MATRIC NO: 16/LAW01/173

The legal issues for determination are

1. Whether copyright subsists on a sound recording
2. Whether the work satisfies the requirement for copyright protection
3. Whether John, a foreigner can claim copyright under Nigerian law

**Introduction**

Copyright literally means the right to copy or reproduce history. According to Copinger and Skone James, copyright is one of the major branches of Intellectual Property law which gives the owner the exclusive rights to authorize or prohibit certain uses of his works by others. Before a work can be protected under Copyright law, such work has to be eligible, that is, it must fall under the category of protected rights under copyright. It should be noted that copyright protects the expression of ideas and not the idea itself.

**Principle and Application**

It should also be noted that before a work can be protected under Copyright law, it must satisfy the requirements of Originality, fixation and qualification of the author- Section 1 of the Copyright Act

Section 1(1) of the Copyright Act provides for works eligible for copyright and they include: literary works, musical works, artistic works, cinematograph films, sound recordings and broadcasts.

Section 51 of Copyright Act defines Sound recordings as any fixation of a sequence of sound capable of being perceived aurally and of being reproduced, but does not include a soundtrack associated with a cinematograph film.

Sound recording is one of the categories protected by the Copyright law. Hence, on the first issue, copyright subsists on a sound recording

On the second and third issues, generally, before a person can qualify for copyright protection under Nigerian law, there must be some connection between the author and Nigeria. This could in respect of the nationality or domicile of the author, place of first publication, government works and by virtue of international agreements. However, by virtue of Section 3 of the Copyright Act, a work that is first published in Nigeria shall be eligible for copyright protection and this applies to all categories of works except broadcasts. It should also be noted that sound recordings satisfy the requirements of originality and fixation because they normally exist in fixed medium

Also, by virtue of International agreements, works which on the date of first publication are made by authors who are nationals or domiciled in the member state or the works first published in a member state, United Nations or its agencies, OAU or ECOWAS may be protected by copyright in Nigeria (Section 5 of the Copyright Act). This principle was also stipulated in Microsoft Corporation v. Franike Associates Ltd where it was held that a certificate showing that a person’s country is under such international agreement is conclusive proof to claim reference to an international agreement. However, By virtue of the Berne Convention which Nigeria and Ghana belong to, John’s work can be protected. The burden is on John to prove that his work can be protected under Copyright law because Nigeria is a party to the Berne convention which Ghana is also a party. He can do this by showing a document from the Copyright commission in Ghana to evidence this

Therefore copyright subsists in john’s work under Nigerian law