

THE SHADOW IN THE LIBRARY: FAIR DEALING, DIGITAL ENTICEMENT, AND THE BLURRING LINE BETWEEN INFRINGEMENT AND PLAGIARISM IN NIGERIA

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ABSTRACT

The advent of the digital era and information age has opened a floodgate for access to information for research purposes and private study. This phenomenon has also increased the rate at which researchers are able to copy other author's works and abuse the privilege of the fair dealing doctrine provided in section 20(1) of the Nigerian Copyright Act (NCA) 2022. Using the doctrinal approach, this paper examined how the abuses of the fair dealing doctrine has resulted in the twin vices of copyright infringement and plagiarism. The paper examined the differences between copyright infringement and plagiarism, and whether they coalesce under the NCA 2022. It was found that by requiring 'acknowledgement' or attribution of copyrighted works for the application of the fair dealing doctrine under section 20(1) of the NCA 2022, the new Act has effectively merged both copyright infringement and plagiarism under our law, especially in view of the enforceability of moral rights under section 14 of the Act.

Keywords: Copyright, copyright infringement, plagiarism, fair dealing, abuse

1. INTRODUCTION

Higher institutions and research institutes are major players in the knowledge economy globally (Agu, et al. 2009). They contribute to the current advancement of the human race in every sphere: medically, scientifically, technologically, socially, politically, and otherwise (Marginson, 2009:3). The advancement of the knowledge economy has reached a tipping point in the current millennia, with increased competition among centres of teaching and learning and researchers alike. These centres and researchers are expected to produce original and novel ideas to drive the knowledge economy and further advance the frontiers of the human race, but at the same time rely on ideas already propagated by others in the past and indeed, ride on the shoulders of previous authors to achieve success and fame (Li, 2014:137; Oldenziel, et al. 1997:293). Thus, while countries have adopted the instrumentality of copyright to protect the intellectual property of knowledge producers and incentivize them, the copyright law has also found it pertinent to incorporate safeguards in the protection of right holders for the benefit of researchers who may want to borrow ideas and ride on the shoulders of 'academic giants' (Brocke, et al. 2015:209; Barr, et al. 2010:3). This dual function of the copyright system achieves the balancing act of protecting the

interest of the copyright holder while at the same time protecting the society from monopoly of knowledge and ideas contained in protected works through the mechanism of 'fair dealing' (Gbahabo & Aderibigbe, 2024; Adeleke and Imran, 2021:17).

In Nigeria, fair dealing as an exception to copyright protection is provided in section 20(1) of the Copyright Act (NCA) 2022. The section allows any person other than the copyright holder himself or a person authorised by him, to deal with the copyrighted work in a manner reserved exclusively for the right holder if such dealing include the following purposes: private use; parody, satire, pastiche, or caricature; non-commercial research and private study; criticism, review or the reporting of current events. A range of these purposes fall within the normal activities that academic researchers and knowledge merchants carry out frequently in higher institutions and research institutes (Billah & Albarashdi, 2018:422). The problem is that as lofty as the idea may be, to allow persons who engage in 'non-commercial research' (academic research) or private study to deal with copyrighted works especially books, journal articles, reports etc without the owner's consent by copying or reproducing them for research purposes, the doctrine of fair dealing may have opened a floodgate of abuses by researchers to undermine the entire knowledge economy (Marginson, 2009:4; Begum & Sharma, 2018:263). Abuses of the fair dealing doctrine have become a matter of concern for the academic community globally because inordinate copying of copyrighted works rather than advance the frontiers of knowledge has stifled the growth of new ideas and the entire knowledge economy through the vices of copyright infringement and plagiarism (Ude-Akpeh & Ezekulie, 2022:173).

Indeed, the advent of the internet and digital revolution has accelerated the abuses of the fair dealing doctrine by the sheer availability and accessibility of copyrighted works on the World Wide Web (Üney, 2023:259; Khan, 2021:33). No doubt, it is now easier to obtain information for conducting research on any subject matter on the Internet, which constitutes a temptation for researchers and negligent users to infringe on the copyright of other authors, and indiscriminately plagiarize their works (Maina, et al. 2014:225; Green, 2002:167). Although there are contemporary technologies to aid researchers engage in fair borrowing of other author's expressions, ideas and wordings, the temptation to abuse the latitude of fair dealing through unfair borrowing is great and compelling; and it is captured in

