

11. CREATIVE DISRUPTIONS AND DIGITAL COPYRIGHT REGIME OF AN AFRICAN FILM INDUSTRY: NOLLYWOOD'S PRESENT CONTINUOUS PATH

Samuel Samiai Andrews*

ABSTRACT

This paper analyses how creativity and inventions during the digital era have influenced the Nigerian film industry. Although, the Nigerian copyright jurisprudence has not significantly adapted to digital interventions, the global nature of audio-visual-cinematographic business practices will quicken such adaptation. Nollywood represents the Nigerian film industry, which mostly consists of the audio-visual production systems. Nollywood is now the third largest film industry globally by production metrics. Digital era cinematic productions are changing the Nigerian film industry's creative structures in significant ways under a weak copyright enforcement regime. Digital technology has become part of Nollywood's strategic method of eradicating film piracy. Digital era interventions influenced the Nigerian film industry to adapt its distribution systems of creations after technology interrupted the former global intellectual property (IP) regulatory Order. In this instance, this old Order recognized only non-technological creative works. This new distribution system carries tremendous advantages beyond combating piracy, including overcoming the negative impact of a pandemic. This paper explores how the

disruptions of digital technology, laws, local economic inequities, and film piracy created the enabling environment for Nollywood's emergence while setting it on an ingenious growth. It analyses the tension between digital technology's normative trends and copyright ownership regimes created by the Beijing Treaty on Audio-visual Performances (Beijing Treaty). It concludes with certain prescriptions towards a sustainable film industry.

Keywords: *Nollywood, intellectual property, digital copyright, African films, creative disruption, fourth industrial revolution, artificial intelligence.*

1. INTRODUCTION

The core legal regime for protecting the film and audio-visual industries are copyright and related neighbouring rights, for example, performers of live music, dances and broadcasting of creations within platforms that are not tangible.¹ However, other intellectual property (IP) regimes like patent, trademark, and unfair competition laws still play significant legal protective roles in the audio-visual industries.² The World Intellectual Property Organization (WIPO) led the charge in the late 1990s to reconceptualize global copyright regimes to recognize technological enhanced and supported creations.³ The changes in copyright laws by most developed economies encourage new businesses, which these new laws fundamentally support.⁴ For example, in the music industry, the iTunes business model from Apple Corporation was one of the early businesses that

* Dr. Samuel Samiai Andrews, SJD is a US Ambassador's Distinguished Scholar (ADSP). He is a former Professor of IP Law at the University of Gondar, School of Law, Ethiopia. He is currently a faculty member at the College of Law, Prince Mohammad Bin Fahd University (PMU), Al Khobar-Dammam. Kingdom of Saudi Arabia. He is an Adjunct Professor of Legal Environment of Business, Criminal Justice and Cybercriminology at the Albany State University, Albany, Georgia, US. He has lectured in the Doctor of Juridical Science (SJD) Colloquium, Seminar & Workshop Program of Suffolk University Law School. Boston, Massachusetts, US (2014-2018). He holds a Doctor of Juridical Science degree from Suffolk University Law School Boston, Massachusetts, US. He holds an LL.M in IP Law & Policy from the University of Washington, Seattle, US. He also holds an LL.M in International Law & Jurisprudence | Legal Theory and an LL.B (Hons) all from the University of Uyo, Nigeria. He holds a Barrister-at-

law (BL) diploma from the Nigerian Law School, Lagos. He is a Licensed Lawyer and Licensed Capital Market Solicitor.

¹ Okediji RG, 'Copyright and Public Welfare in Global Perspective' (1999) 7 *Ind J Global Legal Stud* 117, 118-19; The Copyright Act (Laws of the Federation of Nigeria) (2004), Cap 28, § 26 (describing neighbouring rights as performer's rights, which include performing, recording, broadcasting live, dramatic performance, dance, mime, musical performance and reading/recitation of literary act as far as it is a live performance given by one or more individuals).

² *ibid.*

³ Ginsburg JC, 'Copyright 1992-2012: The Most Significant Development' (2013) 23 *Fordham Intellectual Property, Media and Entertainment Law Journal* 465.

⁴ Elkin-Koren N, 'The Changing Nature of Books and the Uneasy Case for Copyright' (2011) 79 *George Washington Law Review* 101.

leveraged the new 1990s copyright regime.⁵ In the film and audio-visual industry, video on demand business enterprises represent the new model of consuming visual contents enhanced by digital technology and jurisprudence.⁶ Nollywood in its original and current format, as this paper will analyze later, is a direct outcome of the digital era enhanced productive capabilities.⁷ Copyright ownership is loosening due to new distribution channels powered by digital technology.⁸ Therefore, the digital era creative jurisprudence will impact its production ecosystem.

The contemporary digital legal regimes have further liberalized and democratized copyright ownership exclusivity.⁹ Copyright sustains international trade through regimes like the Trade-related Aspects of Intellectual Property Rights (TRIPS) and the World Trade Organization (WTO) guidance.¹⁰ Members of these Treaties have made efforts to comply with the unobstructed trade goals and multilateral engagements of these instruments.¹¹ Nollywood's creative ownership and performance rights' regime has evolved from its checked history to present day technology-enhanced

creations.¹² Its growth continues with the body of astounding works available for public consumption.¹³

Nollywood has grown to be Africa's most successful film industry and the third largest, globally after Hollywood and Bollywood.¹⁴ By 2013, most economists considered Nollywood as a formal sector in Nigeria's developmental growth.¹⁵ In 2014, Nollywood was a USD 5.1 billion industry and added more than 5% value to Nigeria's GDP.¹⁶ At the turn of the 20th century, digital technologies enabled creative industries with humongous internal revenue and income generation capacity.¹⁷ Digital technologies changed the methods by which audio-visual content and creative works reached the public.¹⁸ Therefore, digital creations are disruptive technologies.¹⁹

A disruptive technology is one that displaces an established creative orthodoxy and builds a new business method in an industry.²⁰ Often, technological disruptions influence industrial legal regimes. The existing legal regime lags behind the trending technology, leaving the courts to perform gatekeeping functions of husbanding the new technologies.²¹ For example, in the United States (US), *Sony Corp. of America v Universal City*

⁵ Gasser U, 'iTunes: How Copyright, Contract, and Technology Shape the Business of Digital Media—a Case Study' (2004) Berkman Publication Series No. 2004-07 <<https://ssrn.com/abstract=556802>> accessed 14 June 2021; Solo A, 'The Role of Copyright in an Age of Online Music Distribution' (2014) 19 Media and Arts Law Review 169.

⁶ Raustiala K, Sprigman CJ, 'The Second Digital Disruption: Streaming and the Dawn of Data-Driven Creativity' (2019) 94 New York University Law Review 101.

⁷ Haynes J, et al., 'Evolving Popular Media' in Nigerian Video Films (2000) 51 (Nollywood emerged from the new inventions of digital technology. At that time, VHS cassettes became the main source of contents production and distribution in the films or audio-visual industry. In its later years, Nollywood depends principally on digital streaming, an invention of the digital era to produce, distribute and even fight illegal use of its contents-films).

⁸ Raustiala K, Sprigman CJ, 'The Second Digital Disruption: Streaming and the Dawn of Data Driven Creativity' (2019) 94 NYU Law Review 101; Reidenberg J, 'The Rule of Intellectual Property Law in the Internet Economy' (2007-2008) 44 Houston Law Review 1093; Carroll MW, 'Disruptive Technology and Common Law Lawmaking: A Brief Analysis of A & M Records, Inc v Napster Inc' (2002) Public Law and Legal Theory Working Paper No. 2003-3 <<https://ssrn.com/abstract=376920>> accessed 15 June 2021.

⁹ Lim C, Chik W, 'Whither the Future of Internet Streaming and Time-Shifting? Revisiting the Rights of Reproduction and Communication to the Public in Copyright Law after Aereo' (2015) 23 International Journal of Law and Information Technology 53-88.

¹⁰ Reidenberg (n 9).

¹¹ Kaminski ME, 'The Capture of International Intellectual Property Law through the US Trade Régime' (2014) 87 Southern California Law Review 977.

¹² Carroll (n 9).

¹³ Tushnet R, 'Performance Anxiety: Copyright Embodied and Disembodied' (2013) 60 Journal Copyright Society USA 209-248.

¹⁴ Bright J, 'Meet Nollywood: The Second Largest Movie Industry in the world' (*Fortune*, 24 June 2015) <<http://fortune.com/2015/06/24/nollywood-movie-industry/>> accessed 31 January 2021.

¹⁵ Liston E, 'Hello Nollywood: How Nigeria Became Africa's Biggest Economy Overnight' (*The Guardian*, 10 April 2014) <<https://www.theguardian.com/world/2014/apr/10/nigeria-africa-biggest-economy-nollywood>> assessed 29 July 2019; Ezeonu I, 'Nollywood Consensus: Modeling a Development Pathway for Africa' (2013) 7 The Global South 179-199.

¹⁶ Amos F, 'First Hollywood, then Bollywood, now Nollywood' (*ONE*, 15 June 2015) <<https://www.one.org/us/blog/first-hollywood-then-bollywood-now-nollywood/>> accessed 18 March 2021.

¹⁷ Ku RSR, 'The Creative Destruction of Copyright: Napster and the New Economics of Digital' (2012) 69 U Chi L Rev 263.

¹⁸ Jedlowski A, 'Small Screen Cinema: Informality and Remediation in Nollywood' (2012) 13 Television and Media 431-46.

¹⁹ Ku (n 18).

²⁰ Spar DL, *Ruling Waves: From the Compass to The Internet, A History of Business and Politics Along the Technological Frontiers* (2001) 15.

²¹ *ibid.*

Studios, Inc., illustrates how a new technology enabled the practice of 'time shifting,' which is recording of television shows for private viewing later.²² The video cassette recorder (VCR) created by Sony Corporation disrupted the ways in which movie studios distributed movies to its consumers.²³ Movie studios in the lawsuit claimed that the VCR contributed to the infringement of their copyright by allowing unauthorized recording of the contents.²⁴ The US Supreme Court held that 'time shifting' was a permissible fair use and that the VCR system was legal because the technology was capable of 'substantial non-infringing uses.'²⁵ This US Supreme Court decision validated disruptive technology like VCR.²⁶ It set a precedent for US courts, affirming that new technologies could balance the objectives of copyright with their utilitarian purposes.²⁷ However, so far the Nigerian courts have not given guidance on the digital era IP jurisprudences in a fundamental way.

2. ARTICLE ROAD MAP

This article evolves in three Parts. Part one examines the historical factors that influenced the emergence of a new film ecosystem and Nollywood. It critically examines the intersections of culture and a new technology in the birth of the contemporary Nigerian film industry. Part two analyzes how the digital era laws like the Beijing Treaty have expanded the moral and economic rights of cinematic creatives, especially actors and performers, and its legal impact on Nollywood. Part three further explores the devolution of the new rights for creatives in Nollywood, especially ownership, authorship and the

responsibilities of their collective societies. It concludes with the postscript of the legal landscape of Nollywood.

A. PART ONE: DIGITAL INTERVENTION AND THE EMERGENCE OF A NEW FILM INDUSTRY

The Birth of Nollywood

At the beginning of the 1990s, the Nigerian film creatives introduced a new genre of film production, which solely depended on audio-visual production systems.²⁸ Other African countries copied the Nollywood genre and production system, which was more economically feasible than celluloid film production.²⁹ The audio-visual mode of film production was popularized by a Nigerian filmmaker, Kenneth Nnebue, in the early 1990s. As opposed to the celluloid type films, it captured the yearning taste for cinematic entertainment and filled the gap that cinema theatres left open.³⁰

In the early 1990s, Kenneth Nnebue, Chris Obi Rapu and Okechukwu Ogunjiofor scripted, produced, and directed 'Living in Bondage', the film that began the Nollywood era in Nigeria.³¹ Kenneth Nnebue imported empty caches of video home system (VHS) tapes from Asia for purposes unrelated to filmmaking but creatively changed the purposes of the goods by recording Living in Bondage on them.³² He took advantage of the digital technology available at that time to primarily make an income during a period of dire national economic meltdown.³³ He has stated that his primary reason for engaging in filmmaking was commercial.³⁴ Apart from starting a new creative

²² 464 U.S. 417 (1984).

²³ Id 441-443.

²⁴ *ibid.*

²⁵ Id 441-442.

²⁶ Lee E, 'Technological Fair Use' (2010) 83 S. Cal Rev 797.

²⁷ Ghosh S, 'The Transactional Turn in Intellectual Property' (2010) 35 Dayton L Rev 329, 334-35.

²⁸ Haynes J, *Nollywood: The Creation of Nigerian Film Genres* (University of Chicago Press, 2016) 1.

²⁹ Jedlowski A, 'From Nollywood to Nollywood: Processes of Transnationalization in the Nigerian Video Film Industry' in Krings M, Okome O (eds), *Global Nollywood, The Transnational Dimensions of African Video Film Industry* (Indiana University Press 2013) 1, 25-45.

³⁰ Esonwanne U, 'Interviews with Amaka Igwe, Tunde Kelani, and Kenneth Nnebue' (2008) 39 *Research in African Literatures* 24-39.

³¹ Literary and legal scholars have adequately captured the history and background related to the emergence of the Nollywood industry. Those narratives can be found in the following works: Onuzulike U, 'Nollywood: The Birth of Nollywood' (2007) 22 *Black Camera* 25; Jedlowski A, 'When the Nigerian Video Film Industry became "Nollywood": Naming, Branding, and the Video Transnational Mobility' (2011) 33 *Estudos Afro-Asiáticos*-Año 225-51; Arewa O, 'The Rise of Nollywood: Creators, Entrepreneurs, and Pirates' (2012) *Legal Studies Research Paper Series No. 2012-11* <<https://ssrn.com/abstract=2011980>> accessed 18 July 2019; Haynes J, *Nollywood: The Creation of Nigerian Genre* (2016); Olayiwola A, 'From Celluloid to Video: The Tragedy of the Nigerian Film Industry' (2006) 59 *J. F. & Video* 56.

