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“The Role of Intellectual Property Rights (IPRs) in Developing Nations: Nigeria as a  
Case Study”

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## **Abstract**

*This paper examines the impacts of Intellectual Property Rights (IPRs) in developing nations using Nigeria as a case study. One of the branches of IPR is copyright which protects original forms of expressions. Impact of IP on development has manifested strongly in copyright as a result of digital technology. Digital Rights Management (DRM) plays a significant role in this development. The paper assesses the nature and impact of digital technology whose emergence and increased use has made the earliest laws relating to copyright obsolete in terms of protection of works in digital form. The paper also examines the conceptual definition of DRM and evaluates how copyright law has responded to this phenomenon of digital technology. It concludes by recommending for the swift passage of the Nigerian Draft Copyright Bill, 2015, as this will address the digital concern posed by digital technology.*

## **Introduction**

It is no gain saying that Intellectual Property Rights (IPRs) have never been more economically and politically important globally or controversial than they are today. IPRs play a dual role in development circle in the world today. It could either play a positive role in encouraging new business development, innovation, creation and rationalization of inefficient industry and inducing technology acquisition<sup>1</sup>. Take the patent regime for instance; its underlying purpose is the encouragement of improvements and innovation.<sup>2</sup> While it is true that patents limit the exploitation of patented subject matter, they allow persons other than the patent holder to examine the details of such invention and learn the technological advances that are embedded in the invention.<sup>3</sup> This is because upon filing of the application and submission of the technical aspects of the application, the invention becomes a part of the state of the art; in other words, it is in the public domain. This in itself allows for technology transfer. In the case of copyright, the film and music industry has become an important part of the national economies of a number of developing countries like Nigeria and India. For instance, the music market in Nigeria reportedly generated revenues in the sum of \$53 million in 2012, up from \$47 million in 2009. This

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<sup>1</sup> Keith E. Maskus, ‘Intellectual Property Rights and Economic Development’ (Compliance with International Intellectual Property Law Symposium, Cleveland, February 2000) 1

<sup>2</sup> Asahi Kasei Kogyo (1991) RPC 485, 532

<sup>3</sup> Tina Hart, Linda Fazzani and Simon Clark, “Intellectual Property Law” (4<sup>th</sup> edn, Palmgrave Macmillan 2006) 11

figure is projected to grow at a rate 9.3% annually to hit \$81 million in 2018.<sup>4</sup> This is an industry that provides jobs for not only the music artistes, but the song writers, the producers, the distributors and the studio engineers, who are all behind the scenes. On the other hand, they may harm development prospect by encouraging imitation and allowing owners of IPRs to exhibit their monopolistic behavior<sup>5</sup>. This is evident in most countries where there is significant percentage of piracy. As these countries strengthens their laws and enforce them, these pirates must look for alternative ways to survive.

One of the areas where the impact of IP on development has manifested strongly is copyright as a result of digital technology. It creates both advantages and disadvantages by enabling access as well as having the potential to restrict access. In this development, Digital Rights Management (DRM) play a significant role. DRM systems/Technological Protection Measures (TPM) are aimed at enforcing certain business rules in respect of the use of content protected by intellectual property<sup>6</sup>. They regulate the process of work licensing online by allowing or prohibits access according to the certain rules or terms as put up by right owners. DRM as a unique identifier<sup>7</sup> or description<sup>8</sup> of works, serves as a viable mechanism for the protection and prevention of copyright infringement particularly piracy which has become a major threat to copyright regime. In terms of enforcement, right owners used DRM/TPMs as a means of enforcing their rights in the digital environment.<sup>9</sup>

Therefore, this paper will focus on DRM to explain the role of IPR in Nigeria as a developing country. To achieve this, the first part examines the nature and impact of digital technology. The second part defines the concept of DRM and its attendant issues. The third part addresses how copyright has reacted to the phenomenon of digital technology. The fourth part examines the emerging reform in the digital environment viz-a-viz the Nigerian Copyright Draft Bill 2015. In conclusion, the paper recommends for the swift passage of the Copyright draft bill 2015.

