

JUXTAPOSING COPYRIGHT PROTECTION & CREATIVE FREEDOM ON SOCIAL MEDIA: THE NEED FOR A PARADIGM SHIFT

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The human mind possesses unfathomable capabilities. These capabilities tout the mind as the bedrock of creativity and innovation, hence, the remark of Arpad Bosh that:

“Human genius is the source of all works of art and invention; these works are the guarantee of a life worthy of men; it is the duty of the state to ensure with all diligence...; the protection of art and invention.”

Creativity and innovation contribute to the evolution of any civilization. They are the catalyst of progress, thus incentivizing countries to protect intellectual creations at the local and regional levels. The need to protect intellectual creations is rooted in the idea that such protection will serve as an incentive for creativity, inventiveness, and innovation, leading to societal growth.

¹ Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of Their Phonograms, October 29th, 1971; George Thuronyi, ‘Copyright Law and New Technologies: A Long and Complex Relationship’, available at <<https://blogs.loc.gov/copyright/2017/05/copyright-law-and-new-technologies-a-long-and-complex-relationship/>> last accessed 28 September 2023.

Rewarding creativity facilitates more inventiveness and creativity which is a social endgame as it leads to social and economic development.

Since the beginning of time, human creativity, and ingenuity have always been evolving. Truly, the evolution of the human mind necessitated copyright protection in the first place. Originally, copyright protection was only guaranteed for the known medium of storage of intellectual creations in ancient times, to wit, books. As intellectual works became fixed into mediums such as musical recordings, pictures, phonograms, cinematograph films, and so on, so did copyright protection extend to those areas.¹

As a branch of intellectual property protection, copyright confers upon the author (owner) certain rights in relation to his work, rights that extend to prohibit the usage of one’s intellectual creation by others without the owner’s authorization. Copyright like the other intellectual property types is guaranteed to serve as a motivation for creative minds. Once a work complies with the provisions of the Copyright Act 2022, it becomes protected in Nigeria, and the author forthwith, for the duration of the protection, has all

exclusive rights in relation to his work in the absence of any agreement to the contrary.

Information Communication Technology, the internet, and social media platforms have revolutionized the world in modern times. We live in a digital age, an era characterized by almost seamless and boundless innovative possibilities. A by-product of these innovative possibilities is the social media. The development of social media platforms provided the world with means to interact with others at a global scale, a scale large enough to justify the world being called a 'global village'.

In this era of social media, sharing information has become a culture as people enjoy sharing their experiences with others.² Due to this reality, a large number of social media users naturally use a variety of social media 'applications' (Apps) and web services that allow content sharing.³ Content sharing on social media is perhaps the most modern variation of creative expression and freedom. However, the content shared on many of these social media platforms is more often than not

works in which copyright subsists. For instance, on Instagram, the pictures and videos recorded and shared enjoy copyright protection. The same applies to Facebook, TikTok, YouTube, and many other social media sites.

With the blessings of social media, creative freedom, and expression, comes the need to ensure copyright protection in the digital space.⁴ The internet and social media create a new medium of expression, creativity, and innovation. However, this medium must be adequately refereed by copyright laws to preserve the ideals of copyright protection which among others seeks to encourage innovation and creativity and protect the right of a creator to exploit his work commercially. Nevertheless, it proves difficult to protect copyrighted works on social media from being infringed.⁵

The advent of social media has created the new 21st-century cultural norm of 'sharing'; wherein, people share details about their personal lives, work, opinions

² Louise Lundell, *Copyright and Social Media: A legal analysis of terms for use of photo sharing sites* (LLB dissertation of the Jönköping International Business School, Jönköping University 2015).

³ O Nov et al, 'Analysis of Participation in an online Photo-Sharing Community: A Multidimensional Perspective', *Journal of the American Society for Information Science and Technology*, Vol. 61, no.3 (2010) p.555.

⁴ Babovic Mihajlo 'The Emperor's New Digital Clothes: The Illusion of Copyright Rights in Social Media,' *Cybaris*: Vol. 6:Iss. 1, Article 6 available at: <https://open.mitchellhamline.edu/cybaris/vol6/iss1/6>>last accessed 28 September 2023.

⁵ Louise Lundell, *Copyright and Social Media: A legal analysis of terms for use of photo sharing sites* (LLB dissertation of the Jönköping International Business School, Jönköping University 2015).

and thoughts with others.⁶ Social media is designed to allow for sharing at a grand scale and anyone who chooses to use social media must do so expecting that any content posted by him/her can and may be shared. There is a thin line between the need to share creative works and the right of an author in relation to his work. Interestingly, the concept of sharing as an emerging way of life as it pertains to copyrightable works runs against the traditional notions of exclusivity of works.⁷ Social media is designed to allow for sharing at a grand scale. This comes with certain problems. The first of which is the fact that some of the works shared on social media are works which copyright subsists. Copyright protection in a work generally precludes the sharing or distribution of a work without the authorization of the author of the work.