³² Esonwanne (n 31) at 24.

³³ *ibid* at 26-27.

³⁴ *ibid.*

industry, Nnebue deliberately set the stage for Nigerian creatives to become artistic and literary entrepreneurs that would later change the income earning power of Nollywood actors.³⁵ This singular innovation of Nnebue created a film genre peculiar to Sub-Saharan Africa.³⁶ The history of Nollywood has been widely recorded in legal and non-legal literature.³⁷ Therefore, this paper would not expand on the historical background of the industry.

The seamy side of the VCR devices, which is a typology of the digital era technology, was that it enabled easy duplication of audio-visual content leading to widespread film piracy.³⁸ The straight to video (STV) production system became the weak link in the Nollywood distribution chain because the digital versatile disc (DVD), videotapes, and VHS cassettes had no protection against illegal duplication. Nollywood lost around USD two million yearly during its early years to film piracy and artists earned less income for their creative works.³⁹ Film piracy became Nollywood's Achilles' heel because digital technology that enabled the rapid production of films by authentic filmmakers, had become the method of replicating illicit copies of Nollywood films.⁴⁰ The illicit film replication continues in large volumes and is unregulated.⁴¹ A quarter century after the first Nollywood films emerged, the industry is now at a crossroad that requires enhanced copyright protection.⁴²

The digital era technology has made the production of non-celluloid films less expensive.⁴³ For example, a STV content using a VHS, compact disc (CD), or DVD in Nollywood can take a period between one week to two months for less than a two-hour movie.⁴⁴ Film production on celluloid systems takes much longer and costs more to deliver compared to digitally produced movies.⁴⁵ Nollywood had no formal distribution system for its films, but resorted to street vendors and the existing market distribution hubs of Onitsha, Alaba, and Idumota markets.⁴⁶ These commercial centers were renowned markets for electronics and general merchandise.⁴⁷ Without regulation of the distribution of Nollywood films, it was easy for filmmakers and non-filmmakers to seize the opportunity and create an informal distribution network.⁴⁸

B. THE DEMOCRATIZATION OF A CREATIVE SPACE

Digital technologies democratized the cinematic creative and productive space with its attendant changes to laws.⁴⁹ Filmmakers did not require big budgets or expensive sophisticated equipment to make movies anymore.⁵⁰ The pre-existing Nigerian film industry processes and practices followed the traditional studio formalized production systems.⁵¹ Few filmmakers and

³⁵ Esonwanne (n 31).

³⁶ Arewa (n 32).

³⁷ Onuzulike; Arewa; Haynes; Olayiwola (n 33).

³⁸ Obi-Uchendu E, 'Nollywood, Piracy and the Millennial Crisis' (*The Huffington Post*, 7 March 2014) <http://www.huffingtonpost.com/ebuka-obiuchendu/nollywood-piracy-and-the-millennial-crisis_b_4665209.html> accessed 16 February 2021.

³⁹ *ibid.*

⁴⁰ Oludayo T, Okoro P, 'Movie Piracy Networks at Alaba International Market, Lagos Nigeria' (2018) 62 *International Journal of Offender Therapy and Comparative Criminology* 274-285.

⁴¹ *ibid.*

⁴² Lawal-Arowolo A, 'Copyright Exploitation: The "Nollywood" (Nigeria) Film Market' (2015) <<https://ssrn.com/abstract=2694906>> accessed 15 June 2021.

⁴³ Jedlowski (n 30) at 27; Uzoatu U, 'The Transition of Onitsha Market Literature to Home Movies' (*Premium Times* (Nigeria), 4 December 2012) <<http://www.premiumtimesng.com/arts-entertainment/109722-the-transition-of-onitsha-market-literature-to-home-movies-by-uzor-maxim-uzoatu.html>> accessed 18 February 2021.

⁴⁴ Correy M, 'Nollywood: A Socially Conscious Cinema?' (2008) 22 *Black Camera* 137.

⁴⁵ Olayinwola (n 32).

⁴⁶ Uzoatu (n 44) (Onitsha is in the eastern region of Nigerian and a popular trading center. Idumota and Alaba are popular market centers in Lagos in the western region of Nigeria. Idumota and Alaba market mostly serve Nigerians living in Lagos, the commercial nerve center of Nigeria and major cities in western Nigeria. Onitsha market caters for Nigerians living in the eastern and southern region. The marketers had inside knowledge of the consumption pattern for indigenous Nigerian cultural goods and maximized these traits for effective promotion of Nollywood movies. The established network of these marketers enhanced the outreach of Nollywood's publicity among consumers. The early publicity by Onitsha, Idumota and Alaba marketers gave Nollywood's genre the notoriety, which spurred its ascendancy as a global movie industry).

⁴⁷ McCall J, 'Nollywood Confidential: The Unlikely Rise of Nigerian Video Film' (2004) 95 *Transition* 98.

⁴⁸ *ibid.*

⁴⁹ Steele J, 'Power to the People: The Democratization of Film' (*HuffPost*, 25 May 2011) <https://www.huffpost.com/entry/power-to-the-people-the-d_1_b_829303> accessed 9 March 2021; Katyal SK, 'Privacy Vs. Piracy' (2005) 7 *Yale Journal of Law and Technology* 222.

⁵⁰ Ryan C, 'New Nollywood: A Sketch of Nollywood's Metropolitan New Style' (2015) 58 *African Studies Review* 55-76.

⁵¹ Arewa OB, 'Nollywood and African Cinema' in Calboli I, Ragavan S (eds), *Diversity in Intellectual Property -Identities, Interests, and Intersections* (Cambridge University Press 2015) 367-383.

film production entrepreneurs dominated the Nigerian film industry during the period after independence in 1960 until the early 1990s.⁵² Ola Balogun, Eddie Ugbomah, and Hubert Ogunde were the pioneer filmmakers in Nigeria during the celluloid era of filmmaking, immediately post Nigerian Independence.⁵³ Ola Balogun produced the first Yoruba and Igbo speaking Nigerian film.⁵⁴ The 1990s opened up the creative space for new works and creative entrepreneurs.⁵⁵

The Outer Reach

In the aftermath of diversifying Nigerian telecommunication systems, mobile phones and devices quickly became vital distribution channels for Nollywood films.⁵⁶ In late 2011, private telecommunication service providers acquired the capacity to stream video films to Nigerians through mobile devices and wireless means.⁵⁷ Digital technology introduced the system of streaming music and films which influenced the rise of the video-on-demand (VOD) business.⁵⁸ At the same time, a new crop of Nollywood filmmakers revisited the celluloid format of making films with a big budget.⁵⁹ Nollywood filmmakers revived the showing of films in cinema theatres, preceded with elaborate premiering events. The hybrid distribution and production systems of celluloid and digital formats

coupled with the revival of film showings in multiplexes and cinema theatres makes up the 'New Nollywood'.⁶⁰

The phrase 'New Nollywood' distinguishes the creative texture and business model of the Nigerian indigenous film industry that evolved in the early 1990s (the classic Nollywood) and the production systems that began in the latter half of 2000.⁶¹ In the COVID-19 pandemic era, Nollywood filmmakers were able to stay afloat during the restrictions associated with the pandemic by relying on income streams from the digital distribution of their content.⁶² Digital technology enhanced the home entertainment experience during the lockdown and other restrictions put in place to safeguard public health.⁶³

C. PART TWO: DISRUPTIVE AND CREATIVE JURISPRUDENCE

a) Nollywood and Digital Copyright

Legal scholars introduced the concept of 'digital copyright' at the beginning of this millennium to emphasize the recognition of the interface of digital technology and copyright laws in the protection of creative rights.⁶⁴ The consequence of the Internet Treaties of the mid 1990s initiated by WIPO, was the

⁵² Olayiwola A, 'From Celluloid to Video: The Tragedy of the Nigerian Film Industry' (2006) 59 J. F. & Video 56.

⁵³ *ibid.*

⁵⁴ Id at 141 (Amadi the first Igbo language film was produced in 1975; It is a story of a man who could not cope with city life in Lagos. He had to move back to his village to restart his life. While in the village he used the skills learnt in the city to develop an agricultural entrepreneurial business).

⁵⁵ Ebeowo PJ, 'The Emerging Video Film Industry in Nigeria: Challenges and Prospects' (2007) 58 Journal of Film and Video 46-57.

⁵⁶ Ryan (n 51).

⁵⁷ *ibid.*

⁵⁸ Eleanya F, 'Nigeria's Streaming Industry Booms but Data Cost Slows Growth' (*BusinessDay*, 16 March 2021) <<https://businessday.ng/life-arts/article/nigerias-streaming-industry-booms-but-data-cost-slows-growth/>> accessed 16 March 2021; Haynes (n 29) at 285-300; Rechartd L, 'Streaming and Copyright: A Recording Industry Perspective' (*WIPO Magazine*, May 2015) <https://www.wipo.int/wipo_magazine/en/2015/02/article_0001.html> accessed 17 March 2021; British Broadcasting Service, 'Nigeria Awards Telecoms Licenses News' (*BBC News*, 19 January 2001) <<http://news.bbc.co.uk/2/hi/business/1126538.stm>> accessed 16 March 2021; Ayodeji AM, 'Regulatory Framework of Telecommunication Sector: A Comparative Analysis between Nigeria and South Africa' (2015) 23 Africa J Int'l & Comp L 273.

⁵⁹ Jedlowski (n 30) at 37-38 (In 2006, Jeta Amata, was one of the early Nigerian filmmakers to use digital era production systems and techniques

with the movie *Amazing Grace*, which came with premiering style distribution and high budget film productions).

⁶⁰ Haynes J, "'New Nollywood': Kunle Afolayan' (2014) 5 Black Camera 53-73; Tsaaior JT, "'New" Nollywood Video Films and the Post/Nationality of Nigeria's Film Culture' (2018) 49 Research in Africa Literature 145-162.

⁶¹ Pratt L, 'Good for New Nollywood: The Impact of New Online Distribution and Licensing Strategies' (2015) 3 International J. Cult. Creative Ind. 70-84.

⁶² 'Nigeria's Film Industry has Taken a Viral Knock' (*The Economist*, 27 August 2020) <<https://www.economist.com/middle-east-and-africa/2020/08/27/nigerias-film-industry-has-taken-a-viral-knock>> accessed 15 May 2021; 'Nigeria's Nollywood gets Creative in Response to COVID-19' (*France 24 News*, 4 June 2020) <<https://www.france24.com/en/20200604-nollywood-innovates-in-response-to-covid-19>> accessed 15 May 2021.

⁶³ *The Economist* (n 63).

⁶⁴ Melendez-Juarbe HA, 'Creative Copyright for Creative Business' (2010) 1 U Puerto Rico Bus L J 137; See also Duarte D, *et al.*, 'How the Creative Industries Can Boost the Global Economy' (*World Economic Forum*, 18 June 2015) <<https://www.weforum.org/agenda/2015/06/how-the-creative-industries-can-boost-the-global-economy/>> assessed 30 January 2021; Lee E, 'Technological Fair Use' (2010) 83 S. Cal Rev 797; See further Andrews SS, 'Developing a Copyright Curriculum for Nigerian Universities for the Creative Digital Space' (2022) 71 GRUR International Journal of European and International IP Law 322-334.

global recognition of new copyright laws that recognized protecting creativity with technological means.⁶⁵ The WIPO Copyright Treaty (WCT), WIPO Performances and Phonograms Treaty (WPPT) and other Internet Treaties were outcomes of the digital era jurisprudence.⁶⁶ The digital regimes of the Internet era included the right to protect one's copyright with technical protection measures.⁶⁷ It also included regimes like the rights of making available and publicly communicating protected works, Takedown, Putback and moderating rights for works, Internet Service Providers' rights, safe harbor protection and copyright management organizations' (CMO) enhanced rights to protect members' work.⁶⁸

As an extension of the Internet Treaties, further changes to the copyright regimes included the Beijing Treaty on Audio-visual Performance (Beijing Treaty) and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh Treaty).⁶⁹ The Beijing Treaty is the most relevant regime for the theme of this paper being the laws that would directly affect the audio-visual creativity of the Nollywood industry.

The Nollywood industry has experienced three phases of technological disruption that significantly influenced its mode of production.⁷⁰ The first phase was the digital

duplication of visual content, which created a movie industry entirely on VHS, CD-ROM, VCD, and later DVD.⁷¹ Kenneth Nnebue's 'Living in Bondage' film is a product of the first phase of technological disruption with his then novel idea of using empty VHS cassettes he imported from Japan for duplicating his film and marketing them in that format.⁷²

The second phase was the User Generated Content (UGC) phase where third parties either created original contents or derivatively created contents from pre-existing original works.⁷³ Social media like YouTube distributes most of these UGC. The third phase of technology disruption is the practice of uploading and streaming Nollywood films on the Internet.⁷⁴ For example, YouTube, IROKOTv, Netflix and other VOD platforms enable uploading of copyrighted video films.⁷⁵ Most of the time, these social media platforms are channels for uploading unauthorized films.⁷⁶ Such new distribution methods for Nollywood films implicate a creator's copyright and other IP rights.⁷⁷

Innovators on new platforms like the Internet and software-driven sites began to rely on new legal regimes to protect their creative content both online and offline.⁷⁸ The Nigerian legal systems have not yet recognized regimes like licenses, torts and contracts. The Nigerian copyright law and policies, especially in the distribution

⁶⁵ Osborn LS, 'Intellectual Property Channeling for Digital Works' (2018) 39 *Cardozo Law Review* 1303.

