rich a consent judgement which the court enforced based on the admission of the dependent of liability by impinging the allege right by the plaintiff in the suit.

4.2 Trademark Act

Trademark as defined under the Act, means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as a registered user of the mark.[32] It is a mark or sign that is designed by a manufacturer or even a supplier for the sole purpose of identifying his product and differentiating it from the products of other manufacturers or suppliers especially, his competitors.[33]

The entertainment industries resort to trademark in protecting the goodwill of their brand from exploitation from competitors. Trademarks in entertainment especially in music and film are the emerging big markets which give huge profits to the entertainment industry. Entertainment company names, record label names, performers' monikers, and more can be protected under the Nigerian Trademark Act. Like other businesses, entertainment entities have an interest in preventing others from using names that are so similar to theirs as to cause confusion among consumers as to exactly who is delivering certain products or services. Therefore, many entertainment entities register their names under the Act thereby claiming the exclusive right to use their names.

Protection of commercial rights and interest for a song and film title plays a vital role when such legal issues arise. The paradigm shift surrounding the intellectual property issues plays a significant role surrounding various controversies relating to trademark issues such as deceptively similar songs or film titles, unauthorised use of film titles falling within the ambit of infringement of trademarks and remedy of passing off.[34]

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[30] Per Wilberforce in *LB (Plastics) Ltd v. Swish products Ltd* (1979) FSR, 145 at 619.
[31] Suit No: FHC/L/CS/799/2016. (unreported)
[32] Section 67, Trade Marks Act, Cap T19, LFN, 2004
[33] See LB (Plastic) Ltd. *v.* Swish Product Ltd. (1979) FSR, 148
[34] Trademark law in the Music and film industry <http://www.legalservicesindia.com/article/2067/TrademarkLaw-in-Music-and-Film-Industry.html> Accessed on August 20th 2019

Use and ownership of trademarks by members of a record label or other band is usually a source of great controversy especially when the entity dissolves. If, prior to dissolution, the owners or members of the entity have not agreed the best option suggested by this writer is to adopt what will be a neutral ground at the circumstance to balance all possible means of conflict in the trademark among the members. This is because of the fact that as to who may use the trademark after dissolution, lengthy legal battles can result as different members or factions may try to use and prevent the other members from using the trademark. However, the writer suggest that agreement should be made on how the partnership should look like especially in the event of conflict after resolution.

4.3 Patent and Design Act

Patent is a government authority or licence conferring an exclusive right or title for a set period, especially the sole right to exclude others from making, using, or selling an invention, without permission or consent of the licensee during the lifespan of the patent. Patent has its origin in the idea of conferring a form of monopoly on inventors for the result of an intellectual voyage of discovery as an incentive to innovation or research.[35] It is a right granted under the law to protect an invention that is novel or basically an improvement over some existing processes.[36]

The law governing patents differ from one country to another, thus what can be protected in a country might not enjoy the right of protection in another. Sometimes encounter individuals who claim to be inventors with new groundbreaking discoveries which they claim can solve certain problems. As soon as they conceived inventions, they immediately consider obtaining a patent for these so-called inventions. Some of these "inventors" believe that most ideas and dreams can be registered as a patent, on the contrary however, a lot of the ideas, dreams and imaginations lack the status of qualifying for a patent license under the Nigerian Law.

Patentability simply means suitable to be patented under the law, entitled by law to be patented by the issuance of a paten. The concept of patentability is such an important concept in the sense that provisions made for it in the legal regime of a country's patent system go a long way in determining how effective the system would be. Consequently, it is usually the first issue to be addressed in the legal framework governing the operation of the patent system in many jurisdictions.[37]

5. REMEDIES FOR BREACH OF COPYRIGHT IN THE ENTERTAINMENT INDUSTRIES IN NIGERIA

Having discussed the legal framework for the protection of copyright in the entertainment industry, the article will now highlight on the various remedies available whenever the protections are breach. Thus, for every wrong-civil or criminal, there must be a remedy.[38] Broadly speaking, there are two types of remedies namely, penal, and civil. That is, civil remedies and criminal remedies which are hereby discussed:

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[35] Ayoyemi, A. *Intellectual Property rights Traditional Knowledge Systems and Jurisprudence in Africa* (Ibradan, Abba Press Limited, 2012) p. 201