various empirical studies. For instance, in a survey report of students in the United States, 54% of students admitted to plagiarizing from the Internet (Onuoha & Ikonne, 2013:103); in another study, 18% of graduate-level students were found to have plagiarized large portions of papers in India (Sharma, 2010:143). Another US study found that over 50% of university students engage in some form of Internet-based academic cheating during their university career (Breen & M. Maassen, 2005:1). In a University of Pretoria study on plagiarism involving 150 undergraduate students, 80% of the participants admitted to having plagiarized assignments directly from the Internet (Russouw, 2005). Another survey of college student attitudes towards Internet plagiarism revealed that 25% of 698 students in nine universities copied and pasted text from the Internet or traditional sources without proper citation (Scanlon & Neumann, 2002:374).

In Nigeria, the prevalence of plagiarism especially among university students is also abhorrently high. For instance, in a study of plagiarism among undergraduate students in Nigerian private universities, the researcher found that 8.2% of the respondents bought term papers from paper mills; 46% copied from their colleagues' assignments; 69.2% copied and pasted portions of text from the internet; 65.7% copied verbatim from textbooks or journals without proper reference; 58.5% included fake references in their work; and 46.7% submitted assignments without references (Babalola, 2012:53). Apart from students, plagiarism is equally prevalent among university lecturers and other professionals in Nigeria (Adeyemo, 2013). Indeed, most of the activities constituting plagiarism in Nigeria also include traces of copyright infringement, as the two vices often interrelate and coincide in significant respects (Billings, 2004:392). Thus, the same action constituting plagiarism may also amount to copyright infringement and therefore, both vices are described as two sides of the same coin, with each side retaining separate characteristics (Sengupta, 2015:19).

This paper examines the relationship between abuses of the fair dealing doctrine and the twin vices of copyright infringement and plagiarism in Nigeria, relating to the use of copyrighted works for research purposes and private study as provided under section 20(1) of the Nigerian Copyright Act 2022. The paper seeks to explain how the unguarded utilization of the fair dealing mechanism by researchers in Nigeria results in both violation of copyrights and plagiarism. It scrutinizes the two concepts to determine their

interrelatedness and consequences for their occurrence within the research community and knowledge economy. In order to achieve these objectives, the paper is divided into five parts besides this introduction. Part 2 deals with conceptual clarification of the subject matter of the research. Part 3 examines the relationship between the abuses of the fair dealing doctrine and copyright infringement. Part 4 addresses the relationship between abuses of the fair dealing doctrine and plagiarism, part 5 examines the relationship between copyright infringement and plagiarism and part 6 is the conclusion.

2. CONCEPTUAL CLARIFICATION

2.1 Copyright

The main statute dealing with copyright law in Nigeria, the Copyright Act 2022, in sections 9-13 gives an insight into the concept of copyright. The Act provides that copyright in a work shall be the exclusive right to control and prevent certain acts from being performed in connection with the work. Hence, copyright is a set of exclusive rights granted by the law of a jurisdiction, to an author or creator of an original work to copy, adapt, and distribute such work (Jegede and Idairu, 2024). Copyright has been defined as a right conferred on authors and owners of creative works (these include literary, scientific, or artistic works), to control the doing of certain acts in relation to those works. In *McMillan & Co v Cooper* (1924), the Bombay High Court of India per Lord Atkinson stated that the moral basis on which the principle of copyright protection rests is the eighth commandment of the Holy Bible which is 'thou shall not steal' (Exo:20:15). Thus, a person is not expected to steal the work of another. Copyright is also said to be a kind of right that protects the expression of an idea and not the idea itself. The concept is otherwise known as 'idea expression dichotomy'. In *Donoghue v Allied Newspaper* (1937), it was held that copyright exists to protect works and not ideas. Also, in *Gero v Seven-up Company* (1982), it was observed that the goal of copyright is to protect the expression of an idea in a creative work.

Thus, based on the preceding definitions, it is clear that copyright is concerned with protecting the work of an author or creator against unauthorised users. Note that the owner of a work may not necessarily be the author of such work. The author is usually the creator

of the work while the owner is the one who is conferred with the right to control the doing of any act in relation to that work (Nwabachili and Nwabachili, 2015:78). A number of works are eligible for copyright protection. These works are literary works, musical works, artistic works, audio-visual works, sound recordings and broadcast. It is important to note that before one can claim copyright protections, three basic factors must be considered under section 2(2) NCA 2022: the work must be original, also fixed in a tangible form, and placed in a public domain or must have been published.

