**INTELLECTUAL PROPERTY II (LPB406)**

**GROUP 5**

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**LECTURERS IN CHARGE:**

**DR.MRS. IFEOLUWA OLUBIYI**

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**QUESTION**

The Commissioner for Education in Ekiti State has commissioned a report into the health and safety concerns over the installation of mobile phone masts in some of its schools. This report has uncovered serious allegations of fraud on the part of the Principals of some secondary schools and the report includes photographs of the named officials apparently receiving money from a representative of the mobile phone company. The allegation is that these officials were bribed by the mobile phone companies concerned to allow the positioning of the masts at the schools. There had been widespread rumours that the officials had been bribed.

One of the authors of the report (who assigned his copyright in the report to the Ministry of Education) has given a copy of the report to a local newspaper. The newspaper is about to publish long extracts from the report and also publish the photographs.  The Commissioner wishes to prevent the publication of this report in the newspaper.Discuss the Copyright implications of this matter.

**INTRODUCTION**

Copyright is just one of a bundle of rights which make up Intellectual Property (IP). IP rights (IPR) help to ensure that a work is not used without the permission of the rights holder. In most cases the first copyright holder is the author of the work. According to the University of Cambridge IPR Policy all forms of intellectual property that do not require registration, such as copyright in literary works and software, belong to the creator, subject to any ownership or licensing or publication provisions in agreements the creator may have agreed to previously, e.g. in research grants or sponsorships or collaboration agreements, or the copyright works have been created for the administrative or managerial purposes of the University or commissioned by the University, e.g. examination papers, library catalogues, special reports on policy or management.

The rights of the author can be divided into two groups – moral and economic.

The moral rights of an author include: the right of paternity (to be identified as the author of the work, he right of integrity (for the author to prevent any derogatory treatment of their work), the right to object to false attribution (not to have something they did not create attributed to them), the right to privacy (to be able to withhold certain films or photographs).

Economic rights include theright: to copy the work, to issue copies of the work to the public, to rent or lend the work to the public, to perform, show or play the work in public, to communicate the work to the public, to make an adaptation of the work or to do any of the above in relation to an adaptation.

**AUTHORSHIP AND OWNERSHIP**

The author of a work is the person who creates it[[1]](#footnote-1). The law stipulates that copyright in the work shall belong in the first instance to the author unless otherwise stipulated in writing under the contract of employment.[[2]](#footnote-2) The author does not have to be the person who carries out the physical act of creating the work, such as by putting pencil to paper. In Cala Homes (South) Ltd V Alfred Mc Alphine Homes East Ltd., [[3]](#footnote-3)drawings were made by draughtsmen, but another person had told them what features were to be incorporated in the designs for new houses. In some cases, that information was imparted by means of sketches, in other cases, verbally. The person giving the instructions also marked up the preliminary drawings with alterations he required to be incorporated in the finished drawings. Laddie J .said that what is protected is paper or some other medium, and that it was wrong to think that only the person who performs the mechanical acts of fixation is the author. He held that the person giving the instructions was a co-author of the drawings and hence, the plaintiff for whom he worked as design director, was a joint owner of the copyright. In the case of Donoghue v Allied Newspapers Ltd[[4]](#footnote-4), where a person’s contribution to a work is of a mechanical character, such contribution does not accord him the title “author”.

Ownership refers to who owns the work. As a general rule, the author is the first owner. This is, however, not always the case. These exceptions are:

 \* If a work is created by an employee in the course of his/her employment, the employee owns the copyright.[[5]](#footnote-5)

 \* Not having been so commissioned, is made in the course of the author’semployment; the copyright shall belong in the first instance to the author, unless otherwise stipulated in writing under the act.[[6]](#footnote-6)

If the work is created by an independent contractor and the independent contractor signs a written agreement stating that the work shall be “made for hire”, the commissioning person or organisation owns the copyright as provided by the copyright act.