## **Nature and Impact of Digital technology**

The influence of the invention of technological changes and computer significantly in the last two decades cannot be over-emphasized. This influence can be felt basically in all

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<sup>4</sup> Jamila Nasir, David Jangkam and Ayodele Adewole, ‘Online Music and Movies and New Technological Devices: Challenges Confronting Collecting Societies in Nigeria’ (2016) ABULJ 183, 188

<sup>5</sup> Keith E. Maskus, 2000 (*n 1*)

<sup>6</sup> See generally World Intellectual Property Organization (WIPO), *Intellectual Property on the Internet: A survey of Issues* No. 856 (WIPO Publication 2002) p 40

<sup>7</sup> i.e. numbers or codes permitting the unique identification of a piece of content (comparable to, for example, the ISBN number for books)

<sup>8</sup> i.e. information about the piece of content which may include, for example, the identity of the rightsholder, the price for using the work, and any other terms of use

<sup>9</sup> World Intellectual Property Organization (WIPO) (*n 6*)

human endeavours. This can be attributed to the new easy and fast way of performing many tasks at a time. Technology revolutionized the performance of many human functions ranging from the conventional writing, deducing information in digital form, storage of this information (data) and its management, entertainment, telecommunications and business activities. The most prominent of this technological revolution is digital technology, whose emergence and expansion necessitated the creation of digital networks like the internet.

Digital technology, particularly the internet, has led to new opportunities for copyright creators and owners to exploit and disseminate copyright works, and for users to enjoy copyright works.<sup>10</sup> An example is the growing market via the internet for digital copies of work, often copied using compression softwares that are capable of being downloaded on demand, or development of digital storage media, ripping technology and peer-to-peer file sharing digital platforms<sup>11</sup>. All these seeming advantages of digital technology have made the digital environment and copyrighted works volatile and exposed to digital piracy. In other words, protected works can now be downloaded faster, cheaper and in larger volume, all at the detriment of authors, rightholders or content owners.

Therefore, the increased use of digital technology and the exponential growth of the internet has made the earliest copyright laws obsolete, and has far-reaching implications. According to Raymond Ku. and Jacqueline Lipton.<sup>12</sup>

Digital technology and the exponential growth of the Internet threaten to upset copyright law’s delicate balance. Once converted to digital files, many works of authorship, including text, music, graphics, and video can be flawlessly copied at almost no cost. Subsequent copies can be made with no degradation in the quality of these copies as happens in the analog world. Once in digital form, these same files can then be distributed globally using the Internet at virtually no cost. Technology, therefore, makes it possible for anyone with a computer to become a global distributor of copyrighted works.

In the light of the above issues, the vital questions are what is the commercial<sup>13</sup> fate of a rightholder or content owner whose work has been distributed digitally without any profit, or music writer, record label owner, or film producer whose work has been digitally pirated? How do they protect their works or content in an online environment?

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<sup>10</sup> Adebambo Adewopo, *Nigerian Copyright System: Principles and Perspectives* (Odade Publishers 2012) 187

<sup>11</sup> Ibid

<sup>12</sup> Jacqueline Lipton, *Rethinking Cyberlaw: A New Vision for Internet Law* (Elgar Publisher, 2015)14.

<sup>13</sup> Moral rights of authors and directors maybe affected as well. For instance, conversion of copyright material from analog to digital form in which some information like the publishers, director or authors name may have been removed or some alterations made which have altered or affect the original work. Hence, their moral rights can be said to have been infringed upon.

What options, if any, do they have to curb, prevent, monitor and manage their works in the digital space?

It is important to state that digital technology has also enabled work owners or rightholders to protect their works online/digital environment in digital format through technology itself. This is made possible through Digital Rights Managements (DRM) (which is the crux of this paper) and other technological protection measures like anti circumvention rules as we shall see in the next sub-heads.

### **Definition and Concept of Digital Rights Management**

The term ‘Digital Rights Management’ (DRM) is synonymous or part of Technological Protection Measures (TPM) which also includes ‘Access Control’ and ‘Anticircumvention rules’, Therefore, for the purpose of this paper, the terms shall be used interchangeably to mean and construe the same meaning.

