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LPB 406

INTELLECTUAL PROPERTY II LAW TEST

The legal issue for determination in this question is whether John, a foreigner can claim copyright for his work under Nigerian law.

According to *Section 1 of the Copyright Act* there are certain works that are eligible for copyright protection in Nigeria and of them stated are literary works and sound recordings. In *Section 51 of the Copyright Act* literary works is said to include novels, stories and poetical works while sound recordings are defined as first fixation of a sequence of sound capable of being perceived aurally and of being reproduced.

There are certain requirements a literary work still must satisfy in order to qualify for copyright in Nigeria. These requirements are stated in *Section 1(2) of the Copyright Act.* It is stated that the literary work can only be eligible for copyright if it is original and has been fixed. Originality in this sense does not mean that the work should be new but rather that sufficient effort has been expended on making the work to give it an original character as stated in *Section 1(2)(a) of the Copyright Act.* This definition was supported in the case of *University of London Press v University of Tutorial Press.*

Fixation is also explained in *the Copyright Act.* It is stated in *Section 1(2)(b) of the Copyright Act* that the work must have been fixed in any definite medium of expression, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.

According to *Section 5(1) of the Copyright Act* an eligible work would qualify for copyright protection if the work is first published in a country which is a party to an international treaty or other international agreement to which Nigeria is a party. Publication can also be said to have taken place if copies of the work have been made available in a manner sufficient to render the work accessible to the public as stated in *Section 51(2)(a) of the Copyright Act.*

According to *Section 1(4) of the Copyright Act* states that a work shall not be ineligible for copyright by reason only that the making of the work or the doing of any act in relation to the work involved an infringement of copyright in some other work.

Applying the above principles of law it is obvious that John’s work is an eligible work for copyright protection in Nigeria. The work was original according to the definition given above and was fixed in a medium which was the recording he made. John can also be a qualifying author if the work is firstly published in Nigeria or any member state because John is a Ghanaian and Ghana is a party to an international treaty with Nigeria, the Berne Convention.

Also applying the above principles although Ope stole the work thereby infringing John’s copyright but her copyright is not obsolete in accordance with *Section 1(4) of the Copyright Act.*

In conclusion, I will thereby advise John accordingly. I will tell him to proceed to publish his work in Nigeria in order to gain the appropriate copyright. I would also advice that he not sue Ope because her copyright is not obsolete despite the means she obtained the work by.