

**GROUP NUMBER: GROUP 3**

**COURSE: INTELLECTUAL PROPERTY II**

**COURSE CODE: LPB 406**

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**QUESTION**

Ifedayo recorded a song titled “My Love” at Trinity Entertainment studio. His producer showed him the master tape of the recording and mentioned “we are good to go”. The following day, Ifedayo found about 20 copies of his recorded song displayed outside ShopRite Mall in Ikeja, Lagos. He was confused and he called the producer immediately, stating that he had not given approval to the producer to reproduce or sell his song. The producer felt he got consent from Ifedayo because he mentioned “we are good to go”. Ifedayo seeks your legal advice.

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**ABSTRACT**

Creativity is the bedrock of every civilization and the truth of this assertion cannot be more obvious than in the rapid changes that have been brought about in the wake of the Internet and the digital revolution. The protection of copyright is an obligation of nations in order to promote and encourage innovation and creativity. The copyright law gives the owner of copyright work the exclusive right to control the reproduction, distribution, publishing, etc of the copyright works.[[1]](#footnote-2) In Nigeria, copyright is governed by the ***Copyright Act, C28, Laws of the Federation 2004***, and the body charged with the enforcement and protection of copyright is the Nigerian Copyright Commission.[[2]](#footnote-3) In answering the given pose, this paper promises to make use of the best sources to ensure the systematic investigation into the subject matter and study of materials and sources in order to establish facts and reach new conclusions.

**INTRODUCTION**

 To begin, it is important to understand what Copyright is. When the matter of copyright is brought into question, generally, the adequate understanding of the term “copyright” is also brought into the light. The Copyright Act does not give a precise definition of the term but rather a tautology.[[3]](#footnote-4)The understanding of Copyright can be seen as the protection extended to the creator of an original work, which provides the sole rights to control the use and distribution of the work. Normally, copyright protection lasts for a specific period of time,[[4]](#footnote-5) and after such time is up, the copyright can be renewed or the work will be passed into the public domain where it can be legally used without giving notice of the original creator and without the need for recompense to the former owner.

According to the Copyright Act, a sound recording means “the first fixation of a sequence of sound capable of being perceived aurally and of being produced, but does not include a soundtrack associated with a cinematograph film.”[[5]](#footnote-6) Sound recordings are also defined as “works that result from the fixation of a series of musical, spoken, or other sounds.” Additionally, sound recordings are typically “fixed” in “phonorecords” which are the material objects in which sounds are fixed, such as tapes and disks. The main importance of copyright protection is simply the safeguarding of the works of a creator/author.

**LEGAL ISSUES**

The legal issues in the question above are;

1. Whether the words ‘we are good to go’ said by the producer amount to notice and Ifedayo’s silence amounts to consent to publish Ifedayo’s song
2. Whether the publishing of Ifedayo’s song by the producer amounts to infringement of Ifedayo’s copyright in his song.

**PRINCIPLE**

By virtue of **Section** **1(e) of the Copyright Act**, Sound recordings are eligible for copyright protection. **Section 7, Copyright Act** provides thatthe copyright in a sound recording shall be an exclusive right to control in Nigeria; the direct or indirect reproduction, broadcasting or communication to the public of the whole or a substantial part of the recording either in its original form or in any form recognizably derived from the original and the distribution of copies of the work to the public, for commercial purposes, by way of rental, lease, hire, loan or similar arrangement. Copyright confers both economic and moral rights on the right holder. These economic rights belong to the owner who can also be the same person as the author. The ownership of copyright shall initially vest in the author, in consideration of the qualifications stated in **Sections 2-5** of the Act. In light of this, an author in the sound recording of a musical work is the artist in whose name the sound recording was made, unless the parties to the making of the sound recording provide otherwise by contract.[[6]](#footnote-7) Therefore, the artist of the sound recording is the owner and has the economic rights over his work.

Copyright can be transferred by assignment, testamentary disposition or by operation of the law.[[7]](#footnote-8) A person can be granted the rights by assignment or license. A licence is an authorization by the copyright owner granted to a third party to carry out certain acts reserved exclusively for the copyright owner. According to the Copyright Act, an exclusive licence to do an act, the doing of which is controlled by copyright, shall not have effect unless it is in writing[[8]](#footnote-9). In other words, unless it is clearly written down, such licencee has no right to do any of the acts granted to him.

Also, the Copyright Act provides that copyright is infringed by any person who without the licence or authorization of the owner of the copyright does or causes any other person to do any of the acts listed under **Section 15(1)**.[[9]](#footnote-10) However, there are exceptions to these acts of infringement[[10]](#footnote-11). Infringement of copyright shall be actionable at the suit of the owner, assignee or an exclusive licencee of the copyright as the case may be, in the Federal High Court; and in any action for such an infringement, all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.[[11]](#footnote-12)

Looking at some case laws, we have the case of ***Adenuga v Ilesanmi Press & Sons Nigeria Ltd,[[12]](#footnote-13)*** where the appellant as the plaintiff in the lower court sued the respondent for unauthorized publication of work. The respondents had published a manuscript submitted to it by the appellant, advertised it for sale in the newspapers and was also selling copies to the public. The appellants’ action for infringement was on the basis that there was no contract between the parties concerning the publication of the manuscript. Although unsuccessful at the lower court, on appeal it was reversed. The Court held that although the appellant submitted his manuscript to the respondent and further corrected and signed printer’s proof, this did not amount to conclusive evidence that he authorized the publication as opposed to mere printing or reproduction of the book. By publishing to and selling to the public, the respondent had infringed the appellants’ copyright.