Those who are familiar with computer system at its inception in Nigeria in the ‘70s would attest to the fact that putting up measures to circumvent technological measures used to protect copyright works are not new. Those who played with computers in the early Apple II days may still remember the wide variety of cracking software and hardware they could obtain e. g. Bag of Tricks, Locksmith, Wildcard, etc.<sup>14</sup> So, those tools have been existing a long time ago and not new. In the same vein, DRM/TPMs are more pronounced and topical now due to the greater importance and growth of digital environment, explosion of internet and e-commerce.

Digital rights management is a far-reaching term that refers to any scheme that controls access to copyrighted material using technological means.<sup>15</sup> Digital Rights Management entails the operation of a control system that can monitor, regulate and price each subsequent use of a digital file that contains media content or software.<sup>16</sup> Electronic access can be administered through rendering software tied to a protected work, and can be complemented with encryption, digital signatures, watermarking or hardware

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<sup>14</sup> Peter K. Yu, Anticircumvention and Anti anticircumvention, Legal Studies Research Series, Research Paper No. 04-05. Available at <http://ssrn.com/abstract=931899>. 14

<sup>15</sup> <http://computer.howstuffworks.com/drm1.htm>. Accessed on 8/5/2017. This technological means of protection includes anti-copy devices, access control, electronic envelopes, proprietary viewer software, encryption, passwords, watermarking, fingerprinting (user authentication), metering and monitoring of usage, and remuneration systems

<sup>16</sup> Michael A. Einhorn, *Media, Technology and Copyright: Integrating Law & Economics*. (E.E 2004) 47

programming.<sup>17</sup> Flowing from there, depending on the price that a user pays, owners of protected work may limit use by number of plays, duration of access, temporary or partial uses, and the number and location of computers on which the file may be accessed.<sup>18</sup>

It is pertinent to note that DRM and access control is legally different from copyright, which protects the underlying work from unauthorized reproduction, redistribution, derivation, public performance or display. Access protection entails technological procedures that shield a copyrighted work from the attempt to copy. However, copyright protection among other things is principally limited by term duration, fair use, the first sale doctrine, exemptions for libraries etc.<sup>19</sup> Therefore, it won’t be out of place to say that access protection or DRM are not subject to the same legal limitations and user rights as we have in the conventional copyright. This can be justified by the similarities shared by access protection and technology protection which entails measures that disallow black boxes to decode scrambled cable signals or devices that circumvent the Serial Copy Management System.<sup>20</sup>

As shall be later discussed in this paper, the two WIPO Internet Treaties provides for the legislative framework for the protection against circumvention of technological measures used by content or right owners to protect their rights on the internet. The WCT incorporated the Berne Convention that provides protection for computer software and compilation of data by classifying same as literary works<sup>21</sup>, and also introduced a new right called ‘right of making available’.

### **Right of making available**

The traditional exclusive rights of reproduction, distribution, performance and communication as conceived by the Copyright Act<sup>22</sup>, were perceived to be inadequate as relate to the activities on the internet. This necessitated the introduction of an additional

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<sup>17</sup> Ibid. simpler instances include- A company sets its server to block the forwarding of sensitive –mail, read-only files, An e-book server restricts access to, copying of and printing of material based on constraints set by the copyright holder of the content, A movie studio includes software on its DVDs that limits the number of copies user can make to two, A music label releases titles on a type of CD that includes bits of information intended to confuse ripping software.

<sup>18</sup> Michael Einhorn (n 16)

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> For detailed discussion on software protection and classification as literary work, see generally Adebambo Adewopo and Olanrewaju Ajetunmobi, ‘Microsoft Corp. v. Franike: A Critical Analysis’ (2013) 2 (1) NJIP, 207-225

<sup>22</sup> Copyrihgt Act 1988, Cap C28

‘right of making available’<sup>23</sup> to the exclusive rights as contained in the copyright laws. This newer right of making available conceded by copyright now appears to satisfy the demands of digital environment which hitherto was lacking in various copyright laws and of great importance to digital copyright jurisprudence.<sup>24</sup>

The right of making available was conceived by the World Intellectual Property Organisation Internet Treaties, and its defined as follows:

Authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them<sup>25</sup>

The ‘making available’ right is one of the most important innovations of the WIPO Treaties. It is an ‘exclusive right’ that allows authors, phonogram producers, performers and other rights owners to fight piracy on the internet and offer new interactive uses of their works and recordings.<sup>26</sup>

### **Copyright Law Response to Digital Technology**

The challenge of digital technology being a global one caught the attention of international community. In addressing this menace, new norms were established.