2.2 Copyright Infringement

Copyright infringement is also known as piracy (Begum & Sharma, 2018:261). It occurs when a person without a license or permission of the copyright holder or without any lawful excuse, does or causes any other person to do any of the restricted or prohibited acts concerning a copyrighted work. It is the unauthorized use of the work of an author and the breach of copyright. It is also the use of a work protected by copyright without the consent and permission of the copyright holder (Kenton, 2024). In a bid to reduce the violation of copyright laws and the infringement of copyright globally, the Berne Convention 1886 to which Nigeria is signatory, was adopted (Tella and Oyeyemi, 2017:110). The convention protects the rights of authors and creators of creative works, allowing authors to enjoy the full benefits of their creative works, and creators enjoy the economic value.

In Nigeria, section 36 of the NCA 2022 stipulates the acts, which constitute copyright infringement. It provides that:

Copyright is infringed by any person who without the authorisation of the owner of the copyright —

- (a) does or causes any person to do an act, which constitutes a violation of the exclusive rights conferred under this Act;
- (b) imports or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy under this Act;
- (c) sells, offers for sale or hire any work in respect of which copyright is infringed under paragraph (a);

- (d) makes or has in his possession, plates, master tapes, machines, equipment or contrivances used for the sole purpose of making infringing copies of the work;
- (e) permits a place of public entertainment or of business to be used for a public performance of the work, where the performance constitutes an infringement of copyright in the work, unless the person permitting the place to be used was not aware and had no reasonable ground to suspect that the performance constitutes an infringement of the copyright;
- (f) permits within its premises, the reproduction of a copyright work;
- (g) performs or causes to be performed for the purposes of trade or business or the promotion of a trade or business, any work in which copyright subsists.

These acts of infringement are classified into primary/direct and secondary/indirect infringement (Giri, 2024). Direct infringement occurs when a person uses another's work without his permission, while indirect infringement occurs when a person deals with materials that infringe copyright. For example, copying a person's work or article verbatim is a direct infringement. In a situation where a person provides a place for copyright infringement or sells such infringing copy, then it is an indirect infringement.

Under section 37 of the NCA 2002, when a person's copyright is infringed upon, he can bring either a civil or criminal action for infringement. Thus, it is clear that copyright is concerned with the protection of a person's work from unauthorized use, which constitutes copyright infringement.

2.3 Fair Dealing

Fair dealing is one of the exceptions to copyright infringement, which allows an individual to use a copyrighted work without requesting permission from the owner or copyright holder. It connotes that a person can deal with or utilise another author's work without their authorisation if the dealing or utilisation falls within the stipulated activities under section 20(1) of the NCA 2022. It allows an individual to engage in activities like research, educational and academic purposes, criticism, news reporting, news review, and public and private study without the fear of infringing on another's copyright.

In *Hubbard v Vosper* (1972), Lord Denning M.R. noting the difficulty of defining and applying 'fair use' in appropriate cases to avoid copyright infringement, observed that the primary question to be determined is the degree of copyrighted work that the other person used. He gave conditions that must be met before a person can be said have used the copyrighted material of another in a way that amounts to fair use. These includes:

- a) The number and extent of the quotation or extracts of the work used
- b) The nature of use of the work. If the work is used as a basis for comment, criticism, or review, then the work (extract) cannot be regarded as an infringement of copyright;
- c) The proportion of the work used (long extracts and shorts comment are not fair, but short extracts and long comments are fair); and
- d) The impression of the book.

These conditions have been developed in many other decisions of courts in different common law jurisdiction including Nigeria, Canada and the United States. Thus, in the Canadian case of *CCH Canadian Ltd. v Law Society of Upper Canada* (2004), the test of fair use was explained and divided into six factors based on Lord Denning's reasoning in *Hubbard's* case. They include the following: (a) the purpose of the use: is the work for academic purposes or commercial purposes? (b) the character: what was the work used for? (c) the amount used: how much of the work was used? (d) the nature of the work: does the work arouse public interest? (e) The effect of the dealing: does it in any way affect the copyrighted owner commercially? Is the effect on the original work good or bad?; and (f) Alternatives to the use: was there a better alternative than the use of the copyrighted work, was the work even necessary? (see also *Ashtown v Telegraph Group* 2001).