Also, the case of ***Peter Obe v. Grapevine Communication Ltd,[[13]](#footnote-14)*** where the plaintiff, a photographer sued the defendant for infringement of copyright in his photographic works consisting of photographs taken by the plaintiff during the civil war. The defendant had reproduced and published the pictures in its Grapevine Magazine without the consent of the plaintiff and without due acknowledgement.

**APPLICATION**

In addressing the first issue, it can be seen in the above scenario that the producer assumed that he was given an exclusive license to reproduce or sell the song in the manner which he wanted. An exclusive license must be written in order for it to take effect. Ifedayo is the owner of the intellectual property in question and owners have the choice to decide whether they want to enter into an exclusive license. The producer, in the above case scenario, took Ifedayo’s lack of objection to the words uttered by him, “we are good to go”, as a conduct granted license to reproduce, publish and sell the work. The fact that Ifedayo stated that he had not given approval to the producer to reproduce or sell his song, meant that Ifedayo did not make the statement, “we are good to go” to mean that he was giving the producer approval to go ahead with the reproduction or selling of the song. Basically, the conduct of Ifedayo did not constitute a grant of license to allow the producer to reproduce or sell the song recorded by Ifedayo.

The second issue deals with whether the producer infringed on Ifedayo’s copyright. Following the circumstances of the case, it is clear that there was an infringement on the copyright of Ifedayo as his song was displayed for sale without his oral or written permission/consent for such sale. The unauthorized doing of any of the acts which are within the exclusive rights of the copyright owner constitutes infringement of copyright as provided for in **Section 6-8 of the Copyright Act**. Based on the scenario above, one can deduce that Ifedayo’s song was reproduced and distributed to the public without his approval or authorization and applying the laws above, this is an infringement of his copyright.

The producer, in the above case, could be said to have infringed on the copyright of Ifedayo because he did an act that was within the exclusive rights of the copyright owner. With this being so, Ifedayo, as the author of the work, would be entitled to bring an action for infringement of his copyright and seek remedies for the infringement. In order to succeed in an infringement action, the plaintiff must satisfy certain requirements as follows;

1. That Copyright subsists in the work alleged to be infringed;
2. That ownership of copyright in the said work is vested in the plaintiff either as author, assignee or exclusive licensee;
3. That the defendant has done an act, in relation to the work which is exclusive to the plaintiff;
4. That the defendant has no authority to do the act complained of;

If Ifedayo is able to satisfy the above requirements, he would be able to succeed in an action for infringement.

**CONCLUSION**

From the foregoing, it is quite clear the issues in the given question. Ifedayo being the owner and author of his song never gave his producer his consent to reproduce and sell copies of his song. The Copyright Act is translucent that only the owner and author of the copyright has the right to reproduce, publish and sell his works, and any other person not given a licence or assigned to do such acts is committing an infringement of that work. His producer who went ahead to reproduce and sell the song has thereby infringed on Ifedayo’s copyright and is liable.

Our advice to Ifedayo is that his producer is liable for infringement of his copyright in accordance with **section 15 of the Copyright Act**, which provides that the unauthorized doing of any of the acts which are within the exclusive rights of the copyright owner constitutes infringement of copyright and hence, court proceedings can be instituted against the producer in the Federal High Court of Lagos State. Ifedayo would be entitled to damages and all such other reliefs that the court deems fit to give.

**BIBLIOGRAPHY**

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* <https://lawpadi.com/>
* Copyright Act, C28, LFN 2004
* Class note on Copyright, Dr. Olubiyi
1. CA 2004, s 6,7 and 8 [↑](#footnote-ref-2)
2. CA 2004, s 34 [↑](#footnote-ref-3)
3. CA 2004, s 51(1) [↑](#footnote-ref-4)
4. CA 2004, 1st Sch. [↑](#footnote-ref-5)
5. CA 2004, s 51(1) [↑](#footnote-ref-6)
6. CA 2004, s 51(1) [↑](#footnote-ref-7)
7. CA 2004, s 11(1) [↑](#footnote-ref-8)
8. CA 2004, s 11(3) [↑](#footnote-ref-9)
9. CA 2004, sub-ss (a)-(g) [↑](#footnote-ref-10)
10. CA 2004, 2nd and 3rd Schs. [↑](#footnote-ref-11)
11. CA 2004, s 16(1) [↑](#footnote-ref-12)
12. (1990) 5 NWLR 205 (CA) [↑](#footnote-ref-13)
13. (2007) 5 IPLR 372 (FHC) [↑](#footnote-ref-14)