Ownership or authorship is rebutted where there is a contrary stipulation in a contract of employment[[7]](#footnote-7) or where the proprietors of newspapers, magazines and similar periodicals creates the works made by the authors[[8]](#footnote-8) . The case of Joseph Ikhuoria v Campaign Services & Anor[[9]](#footnote-9) , the court, in determining the issue of ownership which is keen to authorship, dismissed the plaintiff’s claim, holding that the plaintiff had relinquished his right of ownership of the copyright of the sketch to the 1st defendant company by express provision contained in his contract of employment. Also, in the case of Walter v Lane[[10]](#footnote-10) , reporters of The Times made reports of the speeches of Lord Roseberry which was printed verbatim after they had been corrected and revised. It was held that the reporters were the authors of the report and, as a result of the reporters’ employment, the copyright in the reports belonged to The Times.

 With respect to commissioned works, the Copyright Act[[11]](#footnote-11) states that the copyright in the work to be commissioned is vested in the author in the first instance.

In the case scenario, the copyright should vest in the author who gave the copy of the report to a local newspaper. However, due to the fact that he earlier assigned his copyright to the Ministry of Education, the ownership of the copyright has been transferred to the Commissioner, provided that such assignment is in writing and thus relinquishing the right of ownership of the author.

**EXCEPTIONS TO THE GENERAL RULE OF OWNERSHIP OF COPYRIGHT**

• Employer may be the copyright owner.

The law grants to owners a set of specified rights: reproduction of works; distribution of copies; making of derivative works; and the public performance and display of works. Some artworks have "moral rights" regarding the name of the artist on the work, or preventing destruction of some works. Owners may also have rights to prevent anyone from circumventing technological protection systems that control access to the works.

• Copyrights can be transferred.

The law may make you or your employer the copyright owner, but the law also allows the owner to transfer the copyright. With a written and signed instrument, your employer can give you the copyright. In the academic setting, we are frequently asked to transfer copyrights in our books and articles to publishers. The ability to transfer or retain our copyrights is an opportunity to be good stewards of our intellectual works.

* Copyright owners may allow public uses.

A copyright owner may grant rights to the public to use a protected work. That grant could be a simple statement on the work explaining the allowed uses, or it may be a selection of a Creative Commons license. Similarly, the movement to make works "open access" or "open source" is a choice by the owner of rights to make works available to the public.

**WHAT CONSTITUTES AN INFRINGEMENT UNDER COPYRIGHT?**

 Section 15 of the Copyright Act provides for various acts that could constitute infringement and the rights granted in copyright is mostly right of production, publications, adaptation, performance, and commercial distribution.

Acts which constitute infringement includes; unauthorized making of copies of another’s work or reproduction, public performance, broadcasting, etc also we have importation, sale, exhibitions in public and other unauthorized dealings which all constitute infringement.

According to section 15(1) (a) provides that unauthorized acts which are within the exclusive rights of an author constitutes infringement and these exclusive rights are provided for under section 6 and 8 of the Copyright Act, as section 15(1) (b)-(g) provides the rest of the infringing acts including importation or causing an importation of any copy of work intoNigeria. As in the case of Yemittan v Daily Times Newspapers where the defendant copied a work without the consent of the plaintiff amounting to infringement, also in the case of CBS Inc&anor v. Inter magnetic co ltd, which was centered on the work and not the parties, where what had been taken was quantitatively small but constitutes infringement.

**EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT**

There are exceptions to copyright control and this is provided for under the 2nd schedule section 6 of the Copyright Act. The various exceptions are; fair dealing, public acknowledgement, parody, pastiche, or caricature, and educational use.

From the above exceptions public acknowledgement was the case in the scenario because it had to do with the public and its health, and public interest can be seen as a rationale for the exemptions of copyright.

In acknowledgment, there is a condition that where the use of the work is to be excused of infringement is in public and it must be by with an acknowledgement of title & authorship and the exception to this is the case of INCIDENTAL INCLUSION in a broadcast as contained under schedule 2 paragraph 7h of the Copyright Act.

The interest and health of the public is vital therefore it has to be treated with care and every piece of information concerning their health status should be informed to them in proper timing. From the scenario we can see that the communication mast posed a problem to the public and the commissioner with his power and capability tried to treat the case but it was installed in schools and officials of the places bribed to maintain the masts even though it poses the danger of ill health to the public at large.

