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**INTELLECTUAL PROPERTY II TEST**

The legal issues in the above scenario are as follows:

1. Whether or not John’s work can be classified as a derivative work of chimamada and so therefore not original.
2. Whether or not John can exercise copyright in already published work( the work published by Ope)
3. Whether or not John, not being a citizen of Nigeria can exercise copyright in Nigeria.
4. Whether or not John can institute an action against Ope for infringement of Copyright

Copyright is a proprietary right which confers exclusive rights to authorize or prohibit a wide range of activities relating to qualified subject matter. These activities include the performance, translation, adaptation, publication and use of the work.

in the above scenario, John certainly faces a lot of problems if he wishes to truly claim copyright over the work and institute an action against Ope for infringement.

Addressing the first legal issue, the test that can be used here is the test of originality. The test of originality was laid down in the land mark English case of ***University of London Press Limited v University Tutorial Press***. The court here said that while dealing with the copyright the courts would not be concerned with the originality of idea, rather what is protected is originality of expression. Here as long as sufficient time, effort, skill, judgement and creativity is expanded on a work it will be deemed as original. That is to say, the work should have originated from the author. The expression of ideas should be from the author’s own intellectual creation. At the same time, works which are drawn from the works or others or inspired by the works of others are deemed to pass the test of originality so long as the expression of ideas are unique and different. That is to say even if both new and previous works have the same idea, they will be deemed to hold separate copyright as long as the expression of ideas is different and unique. Therefore, although John’s work was inspired and the idea drawn out from Chimamanda’s popular work, so long as john’s expression of thus similar idea is different, he will be deemed to have passed the test of originality.

On to the next legal issue, this test has to do with whether or not mere fixation without publication will suffice for copyright to be created. The answer is yes. Although John was yet to publish his work, copyright generally exists so long as the expression of ideas has been put into a fixed medium. John need not publish his work immediately for copyright to arise. And nothing in the Act specifies that fixation must be done by the author either. A person who merely takes down the words of another as well as language of the author will not be deemed to hold copyright over such a work. John had already expressed his ideas in form of an audio which serves as one of the categories of works eligible for copyright according to ***Section 1(1) of the copyright act***. Therefore, John already haven put his work in a fixed medium has copyright over the work and Ope lacking his consent has no right to reproduce, translate or adapt the work into any form.

The third issue is a tricky one as John indeed is not a citizen of Nigeria and was yet to publish his work leaving it unprotected by **Section 3 of the copyright Act**. Although John is no citizen of Nigeria, he is indeed domiciled in Nigeria, being a student of ABUAD, a Nigerian university. Therefore, although not a citizen and yet to publish the work, by way of him being domiciled in Nigeria, protection of works also extend to him. That is to say, he indeed has copyright over the work.

John, having satisfied all the requirements of copyrights can indeed institute an action against Ope for the infringement of his copyright. Giving my advice, I advise John to go on with this action against Ope based on the requirements of Copyrights which he has satisfied and which Ope has failed to fulfill.