The Nigeria Copyright Act 2022 in the proviso to section 20(1) has incorporated these conditions in the application of the fair dealing doctrine as an exception to copyright protection in Nigeria. The presence of these conditions narrow the application of the fair dealing doctrine and potentially reduce abuses of the exception by providing layered protection of copyrighted works.

2.4 Plagiarism

The term 'plagiarism' is derived from the Latin word *plagiare* meaning 'kidnap' (taking by force that which belongs to another) (Idiata, et al. 2019:922), but in contemporary literal terms, it means theft, stealing or taking the expression, facts or ideas of an author and passing them off as belonging to another without attributing them to the original creator (Tripathi, et al. 2015:15). This simply means that once an original author is not acknowledged or cited as the originator of a string of words, facts or expression, plagiarism has occurred (Lulu-Pokubo & Echem, 2020:40). According to Fishman (2009), the five elements of plagiarism are: -

- a) The uses words, ideas or work products
- b) attributable to another identifiable person or source
- c) without attributing the work to the source from which it was obtained
- d) in a situation in which there is a legitimate expectation of original authorship
- e) in order to obtain some benefit, credit, or gain which need not be monetary

Plagiarism is an illicit activity synonymous with cheating. It can be described as corruption of the process of independent and critical thinking that is essential to adding to the body of knowledge. It is also an academic malpractice and a breach of academic integrity (Idiegbeyan-ose, 2016). Hence, in most universities and research institutes, plagiarism is considered a moral and ethical issue and serious penalties are imposed against students who engage in it.

Like copyright infringement, what is required to avoid plagiarism is 'acknowledgement' of sources used in academic research (see s.20(1) NCA 2022). Attributing thoughts, ideas, facts and expression to the proper owners is therefore, at the core of good academic practices that enthrone integrity and advance the frontiers of knowledge. Practices that deny authors their due credit as originator of strings of words (expression), ideas, facts and design are thus, deprecated as plagiarism (Ude-Akpeh & Ezekulie, 2022:176; Bytescare, 2023). These may include: direct copying verbatim of sources (whether published or unpublished sources); cut and paste; paraphrase or summarize without attribution; patch writing; and purloining (submitting a substantial part or all of another's work as one's own) (Walker, 2010:41; Blum, 2009; Coulthard, 2004).

3. FAIR DEALING ABUSES AND COPYRIGHT INFRINGEMENT

As explained earlier, section 20(1) of the NCA 2022 provides for the exception of fair dealing of copyrighted works if the conduct, which would otherwise have been an infringement, falls within the purposes listed in the section, among which are non-commercial research, private use, criticism or review and the reporting of current events (Raphael, 2024:56). It is our thesis in this paper, which is supported by empirical evidence to the extent that the fair dealing exception has become subject to abuse by researchers in Nigeria through inordinate copying of academic source (books, journal articles, reports, dissertations) when conducting research (Babalola, 2012:53; Olutola, 2016:83). Although the fair dealing exception allows copying of copyrighted works without the consent of the owner for research and private study purposes, this liberty is not unrestricted. Researchers who indulge in unrestrained copying may still infringe on copyright if the court decides that the proviso to section 20(1) of the Act applies to render the dealing (copying) unfair under the four-factor test. This means in effect that notwithstanding the perceived unruliness of the fair dealing doctrine, the exception is after all a façade, at least until the court decides otherwise. Thus, most abuses of the fair dealing exception by researchers may be challenged under the four-factor test and rendered 'unfair'. The proviso in section 20(1) of the NCA provides that:

...in determining whether the use of a work in any particular case is fair dealing, the factors to be considered shall include the —

- (i) purpose and character of its usage,
- (ii) nature of the work,
- (iii) amount and substantiality of the portion used in relation to the work as a whole, and
- (iv) effect of the use upon the potential market or value of the work

Notwithstanding the attitude of courts on the weighing of these factors in determining fair dealing, the most important factor as far as the determination of fair dealing for research purposes is concerned, is the amount and substantiality of the portion used in relation to the work as a whole (Billah & Albarashdi, 2018:436). Indeed, the amount of copying is closely connected with the effect of the use on the financial exploitation of the

work, and potentially, use of a large portion of a copyrighted work, even for a noble purpose like education and research, may affect the potential market of the work. Thus, any researcher who abuses the fair dealing exception by copying indiscriminately violates copyright if the amount of copying is too much relative to the whole of the copyrighted work.

