

October 11, 2021

**The Senate President,
Senate of the Federal Republic of Nigeria
National Assembly Complex,
Three Arms Zone,
Abuja.**

Distinguished Senate President,

RE: COPYRIGHT ACT REPEAL AND RE-ENACTMENT BILL 2021

Three working days ago, we received for the first time by e-mail an 88-page document with 109 sections which we have been told we must immediately respond to by submitting 15 hard copies and a soft copy of a memorandum before tomorrow to the Senate. We were also informed that the Nigerian Senate is scheduled to hold a Public Hearing tomorrow, October 12, 2021 on the Document, consequent upon which the document may be enacted as a new Copyright Act for the Federal Republic of Nigeria! We are stunned.

On Thursday, October 7, 2021, there was a Zoom 'Technical Consultative Meeting' organized by the Nigerian Copyright Commission to which stakeholders were invited so that everyone "will speak with one voice" at the scheduled Public Hearing. Many of the participants at the Zoom Meeting complained that they had never seen the document the enactment of which they were all asked to support. The portal at which we were told the document could be downloaded was not working. There is no question that the sudden hyperactivity is an effort to make the Public Hearing reach a pre-determined conclusion.

We have taken a cursory look at the document called the Executive Copyright Bill. It is very clear that the Senate is being stampeded to pass a very dangerous bill

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infested with many bad and anti-democratic provisions that will stifle the growth of creativity in Nigeria and damage our economy going forward. Indeed, the bill if passed into law will turn Nigerian musicians, authors, film makers, computer programmers, publishers and the many creatives who depend on a good copyright system into the slaves of a few civil servants at the Nigerian Copyright Commission.

There are countless provisions in the bill giving the Nigerian Copyright Commission and its personnel such powers and privileges not possessed by any other government agency. A lot of these provisions are not in line with diverse public service rules. Indeed, in so many situations, the Nigerian Copyright Commission has put itself in the place of the owners of copyright to take decisions on behalf of the copyright owners which decisions are business decisions ordinarily taken by the owners of copyright or their agents. Please see Section 15(4), Section 16(3), Section 27(1)(c), Section 27(2), Section 27(6), Section 97(b), etc. The commission neither has the competence, the staff, the technology or the lack of bias and has not shown over time that it has the slightest capacity to exercise the powers it is grabbing and the result will be utter confusion and frustration.

In certain sections, the document has used terms that have no discernable meaning and will only give practitioners and judges unending headache as no interpretation of the terms are provided. An example is Section 29 which provides no explanation with respect to what “collective work” means and simply leaves it to conjecture. In most parts of the document, the word, ‘copy’ is used as if we are still in an analogue environment.

If Section 39 of the bill becomes law, in a supposed democracy, no copyright owner in Nigeria who negotiates or grants a licence for the use of his work, will be able to exercise his constitutional right of going to court anymore to enforce his rights, except he gets the permission of civil servants at the Nigerian Copyright Commission!

Under Section 104 (2), no one can bring any action against the Commission or any member of its staff on any matter whatsoever, whether private or official, except a three-month written notice of intention to commence the suit is served upon

the Commission by the intending plaintiff or his agent. No government official or even any of our distinguished senators enjoys such privilege or protection.

Furthermore, under Section 100, if any citizen gets a judgment against the Commission, no execution or attachment of process can be issued against the Commission, unless prior to such execution, not less than three months' notice of the intention to execute or attach has been given to the Commission.

The provisions of Section 102 make the Nigerian Copyright Commission a "secret society" in a world that advocates transparency in the operation of public institutions.

Under Section 87, Nigeria will start a new regime of the registration of copyright, a totally unnecessary and anachronistic adventure. It is a very bad move.

Registration of copyright is an almost dead practice. Across the world, only the United States of America still registers copyright statutorily and only for the purpose of bringing an action and not for protection. Almost everywhere in the world, copyright registries have been dismantled and the registrars sent home.

Copyright does not just protect musical works, sound recordings, books, plays, movies, computer programs, photographs, broadcasts, etc. Copyright protects an almost endless list of creative works and works of artistic craftsmanship such as paintings, drawings, etchings, lithographs, woodcuts, engravings, prints, maps, plans, diagrams, works of architecture, sculptural works, etc.

The truth is that it is practically impossible to register even a tiny fraction of the works eligible for copyright. Every day, without being conscious of it, we are all creating eligible works in our letters, reports, memos, lectures, addresses, sermons, scripts, etc. To even attempt to register a fraction of the works eligible for copyright requires a bureaucracy, the size and cost of which is not meaningful to contemplate in today's Nigeria.

If as stated in Section 87, the Register will provide prima facie evidence of the particulars entered therein, it then means that anyone who registers a work may claim copyright in the work even if he is not the creator of the work. Just think of the commotion this is likely to cause in a semi-literate society like ours with the enormous danger of fraudulent registrations which may in fact defeat the whole purpose of copyright protection.

Reading through the document, it is clear that it was drafted by Civil Servants with definite self-serving agenda and academics with very little copyright industry experience. The contradictions and conflicts in the document are fundamental and not such that can be repaired by any panel beating. Indeed, the Head of Service of the Federation needs to look at the document to expunge the many anti-Public Service proposals. A very transparent process in which the true stakeholders are on the table needs to be commenced if the intent is not to suppress Nigeria's creative output and kill our copyright industries.

The 1988 Copyright Act (Cap C 28, Laws of the Federation of Nigeria, 2004) upon enactment was admired across the world and continues to be in place. It is very true that because of developments in digital technology and the fall in the value of the Naira, there is need to update our copyright law. That need cannot be reason enough to rush and unleash this terrible piece of legislation on our musicians, authors, film makers, publishers, computer programmers, etc.

For full disclosure, the undersigned is the Chairman of the Board of Copyright Society of Nigeria (COSON), Nigeria's biggest copyright organization with thousands of members across the country made up of very substantial owners of copyright in musical works and sound recordings.

We also have reciprocal representation agreements with many organizations across the world with millions of copyright works in our repertoire.

Our organization has been a critical driver of developments in the copyright sector in Nigeria which developments are central to the income and well-being of our members.

The undersigned actively participated in drafting the present Copyright Act and working with the late Prof. Egerton Uvieghara drafted the 1st Amendment to the Act while both he and Prof Uvieghara served on the Board of the Nigerian Copyright Council. He is the author of "Copyright, Neighbouring Rights and the New Millionaires – the Twists and Turns in Nigeria"

We believe that the distinguished Senator Tokunbo Abiru must have had good intentions in leading the process of copyright reform in Nigeria. Unfortunately, that process has been hijacked and the train derailed and a new transparent process that has the stakeholders on the table needs to begin.

For the good of the Nigerian nation and posterity and not to make Nigeria the laughingstock of the world, the Senate of the Federal Republic of Nigeria is requested not to put its imprimatur on the terrible piece of legislation known as the 'Executive Copyright Bill'.

A handwritten signature in black ink, appearing to read 'Tony Okoroji', written in a cursive style.

CHIEF TONY OKOROJI

Chairman