



INTELLECTUAL PROPERTY IN THE SOCIAL MEDIA LANDSCAPE: THE IMPACT, OPPORTUNITIES AND CHALLENGES

Atamenwan, Rita Nene*

ABSTRACT

The advent of social media has revolutionized the creation, sharing of, and interaction with intellectual property. This paper delves into the effects of social media on Intellectual Property rights and protection. While analysing its opportunities, and challenges, it seeks to make recommendations for ensuring a balance between private ownership and public ownership of intellectual property. It recognises the ease with which users can share and reproduce copyrighted content without permission and discusses new forms of creative expression and sharing, as well as opportunities for Intellectual Property owners to license and monetize their content. It highlights the relevant legal frameworks on intellectual property rights as on social media in Nigeria. The paper highlights the challenges of enforcing Intellectual Property rights in the digital age and emphasizes the need for strengthening the enforcement of existing laws, harmonization with international standards, and innovative solutions to address online infringement. It examines the role of digital rights management and specialized Intellectual Property courts and tribunals in navigating the complex social media landscape. Ultimately, this paper seeks to provide a comprehensive understanding of the intersection of Intellectual Property and social media, informing policy and legal frameworks that balance creativity, innovation, and protection in the digital era.

Key words: *Intellectual property, intellectual property protection, intellectual property rights, social media, ownership.*

INTRODUCTION

Globalization has impacted various aspects of the law, profoundly, contributing to the evolution and expansion of contexts and concepts, intellectual property law inclusive. Social media, one of the instruments of globalization, has also affected intellectual property protection both positively and adversely. Although innovators and creators have a global audience to cater to and are provided with the platform to exercise their rights of freedom of expression¹ and association²

*Rita Nene Atamenwan, LL B (Hons), BL, LL M (RSU), PhD (In view, RSU)
Email: ritaatamenwan@yahoo.com.



guaranteed by the Constitution and relevant international and regional instruments, there is also a rise in violations of these rights alongside others. Social media offers individuals the opportunity to share their thoughts, ideas and intellectual property on a global platform, while others without reference or compliance with processes recognised by law, reproduce, copy or share those thoughts, ideas and intellectual property, breaching the owner's protection and right in respect of the intellectual property.³ Intellectual property protection has become more rampant in discourses involving social media, arguably, the advent of social media has imposed as many challenges to people exercising intellectual property rights as opportunities.⁴

According to reports, Nigeria has about 103 million Internet users of which, 36.7 million Nigerians used social media in January 2024, as against 31.6 million social media users in 2023. Meaning that more than 45 per cent of Nigeria's population commenced using social media in January 2024, while about 54.5 per cent were offline. There are over 45 million professional content creators, globally⁵ in what is called, the content creator economy. The COVID-19 lockdown in 2020, triggered an increase in the content creator population in Nigeria. Digital

¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s39; Economic Community of West African States (ECOWAS), *Revised Treaty of the Economic Community of West African States* 1993, art 9; African Charter on Human and Peoples' Rights 1981, art 9; United Nations, Universal Declaration on Human Rights 1948, art 19.

² CFRN, s40; Economic Community of West African States (ECOWAS), *Revised Treaty of the Economic Community of West African States* 1993, art10; African Union, African Charter on Human and Peoples' Rights 1981, art29; Universal Declaration on Human Rights 1948, art20.

³ U M Ogisi, 'Social Media And The Rights Of The Individual: The Nigerian Perspective' [2017] 13 UNIZIK Law Journal, 1-14.

⁴ Jude Odinkonigbo, Obi Meghoma and Deborah Okpiaifo, 'The Challenges of Protecting Intellectual Property Rights in Nigeria in the Age of Social Media' *Templars*, 9 May 2023 <https://www.templars-law.com/app/uploads/2023/05/03052023-THE-CHALLENGES-OF-PROTECTING-INTELLECTUAL-PROPERTY-RIGHTS-IN-NIGERIA_.pdf> accessed 2 May 2024.

⁵ Simon Kemp, 'Digital 2023: Nigeria' *Datareportal* (13 February 2023) <<https://datareportal.com/reports/digital-2023-nigeria>> accessed 2 May 2024; Chinwe Michael, 'Number of Nigerians on social media hits 36.7 million — Report' *Business Day* (18 March 2024) <<https://businessday.ng/technology/article/number-of-nigerians-on-social-media-hits-36-7-million-report/>> accessed 2 May 2024.



content creation has been described as the new oil discovery, ‘digital oil’ in the economy. Social media has evolved from being used for personal connections and disseminating information to being a money-making tool and source of livelihood for many.⁶ The Creative sector is the second-largest employer in the country with over 4.2 million Nigerians currently employed and having the potential to employ an additional 2.5 million people by 2025.⁷

The above statistics are indicative of existent and emergent opportunities and challenges with intellectual property and intellectual property protection, especially in Nigeria, where social media regulations are underdeveloped. This research seeks to evaluate the legal and institutional frameworks for intellectual property protection in Nigeria as it pertains to content creation on social media. It intends to explore the issues of online infringement, fair dealing and other barriers to intellectual property protection in the social media space their implications for intellectual property in Nigeria. This paper will analyse jurisdictional issues and strategies for promoting respect for intellectual property rights.

CONCEPTUAL CLARIFICATIONS

Intellectual Property

The concept of Intellectual Property has been defined as ‘creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in

⁶ Itoro Etukudoh, ‘How social media turn ‘digital oil’ for Nigeria content creators’ International Centre for Investigative Reporting (19 April 2024) <<https://www.icirnigeria.org/how-social-media-turn-digital-oil-for-nigeria-content-creators/>> accessed 2 May 2024.