Exactly what amount of copyrighted work is permissible to be copied for research purposes is not clear. The courts have applied different standards in determining the permissible amount to be copied, or risk infringing on copyright (Bartow, 1998:164). The court looks at the context in and purpose for which the copied portion is used and determine whether the amount copied fits in that context and serves that purpose. Hence, even the use of a very small portion may be considered unfair if the portion used contains the essential parts of the original work and therefore benefits from its unique economic value.

Apart from considering the four-factor test in determining whether abuses of the fair dealing exception have occurred, the Nigerian Copyright Act 2022 seems to have introduced a new dimension in the fair dealing calculus by requiring in section 20(1)(d) that any exercise (claim) of fair dealing must be accompanied by 'acknowledgement' of the title and author of the work.

(d) criticism, review or the reporting of current events, subject to the condition that, if the use is public, it shall, where practicable, be accompanied by an acknowledgment of the title of the work and its author except where the work is incidentally included in a broadcast

This means that acknowledgement (attribution) has become a legal requirement for the application of the fair dealing exception in Nigeria in contrast to other jurisdictions like the United States (Band & Schruers, 2005:1). The implications of this clause are threefold: first, acknowledgement has become a fifth condition for legitimization of the fair dealing exception; second, the clause makes it easier for copyright owners to succeed in a claim for copyright infringement; third, it coalesces the two vices of copyright infringement and plagiarism as legal claim under the Copyright Act. The latter implication means that at least some instances of plagiarism could now support a legal claim under the Copyright Act 2022

(Stephens, 2020:419) unlike in the past where plagiarism was considered as a situation of academic dishonesty or moral issue only (Frye, 2016:141).

4. FAIR DEALING ABUSES AND PLAGIARISM

Abuses of the fair dealing exception arising from inordinate copying of copyrighted works for research purposes may also amount to plagiarism independent of copyright infringement. Plagiarism and copyright infringement have similar characteristics (both involve copying) but the two phenomena are not synonymous (Stephens, 2020:408). Plagiarism arises from the failure to credit a work to the appropriate source or the failure to fully indicate the scope of indebtedness, involving the author's interest in being properly credited as a source of the work. Copyright on the other hand, protects against the copying of expression, and it is the "principal means for protecting works of authorship" and their economic interest (Kwall, 2002:996).

Plagiarism is a complex and interesting concept that lies at the very foundation of the academic and literary culture globally (Green, 2002:170). Indeed, its interrelatedness with copyright infringement makes it an easier pry for abuses of the fair dealing exception in the course of research. Researchers find it easier to plagiarize in more subtle ways than to simply copy word-for-word, which may amount to copyright infringement. Hence, although the two concepts are obviously distinct, different typologies of plagiarism may constitute copyright infringement and vice versa (Stearns, 1992:525). There may be need to examine how these different typologies of plagiarism coalesce with copyright infringement.

- a) Self-plagiarism: This arises when an author reuses his own material, usually without acknowledgement; but it also includes salami-slicing, where the author submits several papers with slightly different interpretations of the same subject matter or based on the same research (Saunders, 2010:280). The issue of copyright ownership and infringement must be distinguished from acknowledgement, which falls within the precinct of plagiarism. An author is free to copy his or her own work only to the extent that he has not transferred rights to a third party. Double-dipping – the practice of submitting the same or a substantially similar (in terms of text or

illustrations) paper to more than one journal thus, becomes a copyright infringement if the author has signed a copyright assignment form or exclusive licence with a publisher, regardless of the issue of acknowledgement. By contrast, submission of two papers based on the same scientific experiment, but using different words, would not generally amount to a copyright infringement, even if there is no acknowledgement. However, this would amount to plagiarism.