⁶⁶ Okediji R, 'The Regulation of Creativity Under the WIPO Internet Treaties' (2009) 77 *Fordham Law Review* 2379.

⁶⁷ Ginsburg JC, 'The Pros and Cons of Strengthening Intellectual Property Protection: Technological Protection Measures and Section 1201 of the US Copyright Act' (2007) Columbia Public Law Research Paper No. 07-137 <<https://ssrn.com/abstract=960724>> accessed 15 June 2021.

⁶⁸ *ibid.*

⁶⁹ Von Lewinski S, 'The Beijing Treaty on Audiovisual Performance' (2012) 6 *Auteurs and Media* 530-546; Ncube CB, *et al.*, 'Beyond the Marrakesh VIP Treaty: Typology of Copyright Access-Enabling Provisions for Persons with Disabilities' (2020) *Journal of World Intellectual Property* 1-17.

⁷⁰ Adejunmobi M, 'Charting Nollywood's Appeal Locally & Globally' (2010) 28 *African Literature Today* 106; Ku RSR, 'The Creative Destruction of Copyright: Napster and the New Economics of Digital Technology' (2002) 69 *U Chi L Rev* 263.

⁷¹ Jeyifo A, 'Will Nollywood Get Better? Did Hollywood and Bollywood Get Better?' (2008) 12 *West Africa Review* 13-21.

⁷² Esonwanne (n 31).

⁷³ Leistner M, 'Copyright Law on the Internet in need of Reform: Hyperlinks, Online Platforms and Aggregators' (2017) *JiPLP* 2017

<<https://ssrn.com/abstract=3245950>> accessed 15 June 2021; Vongthip V, Nakorn PN, 'Internet Service Providers and its Role of Hosting User Generated Content under the United Kingdom and European Union Regime' (2017) 6 (2) *PSAKU International Journal of Interdisciplinary Research* <<https://ssrn.com/abstract=3261140>> accessed 15 June 2021.

⁷⁴ Obiaya I, 'Nollywood on the Internet: A Preliminary Analysis of an Online Nigerian Video Film Audience' (2010) 2 *Journal of African Media Studies* 321-38.

⁷⁵ *ibid.*

⁷⁶ Garon JM, 'Content, Control, and the Socially Networked Film' (2009) <<https://ssrn.com/abstract=1480160>> accessed 16 June 2021.

⁷⁷ Bramble NW, 'Safe Harbors and the National Information Infrastructure' (2013) 68 *Hastings L J* 325.

⁷⁸ Kabanda P, 'An Untapped Economy: Africa's Creative Sector, (*World Policy Organization*, 19 February 2014) <<https://worldpolicy.org/2014/02/19/an-untapped-economy-africas-creative-sector/>> accessed 16 June 2021; Litman J, *Digital Copyright* (Maize Books 2017) 143; Friedman WA, Jones G, 'Creative Industries in History' (2011) 23 *Bus Hist Rev* 237-44; Pager S, 'The Role of Copyright in Creative Industry Development' (2017) *Law Dev Rev* 1.

of audio-visual content, lags behind technology.⁷⁹ However, in 2015, the Nigerian Copyright Commission (NCC) began the process of amending its copyright laws to include the digital means of film production. The NCC proposed law covered creative rights associated with emerging new technologies.⁸⁰ In the global IP space, WIPO and other international creatives are working to adapt cinematographic industries to effective legal and policy outcomes of the digital era.

b) The Beijing Treaty Regime and the Nigerian Film Industry

The Beijing Treaty grants a Nollywood actor the economic rights of reproduction, distribution, rent and making available her work.⁸¹ Nollywood actors invariably would have the right to authorize the fixation and communication of their performances on an audio-visual format and on the Internet.⁸² The Treaty grants contracting State parties the option of stipulating in their national laws that actors may exchange the right of authorization for equitable entitlements.⁸³ The equitable entitlements are for the direct or indirect use of their works in audio-visual format made available to the public.⁸⁴ The Beijing Treaty jurisprudence may

democratize creative right ownership of performers and actors the same way digital era technologies did for cinematic productions.⁸⁵

Contracting Parties may also stipulate in their national laws that once an actor consents to the audio-visual fixation of a performance, the exclusive rights of authorization transfers to the producer of the film.⁸⁶ This right of transfer would not deny the actor any right to royalty or equitable remuneration in the performance.⁸⁷ For Nollywood actors to enjoy the benefits of the equitable remuneration provision of the Beijing Treaty, Nigeria must domesticate it in its laws. Comparatively, the US' protection of performances under the Beijing Treaty has raised questions about the legality of granting copyright protection to audio-visual performers.⁸⁸ The Beijing Treaty has granted performers and actors codified moral and economic rights with a global scope.⁸⁹

Some US legal scholars claim that the Beijing Treaty would introduce moral rights concepts into the US through a back door and affect the public domain exception for copyright works.⁹⁰ These scholars have raised concerns about the broad ramification of the Beijing Treaty provisions as having a chilling effect on fair use of copyrighted works.⁹¹ They assert that performers

⁷⁹ Prather M, 'How digital is unleashing Africa's creativity' (*World Economic Forum*, 11 November 2015) <<https://www.weforum.org/agenda/2015/11/how-digital-is-unleashing-africas-creativity/>> assessed 16 June 2021.

⁸⁰ Nigerian Copyright Commission, 'Introductory Notes' Draft Copyright Bill (2015) 3 Nigerian Copyright Commission Draft Copyright Bill (2015) <http://graduatedresponse.org/new/wp-content/uploads/2016/02/DRAFT_COPYRIGHT_BILL_NOVEMBER-2015.pdf> accessed 25 February 2021.

⁸¹ 'Main Provisions and Benefits of Beijing Treaty on Audio-visual Performance (2012)' (*WIPO*, 2016) <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_beijing_flyer.pdf> accessed 16 June 2021.

⁸² Beijing Treaty, Article 12(3) ('independent of the transfer of exclusive rights described above, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided this Treaty including as regards Articles 10 and 11'); Beijing Treaty, Articles 7-11 (setting out exclusive rights of authorization for performers, exclusive rights of making available fixed performances and exclusive rights to establish remuneration for secondary uses of fixed audio-visual performances); WIPO, 'The Beijing Treaty' <https://www.wipo.int/beijing_treaty/en/> accessed 18 April 2021 (emphasizing the economic and moral rights of performers like actors in the digital era).

⁸³ Beijing Treaty, Article 12 ('(1) A Contracting Party may provide in its national law that once a performer has consented to fixation of his or her performance in an audio-visual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audio-visual fixation subject to any contract to the contrary between the performer and the producer of the audio-visual fixation as determined by the national law.');

Copyright Act (Laws of the Federation of Nigeria) (2004), Cap. 28 § 10(4) ('in the case of a cinematograph film or sound recording the author shall be obliged to conclude, prior to making of the work, contracts in writing with all those whose works are to be used in the making of the work').

⁸⁴ Beijing Treaty (n 83 and 84).

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ *ibid.*

⁸⁸ Travis H, 'WIPO and the American Constitution: Thoughts on a New Treaty Relating to Actors and Musicians' (2014) 16 *Vanderbilt Journal of Entertainment and Technology Law* 45; Rossini C, *et al.*, 'Beijing Treaty on Audio-visual Performances: We Need to Read the Fine Print' (*Electronic Frontier Foundation*, 24 July 2012) <<https://www.eff.org/deeplinks/2012/07/beijing-treaty-audiovisual-performances>> accessed 16 June 2021.

⁸⁹ WIPO (n 82).

⁹⁰ Travis (n 89) at 61-67.

⁹¹ Rossini (n 89).

may abuse the exclusive powers granted by the Treaty to prevent others from benefiting from their works even when its use is within fair use.⁹² However, this paper avers that Member States may use the legal exceptions of fair use or fair dealing within its national legislations to check a performer's overbearing use of her exclusive rights (performer's rights abuse).⁹³ For example, in Nigeria the proposed Copyright Amendment Bill has certain exceptions or exemption provisions that may allay the fears of industry stakeholders on performer's rights abuse.⁹⁴

c) Amending the Laws Regulating Nollywood

The digital era cinematic production systems have significantly shifted copyright ownership and authorship holdings from its nuclear control to a diverse holding system.⁹⁵ In response to the changing legal regimes of the 21st century digital era, the NCC completed the Nigerian Copyright Act amendment project in 2015.⁹⁶ The NCC submitted the proposed law to the Federal Government of Nigeria for further legislative and executive processes needed to give Nigeria a new copyright law that fulfils the exigencies of the digital era productive methods.⁹⁷ Unfortunately, the process of amending the Nigerian

copyright law is suffering delay, without official reasons from the Nigerian regulatory authorities.

d) Defining Nollywood Actor's Copyright

The current Nigerian Copyright Law and the proposed amendment does not explicitly define a movie actor's copyright. However, the current Copyright Law and the proposed amendments have given direction on the scope of Nollywood filmmakers' and actors' copyright.⁹⁸ Films, including audio-visual works like Nollywood creations are literary works.⁹⁹ The current Nigerian Copyright Law assigns screenplay and the screenwriter with protection because this category of creation belongs to the traditional class of authors.¹⁰⁰ The director of a film generally derives copyright protection from their artistry and creative application of skills.¹⁰¹ These directing skills and their application in the filmmaking process should be original.¹⁰² For example, originality may emerge from how a film director manoeuvres the angle of a camera and applies lighting techniques in making a movie, which would attract copyright protection.¹⁰³ However, for producers of Nollywood films, copyright arises mostly from industry traditions, contractual arrangement and the existing Copyright Law.¹⁰⁴

⁹² Travis (n 89) at 80-81.

⁹³ 'Beijing Treaty: Helping Audio-visual Performers-Background Brief' (WIPO, January 2014) <https://www.wipo.int/pressroom/en/briefs/beijing_treaty.html> accessed 16 June 2021.

⁹⁴ The Copyright Act (Laws of the Federation of Nigeria) (2004), Cap. 28, §§ 6, 7, and 8, Second Schedule (Repeal & Re-enactment) Bill (2021) (SB. 688) (This Law is sponsored by Senator Tokunbo Abiru. It finally got its first Reading on 4 May 2021 and has now gone through the second legislative reading).

⁹⁵ Goshen Z, Levit D, 'Common Ownership and the Decline of the American Worker' (2021) Columbia Law and Economics Working Paper No. 653 <<https://ssrn.com/abstract=3832069>> accessed 2 May 2021.

⁹⁶ Oluwasemilore IA, 'Nigeria Copyright Law and Digital Reform' (2018) 9 WIPO-WTO Colloquium Papers 119 <https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2018/chapter_9_2018_e.pdf> accessed 25 February 2021.

⁹⁷ Ibid.

⁹⁸ Draft Copyright Bill (2015) § 55(2) (Nigeria) (stating, 'In this part, – performers – includes actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore irrespective of whether the work was fixed or only fixed during performance'); The Copyright Act (Laws of the Federation of Nigeria) (LFN) (2004), Cap. 28 § 10(4) ('in the case of a cinematograph film or sound recording the author shall be obliged to conclude, prior to making of the work, contracts in writing with all those whose works are to be used in the making of the

work') (meaning that the author, the one who makes, financial, logistic and fundamental investments and arrangements for the making of the film is mandatorily required to enter a written contract with all those creatives whose work, including performances, are to be used in the making of the film); The Copyright Act (LFN) (2004), §§ 26-28 (Nigeria).

⁹⁹ The Copyright Act (LFN) (2004), § 1(d) (Nigeria); Ng A, 'The Author's Rights in Literary and Artistic Works' (2009) 9 John Marshall Review of Intellectual Property Law 453.

¹⁰⁰ Chon M, 'The Romantic Collective Author' (2012) 14 Vanderbilt Journal of Entertainment and Technology Law 829-848; Bowrey K, *Copyright, Creativity, Big Media and Cultural Value: Incorporating the Author* (Routledge, 2021).

¹⁰¹ Hughes J, 'Actors as Authors in American Copyright Law' (2018) 51 Connecticut Law Review 409; Moore S, 'So Just Who Owns Copyright to that Film' (*Forbes*, 6 July 2015)

<<https://www.forbes.com/sites/schuylermoore/2015/07/06/so-just-who-owns-the-copyright-to-that-film/?sh=606f720e1920>> accessed 16 June 2012; Dougherty FJ, 'Not a Spike Lee Joint? Issues in the Authorship of Motion Pictures Under US Copyright Law' (2001) 49 UCLA Law Review 225.

¹⁰² Hughes (n 101); Dougherty (n 102).

¹⁰³ Dougherty (n 102).