⁷ Omoleye Omoruyi, ‘The creative economy currently employs 4.2m Nigerians, to add 2.7m more by 2025’ (Technext August 22 2023) <<https://technext24.com/2022/08/23/creative-economy-employs-4-2m-nigerians/>> accessed 2 May 2024; Bukola Okikiolu, ‘Nigeria’s Creative Sector in a Time Warp – Femi Balogun’ (Jobberman 13 April 2022) <<https://www.jobberman.com/discover/nigerias-creative-sector>> accessed 2 May 2024.



commerce.⁸ It is ‘any original creation of the human intellect...’⁹ or ‘characterized as non-physical property that is the product of original thought.’¹⁰ It is ‘an idea, a design, etc that somebody has created and that the law prevents other people from copying.’¹¹ Intellectual property is intangible assets or creations which accord certain rights that can be protected for the benefit of the creator. Key concepts that characterise intellectual property include originality,¹² intangibility of the assets – they are not physical, they are literary works, sounds, images and inventions,¹³ they are enforceable within the jurisdiction where they are granted,¹⁴ they are registrable,¹⁵ the rights are exclusive or private¹⁶ but have a limited period before they enter the public domain.¹⁷ Copyright, Patent, Trademarks, Trade secrets and Industrial designs form aspects or types of intellectual property.

Intellectual Property

⁸ World Intellectual Property Organization, ‘What is Intellectual Property’ (WIPO 2024) <<https://www.wipo.int/about-ip/en/>> accessed 4 May 2024

⁹ Raghbir Singh, *Law Relating to Intellectual Property: A Complete Comprehensive Material on Intellectual Property Covering Acts, Rules, Conventions, Treaties, Agreements, Digest of Cases and Much More Vol 1*, (New Delhi: Universal Law Publishing Co Pvt Ltd 2004); C N Saha and S Bhattacharya, ‘Intellectual Property Rights: An Overview And Implications In Pharmaceutical Industry’ (2011) 2(2) *J Adv Pharm Technol Res.* 88-93 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/>> accessed 4 May 2024

¹⁰ Adam Moore and Ken Himma, ‘Intellectual Property’ (Stanford Encyclopedia of Philosophy 18 August 2022) <<https://plato.stanford.edu/entries/intellectual-property/>> accessed 4 May 2024

¹¹ Oxford Advanced Learner’s Dictionary (9th Edition, Oxford University Press 2015) 817

¹² Copyright Act 2022, s2(2)(a)

¹³ Copyright Act 2022, s2

¹⁴ *Ibid*, s6

¹⁵ *Ibid*, s87

¹⁶ *Ibid*, s28, 29

¹⁷ *Ibid*, s19



This rights refer to the ‘rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period.’¹⁸ These rights pertain to the ‘control of physical manifestations or expressions of ideas’, and not the abstract non-physical entity.¹⁹ They are rights associated with intangible assets or non-physical property owned by a person and protected against use without consent.²⁰ Intellectual Property law, in the context of this research, refers to the protection of a content creator’s interest and ideas by assigning and enforcing legal rights to produce and control physical instantiations of those ideas.²¹ Intellectual Property law ‘is the body of laws that governs all the relevant aspects... of IP Rights.’²² The characteristics of intellectual property rights include; exclusivity – the rights are exclusive to the owner of the work until conveyed to another or enters the public domain, persons conferred with intellectual property rights enjoy legal protection, however, one must register such works to enable enforceability and justiciability, the rights are enforceable within the jurisdiction where they are registered.

The Doctrines of Fair Use or Fair Dealing

The concepts are often used interchangeably. Fair Use in the copyright context, ‘means that the dealing with the work must be genuine and reasonable.’ In other words, fair is an exception to

¹⁸ World Trade Organization, ‘What are Intellectual Property Rights’ (WTO 2024) <https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm> accessed 4 May 2024.

¹⁹*Ibid*; Adam Moore and Ken Himma, ‘Intellectual Property’ (Stanford Encyclopedia of Philosophy 18 August 2022) <<https://plato.stanford.edu/entries/intellectual-property/>> accessed 4 May 2024.

²⁰ St Francis School of Law, ‘Intellectual Property Rights: Definition and Examples’ (St Francis School of Law 15 April 2021) <<https://stfrancislaw.com/blog/intellectual-property-rights/>> accessed 4 May 2024.

²¹ Adam Moore and Ken Himma, ‘Intellectual Property’ (Stanford Encyclopedia of Philosophy 18 August 2022) <<https://plato.stanford.edu/entries/intellectual-property/>> accessed 4 May 2024.

²² Advocates of International Development, ‘Intellectual Property Law: Nigeria’ (Advocates of International Development 2016) <<https://www.a4id.org/wp-content/uploads/2016/12/Intellectual-Property-Law-Nigeria.pdf>> accessed 4 May 2024.



copyright control. The doctrine of fair use is evolving and has continued to develop over the years, it distinguishes uses of copyrighted material that fall within or outside the copyright owner's control.²³ Conversely, fair dealing relates 'to the treatment of an author's work with genuineness and with reasonable purpose.' For instance, copying of copyrighted work for criticism, caricature or satire, news, research, reporting, scholarship, and commentary is outside the copyright owner's control, private use is categorised as fair dealing or fair use in Nigeria,²⁴ while plagiarism, downloading copyrighted files for use, uploading copyrighted works, and quoting from a book without referencing the source are examples of copyright infringements. Some characteristics of fair dealing are; the works may be used for permissible purposes, the dealing should display good faith on the part of the user, the new work must not be used as a substitute for the original work, the use of the work should not cause harm to the market or potential market of the original work. The four key considerations in determining fair dealing are the;

- i. purpose and character of the usage of the work
- ii. nature of the work
- iii. amount and substantiality of the portion used in relation to the work as a whole and

²³Copyright Act 2022, s20(1); Glory Onoyeyan, 'Copyright Law and Photocopying Practice in Nigeria' (2018) Library Philosophy and Practice (e journal) <<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=5588&context=libphilprac/1000#:~:text=The%20copyright%20law%20under%20the,the%20reporting%20of%20current%20events.>> accessed 4 May 2024; Oyetola Muyiwa Atoyebi and Farida Ajibade, 'Fair Use And Fair Dealing: An Analysis Of Copyright Law In Nigeria' (Lawpavilion June 11 2023) <<https://lawpavilion.com/blog/fair-use-and-fair-dealing-an-analysis-of-copyright-law-in-nigeria/>> accessed 5 May 2024.