[36] Ibid, p. 211

[37] Ibid, p. 70

[38] *Anton Pillar KG vs Manufacturing Processes Limited* (1976) Ch55 at p. 61

5.1 Civil Remedies

Any person who has a copyright in any of the specified items under the Copyright Act reserves the right to initiate civil action at the Federal High Court for any infringement of his copyright.[39] In *Achebe vs. Drum Publications Nig. Ltd*[40], an action for infringement of the Plaintiff's copyright was brought before the High Court of the defunct East Central State. The court held that it lacked jurisdiction to determine any action which was related to copyright. The remedies that the Federal High Court can award where the action is successful are award of damages, order of injunction, or order for account. In addition to the above, the copyright owner will be entitled to all the copies of the infringing materials that the Court may so find. The above matters are covered by section 16 and 18 of the Act. It is also noteworthy that the owner of an infringed copyright has the right if the Court so orders, under an ex-parte order to go into the premises where the infringement has taken place to take possession of the offending article with the assistance of a police officer not below the rank of an Assistant Superintendent of Police, under section 25(1) of the Act. Section 24 abolishes the common law rules prohibiting simultaneous prosecution of criminal and civil actions in the same cause. It provides inter alia as follows:

> Notwithstanding the provisions of any law to the contrary, it shall be permissible for both criminal and civil action to be taken simultaneously in respect of the same infringement under this Act.

Section 29 replicated the provisions of section 16(1) & 18 in a condensed manner with respect to the entitlement of the right of copyright owner to orders of damages, account, injunction, and conversion with respect to performer's right. It is still debatable or a moot point whether the various remedies under the Act are enough to assuage the injury that is inflicted on a copyright owner whose right has been breached.

There are very few precedents to make illustrations. However, in Continental Pharmaceutical Limited v. Glaxo Smith Kline Consumers Nigeria Plc,[41] a Lagos Federal High Court awarded ₦1.2 billion as damages against a multinational pharmaceutical firm, Glaxo Smith Kline Consumers Nigeria Ltd. (GSK) and its parent company, Smith Kline Beecham plc based in the United Kingdom for infringing on the trademark and patent right of the local company in Nigeria, over a logo with blue and white package design for the manufacture and sale of Panadol and Panadol extra products.

In another case, of Beddings Holdings Limited v INEC and 6 Others,[42] a Federal High Court sitting at Lagos affirmed that the patent and industrial design rights (RP 12996 and RD 5946 respectively), held by Beddings Holdings (the plaintiff) for the invention of "Transparent Ballot Box" had been infringed by the INEC when it licensed the importation of transparent ballot boxes by two private Nigerian companies without seeking the requisite license from the Beddings Holdings limited for the 2011 general election.

5.2 Criminal Liability

Section 20 of the Copyright Act provides for three categories of criminal liability. To fully comprehend the section, it is necessary to quote the provisions of subsections (1), (2) and (3) of the said section which provide:

> S. 20(1) Any person who (a) makes or causes to be made for sale, hire, or for the purposes of trade or business any infringing copy of a work

[39] Under Sections 251(1)(f) CFRN, the Federal High Court has jurisdiction as regards matters relating to copyright.
[40] (1974) ALR Comm 227
[41] (2012) 3 CLRN, 157
[42] Unreported, FHC/ADJ/CS/82/2011

> in which copyright subsists; or (b) imports or causes to be imported into Nigeria more than two infringing copies of such work; or (c) makes, cause to be made, or has in his possession, any plate, master tape, machine, equipment or contrivance for the purposes of making any infringing copy of any such work; shall unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was not infringing copy of any such work, or that such plate master tape, machine, equipment or contrivance was not for the purpose of making an infringing copies of any such work, be guilty of an offence under this Act and shall be liable on conviction to a fine of an amount not exceeding N1,000 for every copy dealt with in contravention of this section or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.
> (2) Any person who- (a) sells or lets for hire or for the purposes of trade or business, exposes or offers for sale, or hires any infringing copy of any work in which copyright subsists; or (b) distributes for the purposes of trade or business any infringing copy of any such work; or (c) has in his possession other than for his private or domestic use, any infringing copy of any such work; shall, unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was an infringing copy of any such work, be guilty of an offence under this Act and shall be liable on conviction to a fine of N100 for every copy dealt within in contravention of this section, or to a term of imprisonment not exceeding two years or in the case of an individual to both such fine and imprisonment.
> (3) Any person who, without the consent of the owner, distributes, in public for commercial purposes, copies of a work in which copyright subsists by virtue of section 5(1)(a) (vi), 5(1)(c)(vi), 6(1)(b) or 7(1)(c) of this Act by way of rental lease, hire, loan or similar arrangement, shall be guilty of an offence under this Act, and shall be liable upon conviction to a fine of N100 for every copy dealt with or imprisonment for six months or to both such fine and imprisonment.

The significant point of departure in subsection (1) and (2) is that the onus of the proof of innocence is cast on the accused person. Therefore, infringement of intellectual property ownership can be criminal offence as well as being actionable in civil law. A range of criminal provisions exist under Nigerian laws which prohibit such practices which may be associated with organised crime groups that are dealing for profit in brand fake products or pirated goods. However, these offences can also occur in legitimate business if an employee for instance uses the workplace to produce and or trade in fake or pirated brand goods to consumers.