¹⁰⁴ The Copyright Act (LFN) (2004), Cap. 28 § 10(1) (copyright conferred by sections 2 and 3 of this Act, shall vest initially in the author), § 51(f) ('author' in the case of cinematograph film, means the person by whom the arrangement for making of the film were made, unless the parties to the making of the film provide otherwise by contract between

e) **Copyright Owner or Author? Which is which in Nollywood?**

The current Nigerian Copyright Law joins other common law jurisdictions like the US and Canada in emphasizing a single author as one creative genius and the central pillar of creativity.¹⁰⁵ An author in the Nollywood industry would be '...the person by whom the arrangements for making of the film were made...'¹⁰⁶ The 'making-arrangement' definition seems suited for the corporate or deep pocket financiers of cinematographic works.¹⁰⁷ Unfortunately, the definition of a film author under the current law is not helpful and inclusive of the audio-visual collaborative process. The first two sections of the law indicate the preference for an author as the foundation of creativity.¹⁰⁸ These two sections use the word 'author' to refer to creators of copyright works.¹⁰⁹ However, it grants ownership of copyright during assignment and licensing to the assignee or licensee.¹¹⁰ If the Nigerian law had intended a copyright author and owner to have the same meaning, the law should have expressly stipulated the need to seek license or authorization from the author of a film, as it had done all along in cases of written contracts.¹¹¹ The Nigerian Copyright Law perhaps intended a copyright author and owner to possess the capacity of exercising non-exclusive rights despite its clear provisions in Section 6.¹¹² The convoluted scenario

of copyright authorship and ownership regime seems a case of poor legislative drafting which the impending amendment has attempted to cure.¹¹³

f) **Copyright Author and Owner under the Impending Nigerian Copyright Law**

Section 24 of the Draft Copyright Bill (2015) vests copyright ownership initially in an author.¹¹⁴ The use of the word 'initially' connotes the transferable nature of copyright ownership.¹¹⁵ The drafting language of the Draft Copyright Bill uses the words 'copyright owner' and 'author' interchangeability.¹¹⁶ However, the same law has shown that one must first become a copyright author before ownership of the same.¹¹⁷ The Draft Copyright Bill has shown that you can be a copyright owner but not an author.¹¹⁸ The signalling phrase showing this distinction in the impending law states that:

[...] an author or other owner.¹¹⁹ The proposed amendment to the copyright law further attempts to differentiate the incidents of ownership, stating that owning a material that embodies a copyrighted work does not transfer or assign such copyright, nor does owning a copyright that is embedded in a material, confer ownership of the material.¹²⁰

themselves); (Draft Copyright Bill (Nigeria) (2015), § 24(1); Bond Emeruwa, Former President Audio-visual Society of Nigeria, conversation with author (17 June 2017). Transcript available with author of this article. 105 Ginsburg J, 'The Concept of Authorship in Comparative Copyright Law' (2003) 52 DePaul Law Review 1063, 1064-1072; The Copyright Act (LFN) (2004), Cap. 28 § 10(1); 2(a) (b) (stating 'Copyright conferred by sections 2 and 3 of this Act shall vest initially in the author...the copyright shall belong in the first instance to the author, unless otherwise stipulated in writing under the contract.').

¹⁰⁶ The Copyright Act (LFN) (2004), Cap. 28 § 51.

¹⁰⁷ In reality with developing societies like Nigeria a budding filmmaker does not have the capacities to be 'making arrangements...'; Bond Emeruwa (n 104).

¹⁰⁸ The Copyright Act (LFN) (2004), Cap. 28 §§ 10(3); 2(1) (3) (4).

¹⁰⁹ Ibid; Draft Copyright Bill (Nigeria) (2015, §§ 9, 55; Ginsburg J, 'The Author's Place in the Future of Copyright' in Okediji R (ed.), *Copyright in an Age of Exceptions and Limitations* (Cambridge University Press 2017) 60-84; Ginsburg J, 'The Concept of Authorship in Comparative Copyright Law' (n 105 and 106).

¹¹⁰ The Copyright Act (LFN) (2004), Cap. 28 § 11(5) (6).

¹¹¹ Ibid, § 10(3) ('...but in all other aspects, the author shall be the first owner of the copyright in the work...').

¹¹² The Copyright Act (LFN) (2004), Cap. 28 §§ 6 & 15.

¹¹³ Draft Copyright Bill (Nigeria) (2015), §§ 4(1); 24(1).

¹¹⁴ The Copyright Act (n 105).

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid § 26(9) ('Unless otherwise provided by agreement, **an author or other owner of copyright** who has transferred his copyright or granted a license for the exploitation of a work shall not be deemed to have transferred the right of ownership in the material object in which the work is embodied.'). This section also shows that the words, copyright owner and copyright author are distinct in application.

¹¹⁸ Draft Copyright Bill (Nigeria) (2015), § 26(9) ('Unless otherwise provided by agreement, **an author or other owner** of copyright who has transferred his copyright or granted a license for the exploitation of a work shall not be deemed to have transferred the right of ownership in the material object in which the work is embodied').

¹¹⁹ Draft Copyright Bill (Nigeria) (2015), § 26(9).

¹²⁰ Draft Copyright Bill (Nigeria) (2015), §§ 26(7) (8) (9) ('(7) ('[sic] Ownership of the material object in which a work is embodied shall not infer ownership of copyright in that work. (8) ...Where an owner of copyright transfers the right of ownership of the material object in which the work is embodied, he shall not be deemed to have transferred his

D. PART THREE: THE FORMAL NOLLYWOOD

In a filmmaking project, traditionally, creativity spreads across various stages of film production.¹²¹ Proprietary creation begins from the conceptualization of the film story to the screenplay stage of filmmaking and continues to the editing of the finished shoot.¹²² The allocation of the Nigerian copyright focuses on rewarding the source of funding a film project.¹²³ Establishing Nollywood formal internal norms and culture could set standards for efficient creative practices.

a) Creating Nollywood Norms

i) Effectuating Institutions

Creating institutions in the Nollywood industry through idea-submissions, recognition of electronic contracts and metrics systems may reduce creative and legal

copyright or to have granted a license for the exploitation of the work, unless otherwise provided by a written agreement. (9) ...unless otherwise provided by agreement, an author or other owner of copyright who has transferred his copyright or granted a license for the exploitation of a work shall not be deemed to have transferred the right of ownership in the material object in which the work is embodied’).

¹²¹ Raustiala, Sprigman (n 9).

¹²² *ibid.*

¹²³ The Copyright Act (n 105) § 51(f).

¹²⁴ Jewell C, ‘From Script to Screen: What Role for Intellectual Property?’ (*WIPO Pressroom*) <https://www.wipo.int/pressroom/en/stories/ip_and_film.html> accessed 17 June 2021; Renault CE, Aft RH, *From Screen to Script: The Importance of Copyright in the Distribution of Films* (2011) WIPO Publication No. 950E.

¹²⁵ Gong JJ, Young SM, ‘Financial and Nonfinancial Performance Measures for managing Revenue Streams of Intellectual Property Products: The Case of Motion Pictures’ (2016) <<https://ssrn.com/abstract=3459849>> accessed 4 May 2021 (exploring an empirical study on product life cycle revenue management using IP products as case study on the significant role financial and non-financial performance measures play in managing and keeping revenue and metrics derived from the film and audio-visual content industry); Edeh H, ‘FG Partners French Development Agency to Grow Economy through Copyright Protection’ (*BusinessDay*, 26 November 2020) <<https://businessday.ng/news/article/fg-partners-french-development-agency-to-grow-economy-through-copyright-protection/>> accessed 22 February 2022 (reporting on the survey and report conducted by Price Waterhouse Cooper (PwC) and KPMG consultants for Agence Française de Développement (AFD), where old data that were already in public domain was cited as current metrics on the state of the growth of Nigeria’s Creative Cultural Industries); This author avers that Nigeria lacks ascertainable and reliable data to scale its creative industrial output.

¹²⁶ Moudio R, ‘Nigeria’s Film Industry: A Potential Gold Mine?’ (*United Nations African Renewal*, May 2013) <<https://www.un.org/africarenewal/magazine/may-2013/nigeria%E2%80%99s-film-industry-potential-gold-mine>> accessed 21 March 2021; Nsehe M, ‘Hollywood, Meet Nollywood’ (*Forbes*,

conflicts.¹²⁴ The Nollywood industry continues to rely on outdated and inadequate data, which does not impel development.¹²⁵ A survey recently published in November 2020 concluded that ‘Nollywood film production generates between USD 500 million and USD 800 million annually. The industry directly employs 300,000 people and indirectly more than a million,’ which repeats information already available in the public domain since 2013.¹²⁶ The fact that the Nigerian film industry would be relying on these old metrics in a fast evolving economic sector, shows a significant deficit in a critical growth tool.¹²⁷ The lack of current data on Nollywood creativity stalls planning and investment confidence in an industry that is still struggling to attract practical government support.¹²⁸ It also defeats the process of collateralization of Nollywood creative rights as tangible assets for valuations.¹²⁹

19 April 2011)

<<https://www.forbes.com/sites/mfonobongnsehe/2011/04/19/hollywo-od-meet-nollywood/?sh=554fdbce5d7a>> accessed 21 March 2021; Gong and Young (n 126).

¹²⁷ UNESCO, ‘Cultural Time: The first Global Map of Cultural and Creative Industries’ (December 2015) <https://en.unesco.org/creativity/sites/creativity/files/cultural_times_the_first_global_map_of_cultural_and_creative_industries.pdf> accessed 20 March 2021.

¹²⁸ Burton BW, ‘Financing Alternatives for Companies Using Intellectual Property as Collateral’ (2014) <<https://www.hilcoglobal.com/docs/librariesprovider10/default-document-library/financing-alternatives-for-companies---using-intellectual-property-as-collateral.pdf?sfvrsn=2>> accessed 22 February 2022 (describing how modern companies use IP as a business strategy to boost their cash flow problems by collateralizing their IP portfolios).

¹²⁹ ‘Intellectual Property Financing -An Introduction’ (*WIPO Magazine*, September 2008)

<https://www.wipo.int/wipo_magazine/en/2008/05/article_0001.html> accessed 23 March 2021; Kramer WJ, Patel CB, ‘Securitisation of Intellectual Property Assets in the US Market’ <https://ipo.org/wp-content/uploads/2013/04/Securitisation_of_IP_in_the_US.pdf> accessed 23 March 2021; Okonkwo IE, ‘Valuation of Intellectual Property: Prospects for African Countries’ (2019) <<https://ssrn.com/abstract=3553288>> accessed 22 February 2022; Lopes C, ‘How Can Africa Profit from Its Creative Industries’ (*World Economic Forum*, 3 September 2015) <<https://www.weforum.org/agenda/2015/09/how-can-africa-profit-from-its-creative-industries/>> accessed 6 May 2021; It has taken the Nigerian government more close to two decades to amend the Copyright law from the period stakeholder finished work on the Copyright Amendment Bill and transmitted it to the government; Philpott C, Jahnke S, ‘Intellectual Property: A New Form of Collateral’ (*Puget Sound Business Journal*, 6 March 2005) <<https://www.bizjournals.com/seattle/stories/2005/03/07/focus9.html>> accessed 16 May 2021.

In the Nigerian music industry, a CMO called the Musical Copyright Society of Nigeria (MCSN) has led the charge in aggregating creative data, controlling its member's creative rights and royalties online.¹³⁰ The MCSN's GoCreate Apps for monitoring the distribution and publication to the public of musical works of its members within Nigeria indicates its adaptability to digital era tools.¹³¹ Perhaps, this technology will also create data for the music industry's planning and production purposes. The Chairman of the Audio-visual Rights Society of Nigeria (AVRSN), the only recognized CMO for the Nigerian film industry, lamented recently in a presentation that the industry has limited capacity to capture royalties from the digital platforms.¹³² The AVRSN should tap into the digital era technological advantages, which is long overdue for an industry that is more than two decades old. The ubiquitous nature of downstream uses of streamed cinematic contents especially within cyberspace and other remote places make relying entirely on human monitoring an impossible task. Therefore, digital management assets eases royalty management and license enforcement.

¹³⁰ 'MCSN Appoints King Sunny Ade President as GoCreate Goes Live' (*The Guardian*, 7 March 2021) <<https://guardian.ng/art/mcsn-appoints-king-sunny-ade-president-as-gocreate-goes-live/>> accessed 7 March 2021.

¹³¹ *ibid.*

¹³² Ali-Balogun M, 'The Filmmakers' Forum with Mahmood Ali-Balogun' Nollywood Studies Center – Pan African University, Lagos, Nigeria (10 April 2021) (being a statement made by Mahmood Ali-Balogun, AVRSN Chairman, in a question-and-answer session at the events organized by the Nollywood Studies Center of the Pan Atlantic University, Lagos, Nigeria).

¹³³ Draft Copyright Bill (2015), §§ 44-54 (Nigeria) (stating as used in this section – **RMI** means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of 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).

¹³⁴ 17 USC § 1202 (US) (stating that 'No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement' and defining CMI as used in this section, to mean any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work: The title and other information identifying the work, including the information set forth on a notice of copyright; The name of, and other identifying information about, the author of a work; The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright; With the exception of public performances of works by radio and television broadcast stations, the name of, and other

ii) The Adoption of Technical Protection Measures

Digital era copyright regimes like Technical Protection Measures (TPM), Rights Management Information (RMI), and Copyright Management Information (CMI) which looks like the equivalent of the Nigerian RMI,¹³³ would be available to Nollywood if the Copyright Bill of 2015 becomes law.¹³⁴ The current Nigerian Copyright Law has no provisions for digital copyright legal issues except the recognition of computer programs as literary works.¹³⁵ Computer software and programs form the foundation of the digital era creations in the film and the entertainment industry at large.¹³⁶ The Draft Copyright Bill recognizes the significance of the intersection of digital technology and copyright management.¹³⁷ Some of the legally acceptable technical protection measures in the digital content spaces are geolocks, checkers (by Google) and passwords as keys for access to content.¹³⁸ These TPMs are software or programs, which copyright protects as long as they '... prevents, restricts, or otherwise limits access to the work.'¹³⁹

identifying information about, a performer whose performance is fixed in a work other than an audio-visual work; With the exception of public performances of works by radio and television broadcast stations, in the case of an audio-visual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audio-visual work; Terms and conditions for use of the work; Identifying numbers or symbols referring to such information or links to such information; Such other information as the Register of Copyright may prescribe by regulation, except that the Register of Copyright may not require the provision of any information concerning the user of a copyrighted work).