²⁴ Copyright Act 2022, s20(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r) and (2)(a), (b) and (c).



- iv. effect of the use upon the potential market or value of the work.²⁵

Ownership

‘Ownership is defined as the bundle of rights allowing one to use, manage and enjoy the property, including the right to convey it to others’²⁶ Ownership is ‘the legal relation between a person (individual, group, corporation, or government) and an object. The object may be ... completely the creature of [law](#), such as a patent, copyright, or annuity.’²⁷

Social Media

means ‘websites and software programs used for social networking’, examples are Facebook, WhatsApp, X, and TikTok.²⁸ ‘Social Media is a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of User-Generated Content.’²⁹ It has been defined as ‘forms of electronic communication as websites for social networking and microblogging through which users create online communities to share information, ideas, personal messages, and other content such as pictures, videos etc.’³⁰ Social media possesses the following characteristics; it allows user-

²⁵ Copyright Act, s20(1)(d), (i), (ii), (iii) (iv).

²⁶ Black’s Law Dictionary (8th Edition, Thomas West Publishing Company 2004) 1138.

²⁷ Britannica, *Ownership* (*Encyclopedia Britannica* 20 July 1998) <<https://www.britannica.com/money/ownership>> accessed 10 May 2024.

²⁸ Oxford Advanced Learner’s Dictionary (9th Edition, Oxford University Press 2015) 1482

²⁹ A M Kaplan, ‘Social Media, the Digital Revolution, and the Business of Media,’ (2015) 17 (4) *International Journal on Media Management*, 197-

199 <<https://www.tandfonline.com/doi/pdf/10.1080/14241277.2015.1120014#:~:text=Social%20media%2C%20defined%20as%20%E2%80%9Ca.%26%20Haenlein%2C%202010%2C%20p.>> accessed 13 May 2024.

³⁰ I A Yahaya and H A Ayodeji, ‘Influence of Social Media Usage on The Information Behaviour of Undergraduate Students in Selected Universities in Kwara State, Nigeria’ (2019) *Library Philosophy and Practice* <<https://digitalcommons.unl.edu/libphilprac/3655>> accessed 13 May 2024.



generated content, it consists of online communities with people having shared identities and interests, it accords users virtual identity such as profiles, accounts and handles, it provides a space for interaction amongst users, users can engage in real-time updates therefore accessing and sharing information instantly, it possesses algorithms that curate contents, prioritize posts and personalize user experiences, social media possesses a global scope which allows people connect with others all over the world, social media also allows users access various forms of communication, including video, audio, text, images, live streaming and other multimodal means of communication.³¹

Generally, the rights of creators are the central focus of the discourse on intellectual property and social media, taking into cognisance the intersection between public ownership and breaches. The work intends to review the relationship between these key concepts and Intellectual Property Rights Protection in the Social media space.

HISTORY OF INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

Nigeria has an array of laws that govern Intellectual Property Rights, they include the Copyrights Act, the Patents and Designs Act and the Trademarks Act, the Merchandise Marks Act, Trade Malpractices (Miscellaneous Offences) Act, Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act. However, focus will be placed on the Copy Rights Act, the Patents and Designs Act and the Trademarks Act.

³¹Lamya Benamar and others, The Identification and Influence of Social Roles in a Social Media Product Community, (2017) 22 (6) *Journal of Computer-Mediated Communication*, 337–362
<<https://academic.oup.com/jcmc/article/22/6/337/4675174>> accessed 13 May 2024



Scholars believe intellectual property is as old as mankind.³² However, it predates the creation of Nigeria. there are various accounts on the existence of intellectual property protection. Some argue that it originates from around 500 B.C.E. when Sybaris, a Greek state, made it possible for citizens to obtain a one-year patent for each ‘new refinement in luxury,’ while another account states that it started when chefs in Sybaris, a colony of Greece were granted yearly monopolies for making certain culinary dishes.³³ Other early references to the intellectual property include; Vitruvius who exposed intellectual property theft while acting as a Judge in a literary contest in Alexandria in the 1st Century. The perpetrators were tried, convicted, and disgraced for stealing from other peoples’ works. The second instance arose in Rome, although no known Roman law existed for protecting intellectual property, Roman jurists discussed the different ownership interests in intellectual work and how the work would be categorized. For instance, the ownership of a painting was differentiated from the ownership of the table upon which the painting is displayed. Reference was also made to literary piracy by Marcus Valerius Martialis also known as Martial, the Roman Epigrammatist, whose epigrams Fidentinus copied without citing the source, leading to the first recorded plagiarism matter.³⁴ Although there was no legal remedy or recourse, Martial criticised Fidentinus and other imitators through his works.³⁵

There was no record of intellectual property protection institutions or conventions in Ancient Greece and Rome during earlier times. However, during the Roman period, to the Florentine

³² Sony Kashyap, ‘History And Development Of Intellectual Property’ (2021) (3) (1) International Journal of Education, Modern Management, Applied Science & Social Science (IJEMASSS) 193-196 <<https://www.inspirajournals.com/uploads/Issues/1192479670.pdf>> accessed 5 May 2024.

³³ Adam Moore and Ken Himma, ‘Intellectual Property’ (Stanford Encyclopedia of Philosophy 18 August 2022) <<https://plato.stanford.edu/entries/intellectual-property/>> accessed 4 May 2024.

³⁴ B W Bugbee, *The Genesis of American Patent and Copyright Law* (Public Affairs Press 1967) 7-194.

³⁵ M V Martialis, *Martial: Epigrams in 2 Volumes* (G. P. Putnam's Sons 1930).