In December 1996, two WIPO Digital Agenda Treaties<sup>27</sup>, namely WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), both nicknamed the (the WIPO Internet Treaties) were adopted. The WIPO Internet Treaties are designed to update and supplement the existing international treaties on copyright and neighbouring rights, namely, the Berne Convention and the Rome Convention.<sup>28</sup> These treaties which came into force in 2002<sup>29</sup> provided the watershed for the protection of copyright and neighbouring rights in cyberspace, by establishing the new international legal norms for the protection of technological measures such as Digital Right

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<sup>23</sup> Art. 8 of WIPO Copyright Treaty, 1996

<sup>24</sup> Adebambo Adewopo, *According to Intellectual Property: A Pro-Development Vision of the Law and the Nigerian Intellectual Property Law and Policy Reform in the Knowledge Era*. 5<sup>th</sup> Inaugural Lecture, (2012 Nigerian Institute of Advanced Legal Studies, (NIALS) press, Lagos) 61

<sup>25</sup> WCT (n 23)

<sup>26</sup> See <http://www.ifpi.org/content/library/wipo-treaties-making-available-right.pdf>. Accessed on 12/07/2017

<sup>27</sup> The treaties can be accessed at <http://www.wipo.int/treaties/en/>

<sup>28</sup> World Intellectual Property Organization (WIPO), (n 6) 27

<sup>29</sup> The WCT on March 6, 2002, and the WPPT on May 20, 2002

Management Technologies (DRM) used to provide technical means to ensure that copyright holders can maintain control of their content by safeguarding them from unauthorized access and use.<sup>30</sup> The content of the Internet Treaties can be divided into three parts:

- (1) Incorporation of certain provisions of the TRIPS Agreement not previously included explicitly in WIPO treaties (e.g., protection of computer programs and original databases as literary works under copyright);
- (2) Updates not specific to digital technologies (e.g., generalized right of communication to the public); and
- (3) provisions that specifically address the impact of digital technologies.<sup>31</sup>

Both treaties provide leverage for copyright holders to rely on technological measures (DRM) to protect their works/rights in the cyberspace. The provisions on Obligations Concerning Technological Measures were made flexible, so as to aid their implementations by member states. Therefore, parties to the treaties were also enjoined to develop measures against circumvention of effective technological measures. The provisions on Obligations Concerning Technological Measures are generally referred to as “Anti-Circumvention” provisions. Article 11 of the WCT provides that “Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restricts acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.”

The Treaties also provide protection/legal support to “rights management system”<sup>32</sup>. Article 12 WCT provides that: (1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:

- (i) to remove or alter any electronic rights management information without authority;
- (ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that

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<sup>30</sup> Adewopo (n 10) 193

<sup>31</sup> World Intellectual Property Organization (WIPO) (n 28)

<sup>32</sup> Rights management information in this context has been defined by sub-section Art. 12 WCT to mean information which identifies the work, the author of the work, the owner of any right in the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public. See also Art. 19 WPPT

electronic rights management information has been removed or altered without authority.

These provisions will enhance the ability of copyright holders to exploit their property on the internet, and allow consumers to rely on the accuracy of the information they receive to enable them feel secure transacting online.<sup>33</sup>

Since the adoption of the WIPO Internet Treaties in 1996, State parties in meeting their commitments have started making efforts to domesticate these provisions against the circumvention of technological measures in their various national legislations. The first and most notable amongst them is the United States of America’s Digital Millennium Copyright Act of 1998<sup>34</sup>.