¹³⁵ *Microsoft Corporation v Franike Associate Limited* (2012) 3 NWLR (Pt. 1287) 301 (Nigeria); Copyright Act (LFN) (2004), Cap. 28 §§ 1(1)(a); 51(1)(f).

¹³⁶ Gibson J, 'Once and Future Copyright' (2005) 81 *Notre Dame Law Review* 167.

¹³⁷ Draft Copyright Bill (2015), §§ 44-54 (Nigeria) (highlighting the digital copyright provisions, which stipulates how technological measures and law regulates creativity).

¹³⁸ O' Neill R, 'YouTube Will Now Screen Videos for Copyright issues' (*World Intellectual Property Review*, 19 March 2021) <https://www.worldipreview.com/news/youtube-will-now-screen-videos-for-copyright-issues-21158?utm_source=02.%20WIPR&utm_campaign=fec9f03018-WIPR_Digital_Newsletter_03122020_COPY_01&utm_medium=email&utm_term=0_d4c85a86a7-fec9f03018-27889595&fbclid=IwAR2cSwuA_Yx6aksMdn61TXIlgB_PMcnTeUrwDd9n_WTKsrjUJLAttVZIDOQ> accessed 21 March 2021.

¹³⁹ Draft Copyright Bill (2015), § 44(3)(a) (b) ('As used in this section – (a) Circumvent a technological protection measure|| means avoiding, bypassing, removing, deactivating, decrypting or otherwise impairing a

iii) Moderating Copyright with Takedowns and Putbacks

In the Draft Copyright Bill, one of the vital tools now available to the Nollywood copyright owner is the ability to moderate the online performance and display of her films.¹⁴⁰ The law regulates the Takedown of unauthorized films on any digital platform.¹⁴¹ The Nollywood copyright owner could demand the takedown of a film online.¹⁴² However, the fair use or fair dealing defence under the Draft Copyright Bill triggers a 'Putback' of any film taken down.¹⁴³ The NCC on its own could cause the takedown of offending or infringing films on a digital platform.¹⁴⁴ Worrisome is the NCC's unilateral power to block an online user accused of uploading infringing content access to an Internet site without due process.¹⁴⁵ This unchecked power of the NCC ought to be subjected to judicial review before becoming effective. The Putback provisions moderates the excesses that may occur on the part of copyright owners in their attempt to abuse their rights.¹⁴⁶ This paper recommends the application of the fair use doctrine in adjudicating takedown notices before the Nigerian courts and the NCC.¹⁴⁷ The impending law frowns consequentially at online copyright infringement as shown in the severe penalty applied to repeat

offenders whose suspension from Internet activities is '[...] at least one month.'¹⁴⁸

iv) Standardizing Idea-Submissions

Legal literature has inundated the IP field with the theory that copyright does not protect ideas but expressions of ideas.¹⁴⁹ In Nollywood like most cinematographic industries, films start with someone conceiving an idea of a story for interpretative performance on the big screen or digital platform, an idea purveyor.¹⁵⁰ The owner of this idea either puts it down in the form of a screenplay or conveys this idea to an established professional.¹⁵¹ IP scholars refer to this phase of film creation as the 'idea-submission' phase.¹⁵² Copyright seems the improper regime to protect an idea-purveyor. However, like in the US, contract law looks like the proper regime to resolve disputes arising from these transactions.¹⁵³ Some screenwriters may not be the owners of the idea of the film which becomes a screenplay.¹⁵⁴ The idea-submission process often creates litigation, especially where business culture and norms are non-existent.¹⁵⁵ In Nigeria, copyright does not pre-empt contract law even where creative regimes are operational.¹⁵⁶ The federal

technological measure. (b) a technological measure effectively protects a work under this Act if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits access to the work.')

¹⁴⁰ Draft Copyright Bill (2015), §§ 47; 48.

¹⁴¹ *ibid.*

¹⁴² *ibid.*

¹⁴³ Draft Copyright Bill (2015), §§ 20-23 (the limitation and exclusion of liability under the Draft Copyright Bill uses fair dealing and fair use principles throughout its section without clear cut position. I hope that before the Bill becomes public law it will choose one process. Either fair use or fair dealing).

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.* § 54.

¹⁴⁶ *Lenz v Universal Music Corp* 801 F.3d 1126 (2015) (holding that copyright owners must evaluate fair use before issuing a takedown notice, a California district court ruled that a copyright owner had to consider the fair use doctrine in formulating good faith belief in connection with takedown notice under the DMCA. Universal Music, the copyright holder, sent Lenz a removal notice asserting Prince's wishes not to have his songs posted on YouTube. The website removed the video and Lenz sent a counter-notification pursuant to the law. Lenz asserted that her family video constituted fair use of the song and thus did not infringe Universal's copyrights. The Lenz court per Judge Tallman, held that § 512 of US copyright law 'unambiguously contemplates fair use as a use authorized by law.')

¹⁴⁷ Draft Copyright Bill (2015), § 48(5).

¹⁴⁸ *ibid.*, § 49(1)(b).

¹⁴⁹ Tomkowicz R, 'Copyright in Ideas: Equitable Ownership of Copyright' (2013) 29 Canadian Intellectual Property Review 75.

¹⁵⁰ Brophy A, 'Note: Whose Idea is it anyway? Protecting IDEA Purveyors and Media Producers After *Grosso v. Miramax*' (2007) 23 *Cardozo Arts and Entertainment Law Journal* 507, 508; Galavis A, 'Reconciling the Second and Ninth Circuit Approaches to Copyright Pre-emption: A Universal System is Paramount to the Protection of Idea Purveyors' Rights' (2013) 19 *Boston University Journal of Science and Technology Law* 157; Rosenfeld S, 'Idea-Submission Impossible? The battle between Copyright and Breach of Contract' (2013) 13 *Texas Entertainment and Sports Law Journal* 18-21.

¹⁵¹ Johnson V, 'Omoni Oboli wins "Okafors Law" Movie Ownership Battle' (*The Guardian Nigeria*, 8 May 2019) <<https://guardian.ng/life/omoni-oboli-wins-okafors-law-movie-ownership-battle/>> accessed 23 June 2021.

¹⁵² Palmisciano M, 'Resurrecting the Spirit of the Law: Copyright Preemption and Idea Protection in *Montz v. Pilgrims Films*' (2012) 53 *B CI Rev E Supplement* 209.

¹⁵³ The copyright pre-emption exists strongly under the US jurisprudence but not available in Nigeria; Ray B, 'Could Someone "Lenz" A Hand: Modernizing the Digital Millennium Copyright Act after *Lenz v. Universal Music Corp*' (2019) 25 *B.U. J. Sci. & Tech. L.* 218.

¹⁵⁴ *Raconteur Productions Limited v Dioni Vision Entertainment Limited and others* FHC/L/CS/401/2017.

¹⁵⁵ *ibid.*

¹⁵⁶ Bohannon C, 'Copyright Preemption of Contracts' (2008) 67 *Maryland Law Review* 616; 17 *USC* § 301.

and state law dichotomy in copyright does not exist in the Nigerian legal system, unlike the US.¹⁵⁷

The Draft Copyright Bill has recognized the concept of implied contract in resolving copyright ownership issues.¹⁵⁸ Although the Nigerian Copyright Law recognizes the contractual intent of parties generally in assigning and licensing copyright cases, the court should adopt the general doctrine of contract formation in resolving idea-submission disputes when it arises in Nollywood.¹⁵⁹ The central issues should be the breach of contract or breach of implied contract of passing off a film idea.¹⁶⁰ Additionally, trade secrets, non-disclosure agreements (NDA), and unfair competition laws are regimes that Nollywood could deploy especially at the conceptual stages of literary and artistic works.

Apart from the adverse publicity created by a pre- and post-production litigious tensions for the Nollywood investment environment, it could inflate the cost of film production.¹⁶¹ In addition to the high cost of hiring professionals to conduct due diligence of creative authorships in a film, aspiring collaborators may demand oppressive financial indemnities and copyright clearance schemes before taking on creative projects from budding Nigerian film creatives. Most budding Nollywood filmmakers lack the knowledge of digital era jurisprudence. On the other hand, the wealthy film producers or investors have the advantages of retaining professional advisors who will most often give them a head-start in pre-production negotiations. For example, Netflix would have access to the best lawyers, business

analysts and advisors because they can pay for their services during license-contract negotiations. This paper does not conclude that an efficient idea-submission system in Nollywood will eradicate copyright infringement disputes and lawsuits. However, having a standardized and robust creative system at this developmental stage would establish certain levels of business certainty. Certainty in business norms commands investors' confidence, especially those seeking good returns on their investment rather than engaging in distractions like lawsuits.¹⁶² Therefore, an industry promoted idea-submission system will set norms that will guide all parties.

b) Nigerian Film Industry Online Piracy Issues

We have earlier discussed in Part two how New Nollywood distribution systems, which includes streaming and uploading of contents by VODs or independent filmmakers on the Internet, fundamentally changed the Nigerian movie consumption experience. Technological advancement particularly in this millennium has created an intriguing online film piracy problem.¹⁶³ Existing Nigerian Copyright Law is incapable of redressing the evolving online film piracy systems.¹⁶⁴ Nollywood already had an acute film piracy problem before the advent of streaming technology.¹⁶⁵ The borderless nature of cyberspace and increased anonymity for rapid illicit distribution of audiovisual contents confounded creative right enforcement.

¹⁵⁷ The Copyright Act (LFN) (2004), Cap. 28 §§ 10 & 11.

¹⁵⁸ Draft Copyright Bill (2015), § 26(4) ('A non-exclusive license to do an act the doing of which is controlled by copyright may be written or oral or may be **inferred from conduct**'); *Stanley v Columbia Broad Sys* 221 P. 2d. 73, 85 (Cal. 1950); *Montz v Pilgrim Films & Television Inc.* 606 F.3d 1153 (9th Cir. 2010); Nguyen J, 'A Preemptive Copyright Ghost Lurking in Breach of Claims: Resolving the Copyright Preemption Analysis' (2012) 16 Chap L Rev 437.

¹⁵⁹ *Montz v Pilgrim* (n 159).

¹⁶⁰ *ibid.*

¹⁶¹ Ravid O, '8 Legal Tips for Documentary Filmmakers' (*IndieWire*, 9 July 2015) <<https://www.indiewire.com/2015/07/8-legal-tips-for-documentary-filmmakers-60449/>> accessed 17 June 2021; Garon JM, 'Localism as a Production Imperative: An Alternative Framework to Promoting Intangible Cultural Heritage and expressions of Folklore' (2010) *Bits Without Borders – Law, Communications & Transnational Culture*

Flow in the Digital Age (24 September 2010) <<https://ssrn.com/abstract=1687179>> accessed 17 June 2021.

¹⁶² Dunning J, *Multinational Enterprises in the Global Economy* (2017) 157.

¹⁶³ Scaria AG, 'Online Piracy of Indian Movies: Is the Film Industry Firing at Wrong Target?' (2013) 21 *Michigan St U Coll L Int'l L Rev* 647; Herz B, Kiljański K, 'Movie Piracy and Displaced Sales in Europe: Evidence from Six Countries' (2016) <<https://ssrn.com/abstract=2844167>> accessed 17 June 2021.

¹⁶⁴ Mackay M, 'Nollywood Loses Half of Film Profits, Say Producers' (*CNN*) <<https://edition.cnn.com/2009/SHOWBIZ/Movies/06/24/nollywood.piracy/?iref=nextin>> accessed 22 June 2021; Tade O, 'The Who and How of Pirates Threatening the Nollywood Film Industry' (*The Conversation*, 20 April 2016) <<https://theconversation.com/the-who-and-how-of-pirates-threatening-the-nollywood-film-industry-56952>> accessed 17 June 2021.

¹⁶⁵ Tade (n 165).

The current Nigerian Copyright Law stipulates the use of traditional remedies to restrain film pirates, which includes classic forms of injunctions like Mareva, Anton pillar, interim, perpetual and *ex parte* injunctions.¹⁶⁶ Unfortunately, these forms of reliefs fail to cater to the fast pace of content infringements on platforms with streaming capacities.¹⁶⁷ The copyright owner would have suffered irreparable damages beyond restoration for injury in situations that a film pirate streamed her content illegally.¹⁶⁸ The multiplier nature of digital contents and the economic advantages that arise immediately from their consumption means that the actual copyright owner would lose humongous financial returns in the work.¹⁶⁹ To redress this problem, in France, sport broadcast copyright owners use a special injunction known as ‘dynamic injunction’ to block the streaming of illegal sports broadcasts in real time.¹⁷⁰ Dynamic injunction is platform specific injunction that stops the

broadcasting of sport activities on the motion of the copyright owner without recourse to traditional eligibility rule of *ex parte* injunctions.¹⁷¹

The French law recently recognized the innovative nature of streaming technology and grants a copyright owner this unique relief adapted to the digital nature of the infringement.¹⁷² Nollywood stakeholders should advocate for amending injunctive reliefs to suit exigencies of the online digital infringement. Nigeria currently has a robust application of criminal law to enforce copyright infringement.¹⁷³ It may have to reinvigorate its criminal legal capacities to fight online piracy and prohibit illicit digital transmission of Nollywood copyrighted contents. Even the US Congress recently amended its copyright laws to enhance the prohibition of illicit digital transmission of copyrighted works with enhanced criminal prosecution.¹⁷⁴

¹⁶⁶ Udawadia YM, ‘Remedies in Case of IPR Violation’ (*IPLeaders*, 7 March 2019) <<https://blog.ipleaders.in/remedies-case-ipr-violation/>> accessed 5 April 2021; Capper D, ‘The Need for Mareva Injunctions Reconsidered’ (2005) 73 *Fordham Law Review* 2161; Park SN, ‘Recognition of Foreign Provisional Orders in the United States: Toward a Practical Solution’ (2017) 38 *University of Pennsylvania Journal of International Law* 999, 1007-08 (Mareva Injunctions issues); Ogunkeye O, ‘Nigeria: Anton Pillar Order Class Actions and Injunctions in Nigeria’ (*Mondaq*, 7 February 2002) <<https://www.mondaq.com/nigeria/intellectual-property/15346/anton-pillar-order-class-actions-and-injunctions-in-nigeria>> accessed 5 April 2021 (The Anton Pillar order is an order of court, made *ex-parte* and requiring a defendant or respondent to allow certain persons to enter his premises to search for documents and movable articles as are specified in the court order, and to permit such documents or articles to be taken away. The first Anton Pillar order made in Nigeria was made by Anyaegbunam CJ in *Ferodo Limited v Unibros Stores* (1980) FSR 489) in 1980 following the persuasive authority of the decision of the English Court of Appeal in *Anton Piller KG v. Manufacturing Processes Ltd* (1976) Ch 55).