Republic era, franchises, privileges, and royal favours were granted which was different from the systems of intellectual property as you have it.³⁶ The Republic of Florence made one of the first statutes that protected authors' rights on June 19, 1421. The statute recognized the rights of creators to the products of their intellectual work and incorporated incentives. Filippo Brunelleschi, a renowned architect was issued the only patent in 1442. Over time, statutes such as the Statute of the Venetian Republic were created about 150 years before England's Statute of Monopolies³⁷ which granted fourteen-year control to creators and eradicated the practice of granting rights to copied ideas or works existing in the public domain, in 1455, in Europe the first recognized mechanized printing press was created, namely, the Johannes Gutenberg's printing press during the period, grants, privileges, and monopolies were issued, not copyright. The Statute of Anne³⁸ which is considered by scholars to be the first copyright

The Statute of Anne is considered by scholars to be the first statute of modern copyright. It stipulated in its commencement that creators and their families had borne the detriment of the production and reproduction of their works without the owners' consent and that there is a need to prevent such practices in the future while encouraging learned men to compose and write books.

In England, in the landmark case of *Miller v. Taylor*³⁹, it was held that creators had the inherent right to control what they produce, independent of statute or law. While this case was eventually

³⁶ B W Bugbee, *The Genesis of American Patent and Copyright Law* (Public Affairs Press 1967) 7-194.

³⁷ Statute of Monopolies 1623 (Chapter 3 21 Ja 1), United Kingdom.

³⁸ The Statute of Ann 1710 (8 Ann. c. 21 or 8 Ann. c. 19).

³⁹ *Miller v Taylor* 4 Burr. 2303, 98 ER 201.



overruled in *Donaldson v. Becket*⁴⁰, which held that copyright in published works was not permanent but was limited by statute. Over time, other European countries followed suit.⁴¹ The inception of international treaties such as the Paris Convention,⁴² Berne Convention treaties⁴³ and the Trade-Related Aspects of Intellectual Property agreement⁴⁴ have contributed to the expansion of the scope of intellectual property protection, globalizing aspects of intellectual property protection.

The history of Nigeria's intellectual property law and protection is not known before the creation of the Nigerian State. However, its history may be traced back to British colonialism. Various aspects of intellectual property evolved differently. For instance, the first law on copyright, the United Kingdom Copyright Act, was introduced by the colonial government in Nigeria,⁴⁵ and remained in force in Nigeria until it was repealed and replaced by the Nigerian Copyright Act through Decree No. 61 of 1970. The decree was inadequate and there were pressures from creators and copyright owners for a more suitable legal framework that would protect creators against piracy, publishers and the rapid socio-economic development in the post-civil war society. The Federal Military Government then promulgated the Copyright Decree No. 47 of

⁴⁰ *Donaldson v Becket* (1774) 2 Brown's Parl Cases (2d ed.) 129, 1 Eng Rep 837; 4 Burr 2408, 98 Eng Rep 257; 17 Cobbett's Parl Hist 935.

⁴¹ B W Bugbee, *The Genesis of American Patent and Copyright Law* (Public Affairs Press 1967) 7-194.

⁴² Paris Convention for the Protection of Industrial Property of March 20, 1883; Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14 1967.

⁴³ Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, as revised at Stockholm on July 14 1967, 828 U.N.T.S. 221; Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, revised at Paris July 24 1971 1161 U.N.T.S. 3; Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris on July 24 1971 and amended in 1979 S. Treaty Doc. No. 99-27 (1986); Berne Convention for the Protection of Literary and Artistic Works 1971 (as amended in 1979).

⁴⁴ *Agreement on Trade-related Aspects of Intellectual Property Rights* (1869 U.N.T.S. 299).

⁴⁵ Copyright Act 1911.



1988, which existed as the Copyright Act 1988 and was amended. The Act established the Nigerian Copyright Commission. The Copyright Act also incorporates the Trade-Related Aspects of Intellectual Property Rights (TRIPS) protection for copyrights. It was eventually repealed and replaced with the Copyright Act 2022.⁴⁶

The first intellectual property law made applicable to Nigeria was the Trade Marks Promulgation of 1900 which was promulgated by the High Commissioner of the Protectorate of Southern Nigeria.⁴⁷ The United Kingdom Trade Marks Ordinance became applicable in Nigeria during colonialism with the amalgamation of the Northern and Southern Protectorates into Nigeria in 1914.⁴⁸ The Protectorates were previously governed by two different Ordinances which were repealed by the Supreme Court Ordinance of 1914. It underwent several reviews, repeals and amendments before the enactment of the Trademarks Act of 1967.

The Patents and Designs Act share a common history with the Trademarks Act and the Copyrights Act, it was introduced by the British colonialists. The Patent system was introduced in Lagos and Southern Nigeria in 1900 and was extended to the Northern Protectorate in 1902.⁴⁹ The amalgamation of the Northern and Southern Protectorates in 1914, led to the repeal of all legislations on patents and the promulgation of the Patents Ordinance No. 30 of 1916. The Ordinance was amended in 1925 and repealed by the Nigerian government after independence in

⁴⁶ M J Umaru, 'Intellectual Property Law in Nigeria: An Introduction' (Usman Danfodiyo University Press 2011) 15.

⁴⁷ C J Ubanyionwu, 'Historical Evolution of Intellectual Property Laws in Nigeria' (2023) 3 (1) *De Juriscope Law Journal: Department of International Law & Jurisprudence, Chukwuemeka Odumegwu Ojukwu University*, 113-118 < <https://www.nigerianjournalsonline.com/index.php/DJLJ/article/download/4189/4059> > accessed 8 May 2024.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*



1968 with the Patents Right (Limitation) Act, which still retained some vestiges of the colonialist period such as Section 1 which stipulated that inventions would be used for services of the Federal Republic of Nigeria. The Act was repealed, and the current Patents Act of 1970 was enacted and prescribes whose products may be granted the statutory rights.