- b) Word-for-word plagiarism: This involves textual copying of a significant proportion of a copyrighted work, sometimes a whole section of text, usually without acknowledgement. The most obvious and flagrant example is when a contributor to a journal change only the name of the author, and perhaps the abstract and first paragraph (Saunders, 2010:280). Such plagiarism is also tantamount to academic fraud and likely to amount to copyright infringement. But word-for-word plagiarism can also involve intentional or unintentional recycling of comments from other sources, perhaps intermediated by notebooks of collected ideas, where the author transgresses the law by borrowing more than is permitted. In such case, a copy is no less a copyright infringement just because the author made a few minor changes with or without acknowledgement.
- c) Ideas plagiarism: This is the kind of plagiarism where the author reuses the ideas of another author, without acknowledgement. It involves taking of the ideas from a text, but substantially (or entirely) changing the words used. Ordinarily, this type of plagiarism would not amount to copyright infringement because the copyright law protects expression rather than ideas (Green, 2002:202). However, in certain special circumstances, idea plagiarism may also amount to copyright infringement. If the second author merely reuses ideas, there is no infringement; however, if the second author borrows the first author's exact words, or borrows the details of the way the first author expressed the ideas, then there is likely to be copyright infringement. In the United States, many claims of copyright infringement are brought to court based on the taking of another author's ideas without acknowledgement, some of which have succeeded. This position is alien to many other common law countries including Nigeria in view of the clear distinction between copyright (which protect

expression) and plagiarism (which protect both expression and ideas). However, in the English case of *Ravenscroft v Herbert* (1980) the court found in favour of the plaintiff for copyright infringement based on textual copying and idea similarity. In that case, the author of a non-fiction book sued James Herbert, the author of the fictional *The Spear of Destiny*, claiming that the work included nearly 50 examples of significant textual copying, but also that it used a significant number of ideas, which obviously were derived from the first book. The judge concluded that there was copyright infringement. Similarly, Lord Hoffmann in the leading English copyright infringement case of *The Designers Guild* (2001) found that if the second author does not just borrow ideas, but also the way they are used, then there is copyright infringement: [T]he original elements in the plot of a play or novel may be a substantial part, so that copyright may be infringed by a work which does not reproduce a single sentence of the original. If one asks what is being protected in such a case, it is difficult to give any answer except that it is an idea expressed in the copyright work.

The current position under the Nigerian Copyright Act 2022 seems to agree with the *designers Guild's case* that only significant copying of words (expression) in copyrighted works without acknowledgement can constitute both plagiarism and copyright infringement capable of legal action.

- d) Scattergun plagiarism: Also known as patch writing, this involves a selective plundering, whereby the author borrows words, ideas or other context, from a variety of other originators. Interestingly, because of the legal test of substantiality, such plagiarism, however blatant, may well not amount to copyright infringement (Haruna & Usman, 2021:197).
- e) Citation plagiarism (or amnesia) involves a cavalier approach to acknowledgment in references or footnotes by either not giving credit for sources, or lifting someone else's citations as a shortcut.

5. IS COPYRIGHT INFRINGEMENT AND PLAGIARISM TWO SIDES OF THE SAME COIN? AN EVALUATION OF THE INTERRELATEDNESS

As earlier noted, copyright infringement and plagiarism are interrelated at different intersections, but they both maintain separate and distinct characteristics. Both involve copying from other author's work. Both are concerned with the creative process and matters of originality and authorship, and both seek to prevent free riding on the work of others (Dursht, 1996). This section examines the aspects of intersection between copyright and plagiarism generally.

5.1 Originality

The principles of plagiarism and copyright law both seek to protect the original work of creators. Copyright, like plagiarism, does not demand that the author exercise a degree of creativity in the sense of 'first to invent' that is, novelty in the patent law sense. Under the principles of plagiarism and the law of copyright, it is understood that creators, to a certain extent, will rely and build upon the work of those who go before them (Li, 2014:137). In copyright law, the necessary threshold contribution (originality) is set at a relatively low level. For a work to attract copyright protection it must be original. Originality for this purpose does not require that the author be the first to create or the first to come up with the idea. It means merely that the material emanates from the author and has not been copied from an existing work. Copyright is said to be about the originality of expression of the idea. The author must expend skill and labour, that is, 'sweat of the brow' (Desktop Marketing Systems Pty Ltd v Telstra Corporation Ltd 2002).

5.2 Authorship

For plagiarism, an author may be the originator of a written work or the originator of an idea. Although the same general principles with respect to authorship apply under both plagiarism and copyright, copyright law has a narrower notion of authorship. For copyright, authorship is related to the principles of originality and infringement. The author of a work is said to be the person who expresses the idea in a material form. Someone who merely supplies ideas or information and does not have a hand in actually expressing the ideas, is not regarded as an author for copyright purposes. There is joint authorship (i.e. more than one author for a particular copyright work) where two or more creators together produce

the material. However, where each author's contribution to the work can be identified, rather than together being regarded as joint authors of the one work, each author will be regarded as the author of their identifiable contribution.