In implementing the treaties, the European Union passed an EU Directive in 2001 after the adoption of the ‘Common Position of the European Parliament and Council of the European Union’<sup>35</sup> to provide protection for digital rights management systems that protect copyright in digital form.<sup>36</sup> Other countries that have implemented the Treaties and legislate against circumvention of technological measures are Australia<sup>37</sup> and Japan<sup>38</sup>. It is important to note that many African countries including Nigeria<sup>39</sup>, are yet to take the positive step of domesticating the provisions of the WIPO Internet Treaties in their laws.<sup>40</sup> However, the recently passed Cybercrime Act, 2015<sup>41</sup> and Copyright (Amendment) Bill 2010 deals with the digital concerns in copyright protection for the first time in any copyright law reform as shall be discussed later in this paper.

As laudable as the provision for technology control (DRM) and Anti-circumvention as enshrined in the WIPO Internet Treaties, developing countries have been enjoined to be cautious about the ratification and subsequent implementation in their various countries.<sup>42</sup> This is necessary factoring the ongoing debate of DRM in striking a balance between the

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<sup>33</sup> Peter K. Yu (*n 14*)

<sup>34</sup> Pub. L. No. 105-304, 122 Stat. 2860 (1998). Enacted to ‘facilitate the robust development and worldwide expansion of e-commerce, communication, research, development and education by making digital networks safe places to disseminate and exploit copyrighted materials. See generally Ss. 1201(a)(1), (2), and 1201 (b) of the DCMA

<sup>35</sup> European Parliament and the Council of the European Union, Common Position (EC) No. 48/2000, 47, 28 September 2000

<sup>36</sup> Art. 6 of the EU Directive 2001

<sup>37</sup> They enacted Copyright Amendment (Digital Agenda) Act 2000 and into effect in 2001

<sup>38</sup> Japan in its own effort amended its Copyright and Unfair Competition Prevention Law (Law No. 77 of 1999 by including the anti-circumvention provisions of the treaties.

<sup>39</sup> Although, WIPO Internet Treaties were initialed by Nigeria in 1996, we are yet to domesticate them.

<sup>40</sup> Adewopo (*n 10*) 195

<sup>41</sup> Cybercrime (Prohibition, Prevention) Act, 2015 (‘Cybercrime Act’) makes provisions for the protection of critical national information infrastructure, computer systems, electronic communications, data, computer programs, intellectual property and privacy rights. See generally ‘Lanre Ajetunmobi, ‘Cybercrime Act 2015: A Review’ (2014-2015) NJIP

<sup>42</sup> WCT (*n 23*) particularly Art. 11

protection of circumvention against technological measures (DRM) and public/societal interest of access to knowledge. Flowing from this, in today’s DRM debate, there are generally two different camps with rightholders, their investors and representatives on one side, and academics (usually liberal academics), consumer advocates and civil libertarians on the other.<sup>43</sup> Hence, finding a common ground for the two groups has been a major concern, bearing in mind that the underlying principle of copyright protection is to provide incentives for the author for his time, innovation and encouraging further innovations, and at the same time not denying the public access to knowledge. As rightly put by Judge Alex Kozinski in the case of *White V. Samsung Electronics America Inc.*<sup>44</sup> “[o]verprotecting intellectual property is as harmful as underprotecting it.” This statement has become important today, in respect of the ever-expanding scope of intellectual property protection in general and the DRM controversy in particular. Also, as noted by Morolong<sup>45</sup> “the private interest of authors and publishers in creating and selling of copies of works have coincided with the interests of members of the public eager to get access to ideas, information or expression in the works”

The pro-DRM are of the view that the introduction of DRM or anti-circumvention provisions are important and necessary as it affords rightholders not only income by commercially exploiting their works, but also controlling and restricting access to their works, and ensures that the integrity of the work is maintained. Whereas, the anti-DRM group’s plight is also understandable, as they recognize the societal need to access copyright works in accordance with the stipulated limitations and exceptions, by using them in a fair and reasonable manner.<sup>46</sup>

Another area of controversy is whether the leakage in the existing copyright system is acceptable? The copyright owners are of the view that the stronger the protection is, the more profits they will make, and the more worthwhile their investments will be. Therefore, it is ideal for the content industries to deploy technological measures to ensure zero leakage from content produced or work to users.<sup>47</sup> However, from the standpoint of the users, this position is not only unsupportable, but socially detrimental.<sup>48</sup> The words of Professor Lemley captures this better, “[t]he goal of eliminating free riding ... is ill-suited to the unique characteristics of intellectual property ... [, and e]fforts to permit