Over time, patent, trademark and copyright laws have become more complex but the purpose remains the same. Intellectual property laws are now recognised and enacted by Countries to promote creativity, entrepreneurship and ensure creators enjoy the benefits of their inventiveness.⁵⁰

The history of intellectual property rights and protection is an evolving narrative that spans centuries, from the early patent laws of Venice to the modern-day digital rights management systems, the concept of intellectual property has adapted to technological advancements, societal needs, and economic conditions. As the digital age advances, it is essential to continue refining and harmonizing intellectual property rights and protection globally, balancing individual and public interests, and ensuring that the intellectual property system remains a catalyst for progress and human advancement.

THE IMPACT OF SOCIAL MEDIA ON INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

⁵⁰ Jeff Williams, 'The Evolution of Intellectual Property' (Law Office of Jeff Williams PLLC 2022) <<https://www.txpatentattorney.com/blog/the-history-of-intellectual-property/>> accessed on 5 May 2024.



The impact of social media on Intellectual Property rights and protection is complex and multifaceted, requiring ongoing efforts from creators, policymakers, and social media companies to strike a balance between creative expression, sharing, and protection. Social media as a concept was created to remove barriers to interactions and communication.⁵¹ Social platforms such as Meta, Instagram, and X have become relevant podia for entertainment, education, enlightenment and sharing various forms of information. It has had a significant impact on intellectual property rights, raising various challenges and opportunities. Social media has contributed to the increased rate of intellectual property infringements. The culture of sharing on social media platforms have made it easier for copyrighted content to be reproduced without the consent or permission of the creators or owners and contrasts with the implications of copyright law.⁵²

Social media platforms offer creators a vast array of benefits, including the ability to share their work with a global audience, explore new revenue streams through advertising, sponsored content, and affiliate marketing, and facilitate the exchange of knowledge, ideas, and innovations, fostering collaboration and progress. Additionally, social media platforms provide intellectual property owners with tools and mechanisms to report and address infringement, such as copyright and trademark reporting systems, helping to protect their creative works. The Copyright Act 2022 specifically stipulates that literary works, musical works, artistic works,

⁵¹ G Appel, 'The Future Of Social Media In Marketing (2020) 48 *J of the Acad Mark Sci*, 79–95 <<https://doi.org/10.1007/s11747-019-00695-1>> accessed 9 May 2024

⁵² H Boshier, S Yeşiloğlu, 'An analysis of the fundamental tensions between copyright and social media: The legal implications of sharing images on Instagram' (2019) 33 (2) *International Review of Law, Computers & Technology*, 164-186. <<https://eprints.bournemouth.ac.uk/31056/1/Social%20media%20and%20copyright.pdf>> accessed 9 May 2024.



audiovisual works, sound recordings and broadcasts are works eligible for copyright.⁵³ Notably, copyright commences at the creation of the work.⁵⁴ Ordinarily, only the creator of the work has the right to reproduce, broadcast, distribute, or otherwise make the work available to the public.⁵⁵ Except where the work is being used by fair dealing for private use, lampoons or non-commercial research, private study purposes, reviews, and reporting purposes etc.⁵⁶ Contents can be shared with ease through social media platforms, the implication is that mass and peer-based file sharing and streaming on social media platforms cause infringements due to the anonymous nature of social media, ease of creating new accounts and the high rate of infringements which makes it difficult to identify and pursue infringers and enforce Copyright laws, impacting various industries and creative sectors. This reduces the pecuniary interests of creators and devalues their efforts and creativity vested in their works.⁵⁷

Social Media has introduced novel forms of creative expression, which may sometimes blur the lines between fair use and copyright infringement. For instance, social media platforms such as Tik Tok, Instagram, and Snapchat allow users to create and share videos, photos, music, and more, revolutionising the content creation horizon as new expressions and works continue to emerge.⁵⁸

⁵³ Copyright Act 2022, s2.

⁵⁴*Ibid*, s18.

⁵⁵*Ibid*, s 9, 10, 11, 12, 13.

⁵⁶*Ibid*, s20(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r).

⁵⁷ BIAT Legal, 'Copyright in the Digital Era: Addressing the Challenges and Embracing the Opportunities of the Future' (Medium 18 October 2023) <<https://biatlegal.medium.com/copyright-in-the-digital-era-addressing-the-challenges-and-embracing-the-opportunities-of-the-599d0e96bdaf>> accessed 9 May 2024.

⁵⁸Navdeep Sharma, 'The evolution of creativity: how social media apps are transforming content creation' *Financial Express* (India 1 October 2023) < <https://www.financialexpress.com/business/brandwagon-the-evolution-of-creativity-how-social-media-apps-are-transforming-content-creation-3259770/>> accessed 9 Many 2024.



The advent of social media has changed the way consumers interact with Intellectual Property-protected content and has also caused changes in consumer behaviour. It has numerous advantages including direct access between businesses and consumers and vice versa. Social media offers Creators a level playing field, more cost-efficient, data-based, consumer traffic on websites or pages meaning more pecuniary benefits, creator or brand personality creation and calculable access to consumers that offer real-time results amongst other benefits.⁵⁹ Creators now need more following, shares and comments as that would increase awareness of the creator's brand, pecuniary benefits and endorsements. Consumers are also seeking free or low-cost access to digital content.⁶⁰

Social media platforms have also created new opportunities for Intellectual Property creators to license and monetize their content through music streaming, content partnerships and more.⁶¹ The current realities make it crucial for Intellectual Property laws and policies to be updated to meet the rapid evolution of social media towards ensuring and addressing Intellectual protection in the digital age. Social Media may also be leveraged for educating and creating awareness amongst users on intellectual property rights and the importance of respecting creators' rights.

⁵⁹ David Cotriss, 'Social Media For Business: Marketing, Customer Service and More' *Business News Daily* (28 March 2024) <<https://www.businessnewsdaily.com/7832-social-media-for-business.html>> accessed 10 May 2024; Megha Shah, 'Traditional Media vs. New Media: Which is Beneficial' (Tech Funnel 22 December 2023) <<https://www.techfunnel.com/martech/traditional-media-vs-new-media-beneficial/>> accessed 10 May 2024.