Unlike copyright in literary work, copyright in sound recording does not have an author but a maker. The maker is essentially the investor (the party that owned the equipment on which the master copy was made or who undertook all the arrangements necessary to produce the first copy) and is more often a corporate entity rather than an individual (e.g. a record company for sound recordings or a film production company for audiovisual film).

5.3 Ownership and Enforcement

Plagiarism recognises the hurt done to the author whose work is plagiarised but it does not rely solely upon that author enforcing any right against the alleged plagiarist (Green, 2002:188). Plagiarism may have consequences for the plagiarist (e.g. in his or her employment) irrespective of any complaint or other action taken by the original author (McCabe et al. 2001:226). However, unlike copyright where the author of the work can grant permission to person to copy the work, the author of the plagiarised work cannot consent to the lack of attribution. On the other hand, copyright relies upon the owner asserting property rights in the copyright material against an alleged infringer. However, due to the distinction between ownership and authorship in copyright law, sometimes the author of the copyright material is not necessarily the owner of the rights and therefore, he is not in a position to use copyright law to object to the use of the material by another without permission. He may however, insist on his moral right of attribution.

5.4 Infringement

Plagiarism and copyright infringement share two recent trends in common. The first is that digital technology and the Internet make both easier to commit (Green, 2002:188). The second is changed 'attitudes to misappropriation' of others' works. Material appearing on the Internet is seen by many as somehow in the 'public domain' and no longer requiring attribution. In the same way that 'many people believe there is nothing wrong with pirating computer software or MP3 files', they are now 'less inclined to believe that plagiarism itself is morally wrong' (Wyburn & MacPhail, 2006:79). There are significant differences between

breach of the ethical rules of plagiarism and the legal rules about copyright infringement. In the case of plagiarism, the copying of text or an idea without attribution of the author will fall foul of the rule, but the question of copyright infringement is more complicated.

Direct infringement of the economic rights of the copyright owner occurs without the need to prove intention; however, the rules of plagiarism by contrast, assume there is consent from the original author to the use of the material provided attribution occurs. Generally, there is no infringement of copyright when what is reproduced is the bare idea or underlying information, as opposed to the way the ideas or information are expressed (referred to as the idea/expression dichotomy) (Lahore & Rothnie, 2006:105). The rules of plagiarism require ideas as well as words taken from other authors to be attributed (Stearns, 1992:517).

With respect to moral rights, which are included in section 14 of the NCA 2022, the relationship between copyright and plagiarism is almost conjunctive. The personal nature of moral rights means they are exercisable by the author of the copyright material irrespective of the ownership of the economic rights. The rights are conferred only on individuals and they are not assignable to others as are the economic rights. The moral rights comprise the right to have the authorship of the work attributed to the relevant author, not to have it falsely attributed to another, as well as the right of integrity (the right not to have the work subjected to derogatory treatment). Thus, where another person's name has been inserted or affixed to the work in a way so as to imply falsely that he or she is the author, the true author may obtain various civil remedies. Infringement of moral rights is excused where the action is reasonable. There is an inclusive list of factors that must be taken into account in determining the reasonableness of the conduct. Otherwise, the author's consent is required to excuse the conduct. The moral rights in relation to attribution and false attribution are very similar to the rules of plagiarism. The only differences are the application of the defence of reasonableness and the possibility of obtaining the consent of the author to the act in breach of the moral right.

6. CONCLUSION

Having examined the application of the concept of fair dealing and its effect on the twin vices of copyright infringement and plagiarism in Nigeria, relating to the use of copyrighted works for research purposes and private study, this paper concludes that abuses of the fair dealing doctrine has dilapidating effects on both copyright infringement and plagiarism owing to the close relatedness of the two concepts. The paper analysed and explained circumstances where copyright infringement and plagiarism coalesce thereby supporting a cause of action for both vices under the NCA 2022. The paper discovered that by requiring 'acknowledgement' or attribution of copyrighted works for the application of the fair dealing doctrine under section 20(1) of the NCA 2022, the new Act has effectively merged both copyright infringement and plagiarism under our law, especially in view of the enforceability of moral rights under section 14 of the Act. Lastly, the paper examined the relationship between copyright law and plagiarism to discover their similarities and dissimilarities.

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