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<sup>43</sup> Peter K. Yu, (n 14) 16

<sup>44</sup> 989 F.2d 1512 (9<sup>th</sup> Cir. 1993)

<sup>45</sup> Morolong S, ‘Copyright in the Digital Environment: An Assessment of the Botswana Copyright and Neighbouring Rights Act 2000’. (2006) 3 UBLJ 18

<sup>46</sup> Schedule to the Copyright Act, 1988

<sup>47</sup> Peter K. Yu (n 14) 19

<sup>48</sup> Ibid

intellectual property owners to fully internalize the benefits of their creativity will inevitably get the balance wrong.”<sup>49</sup>

### **Internet Service Provider’s Liability/Rule**

Another area of contention which has generated a lot of controversy in the digital online jurisprudence is the liability of Internet service Providers (ISP). The issue or question here is centered on who should be liable for copyright infringement that takes place in new digital online domain which is totally different from the conventional copyright. This is majorly akin to the distribution of work on the internet. When a work is transmitted from one point to another, or made available for the public to access, numerous parties are involved in the transaction, which basically includes Internet access providers or Online Service Providers (ISPs or OSPs).<sup>50</sup> When these service providers participate in transmitting or making available materials provided by another which infringe copyright or related rights, are they liable for the infringement?

It is important to note that ISP could be involved in secondary and contributory liability under copyright law, and its position in the distribution of work in digital environment has continued to present a huge problem, notwithstanding the inclusion of the new ‘right of making available’<sup>51</sup>. ISP liability could arise in two ways: if the service provider itself is found to have engaged in unauthorized acts of reproduction or dissemination to the public, or if it is held responsible for contributing to or making possible the act of infringement by another.<sup>52</sup> In situations where ISPs had not initiated the postings of infringing materials, direct liability is regarded as a matter of strict liability. Therefore, to be held liable for direct infringement, the defendant is not required to have any particular *mens rea* or intention to infringe copyright.<sup>53</sup>

The DCMA, through the ‘Online Copyright Infringement Liability Limitation’<sup>54</sup> in its attempt to address liability for hosting websites or providing websites containing infringing content and dissemination copyrighted works without authorization, establishes the ‘**safe harbor**’ and similar liability immunity or limitation rules. Safe harbor rules or exemptions were established to shelter ISPs from liability for copyright infringement in certain circumstances by setting down guidelines for online copyright infringement. This exemption includes: (a) transitory digital network communications;

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<sup>49</sup> Ibid

<sup>50</sup> World Intellectual Property Organization (WIPO), (*n 6*) 33

<sup>51</sup> As discussed earlier in this paper

<sup>52</sup> Adewopo, According to Intellectual Property (*n 24*)

<sup>53</sup> Lipton (*n 12*) 23

<sup>54</sup> Title II Online Copyright Infringement Liability Limitation] of the Digital Millennium Copyright Act 1998. In the US DMCA Act, 5.512

(b) system caching; (c) storing information on its system at the direction of users; and (d) providing information location tools like hypertext links.

It should be noted that the DCMA does not define when a provider is liable for copyright infringement, and in this respect, the existing principles of US copyright law apply. Instead, the DCMA states those categories of provider activity where providers are exempt from liability for damages.<sup>55</sup> It follows therefore that a provider is exempted if, he is merely acting as a passive conduit for the information, and he is not the producer or author of the information, and has responded timely to remove or disable access to infringing material upon notice from the copyright holder (the so-called ‘notice and takedown’ provisions).<sup>56</sup> Under the DCMA, to qualify for safe harbor, the provider must not only ensure he didn’t interfere with ‘standard technical measures’ applied by rightholders to protect their work and must adopt, but also implement a policy that terminates the subscriptions of repeat infringers, and accommodate and not interfere with technical measures put in place to protect and identify copyright works<sup>57</sup>