**INJUNCTIONS IN THE PREVENTION OF COPYRIGHT INFRINGEMENT**

In simple terms, an injunction means that one of the parties to a certain action must either do something or refrain from doing something. Typically in copyright infringement cases, the court will hand down a prohibitory injunction, which prohibits the defendant from carrying out (or continuing to carry out) acts which infringe the claimant’s copyright.A claimant can also obtain injunctions to prohibit or prevent the future copying and money damages to compensate and, in some cases punish, the defendant for copyright infringement.[[12]](#footnote-12) In this scenario the commissioner can make use of an injunction relief.

The relief of injunction is usually prohibitory in Intellectual Property. The locus classicusfor injunctions is the case of American Cynamid Ethican Ltd which states injunction as an equitable remedy as said before. Just as in the case of Married Media Ltd v Lawrence Akapa it was held that the trial judge erred by restraining both parties from publishing in the said magazine. The court also stated that there were sufficient grounds where the interlocutor’s injunction will be made in favor of the appellant in order to maintain status quo.

**CONCLUSION**

In conclusion, having explained all there is in copyright, judging or assuming from the earlier write-ups, the commissioner can either be seen as a co-owner or the owner.

Firstly, due to the fact that he earlier assigned his copyright to the Ministry of Education, the ownership of the copyright has been transferred to the Commissioner, provided that such assignment is in writing and thus relinquishing the right of ownership of the author. This was elucidated in the Ikhuoria case (supra) where the plaintiff was held to have expressly assigned his copyright in the photograph he took on behalf of his employer because there was a clause in his employment letter making provision for such an assignment[[13]](#footnote-13).

Secondly, one of categories of persons who may claim copyright is the federal or state government where it has commissioned someone to make a work. Section 10(5)[[14]](#footnote-14) basically says that where a work is directed by the federal government, state or international authority, copyright in the work shall be vested in that authority or government. Here, it’s clear that the author in the work has no copyright since the commissioner of the ministry of education is a state authority. This implies that the author had no right to even give out the work to the newspaper in the first place as this can be seen as an infringement.

Finally, the local news paper intends to publish large extracts from the work and this is contrary to the exception of ‘fair dealing’ in relation to copyright control. The locus classicus for fair dealing is the case of Hubbard v. Vosper[[15]](#footnote-15); here Lord Denning M.R stated that:

“… fair dealing … must be a question of degree. The number and extent of the quotations must first be considered. Are they altogether too many and too long to be fair? Then you must consider…if they are used to convey same information as the author, for a rival purpose that may be unfair. Next you must consider the proportions. To take long extracts and attach short comments may be unfair…”

 So, the local newspaper’s intention to publish long extracts will be considered as unfair and an infringement to copyright. Therefore, the commissioner can seek an injunction from the court to stop the news paper from publishing and a probably a penalty to the author for giving out the work.

1. Section 10 (1) Copyright Act C28 LFN 2004 [↑](#footnote-ref-1)
2. Section 10 (2) Ibid [↑](#footnote-ref-2)
3. (1995) FSR 818. [↑](#footnote-ref-3)
4. (1938) Ch. 106 [↑](#footnote-ref-4)
5. Section 10 (2) (a) Copyright Act C28 LFN 2004. [↑](#footnote-ref-5)
6. Section 10(2) (b) Copyright Act C28 LFN 2004. [↑](#footnote-ref-6)
7. S. 10(2) Copyright Act [↑](#footnote-ref-7)
8. S. 10(3) Copyright Act [↑](#footnote-ref-8)
9. (1977-1989) 2 IPLR 316 [↑](#footnote-ref-9)
10. (1900) AC 539 [↑](#footnote-ref-10)
11. S. 10(2) Copyright Act [↑](#footnote-ref-11)
12. www.traverselegal.com

www.study.com

www.tms.org

www.lexisnexis.com

www.copyright.gov [↑](#footnote-ref-12)
13. Odion J.O. (2017) Contending Issues Relating to Copyright Ownership in Commissioned Works in Nigeria: A Case of Robbing Peter to Pay. Intellectual Property Rights. 5: 174. Doi: 10.4172/2375-4516.1000174 [↑](#footnote-ref-13)
14. Copyright act [↑](#footnote-ref-14)
15. (1972) 2 QB 84 [↑](#footnote-ref-15)