⁶⁰ Katie Salcius, '3 Benefits Creators Want From Brand Deals' (Forbes Mar 12, 2024) <<https://www.forbes.com/sites/katiesalcius/2024/05/07/how-this-youtube-family-landed-a-deal-with-disney/?sh=7840305645b9>> accessed 10 May 2024; GRIN Contributor, 'Understanding the Creator Economy' (GRIN 2024) <<https://grin.co/blog/understanding-the-creator-economy/>> accessed 10 May 2024.

⁶¹ A Watson, 'Does Social Media Pay for Music Artists? Quantitative Evidence on the Co-Evolution of Social Media, Streaming and Live Music (2023) 16(1) *Journal of Cultural Economy*, 32–46 <<https://doi.org/10.1080/17530350.2022.2087720>> accessed 10 May 2024.



Social media has affected intellectual property rights and protection, profoundly, offering both opportunities and challenges. On one hand, social media has enabled creators to share their work, connect with global audiences, and monetize their intellectual property through innovative approaches. nevertheless, it has also served as a springboard to widespread infringement, brand impersonation, and the abuse of intellectual property. Presumably, social media will continue to shape the digital landscape, policymakers, platforms, and creators must collaborate on effective solutions that balance intellectual property protection with the free flow of information and innovation.

SOCIAL MEDIA AND INTELLECTUAL PROPERTY: THE CHALLENGES IN MAINTAINING A BALANCE BETWEEN PRIVATE AND PUBLIC OWNERSHIP

Private ownership of Intellectual Property is the exclusive rights of individuals or organizations over their creations, they include copyrights for literary, dramatic, musical and artistic works; patents for inventions and innovations; trademarks for brand names, logos and symbols; and trade secrets for confidential information. They are also known as exclusive rights to intellectual property. These rights allow creators to control the use, reproduction, distribution, and display of their creations, and receive financial benefits for their works. Private ownership of Intellectual Property fosters originality and creativity and encourages investment in research and development. It is the exclusive rights of creators to control the use, reproduction, distribution,



and display of their work, and receive pecuniary benefits for their creations.⁶² Public ownership of Intellectual Property refers to the perception that creative works, innovations and inventions should be accessible and usable by people other than the creator. It implies that creative works are made for public consumption, rather than being controlled by private individuals or organizations.

Generally, Copyright infringement can occur through everyday social media activities, such as copying and pasting literary works without permission, using and sharing music and graphics without authorization, and using registered trademarks without consent. For instance, names and logos are often used for advertising on social media without permission. Even hashtags may now be registered as trademarks with the US Patent and Trademark Office. Examples of successfully registered hashtag trademarks include #smilewithacoke by Coca-Cola, and #McDstories by McDonald's.⁶³ Infringements may include using popular hashtags on social media in a way that implies a connection to the trademark owner may cause confusion among consumers and be considered an infringement. Similarly, design infringement often occurs when counterfeiters sell

⁶²C J S Azoro, 'Rethinking the Meaning, Nature and Scope of Intellectual Property Rights Under Nigerian Law' (2023) 3 *Idemili Bar Journal*, 5-15; S K Savale and V K Savale, 'Intellectual Property Rights' 2018 *World Journal of Pharmacy and Pharmaceutical Sciences* <https://www.researchgate.net/publication/328161728_INTELLECTUAL_PROPERTY_RIGHTS_IPR> accessed 11 May 2024; World Intellectual Property Organization, 'What is Intellectual Property' (WIPO 2024) <<https://www.wipo.int/about-ip/en/>> accessed 4 May 2024.

⁶³ Jude Odinkonigbo, 'The Challenges of Protecting Intellectual Property Rights in Nigeria in the Age of Social Media' (Templars 9 May 2023) < https://www.templars-law.com/app/uploads/2023/05/03052023-THE-CHALLENGES-OF-PROTECTING-INTELLECTUAL-PROPERTY-RIGHTS-IN-NIGERIA_.pdf > accessed 11 May 2024.



fake products on social media, banking on the reputation and brand recognition of established brands.⁶⁴

It is difficult to measure the pecuniary value that should be accorded creators or investors of Intellectual Property or what it should cost the public to access, use or enjoy such intellectual property, there is no measuring scale in intellectual property, however, there may be a need for balance taking into cognisance the realities created by social media and globalization. While private ownership of Intellectual Property is treated as a personal right and is legally recognized as such, it is also a legal creation, whose existence is justified by arguments that culminate in ensuring the balance.⁶⁵ Examples of works that are in the public domain in Nigeria include copyrighted works that have existed up to 50 or 70 years after they were created,⁶⁶ works read or recited in the public or a broadcast, but not for commercial purposes and others which fall under the exceptions to the exclusive or private ownership rights of intellectual property as stipulated in Section 20 of the Copyright Act.⁶⁷ Section 87 of the Copyright Act requires that creations must be registered with the Copyright Commission.

In the area of patents and designs, it is evident that the law, being pre-social media, did not envisage the problems associated with intellectual property in the social media space, a patent is re-registrable with a prescribed annual fee after its first registration which lasts for only 20 years,

⁶⁴ Jude Odinkonigbo, 'The Challenges of Protecting Intellectual Property Rights in Nigeria in the Age of Social Media' (Templars 9 May 2023) < https://www.templars-law.com/app/uploads/2023/05/03052023-THE-CHALLENGES-OF-PROTECTING-INTELLECTUAL-PROPERTY-RIGHTS-IN-NIGERIA_.pdf > accessed 11 May 2024.

⁶⁵ M Biagioli, 'Weighing Intellectual Property: Can We Balance the Social Costs and Benefits of Patenting?' (2019) 57(1) *History of Science*, 140-163 <<https://doi.org/10.1177/0073275318797787>> accessed 11 May 2024.

⁶⁶ Copyright Act 2022, s19(1) (a), (b), (c), (d) and (e), (2) and (3).