¹⁶⁷ O’Neill R, ‘France Adopts ‘dynamic’ Injunctions’ (*World Intellectual Property Review*, 22 March 2021) <https://www.worldipreview.com/news/france-adopts-dynamic-piracy-injunctions-21163?utm_source=02.%20WIPR&utm_campaign=a5296d3ae8-WIPR_Digital_Newsletter_03122020_COPY_01&utm_medium=email&utm_term=0_d4c85a86a7-a5296d3ae8-27889595&fbclid=IwAR2hDGP_wA9lBvJnLvrqgUxoALgOwofEkYjOohtVT57bf5vS8lBKZn8bAXA> accessed 24 March 2021; World Intellectual Property Review (WIPIR), ‘France Introduces A New Weapon Against Online Piracy’ <<https://intellectualpropertyplanet.wordpress.com/2021/03/24/france-introduces-a-new-weapon-against-online-piracy/?fbclid=IwAR2GiLovoTA99-NaPKH771YEzMY7f86u2Sui5HNJIS5P9S2B9SupORS-x98>> accessed 5 April 2021.

¹⁶⁸ *ibid.*

¹⁶⁹ *ibid.*

¹⁷⁰ *ibid.*

¹⁷¹ WIPIR, ‘France Introduces A New Weapon Against Online Piracy’ (*Intellectual Property Planet*, 24 March 2021) <<https://intellectualpropertyplanet.wordpress.com/2021/03/24/france-introduces-a-new-weapon-against-online-piracy/?fbclid=IwAR2GiLovoTA99-NaPKH771YEzMY7f86u2Sui5HNJIS5P9S2B9SupORS-x98>> accessed 5 April 2021.

¹⁷² *ibid.*

¹⁷³ The Copyright Act (2004), Cap. 28, § 38(1) (creating copyright inspectors with similar powers like the Nigerian Police of criminal seizure of illicit copyrighted goods and entering of a place to conduct search and seizures); the following cases are few of the criminal law enforcement action for copyright infringement by the Nigerian Regulatory authority, *Nigerian Copyright Commission v. Bassey & Ors* FHC/CA/31C/2003 (protecting broadcasting rights by convicting a pirate broadcast organization infringing on copyright broadcasting rights of the Broadcasting industry); *Musical Copyright Society of Nigeria v. Nigerian Copyright Commission* (FHC/L/CS/798/2010); *Compact Disc Technologies V. Nigeria Copyright Commission* (CA/L/_/_/2010); Anazia D, ‘Appeal Court Favors MCSN’s Right to Sue for Infringement of Works’ (*The Guardian* (Nigeria), July 2015) <<http://guardian.ng/saturday-magazine/appeal-court-favours-mcsns-right-to-sue-for-infringement-of-works/>> accessed 30 April 2021 (reporting that MCSN on behalf of its members sued a copyright infringer, and as at 2015, the NCC has commenced more than 150 criminal cases against accused copyright infringers).

¹⁷⁴ 18 USC § 2319 C (4) ((4) the term ‘work being prepared for commercial public performance’ means – (A) a computer program, a musical work, a motion picture or other audio-visual work, or a sound recording, if, at the time of unauthorized public performance – (i) the copyright owner has a reasonable expectation of commercial public performance; and (ii) the copies or phonorecords of the work have not been commercially publicly performed in the US by or with the authorization of the copyright owner; (B) a motion picture, if, at the time of 10 unauthorized public performance, the motion picture—(i) (I) has been made available for viewing in a motion picture exhibition facility; and (II) has not been made available in copies for sale to the general public in the US by or with the authorization of the copyright owner in a format intended to permit

3. CONCLUSIONS

Nollywood is an industry that emerged as an economic reality but has metamorphosed into a global creative and impactful presence. Digital technology disrupted the methods and means of filmmaking particularly its distribution and quick turnaround processes in production. This disruption has national and international significance because copyright subject matter is highly transnational. The creative industries like film, music traditional culture, audio-visual content creations and performances have adapted to the ecosystem evolving from the intervention of the digital era. Nigeria is in the process of updating its Copyright Law to recognize the emerging digital copyright and innovative legal rights. Although the Nigerian political legislative processes seem lethargic and lags behind, the NCC continues to spur the Nigerian creative stakeholders to keep the process afloat. In amending its laws, Nigeria has proposed to recognize new copyright regimes particularly in the neighbouring rights sector of performer's rights, where there seems to be a possibility of the economic benefits of copyright may cater for actors in the film industry, unlike the current tradition where a single corporate executive producer or producer holds copyright to a film and most of the economic benefits inuring to a film project.

The disruptive nature of digital technology impacts the conceptualization of copyright regimes. In Nigeria, the impending law should clarify and simplify the concepts of copyright originality, ownership, and authorship. The law should clarify or discontinue the introduction of copyright registrations as evidence of authorship and ownership. The NCC is spear heading the introduction of copyright registration regime into Nigeria, which may muddy the judicial and practical enforcement of creativity.

The transformation of Nollywood from a pedestrian low budget industry to its status of global recognition involved creative and legal evolution powered by digital technology.¹⁷⁵ Currently, Nigeria lacks laws that recognize the creative disruptive capacities of technology, digital copyright, contract and other regimes for protection of the film industry creativity. Nollywood stakeholders like the CMOs and film producers should rethink the current unfair revenue sharing arrangement through transactional dialogue. I have suggested elsewhere that Nollywood stakeholders must have a better understanding of the digital era transactional regimes especially as it concerns copyrighted contents online.¹⁷⁶ A formalized creative environment for Nollywood with institutions capable of implementing best business practices will spur a sustainable growth path.

The Beijing Treaty makes a performer's (Nollywood actors') right a personal right that is inseparable from the performer. The international recognition of audio-visual performance right supports Nollywood's growth objectives. It will translate in practical terms to increase revenue for the Nigerian film industry. Beijing Treaty has created personal economic rights for Nollywood actors and creatives. Nollywood perhaps will continue to produce more socially and economically upward mobile Nigerians. Socially, a new class of Nigerians, whose talents can be monetized and now gainfully employed with reward of authorial rights for creativity will join the upwardly mobile economic cadre of society. Digital era creative disruptions birthed Nollywood and most likely more genres will evolve from it in the entertainment industry.

viewing outside a motion picture exhibition facility; or (ii) had not been commercially publicly performed in the US by or with the authorization of the copyright owner more than 24 hours before the unauthorized public performance) ; Slater A, Watts B, 'The Dawn of a New Era for Copyright Online' The Regulatory Review (12 April 2021) <<https://www.theregview.org/2021/04/12/slater-watts-dawn-new-era-copyright-online/>> accessed 14 April 2021.

¹⁷⁵ Odugbemi F, 'Transformation of Nollywood' *NaijaTimes* (*Naija Times*, 2 March 2021) <<https://www.naijatimes.ng/transformation-of-nollywood/>> accessed 5 March 2021.

¹⁷⁶ Andrews SS, 'Netflix Naija: Creative Freedom in Nigeria's Emerging Digital Space' (*The Conversation Africa*, 20 March 2020) <<https://theconversation.com/netflix-naija-creative-freedom-in-nigerias-emerging-digital-space-133252>> accessed 18 June 2021.

BIBLIOGRAPHY

- A Bill for An Act to Repeal the Copyright Act Cap. 28 Laws of the Federation of Nigeria and to Re-Enact the Copyright Act 2021 and for Matters Connected Therewith (Senate Bill 688).
- African Business Magazine, 'African Creative Industries: The Sleeping Giant' (28 January 2014) <<http://africanbusinessmagazine.com/uncategorised/african-creative-industries-the-sleeping-giant/#article-author>> accessed 22 June 2021.
- African Politics & Policy, '*Cultural and Creative Industries in Africa*' (2016) 2 Afr Politics & Poly <<https://www.cultureinexternalrelations.eu/cier-data/uploads/2016/08/Report21.pdf>> accessed 22 June 2021.
- Amos F, 'First Hollywood, then Bollywood, now Nollywood' <<https://www.one.org/us/blog/first-hollywood-then-bollywood-now-nollywood/>> accessed 18 March 2021.
- Adejunmobi M, 'Neoliberal Rationalities in Old and New Nollywood' (2015) 58 Afr Stud Rev 31, 32-36.
- 'Charting Nollywood's Appeal Locally & Globally' (2010) 28 African Literature Today 106.
- Ali-Balogun M, 'The Filmmakers' Forum with Mahmood Ali-Balogun' Nollywood Studies Center – Pan African University, Lagos, Nigeria (10 April 2021) (being a statement made by Mahmood Ali-Balogun, Chairman, Audio Visual Rights Society of Nigeria in a question-and-answer session at the events organized by the Nollywood Studies Center of the Pan Atlantic University, Lagos, Nigeria).
- Anand AS, 'Less is More': New Property Paradigm in the Information Age?' (2012) 11 Duke LJ & Tech Rev 65.
- Anazia D, 'Appeal Court Favors MCSN's Right to Sue for Infringement of Works' *The Guardian* (Nigeria), July 2015) <<http://guardian.ng/saturday-magazine/appeal-court-favours-mcsns-right-to-sue-for-infringement-of-works/>> accessed 30 April 2021.
- Anderson S, 'The Missing Link between Blockchain and Copyright: How Companies are using New Technology to Misinform Creators and Violate Federal Law' (2017) 19 NCJL & Tech On 1, 13-15.
- Andrews SS, 'Reforming Copyright Law for A Developing Africa' (2018) 66 Journal of the Copyright Society of the USA 1.
- 'Netflix Naija: Creative Freedom in Nigeria's Emerging Digital Space' *The Conversation Africa* (20 March 2020) <<https://theconversation.com/netflix-naija-creative-freedom-in-nigerias-emerging-digital-space-133252>> accessed 18 June 2021.
- Arewa O, 'The Rise of Nollywood: Creators, Entrepreneurs, and Pirates' UC Irvine School of Law Research Paper No. 2012 11 (21 February 2012), Social Science Research Network (SSRN) <<https://ssrn.com/abstract=2011980>> accessed 23 June 2021.
- 'Intellectual Property and Conceptions of Culture' (2012) 4 WIPO J (Issue) 1.
- 'Nollywood and African Cinema' in *Diversity in Intellectual Property -Identities, Interests, and Intersections* (Calboli I, Ragavan S, eds, Cambridge University Press 2015) 367-383.
- Armstrong M, 'Netflix is Responsible for 15% of Global Internet Traffic' *Statista* (8 October 2018) <<https://www.statista.com/chart/15692/distribution-of-global-downstream-traffic/>> accessed 23 June 2021.

Austen-Peters B, 'How Art Can be a Force for Development in Africa' Aljazeera (26 September 2017) <<https://www.aljazeera.com/indepth/opinion/art-force-development-africa-170926083535422.html>> accessed 23 June 2021.

Beer JD, Oguamanam C, 'Open Minds: Lessons on Intellectual Property, Innovation and Development from Nigeria' (5 June 2017) 256-260 Social Science Research Network (SSRN) <<https://ssrn.com/abstract=2659936>> assessed 21 June 2021.

Benkler Y, 'Law, Innovation, and Collaboration in Networked Economy and Society' (2017) 13 Annual Rev Law Soc Sci 231-50.

Blackburn D, *et al.*, 'Impacts of Digital Video Piracy on the U.S. Economy' Global Innovation Policy Center-U.S. Chamber of Commerce (June 2019) <<https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>> 22 June 2021; See also <<https://www.theglobalipcenter.com/report/digital-video-piracy/>> assessed 21 June 2021.

Bohannon C, 'Copyright Preemption of Contracts' (2008) 67 Maryland Law Review 616.

Bowrey K, 'Copyright, Creativity, Big Media and Cultural Value: Incorporating the Author' (Routledge, 2021).

Bramble NW, 'Safe Harbors and the National Information Infrastructure' (2013) 68 Hastings L J 325.

Bright J, 'Meet Nollywood: The Second Largest Movie Industry in the world' *Fortune* (24 June 2015) <<http://fortune.com/2015/06/24/nollywood-movie-industry/>> accessed 21 June 2021.

British Broadcasting Service, 'Nigeria Awards Telecoms Licenses News'

<<http://news.bbc.co.uk/2/hi/business/1126538.stm>> accessed 16 March 2021.

Bramble NW, 'Safe Harbors and the National Information Infrastructure' (2013) 68 Hastings L J 325.