### **Nigerian Copyright Act and Emerging Reform for the Digital Millieu**

Considering the far-reaching implications for copyright arising from digital technology, it is no gainsaying that the existing copyright framework for the protection of rights in the digital and online environment is inadequate or lacking in the existing copyright Act 1988. It is in this light that the Nigerian Government through the Nigerian Copyright Commission, in meeting its commitments and obligations to various international copyrights instruments most notably, the WIPO Internet Treaties, came up with a ‘Draft Copyright (Amendment) Bill 2015, with a view to expand the scope, cater for the protection of rights and address the challenges on the internet or digital environment. It is important to state that this Draft Copyright (Amendment) Bill 2015 deals with digital concerns in copyright protection as mentioned above and it is first of its kind in copyright law reform attempts in Nigeria.<sup>58</sup>

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<sup>55</sup> World Intellectual Property Organization (WIPO), (*n 6*) 34

<sup>56</sup> Ibid

<sup>57</sup> On detailed insight to the safe harbors limitation rules, see generally S. 17 USC , Ss. 512(i), 512(c) (2),(c) (1)(A), (c) (1) (B), 512(d), 512(2)(3)

<sup>58</sup> Adewopo (*n 10*) 195

The amendment is a positive step towards domesticating the provisions of the WIPO internet treaties in Nigeria’s copyright law regime as it relates to DRM and circumvention against technological measures, as well as incorporating Article 8 WCT (right to make available) by amending the existing Copyright Act, which was last amended in 1988. The bill is titled ‘**A Bill For An Act To Amend The Copyright Act Cap C28 Laws Of The Federation Of Nigeria 2004 To Provide For Better Protection Of Copyright In The Digital Environment**’.<sup>59</sup>

Among other things<sup>60</sup>, highlights of the draft bill as it relate what I refers to as norm-settings in copyright law and practice today as a result of the application of DRM/TPMs include:

a) provisions on ‘right to make available’ and communicate to the public as follows:

(1) by the addition in subsection (1) of a new provision numbered (x) as follows:

(x) ‘the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them’

(2) by the addition in subsection (1) (c) of a new provision numbered (v) as follows:

(v) ‘Communication to the public’

(b) the draft bill addresses the liability for internet service provider (ISP) for copyright breaches. It conferred immunity and limited limitation on ISP and intermediaries who are exposed to risk of infringement; and permits blocking of access to content in some cases, and also contains provisions for issuing and carrying out take-down notices for infringing material and for suspending the accounts of repeat infringers. These new provisions or sections are provided for and to be inserted immediately after section 18 of the Principal Act (Copyright Act 1988) and numbered “sections 18A (Takedown of infringing content) and 18B (procedure for suspension of accounts of repeat infringers)

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<sup>59</sup> Amendment of Act Cap. C28 LFN 2004

<sup>60</sup> Ibid 1 The draft set out which works are and are not eligible for copyright protection, and provide various exceptions. It also cover issues of ownership, transfers and licences for protected works; set out penalties for infringements and provide for criminal liability for copyright offences; the draft bill also provides protections for performer’s and folklore rights, and it provides for the establishment and approval of collective management; and for levies for private copying. Also, registration provision to facilitate the creation of a national databank on works protected by copyright in Nigeria.

(c) the draft bill provides for anti-circumvention of technological protection measures/devices and alteration of falsification of electronic rights management information as well as : actions for circumvention of technology. These new provisions or sections are provided for and to be inserted immediately after the existing section 21 of the Principal Act and shall be numbered sections 21A (circumvention of technological devices), 21B (Falsification, alteration or removal of electronic rights management information) and 21C (actions for circumvention of technology).

## **Conclusion**

As earlier mentioned, many techniques have been developed to protect the original work like digital watermarking, access and copy controls etc. until they are given statutory backing by incorporating these techniques in the legislations, protection of original works in the digital environment remains a goal that is yet to be achieved. This paper therefore calls for the swift passage of the Draft Copyright Bill into law. The passage of the bill will not only address the digital concerns in copyright protection most especially by its provisions on DRM, but also bring Nigeria among nations that have complied with international standards. However, as it is important that ideas should be available to the general public so that the flow of creativity must not be blocked, creators and authors must always be incentivized for their efforts. Hence the interest of both must be kept in mind while enacting and implementing DRM techniques.