⁶⁷ *Ibid*, 20(1)(a), (b), (c), (d)(i), (ii), (iii), (iv), (e), (f),(i)(i),(ii),(j)(i), (ii), (iii), (k), (l), (m), (n), (o), (p), (q), (r).



default during the window period of non-payment may make infringements non-penalizable.⁶⁸ The Trademarks Act, 1967 also did not foresee the advent of social media, it specifically provides that non-registration of trademarks precludes the owner or creator from instituting legal proceedings to enforce their intellectual property rights, except where the imitator passes off the product as that of another person. The registered licence of a trademark lasts for only 7 years and the licence may be renewed as at when due, for another 14 years, and re-registrable according to the prescription of the Trademarks Act.⁶⁹ It is worthy of note that legal action regarding infringement will not lie against the infringer during the period of removal from the trademarks register, in other words, the trademarks may be used by the public during the window period. The Trade Marks Act also provides for removal of a registered trade mark if it is proved that the trade mark is not in use.⁷⁰

The line between private ownership and public ownership has been considerably blurred by many factors, such as globalization, public firms contracting intellectual property creation services of private creators and the advent of social media.⁷¹ The interrelationship between private ownership and public ownership raises important questions about a creator's control of intellectual property. For instance, Social media platforms encourage users to share private

⁶⁸ Patents and Designs Act 1971, s7.

⁶⁹ Trade Marks Act 1967, s23(1), (2), (3) and (4).

⁷⁰ *Ibid*, s31.

⁷¹ Michelle Lowry, 'The Blurring Lines between Private and Public Ownership' (ECGI Working Paper Series in Finance 2023)

<https://www.ecgi.global/sites/default/files/working_papers/documents/theblurringlinesbetweenprivateandpublicownership.pdf> accessed 11 May 2024; Stefan Straub and Michael Nentwich, 'Social Network Sites, Privacy and the Blurring Boundary between Public and Private Spaces' (2013) 40 *Science and Public Policy*, 724-732

<https://www.researchgate.net/publication/259705667_Social_network_sites_privacy_and_the_blurring_boundary_between_public_and_private_spaces> accessed 11 May 2024.



moments publicly. Also, users lose control over personal data by agreeing to the social media terms of service, yielding control over their personal information, there are also new forms of digital ownership and the sharing economy, which challenge the traditional notions of private ownership and public content.⁷²

One factor that can affect private and public ownership and interaction is the propensity of social media algorithms to magnify certain content and suppress others, thereby requiring creators to pay for advertisements to project their work determining public opinion and influencing the narrative around private and public content.⁷³ Where public ownership occurs, the intellectual property rights, especially in the copyright of a private owner no longer exist, and the works are usable by the public without restriction, it may be managed by the government or a public entity for the benefit of the public. The intention is to promote creativity and innovation, minimize barriers to entry and competition, and encourage collaborative efforts of creators while fostering economic growth and development.⁷⁴

The increase of open-source software poses another challenge to intellectual property rights. Since open-source software makes its source code publicly accessible, allowing users to modify and share it freely, companies face difficulties in safeguarding their intellectual property. Their

⁷²Lorenz Hilty and Maria Pouri, 'The digital sharing economy: A confluence of technical and social sharing' (2021) 38 *Environmental Innovation and Societal Transitions*, 127-139 <https://www.researchgate.net/publication/348497563_The_digital_sharing_economy_A_confluence_of_technical_and_social_sharing> accessed 11 May 2024.

; Asif Khan, Ximei Wu, 'Impact of Digital Economy on Intellectual Property Law' (2020) (13) 4 *Journal of Politics and Law*, 117 -125

<https://www.researchgate.net/publication/344708218_Impact_of_Digital_Economy_on_Intellectual_Property_Law> accessed 11 May 2024.

⁷³ Arvind Narayanan, 'Understanding Social Media Recommendation Algorithms' *Knight First Amendment Institute: Columbia University*, 5-42.

⁷⁴ G N Mande, 'The Public Perception of Intellectual Property' 66 1 (5) *Florida Law Review*, 262 -308



code can be easily replicated and disseminated, blurring the lines of ownership and control.⁷⁵ Automated content identification and filtering systems have been created by Social media companies to identify and remove infringing content, yet it is difficult to filter all the content and these systems are not always effective.⁷⁶ The doctrine of fair dealing or fair use poses another challenge. This legal concept permits limited use of copyrighted material without permission for purposes like criticism, commentary, news reporting, education, research, or scholarship. However, the digital age has complicated matters, making it harder to define fair dealing, especially when it comes to online content, leading to uncertainty and disputes over what constitutes acceptable use.⁷⁷

Patentability is another challenge in the intellectual property landscape. The swift pace of technological progress makes it tricky to determine whether an invention is genuinely patentable or merely an obvious iteration of existing technology. This ambiguity can spark disputes over patent validity, making it harder for companies to secure and defend their intellectual property rights.⁷⁸ In the area of trademarks, a key challenge is domain name infringement, which has

⁷⁵ Global IP Convention, 'Intellectual Property in the New Age' (GIPC 8 March 2024) <<https://www.globalipconvention.com/blog/intellectual-property-challenges-in-the-digital-age>> accessed 11 May 2024.

⁷⁶ A Marsoof, 'Content-Filtering AI Systems—Limitations, Challenges and Regulatory Approaches' (2023) *Information & Communications Technology Law*, 64–101 <<https://doi.org/10.1080/13600834.2022.2078395>> accessed 10 May 2024; J Cobbe, 'Algorithmic Censorship by Social Platforms: Power and Resistance' (2021) 34 *Philos Technol*, 739–766 <<https://doi.org/10.1007/s13347-020-00429-0>> accessed 10 May 2024.

⁷⁷ Jude Odinkonigbo, 'The Challenges of Protecting Intellectual Property Rights in Nigeria in the Age of Social Media' (Templars 9 May 2023) <https://www.templars-law.com/app/uploads/2023/05/03052023-THE-CHALLENGES-OF-PROTECTING-INTELLECTUAL-PROPERTY-RIGHTS-IN-NIGERIA_.pdf> accessed 11 May 2024.