Brophy A, 'Note: Whose Idea is it anyway? Protecting IDEA Purveyors and Media Producers After *Grosso v. Miramax*' (2007) 23 Cardozo Arts and Entertainment Law Journal 507.

Buhari M, 'Making Africa Rising a Reality in Nigeria' *Bloomberg.com* (21 September 2016) <<https://www.bloomberg.com/view/articles/2016-09-21/making-africa-rising-a-reality-in-nigeria>> accessed 21 June 2021.

Callaghan W, Bhasin R, 'Legal Considerations in the Use of Blockchain Technology and Smart Contracts for Multinational Business' (2018) 36 No. 5 Acc Docket 28 30-31.

Capper D, 'The Need for Mareva Injunctions Reconsidered' (2005) 73 Fordham Law Review 2161.

Cardozo B, *The Growth of the Law* 19-20 (Yale University Press 1973).

Carroll ME, 'Disruptive Technology and Common Law Lawmaking: A Brief Analysis of *A & M Records, Inc v Napster Inc.*' <<https://ssrn.com/abstract=376920>> accessed 15 June 2021.

Chon M, 'The Romantic Collective Author' (2012) 14 Vanderbilt Journal of Entertainment and Technology Law 829-848.

Copyright Act (Laws of the Federation) (2004), Cap. 28 (Nigeria).

Compact Disc Technologies v. Nigeria Copyright Commission (CA/L/_/_/2010).

Correy M, 'Nollywood: A Socially Conscious Cinema?' (2008) 22 *Black Camera* 137.

Decherney P, *Hollywood's Copyright Wars: From Edison to the Internet* 201 (2012).

Digital Millennium Copyright Act Pub L No. 105-304, 112 Stat 28860 (1998).

Dlamini CRM, 'The Law Teacher, the Law Student and Legal Education in South Africa' (1992) 109 *S African L J* 595
Dougherty FJ, 'Not a Spike Lee Joint? Issues in the Authorship of Motion Pictures Under U.S. Copyright Law' (2001) 49 *UCLA Law Review* 225.

Duarte D, *et al.*, 'How the Creative Industries Can Boost the Global Economy' World Economic Forum (18 June 2015)
<<https://www.weforum.org/agenda/2015/06/how-the-creative-industries-can-boost-the-global-economy/>> accessed 21 June 2021.

Ebewo PJ, 'The Emerging Video Film Industry in Nigeria: Challenges and Prospects' (2007) 58 *Journal of Film and Video* 46-57.

Eboh C, *et al.*, 'Nigeria Reveals Oil Price Drop Damage in Data Transparency Drive' Reuters.com (11 October 2015)
<<http://www.reuters.com/article/nigeria-oil-idUSL8N12BOW520151011>> accessed 23 June 2021.

Eleanya F, 'Nigeria's Streaming Industry Booms but Data Cost Slows Growth' *Businessday.ng*
<<https://businessday.ng/life-arts/article/nigerias-streaming-industry-booms-but-data-cost-slows-growth/>> accessed 16 March 2021.

Emeruwa B, Former President Audio-visual Society of Nigeria, conversation with author (17 June 2017) Transcript available with author of this article.

Erdenechimeg D, 'Using Intellectual Property as Collateral: An International Experience and a Mongolian Perspective' (2017)
<<https://www.itcilo.org/sites/default/files/inline-files/Erdenechimeg.pdf>> accessed 16 May 2021.

Esonwanne U, 'Interviews with Amaka Igwe, Tunde Kelani, and Kenneth Nnebue' (2008) 39 *Research in African Literatures* 24-39.

Ezeonu I, 'Nollywood Consensus: Modeling a Development Pathway for Africa' (2013) 7 *The Global South* 179-199.

Forbes Africa, 'How Tech Can Close the Gap in Africa' (13 September 2017)
<<https://www.forbesafrica.com/investment-guide/2017/09/13/tech-can-close-gap-africa/>> assessed 23 June 2021.

France 24 News, 'Nigeria's Nollywood gets Creative in Response to COVID-19'
<<https://www.france24.com/en/20200604-nollywood-innovates-in-response-to-covid-19>> accessed 15 May 2021.

Friedman WA, Jones G, 'Creative Industries in History' (2011) 23 *Bus Hist Rev* 237-44.

Galavis A, 'Reconciling the Second and Ninth Circuit Approaches to Copyright Pre-emption: A Universal System is Paramount to the Protection of Idea Purveyors' Rights' (2013) 19 *Boston University Journal of Science and Technology Law* 157.

Gasser U, 'iTunes: How Copyright, Contract, and Technology Shape the Business of Digital Media – a Case Study' SSRN <<https://ssrn.com/abstract=556802>> accessed 14 June 2021.

Garon JM, 'Content, Control, and the Socially Networked Film' SSRN <<https://ssrn.com/abstract=1480160>> accessed 16 June 2021.

Ghosh S, 'The Transactional Turn in Intellectual Property' (2010) 35 Dayton L Rev 329, 334-35.

Gibson J, 'Once and Future Copyright' (2005) 81 Notre Dame Law Review 167.

Gillespie T, *Wired Shut: Copyright and the Shape of Digital Culture* (MIT Press 2007) 8-9.

Ginsburg J, 'Copyright 1992-2012: The Most Significant Development' (2013) 23 Fordham Intellectual Property, Media and Entertainment Law Journal 465.

'The Concept of Authorship in Comparative Copyright Law' (2003) 52 DePaul Law Review 1063.

'The Author's Place in the Future of Copyright' in *Copyright in an Age of Exceptions and Limitations* (Ruth Okediji, ed, Cambridge University Press, 2017) 60-84.

Gong JJ, Young SM, 'Financial and Nonfinancial Performance Measures for managing Revenue Streams of Intellectual Property Products: The Case of Motion Pictures' <<https://ssrn.com/abstract=3459849>> accessed 4 May 2021.

Guadamuz A, 'Artificial Intelligence and Copyright' *WIPO Magazine* (October 2017) <http://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html> accessed 22 June 2021.

Haynes J, *Nollywood: The Creation of Nigerian Film Genres* (University of Chicago Press 2016) 1.

'Evolving Popular Media' in Nigerian Video Films (2000) 51 (Nollywood emerged from the new creations of digital technology. As at that time VHS cassettes became the main source of contents for distribution and making of

films or audio-visual works. In its later years, Nollywood depends principally on digital streaming an invention of the digital era to produce, distribute and even fight illegal use of its contents-films).

'New Nollywood': Kunle Afolayan' (2014) 5 Black Camera 53-73.

Harsch E, 'Conflict Resources: From "Curse" to Blessing', *African Renewal Online* (January 2007) <<http://www.un.org/africarenewal/magazine/january-2007/conflict-resources-'curse'-blessing>> accessed 22 June 2021.

Hughes J, 'Actors as Authors in American Copyright Law' (2018) 51 Connecticut Law Review 409.

Jackson T, 'Africa's New Silicon Valleys' *Forbes Africa* (30 July 2018) <<https://www.forbesafrica.com/technology/2018/07/30/africas-new-silicon-valleys/>> accessed 22 June 2021.

Jedlowski A, 'When the Nigerian Video Film Industry became "Nollywood": Naming, Branding and the Video Transnational Mobility' (2011) 33 Estudos Afro-Asiáticos-Ano 225-51.

'Small Screen Cinema: Informality and Remediation in Nollywood' (2012) 13 Television and Media 431-46.

'From Nollywood to Nollywood: Processes of Transnationalization in the Nigerian Video Film Industry' in Krings M, Okome O (eds), *Global Nollywood, The Transnational Dimensions of An African Video Film Industry* (Indiana University Press 2013) 1, 25-45.

Jeyifo A, 'Will Nollywood Get Better? Did Hollywood and Bollywood Get Better?' (2008) 12 W Afr Rev 13-21.

Johnson V, 'Omoni Oboli wins "Okafors Law" Movie Ownership Battle' *The Guardian Nigeria*

- <<https://guardian.ng/life/omoni-oboli-wins-okafors-law-movie-ownership-battle/>> accessed 23 June 2021.
- Kabanda P, 'An Untapped Economy: Africa's Creative Sector' World Policy Organization (19 February 2014) <<https://worldpolicy.org/2014/02/19/an-untapped-economy-africas-creative-sector/>> accessed 22 June 2021.
- Karawowska A, 'Copyright and the Digital Economy Act' (2015) 2 Eur J Comp L & Governance 19.
- Katyal SK, 'Privacy Vs. Piracy' (2005) 7 Yale Journal of Law and Technology 222.
- Kemp B, 'Copyright's Digital Reformulation' (2002) 5 Yale JL &Tech 141.
- Koenig TH, Rustad ML, *Global Information Technologies: Ethics and the Law* (West Publishing 2018) 21-36
- Ku RSR, 'The Creative Destruction of Copyright: Napster and the New Economics of Digital Technology' (2012) 69 U Chi L Rev 263
- Kramer WJ, Patel CB, 'Securitisation of Intellectual Property Assets in the US Market' <https://ipo.org/wp-content/uploads/2013/04/Securitisation_of_IP_in_the_US.pdf> accessed 23 March 2021.
- Krings M, Okome O, *Global Nollywood, the Transnational Dimensions of an African Video Film Industry* (Indiana University Press 2013) 27.
- Kwanashe M, *et al.*, 'The Impact of the Arts, Culture and Creative Industries on Nigeria's Economy' ARTERial Network <www.creative-africa.org> accessed 6 May 2021.
- Liston E, 'Hello Nollywood: How Nigeria Became Africa's Biggest Economy Overnight' *The Guardian* (10 April 2014) <<https://www.theguardian.com/world/2014/apr/10/nigeria-africa-biggest-economy-nollywood>> assessed 21 June 2021.
- Lawal A, 'Copyright Exploitation: The "Nollywood" (Nigeria) Film Market' Social Science Research Network (SSRN) <<https://ssrn.com/abstract=2694906>> accessed 15 June 2021.
- Lee E, 'Technological Fair Use' (2010) 83 S. Cal Rev 797.
- Legrand E, 'Report: Core Copyright Industries Add \$1.3 Trillion to US Economy' Intellectual Property Watch (7 December 2018) <<http://www.ip-watch.org/2018/12/07/report-core-copyright-industries-add-1-3-trillion-us-economy/>> assessed 22 June 2021.
- Lenz v. Universal Music Corp <2008 WL 3884333 (N.D. Cal. 2008)> accessed 21 June 2021.
- Lewinski SV, 'The Beijing Treaty on Audio-visual Performance' (2012) 6 Auteurs and Media 530-546.
- Lim C, Chik W, 'Whither the Future of Internet Streaming and Time-Shifting? Revisiting the Rights of Reproduction and Communication to the Public in Copyright Law after Aereo' (2015) 23 International Journal of Law and Information Technology 53-88.
- Litman J, *Digital Copyright* (Maize Books, 2017) 143.
- Lobato R, 'Creative Industries and Informal Economies: Lessons from Nollywood' (2010) 13 Intl J Cult Stud 337.
- Lopes C, 'How Can Africa Profit from Its Creative Industries' World Economic Forum' <<https://www.weforum.org/agenda/2015/09/how-can-africa-profit-from-its-creative-industries/>> accessed 6 May 2021.

Loren LP, 'Slaying the Leather-Winged Demons in the Night: Reforming Copyright Owner Contracting with Clickwrap Misuse' (2004) 30 Ohio Nul Rev 495.

Luthi M, 'Innovation, Regulation and the Digital Environment: The South African Case' (2017) 2 Strathmore L. Rev. 85.

Mackay M, 'Nollywood Loses Half of Film Profits, Say Producers' CNN
<<https://edition.cnn.com/2009/SHOWBIZ/Movies/06/24/nollywood.piracy/?iref=nextin>> accessed 22 June 2021.

McCall J, 'Nollywood Confidential: The Unlikely Rise of Nigerian Video Film' (2004) 95 Transition 98.

Melendez-Juarbe HA, 'Creative Copyright for Creative Business' (2010) 1 No. 1 U Puerto Rico Bus LJ 137.

Michael GJ, 'Anarchy and Property Rights in the Virtual World: How Disruptive Technologies Undermine the State and Ensure that the Virtual World Remains a "Wild West,"' Social Science Research Network (SSRN) (1 March 2013) <<http://ssrn.com/abstract=2233374>> accessed 23 June 2021.

Microsoft Corporation v. Franike Associate Limited (2012) 3 NWLR (Pt. 1287) 301 (Nigeria).

Miller J, 'Global Nollywood: The Nigerian Movie Industry and Alternative Global Networks in Production and Distribution' (2012) 8 Global Media & Comm 117-33.

Moore S, 'So Just Who Owns Copyright to that Film' Forbes (6 July 2015)
<<https://www.forbes.com/sites/schuylermoore/2015/07/06/so-just-who-owns-the-copyright-to-that-film/?sh=606f720e1920>> accessed 16 June 2021.

Montz v Pilgrim Films & Television Inc., 606 F.3d 1153 (9th Cir. 2010).

Moudio R, 'Nigeria's Film Industry: A Potential Gold Mine?' *African Renewal* (May 2013)
<<http://www.un.org/africarenewal/magazine/may-2013/nigeria%E2%80%99s-film-industry-potential-gold-mine>> 22 June 2021.

Musical Copyright Society of Nigeria v. Nigerian Copyright Commission (FHC/L/CS/798/2010) (Nigeria).

Ncube CB, *et al.*, 'Beyond the Marrakesh VIP Treaty: Typology of Copyright Access-Enabling Provisions for Persons with Disabilities' (2020) *Journal of World Intellectual Property* 1-17.