Contents such as photographs, videos, and songs are shared on social media. These are works in which copyright subsists generally. However necessary, any restriction of the sharing of content on the internet is against the very purpose of social media. We must then juxtapose between the rights of an author in his work

and the rights of the public to the expression of one of their own. The need for this juxtaposition is hinged on the fact that social media users in addition to sharing their personal information and creative works also share the creative works of others in which copyright subsists.⁸ Where the owner of copyright shares his work on social media, it is acknowledged that he may so act. However, if the work that he shared becomes available to others and they also share with others, can we say copyright has been infringed? Also, given the fact that he understands that sharing occurs on social media, is it reasonable for an author who shares his work with others to reasonably expect that it will not be shared further? In truth, although it is at best speculative, it may be reasonably presumed that a person who shares content on social media, especially platforms where “the world” may view, expects, or intends for the content shared to ‘go viral’ and gain traction. If this was not the case, the content should not be shared in the first place.

Unfortunately, it appears that copyright laws have been having a hard time

⁶ Ibid.

⁷ Leah C. Grinvald, *Social Media, Sharing and Intellectual Property law*, 64 DePaul L. Rev. (2015) available at < <https://www.via.library.depaul.edu/law-review/vol64/iss4/4>> last accessed 28 September 2023.

⁸ Leah C. Grinvald, *Social Media, Sharing and Intellectual Property law*, 64 DePaul L. Rev. (2015) p. 1062 available at < <https://www.via.library.depaul.edu/law-review/vol64/iss4/4>> last accessed 28 September 2023.

catching up to this new cultural norm of sharing as they tend more to the exclusivity of copyrights. Perhaps a paradigm shift that allows for shorter copyright duration is necessary to incentivize more creative effort. More so, it may be argued that an author's moral right to prevent the distortion or mutilation of his work should be limited as it significantly reduces creativity.

The sharing culture on social media is increasingly coming under threat. This is principally because the present copyright laws favour the exclusivity of copyright as opposed to the sharing culture. Although it is still an emerging ideology, the sharing of content is far better than the exclusivity of copyright as far as modern society is concerned.⁹ This is largely due to the presence of social media platforms. However, copyright laws confer exclusive rights on the owners of copyright in a work giving them a special right to use their work and also a special right to prohibit others from using their work.¹⁰ Exclusivity of copyright is not a novel idea; it is an idea that formed one of

the bases for copyright laws. In fact, some scholars consider exclusivity a reward for creativity and some consider it an incentive for creativity.¹¹

It is quite unfortunate that the extant law and courts are in favour of the exclusivity of copyright. Where it is in issue that a work in which copyright subsists has been shared without the authorisation of the author, the court will always hold that infringement of copyright has occurred except where fair use or an acceptable defence has been established.¹²

Copyright covers two unique sets of interests in a work, the economic interests and the moral rights. Exclusivity of copyright must be such that it pertains to the economic interests in works. Thus, sharing culture on social media should not be interfered with except it deprives the owner of copyright in a work of economic benefits.¹³ This is a way of ensuring cultural progression *vis a vis* protecting the economic interests of authors. As far as protecting the moral rights of an author *vis a vis* sharing culture on social media,

⁹ Ibid.

¹⁰ Davidson Otoru, 'An Overview of Copyright Protection in Nigeria' (2018) <<http://www.mondaq.com/Nigeria/x/692416/Copyright/An+Overview+Of+Copyright+Protection+In+Nigeria+Part+1>> accessed 28 September 2023.

¹¹ William Fisher, 'Theories of Intellectual property' available at <<https://www.law.harvard.edu>> last accessed 28 September 2023.

¹² Davidson Otoru, 'An Overview of Copyright Protection in Nigeria' (2018).

<<http://www.mondaq.com/Nigeria/x/692416/Copyright/An+Overview+Of+Copyright+Protection+In+Nigeria+Part+1>> accessed 28 September 2023.

¹³ Leah C. Grinvald, Social Media, Sharing and Intellectual Property law, 64 DePaul L. Rev. (2015) p. 1062 available at <<https://www.via.library.depaul.edu/law-review/vol64/iss4/4>> last accessed 28 September 2023.

sharing does not always affect the moral right.

Some have argued that the users of social media view the works of others as raw material for the creation of their content on the social media platform and that there is an increasingly eroding line between creators and consumers of creations.¹⁴ To this, Professor John Tehranian stated that the typical actions of just one day in the life of a hypothetical person could amount to \$12.45 million in copyright infringement.¹⁵ This is given the daily routine of social media interaction.

Sharing is an innovation that has been incorporated into the social media space, the current copyright laws require reforms that allow and incorporate sharing on the social media space. Sharing is the new normal; absolute exclusivity is fast becoming an ancient norm.

Conversely, it may be argued that the balance between creative freedom and copyright protection in this digital era lies in having a more robust legal framework for the protection of copyright on the internet and social media. The enactment of the Copyright Act of 2022 is seen to be an attempt to cure the defects of the repealed Copyrights Act, but most importantly, to create a framework that

creates measures against digital infringement of copyright.

The consequential impact of the 2022 Copyright Act on the promotion of copyright protection remains to be seen, but certainly, the provisions of the Act tilt more towards the improvement of the status quo on the level of copyright infringement in this digital age rather than the promotion of creative freedom through a more liberal approach to copyright protection.

All in all, it is stated that if we must attain a balance between creative freedom and copyright protection, there must be a more progressive approach to the idea of the sharing culture in the digital space on one hand, and the jealous protection of exclusive rights for a shorter duration on the other hand.

¹⁴ Ibid.

¹⁵ John Tehranian, 'Infringement Nation: Copyright 2.0 and you 2-4' (2011).