⁷⁸ Global IP Convention, 'Intellectual Property in the New Age' (GIPC 8 March 2024) <<https://www.globalipconvention.com/blog/intellectual-property-challenges-in-the-digital-age>> accessed 11 May 2024.



become increasingly problematic due to the vast number of websites and domain names. Companies face difficulties in safeguarding their trademarks from infringement, and cybersquatters - individuals who register domain names copying established trademarks to exploit the resulting confusion on pecuniary benefits while posing a significant threat to brand protection. Brand impersonation is another significant challenge. The growth of social media has made it easier for individuals and companies to create fake accounts or websites that masquerade as legitimate brands, potentially causing consumer confusion and harming the reputation of the authentic brand.⁷⁹

However, the Copyright Act has broadened the definition of infringement to envisage online content, including but not restricted to: (a) making copyrighted works available through broadcasting, wireless means and otherwise distributing to the public⁸⁰ and specifically, online content without consent for commercial purposes,⁸¹ (b) failing to pay royalties or remuneration,⁸² and (c) aiding or abetting infringement.⁸³ While these amendments aim to address technological advancements and innovations, they fall short in effectively regulating social media.⁸⁴

The interrelationship between social media and intellectual property poses significant challenges in maintaining a balance between private and public ownership. Social media platforms have

⁷⁹ Global IP Convention, 'Intellectual Property in the New Age' (GIPC 8 March 2024) <<https://www.globalipconvention.com/blog/intellectual-property-challenges-in-the-digital-age>> accessed 11 May 2024.

⁸⁰ Copyright Act 2022, s9(f), (g) and (i).

⁸¹ Copyright Act 2022, s54, 55, 56, 57, 58, 59, 60, 61.

⁸² *Ibid.*, s15 and 17.

⁸³ Copyright Act 2022, s45.

⁸⁴ Jude Odinkonigbo & others, 'The Challenges of Protecting Intellectual Property Rights in Nigeria in the Age of Social Media' (Templars 9 May 2023) <https://www.templars-law.com/app/uploads/2023/05/03052023-THE-CHALLENGES-OF-PROTECTING-INTELLECTUAL-PROPERTY-RIGHTS-IN-NIGERIA_.pdf> accessed 11 May 2024.



created new avenues for creativity, sharing, and collaboration, but also raise complex questions about ownership, control, and exploitation of intellectual property. The tension between private interests and public benefits requires a nuanced approach that reconciles the rights of creators and innovators with the need for open communication, fair use, and public domain. As social media continues to evolve, it is crucial to develop and implement effective policies, laws, and practices that strike a balance between private and public ownership, fostering a vibrant and inclusive digital environment that promotes creativity, innovation, and progress for all

CONCLUSION

Nigeria's legal framework must be updated and harmonized with international best practices to effectively address social media-related intellectual property infringements. Social media platforms must take proactive steps to prevent infringement and cooperate with rights holders to address violations. Finally, enforcement agencies and judicial institutions must prioritize intellectual property cases and provide effective remedies to rights holders,

RECOMMENDATIONS

The concept of social media space refers to the new generally recognised public space. It is important to find a balance between private and public ownership of intellectual property rights in social media else the fast-rising global platform would become unmanageable and chaotic, while the existing legal framework would be unable to handle conflicts that may arise between creators, investors, users and existing and emerging stakeholders.

Therefore, to ensure that such balance is maintained, it is necessary to ensure the following:



1. Amendment of the existing laws, especially the Trade Marks Act and the Patents and Designs Acts which were enacted prior to the creation of the internet and social media as we know it today. The existing laws and policies should be strengthened to envisage, identify and tackle mass violation. However, the Act vaguely prohibits online infringement without specifically addressing issues arising from social media use and abuse. Despite this limitation, it is commendable that the Act attempts to fill a gap in Nigeria's Intellectual Property rights protection. To address the challenges posed by social media, it is recommended that the Intellectual Property legal frameworks should be proactive, pre-empting the trends and envisaging circumstances that may exist thereby providing comprehensive protection.
2. Advanced legal education in Social media law and Intellectual property for lawyers would not only create an area of specialization but would also empower lawyers with the technical knowledge required to handle relevant matters and advise all stakeholders for ease of business and fewer infringements in the social media space.
3. Social media platforms and key stakeholders should be encouraged to create comprehensive social media policies that can effectively prevent internal intellectual property threats within organizations. The policy would outline the company's social media guidelines, including what constitutes confidential information, acceptable use of protected assets by employees, and procedures for addressing suspected Intellectual Property infringement on social media. Implementing such policies will allow



organizations to educate employees on how to recognize and mitigate intellectual risks, particularly those resulting from employee oversight or unintentional actions, this would go a long way in mitigating the rate of social media-based intellectual property rights infringements and other vices associated with the invention of social media.

4. Intellectual property in social media requires expansive amendments to the frameworks (legal and institutional) towards identifying, monitoring, and enforcing intellectual property protection in the social media space. Therefore, there is a need to encourage collaborative efforts between stakeholders, including content creators, government, investors, and users towards identifying, reporting, enforcing and curbing intellectual property infringements.
5. There is a need to harmonize our local laws with international standards and advocate for formal global guidelines that would streamline intellectual property infringements in the social media space. Nigeria should also borrow a leaf from more advanced jurisdictions on intellectual property protection in the social media space. Examples are Singapore's Registered Designs (Amendment) Act, 2017 which specifically provides for the registration of virtual designs.
6. Nigeria should also develop specialized Intellectual Property courts or tribunals which would address the peculiar issues relating to intellectual property and social media.



7. There should be a major investment in creating technological solutions, like digital rights management mechanisms that would prevent piracy and unauthorized use of digital works.
8. It is also pertinent to ensure that intellectual property violations are addressed through formal and informal measures like cease-and-desist letters and take-down notices. After which legal or quasi-legal channels may be used to enforce intellectual property rights. When creators engage in the pursuit of cases, obtain remedies, and penalize offenders against Intellectual Property rights infringement it may deter future infringers.