Technically, criminal intellectual property offences are also known as IP crimes or counterfeiting and piracy. Counterfeiting can be defined as the manufacture, importation, distribution, and sale of products which falsely carry the trademark or a genuine brand without permission and for gain or loss to another. Piracy which includes copying, distribution, importation, or such other practices of infringing works, does not always require direct profit from sales.[43]

[43] JOSEPH JA KUR, *Intellectual Property Law and Entrepreneurship in Nigeria principles and practice*, (Aboki publishers, (Abuja) 2015). P.119

6. COPYRIGHTS PROTECTION AND THE CHALLENGES OF ENFORCEMENT IN NIGERIA'S ENTERTAINMENT INDUSTRY

It is a well-known fact that, entertainment industry in Nigeria is inevitably faced with problems militating against its growth under the guidance and regulation of the law. Thus, laws should be made to regulate the entertainment industry so that it will be out of the challenges and problems it faced compared to the global world and developed nations. No doubt the entertainment industry is worth over 4 billion dollars and contributes significantly to the gross domestic product (GDP). However absurd it may sound; the progress of entertainment law has been stifled by various intricacies affecting the industry over the years. These intricacies to be discuss below, have prevented this field of entertainment law from reaching its heights which have been long achieved in other jurisdictions.

6.1 Dearth of Judicial Decisions

The doctrine of judicial precedent or (stare decisis) is hinged on the fact that the principle of law on which a court bases its facts, or issues before it must be followed by courts lower in hierarchy and may be followed by a court of coordinate jurisdiction or a court which is higher in hierarchy in future similar cases.[44] Application of the doctrine makes for scientific development of the law since law is not based on haphazard or arbitrary reasoning but on conceptually coherent principles.[45] However, the doctrine of judicial precedence and its resulting legal development are however unfelt in the realm of entertainment because there are few precedents to begin with. Of all the thousands of copyright and trademark infringements that happen yearly in Nigeria, only few are subject to litigation.[46]

This no doubt is a consequence of the slow-paced judicial system practiced in Nigeria. Hon Justice Dahiru Musdapher CJN, once enthused: "I have a vision of a justice system which is simple, fast, efficient, effective and responsive to the needs and yearnings of the citizenry."[47] One thing is certain; the formers CJN's vision is not a reality. Nigeria's judicial system is so slow that it takes an average of 6 years for criminal proceedings to come to a successful close. This time can be further prolonged depending on the calibre of lawyers involved, the status of the accused and the nature of the offense charged.[48]

6.2 Legislative Slothfulness

The legislature plays a crucial role in gauging, collating, and presenting the views and needs of the people articulating their expectations and aspirations in determining the national development agenda. As an oversight body, the legislature helps to identify problems and policy challenges that require attention and assists in overcoming bureaucratic inertia. The Legislature possesses supremacy and independence in the sphere of establishing the legal principles of state and public life. Achieving of good governance thus requires existence of an active, selfless, and efficient legislature.[49] The constitution clearly spells out the powers, duties, and functions of

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[44] Ephraim A. et al, 'The Rationality of Judicial Precedent in Nigeria's Jurisprudence' *American International Journal of Contemporary Research*, (2014) Vol. 4, No. 5 p. 149

[45] Ibid

[46] Ojukwu, E.V. Onyiuke Y.S and Esimone C.C., (2015). "Intellectual Property Rights Enforcement in Nigeria: A Prop for Music Industry" *US-China Education Review B*, (June 2015) Vol. 5, No. 6, 373-381 doi: 10.17265/2161-6248/2015.06.003

[47] Ibid

[48] Isibor, K.M, (2016*). 'The Sluggish Judicial System in Nigeria: A Legal Change'* <www.isiborkelvin.wordpress.com/2019/09/23/the-sluggish-judicial-system-in-nigeria-a-legal-change/> Accessed on September 24th 2019.

[49] Economic Commission for Africa, 'The Role of Parliament in Promoting Good Governance, Governance and Public Administration Division (GPAD), 1.

Nigerian legislature, it provides thus:

> The legislative powers of the Federal Republic of Nigeria is vested in a National Assembly for which consist of a Senate and a House of Representatives... The National Assembly have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative list set out in Part 1 of the Second Schedule of the Constitution…

An indication of legislative slothfulness is captured by the obsolete regulatory frameworks. The 1988 Copyright Act, 1967 Trademark Act and the 1970 Patent and design Act are all obsolete in a sense. Take section 2 of the Copyright Act for instance, which stipulates the requirement of copyright by reference to author and has stirred up numerous controversies amongst Copyright law scholars. The Act does not define the meaning of an individual and this term has been stretched by some intellectuals to include artificial intelligence.

