

ASSESSING THE QUANTUM OF DAMAGES IN CLAIMS FOR BREACH OF COPYRIGHT

The relative ease of reproduction, distribution and transmission of copyrighted works in today's internet era has boosted the commercialization of intellectual property rights. However, the porous nature of the internet has introduced significant yet unanticipated issues which have undoubtedly prompted skepticism about the effectiveness of Nigeria's Copyright Act to pre-empt and adequately deal with acts of infringement of intellectual property rights.



In copyright infringement cases, a primary contention fiercely challenged is what constitutes appropriate compensation for infringement. It is often the case that the owner of copyright claims exorbitant sums as damages for acts of infringement, without factual or documentary evidence to sustain such claim(s).

In the case of **Onyeka Onwenu & Anor.** (the "Plaintiff") v. **iROKING Ltd.** (the "Defendant")¹, the Plaintiff instituted a copyright infringement claim against the Defendant, seeking the sum of NGN200,000,000 (Two Hundred Million Naira) as damages. The Defendant, by virtue of a contract, had agreed to distribute and monetize the Plaintiff's works across its online streaming platforms for a period of 24-months (non-exclusive). Upon the expiration of the contract, the Defendant inadvertently retained the Plaintiff's works on their platform for an additional 12 months, without the Plaintiff's consent. The Court in its judgment agreed with the submissions of the Plaintiff and consequently awarded damages in the sum of NGN500,000.00 (Five Hundred Thousand Naira).

Considering the judgement award in isolation, one might be quick to think that the awarded sum is paltry. Nevertheless, it is pertinent to note that an infringement of copyright amounts to an 'injury' to the copyright owner, and damages as a remedial award, ought to be primarily aimed at restoring the plaintiff to the original position she would have been in before the violation. Further, Section 16(4) of the Copyright Act², which deals with infringement, directs the Court to only award additional damages as may be considered "appropriate in the circumstances".

In the Onyeka Onwenu case, it was an uncontroverted fact that the commercialisation of the Plaintiff's work during the sustenance of the agreement generated a total sum of \$969 (that is, approximately NGN353,000 (Three Hundred and Fifty-Three Thousand Naira)). Thus, it goes without saying that the Plaintiff's overall claim for NGN202,500,000 (Two Hundred and Two Million, Five Hundred Thousand Naira) was rather exaggerated and unsubstantiated. Effectively, one can reasonably conclude that the

¹ FHC/L/CS/1486/2017: Onyeka Onwenu (MFR) & Anor. v. iROKING Limited Judgement delivered by Hon. Justice Aneke on January 16, 2020.

² Copyright Act Chapter C28 Laws of the Federal Republic of Nigeria 2004.

Plaintiff's claim in this suit contradicts the basic principles underpinning the essence of copyright laws, which hopes to balance the scales of justice rather than tip them in the opposite direction. Furthermore, it is also arguable that since the infringement lasted for a period of 12 months, the most accurate computation of damages ought to have been half of the total revenue generated from the Plaintiff's works during the sustenance of the agreement. Thus, the award of the sum of NGN500,000.00 (Five Hundred Thousand Naira) by the court was more than commensurate.



In instances where there is no contractual background or co-operation between the parties, it seems that Nigerian Courts tend to adopt a more punitive or exemplary approach to damages for the purpose of deterrence. Nonetheless, even in such circumstances, the Courts are not likely to award a sum that is inordinately higher than what the copyright would have been worth, had the parties entered into a formal agreement for commercialisation of such infringed works. In **Multichoice Nigeria Limited (MNL) v. Musical Copyright Society Nigeria (MCSN)**³, the Federal High Court awarded the sum of NGN5,900,000,000 (Five Billion, Nine Hundred Million Naira) in damages to MCSN as Counter-Claimant in the suit, after considering inter alia, the unchallenged evidence of flagrant infringement of copyright in MCSN's works by MNL, the frequency and long duration of the infringement, the financial benefit which arose and the need to ensure adequate reward for copyright owners in Nigeria's music industry.

The key take away from these cases indicates that Nigerian Courts, over time, have displayed a clear understanding and fair judgement in assessing damages in actions for intellectual property infringement. However, considering the steep costs often associated with litigation, intellectual property owners should realistically evaluate their chances of success and the quantum of damages that may be awarded in their favour, before instituting a copyright infringement action.

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³ FHC/L/CS/1091/11: Multichoice Nigeria Limited v. Musical Copyright Society Nigeria. Judgement delivered by Hon. Justice Idris on January 19, 2018.