Nguyen J, 'A Preemptive Copyright Ghost Lurking in Breach of Claims: Resolving the Copyright Pre-emption Analysis' (2012) 16 Chap L Rev 437.

Nigerian Copyright Commission, 'Introductory Notes' Draft Copyright Bill (2015) 3 Nigerian Copyright Commission Draft Copyright Bill (2015)
<http://graduatedresponse.org/new/wp-content/uploads/2016/02/DRAFT_COPYRIGHT_BILL_NO-EMBER-_2015.pdf> accessed 25 February 2021.

Nigerian Copyright Commission v. Bassey & Ors FHC/CA/31C/2003.

Nsehe M, 'Hollywood, Meet Nollywood' Forbes.com (19 April 2011)
<<https://www.forbes.com/sites/mfonobongnsehe/2011/04/19/hollywood-meet-nollywood/?sh=554fdbce5d7a>> accessed 21 March 2021.

Obiaya I, 'Nollywood on the Internet: A Preliminary Analysis of an Online Nigerian Video Film Audience' (2010) 2 J Afr Media Stud 321-38.

Obi-Uchendu E, 'Nollywood, Piracy and the Millennial Crisis' *The Huffington Post* (7 March 2014)
<<http://www.huffingtonpost.com/ebuka->

obiuchendu/nollywood-piracy-and-the-millennial-crisis_b_4665209.html> accessed 16 February 2021.

Ogunkeye O, 'Nigeria: Anton Pillar Order Class Actions and Injunctions in Nigeria' Mondaq.com <<https://www.mondaq.com/nigeria/intellectual-property/15346/anton-pillar-order-class-actions-and-injunctions-in-nigeria>> accessed 5 April 2021.

Oguntola T, 'Audience Measurement Will Boost Broadcast Industry' *Leadership* (23 August 2017) <<http://leadership.ng/2017/08/23/audience-measurement-will-boost-broadcast-industry-fg/>> assessed 3 August 2019.

Oh E, 'Nigeria's Film Industry: Nollywood Looks to Expand Globally' <https://www.usitc.gov/publications/332/erick_oh_nigerias_film_industry.pdf> accessed 21 June 2021.

Okediji RG, 'Copyright and Public Welfare in Global Perspective' (1999) 7 *Ind J Global Legal Stud* 117, 118-19.

'The Regulation of Creativity Under the WIPO Internet Treaties' (2009) 77 *Fordham Law Review* 2379.

Oladipo O, 'Creative Industries and the Informal Sector' (2017) *Quantum Global Q3- Africa Investment Review* (14 September 2017) <<http://africanbusinessmagazine.com/uncategorised/african-creative-industries-the-sleeping-giant/#article-author>> accessed 21 June 2021.

Olayiwola A, 'From Celluloid to Video: The Tragedy of the Nigerian Film Industry' (2006) 59 *J. F. & Video* 56.

Oluwasemilore IA, 'Nigeria Copyright Law and Digital Reform' (2018) 9 *WIPO-WTO Colloquium Papers* 119 <https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2018/chapter_9_2018_e.pdf> accessed 25 February 2021.

O' Neill R, 'YouTube Will Now Screen Videos for Copyright issues' *World Intellectual Property Review* (19 March 2021)

<https://www.worldipreview.com/news/youtube-will-now-screen-videos-for-copyright-issues-21158?utm_source=02.%20WIPR&utm_campaign=fec9f03018-WIPR_Digital_Newsletter_03122020_COPY_01&utm_medium=email&utm_term=0_d4c85a86a7-fec9f03018-27889595&fbclid=IwAR2cSwuA_Yx6aksMdn61TXIgb_PMcnTeUrwDd9n_WTkSrjUUJLAttVZIDOQ> accessed 21 March 2021.

Onuzulike U, 'Nollywood: The Birth of Nollywood' (2007) 22 *Black Camera* 25.

Osborn LS, 'Intellectual Property Channeling for Digital Works' (2018) 39 *Cardozo L Rev* 1303.

'The Limits of Creativity in Copyright: Digital Manufacturing Files and Lockout Codes' (2018) 4 *Tex. A & M J Prop L* 25.

Ouma M, 'The Role of Copyright in Economic Development: A Review from Kenya' (2012) 2012 *Nigerian Institute of Advanced Legal Studies Journal of Intellectual Property* 65.

Pager S, 'The Role of Copyright in Creative Industry Development' (2017) *Law Dev Rev* 1.

Palmisciano M, 'Resurrecting the Spirit of the Law: Copyright Pre-emption and Idea Protection in *Montz v. Pilgrims Films*' (2012) 53 *B Cl Rev E Supplement* 209.

Park SN, 'Recognition of Foreign Provisional Orders in the United States: Toward a Practical Solution' (2017) 38 *University of Pennsylvania Journal of International Law* 999, 1007-08.

Philpott C, Jahnke S, 'Intellectual Property: A New Form of Collateral'

<<https://www.bizjournals.com/seattle/stories/2005/03/07/focus9.html>> accessed 16 May 2021.

Prather M, 'How digital is unleashing Africa's creativity' World Economic Forum (11 November 2015) <<https://www.weforum.org/agenda/2015/11/how-digital-is-unleashing-africas-creativity/>> assessed 22 June 2021.

Pratt L, 'Good for New Nollywood: The Impact of New Online Distribution and Licensing Strategies' (2015) 3 Intl J Cult Creative Ind 70-84.

Raconteur Productions Limited v Dioni Vision Entertainment Limited and others, FHC/L/CS/401/2017.

Raustiala K, Springman CJ, 'The Second Digital Disruption: Streaming and the Dawn of Data-Driven Creativity' (2019) 94 New York University Law Review 101.

'The Second Digital Disruption: Streaming and the Dawn of Data Driven Creativity' (2019) 94 NYU law Review 101.

Ravid O, '8 Legal Tips for Documentary Filmmakers' IndieWire <<https://www.indiewire.com/2015/07/8-legal-tips-for-documentary-filmmakers-60449/>> accessed 17 June 2021.

Ray B, 'Could Someone "Lenz" A Hand: Modernizing the Digital Millennium Copyright Act after Lenz v. Universal Music Corp' (2019) 25 B.U. J. Sci. & Tech. L. 218.

Rechartd L, 'Streaming and Copyright: A Recording Industry Perspective' *WIPO Magazine* (May 2015) <https://www.wipo.int/wipo_magazine/en/2015/02/article_0001.html> accessed 17 March 2021.

Reidenberg J, 'The Rule of Intellectual Property Law in the Internet Economy' (2007-2008) 44 Houston Law Review 1093.

Riby-Smith M, 'South African Copyright Law- The Good, the Bad and Copyright Amendment Bill' (2017) 12 J Intell Prop L & Prac 216-225.

Rice A, 'Iroko' Jason Njoku is Creating the Next Netflix in Nigeria' FastCompany.com (18 March 2013) <<https://www.fastcompany.com/3006695/irokos-jason-njoku-is-creating-the-next-netflix-in-nigeria>> accessed 22 June 2021.

Ropes C, 'How Can Africa Profit from Its Creative Industries?' Africa Cheetah Run (Former United Nations Economic Commission for Africa Executive Secretary's Blog) (19 August 2014) <<https://www.uneca.org/es-blog/creativity-new-money>> accessed 22 June 2021.

Rosenfeld S, 'Idea-Submission Impossible? The battle between Copyright and Breach of Contract' (2013) 13 Texas Entertainment and Sports Law Journal 18-21.

Rossini C, *et al.*, 'Beijing Treaty on Audio-visual Performances: We Need to Read the Fine Print' Electronic Frontier Foundation (24 July 2012) <<https://www.eff.org/deeplinks/2012/07/beijing-treaty-audiovisual-performances>> accessed 16 June 2021.

Rutschman A, 'Weapons of Mass Construction: The Role of Intellectual Property in Nigeria's Film and Music Industries' (2014) 29 Emory Int'l L Rev 673.

Ryan C, 'New Nollywood: A Sketch of Nollywood's Metropolitan New Style' (2015) 58 African Studies Review 55-76.

Scaria AG, 'Online Piracy of Indian Movies: Is the Film Industry Firing at Wrong Target?' (2013) 21 Michigan State University College of Law International Law Review 647.

Schneidman W, 'Nollywood, Intellectual Property and Nigeria's New GDP' COVAfrica (10 April 2014) <<https://www.covafrika.com/2014/04/nollywood->

intellectual-property-and-nigerias-new-gdp/> accessed 22 June 2021.

Spar DL, *Ruling Waves: From the Compass to the Internet, A History of Business and Politics Along the Technological Frontiers* 15 (2001).

Solo A, 'The Role of Copyright in an Age of Online Music Distribution' (2014) 19 *Media and Arts Law Review* 169.

Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).

Steel J, 'Power to the People: The Democratization of Film' *HuffPost.com* (25 May 2011) <https://www.huffpost.com/entry/power-to-the-people-the-d_1_b_829303> accessed 9 March 2021.

Summer A, 'Foreign Direct Investment in Developing Countries: Have We Reached a Policy 'Tipping Point'?' (2008) 29 *Third World Q* 239.

Tade O, 'The Piracy Threat facing the Nollywood Film Industry' *Newsweek* (20 April 2016) <<http://www.newsweek.com/who-and-how-pirates-threatening-nollywood-film-industry449994>> accessed 21 June 2021.

'The Who and How of Pirates Threatening the Nollywood Film Industry' *The Conversation* (20 April 2016) <<https://theconversation.com/the-who-and-how-of-pirates-threatening-the-nollywood-film-industry-56952>> accessed 21 June 2021.

Tade O, Okoro P, 'Movie Piracy Networks at Alaba International Market, Lagos Nigeria' (2018) 62 *International Journal of Offender Therapy and Comparative Criminology* 274-285.

Terra A, 'Copyright law and Digital Piracy: An Econometric Global Cross-National Study' (2016) 18 *NC J L & Tech* 69.

Tikku A, 'Indian Inflow: The Interplay of Foreign Investment and Intellectual Property' (1998) 19 *Third World Quarterly* 87.

The Economist, 'Nigeria's Film Industry has Taken a Viral Knock' <<https://www.economist.com/middle-east-and-africa/2020/08/27/nigerias-film-industry-has-taken-a-viral-knock>> accessed 15 May 2021.

Tomkowicz R, 'Copyright in Ideas: Equitable Ownership of Copyright' (2013) 29 *Canadian Intellectual Property Review* 75.

The Copyright Amendment Bill (2017) (South Africa) *Africanews* (6 December 2018) <<http://www.africanews.com/2018/12/06/the-national-assembly-passed-the-copyright-amendment-bill-the-performers-protection-amendment-bill-and-the-gambling-amendment-bill/?fbclid=IwAR10QxxeiS08purhWqMhA8xoGkoXsm777NiOTxBkq4liXU1X504WqPEASr0>> accessed 21 June 2021.

Travis H, 'WIPO and the American Constitution: Thoughts on a New Treaty Relating to Actors and Musicians' (2014) 16 *Vanderbilt Journal of Entertainment and Technology Law* 45.

Tsaaior JT, "'New" Nollywood Video Films and the Post/Nationality of Nigeria's Film Culture' (2018) 49 *Research in Africa Literature* 145-162.

Tushnet R, 'Performance Anxiety: Copyright Embodied and Disembodied' (2013) 60 *Journal Copyright Society USA* 209-248.

Udwadia YM, 'Remedies in Case of IPR Violation' *IPLeaders* (7 March 2019) <<https://blog.ipleaders.in/remedies-case-ipr-violation/>> accessed 5 April 2021.

UNESCO, 'Cultural Time: The first Global Map of Cultural and Creative Industries' (December 2015) <https://en.unesco.org/creativity/sites/creativity/files/cultural_times_the_first_global_map_of_cultural_and_creative_industries.pdf> accessed 20 March 2021.

Uzoatu U, 'The Transition of Onitsha Market Literature to Home Movies' *Premium Times* (Nigeria) (4 December 2012) <<http://www.premiumtimesng.com/arts-entertainment/109722-the-transition-of-onitsha-market-literature-to-home-movies-by-uzor-maxim-uzoatu.html>> accessed 21 June 2021.

Yu PK, 'Digital Copyright and Confuzzling Rhetoric' (2011) 13 *Vanderbilt J Ent & Tech L* 881-939.

'Five Decades of Intellectual Property and Global Development' (2016) 8 *WIPO J* 1-10.

WIPO Magazine, 'STRAP and CLAMP: Nigeria Copyright Commission in Action' (September 2008) <http://www.wipo.int/wipo_magazine/en/2008/05/article_0009.html> accessed 21 June 2021.

WIPO, 'Intellectual Property Financing – An Introduction' (September 2008) <https://www.wipo.int/wipo_magazine/en/2008/05/article_0001.html> accessed 23 March 2021.

WIPO, 'Main Provisions and Benefits of Beijing Treaty on Audiovisual Performance (2012)' (2016) <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_beijing_flyer.pdf> accessed 16 June 2021.

WIPO, 'From Screen to Script: The Importance of Copyright in the Distribution of Films' <https://www.wipo.int/edocs/pubdocs/en/copyright/950/wipo_pub_950.pdf> accessed 17 June 2021.

World Intellectual Property Review (WIPR), 'France Introduces A New Weapon Against Online Piracy'

<<https://intellectualpropertyplanet.wordpress.com/2021/03/24/france-introduces-a-new-weapon-against-online-piracy/?fbclid=IwAR2GiLovoTA99-NaPKH771YEzMY7f86u2Sui5HNJIS5P9SZB9SupORS-x98>> accessed 5 April 2021.

17 United States Code §§ 512, 1201, 1202

464 U.S. 417 (1984).