Also, there is no general penalty for all infringement offences rather the Act seems to portray some infringing acts as more grievous than the others consequently the penalties for various infringing acts differ.[50] Where an offender makes or causes an infringing work, master tape/plate or equipment to be made, he is liable to a fine not exceeding One Thousand Naira for every copy he dealt with or a term of imprisonment not exceeding 5 years or both.[51] An offender who sells, hires, distributes infringing copies or has them in his possession for these purposes is liable to a fine of One Hundred Naira per copy or a term of imprisonment of 2 years or both.[52] An offender who infringes the copyright owner's right of distribution through rental, hire, lease, loaning or similar arrangement is liable to a fine of One Hundred Naira per copy or imprisonment for 6 months or both.[53]

Therefore, any law that does not impose a maximum fine as penalty would imply that the offender would be paying a substantial amount of money where he deals in large quantities of the infringing work. However, where he deals in few quantities such as a rental club that has just two copies of an infringing work or a production plant that has just one machine or plate, then the amount of fine would be too small to be deterrent.[54] Therefore, in such instances, imposing terms of imprisonment is a better penalty to deter such infringers and other intending infringers. For instance, in *NCC v Ali A. Bala,*[55] the accused was sentenced to pay One Hundred Naira (₦100.00) fine or 3 months imprisonment. Similarly, in *NCC v Nwali Sunday,*[56] the accused was sentenced to pay Three Hundred Naira fine. There are however still cases where the fine imposed are higher. The highest in recent times has been One Hundred and Fifty Thousand Naira in *NCC v Ibrahim Dan Almajiri.*[57]

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[50] Section 20 and 22 Copyright Act

[51] ibid. Section.20(1).

[52] ibid Section 20(2). This ludicrous fine is a direct testament to the obsolete nature of our laws.

[53] Section.20(3) Copyright Act

[54] Olubiyi, I. 'A Comparative Analysis of Copyright Enforcement Provisions in Nigeria: Maximising the Current Legal Regime', *Nnamdi Azikiwe University Journal of International Law and Jurisprudence, (*2014) *P. 96.*

[55] Unreported Suit No: FHC/ABJ/CR/127/2013 at the Federal High Court Abuja, FCT Division). Conviction for book piracy

[56] (Unreported Suit No: FHC/L/153C/13at the Federal High Court, Lagos Division). Conviction for book piracy

[57] 2 (Unreported Suit No: FHC/KD/45C/2009 at the Federal High Court, Kaduna Division). Conviction for sale, distribution, possession of pirated optical discs. Although in *NCC v Sunday Ayodele* (unreported) FHC/KD/8C/12, a fine of ₦250,000 was imposed

6.3 Lack of Specialised Law on Entertainment Industry

Nigeria lacks specialised law regulating entertainment industry, like what is obtainable in oil sector or telecommunication.[58] The fact that there are no specialized entertainment laws means that the Nigerian legislature is either oblivious of the importance of the industry, or they, while aware, are simply indolent.[59]

All works of entertainment result in intellectual property, this is the irrefutable link between entertainment and intellectual property law. However, entertainment law and intellectual property law are not conterminous. While Intellectual property law deals with the rules for securing and enforcing legal rights to inventions, designs, and artistic works, entertainment law is the entirety of legal services devoted to the entertainment industry. Although entertainment law involves a great deal of intellectual property law, there is more particularly on is the emergence and application of digital technology in the late 20th century and the various challenges faced amongst which are: low level of funding by the government, inadequate personnel, low level or lack of training in online enforcement of copyright, inadequate infrastructure (office spaces).

Over the years lawyers have skilfully resorted to intellectual property law frameworks to cater for the legal obligations of their clients in the industry. This dependence on intellectual property law frameworks has created a gap that can only be filled by an enactment of a specialized statute for entertainment law. The absence of literature in this field makes matters worse. There are hundreds of articles and books on intellectual property law and few on entertainment law.[60]

7. CONCLUSION

Based on the foregoing analysis there has been established an in-explicably link between intellectual property law and entertainment law, though they are not conterminous. The paper observed that there is interplay between the two laws, but the scope of the latter is wider, whereas the former is still being used by the lawyers to litigate issues of breach of intellectual rights in entertainment industry.

Therefore, the need for National Assembly's proactivity with a view to developing a robust /specialised entertainment law that can take care of new global challenges of information technology and digital economy.

[58] Such as the Petroleum Act (2004) Cap. (P10), LFN, Associated Gas Re-Injection Act (2004) Cap. (20), LFN, Oil Pipelines Act (2004) Cap. (07), LFN, Hydrocarbon Oil Refineries Act (2004) Cap. (H5), LFN

[59] They are probably ignorant of the workings of the industry and its contribution to national economic growth

[60] Uloko Greg, Modern Approach to Intellectual Property Laws in Nigeria (Lagos, Princeton Publishing Co. 2019) p. 68