



Redeemer's University Nigeria, Journal of Jurisprudence & International Law (RUNJJIL) Volume 4(1) 2024

Content Creators: Rights under the Nigerian Copyright Act 2022

Chukwunye Augusta OJEIH

LLM, LLB, B.A., PgDE, ACIArB, ANIPR,
Lecturer, Faculty of Law, Redeemer's University,
Ede, Osun State.

Phone No: 08037403937

E-mail: ojeihaugustafrancis@gmail.com; ojeihc@run.edu.ng

Olumide OGIDAN

B.A, LLB, BL, LLM;
Lecturer, Faculty of Law, Elizade University,
Ilara-Mokin, Ondo State.

E-mail: olumideogidan7@gmail.com; olumide.ogidan@elizadeuniversity.edu.ng

Abstract

Communication and content creation are the foundation of all social interactions. Our methods of sharing information and conversing has been completely transformed by social networking sites like WhatsApp, Twitter, Instagram, LinkedIn, and others. The men and women behind these social media platforms are referred to as 'content creators'. The evolution of the content creation industry has various implications on the structure of creativity, the organisation and management of individual and national economic systems, the distribution and utilisation of resources to foster sustainable economic expansion, and the shifting landscape of employment trends and opportunities, on education, on infotainment, and so on. But do these creators have any enforceable copyright rights? A cursory look at the Nigerian Copyright Act 2022 appears as though content creators are not recognised; however, an in-depth study of the Act shows otherwise. Content creators have recognizable and enforceable rights under the copyright law. This paper highlights the copyright rights of these authors; the work they produce is an extension of their personalities. Using primary and secondary sources of law, this paper adopts the doctrinal legal research technique. This article concludes that content creators, as authors under copyright, should be accorded their due respect. They have valid and enforceable rights under the law. Take away from content creators their copyright and you would very soon take away from Nigeria her authors.

Keywords: copyright, content creativity, creator, coterminous, social media.

1.0 Introduction

The scope of creativity and communication in modern society defies easy categorization due to its diverse and expansive components. It encompasses human capabilities, essential media and communication tools used by individuals, communities, and large audiences; intricate networks and systems; advanced technology; and the materials and equipment necessary for gathering, producing, transmitting, receiving, storing, and retrieving data and messages. The creativity and content creation industry involve countless individual and institutional contributors. From the invention of the printing press to contemporary advancements such as computers, smartphones, and the Internet, the world has undergone profound transformation. Messages and content of all types now reach vast audiences continuously. Notably, technology's advancement has profoundly shaped our daily lives.

Communication has undergone significant qualitative growth in recent decades, evolving alongside changes in social, political, educational, and entertainment trends. Predicting the full impact of this exponential expansion of information and entertainment on an increasingly engaged audience remains a formidable challenge. The speed of information advancement has surpassed even industry expectations, propelled particularly by digital transmission methods, notably the Internet. This technological leap signifies a complete transformation in the storage, retrieval, and transmission of oral, written, and visual messages, greatly enhancing their potential and application. Social media, facilitated by the Internet, has profoundly reshaped information sharing and communication on a global scale. Consequently, technological advancements in communication have spurred creativity and entrepreneurial opportunities; many individuals now manage their own businesses via social media platforms. Content creators no longer require traditional offices but can operate with just an Internet connection using their preferred smart devices.

With social media's development, content creation and dissemination have become more accessible to everyone with an Internet connection, enabling them to share their ideas, thoughts, and creations globally.¹ However, a pertinent question arises: Are these content creators recognized under Nigerian copyright Act, and if so, do they possess enforceable legal rights under the law?

¹ FasterCapital, 'Impact of Social Media on Content Creation' [www.https://faster capital.com](https://fastercapital.com) accessed 4/6/2024.

The study is structured as follows: Section two examines the concept of copyright. Section three discusses content creation, its functions, and theoretical justifications. Section four investigates whether content creation equates to authorship and explores content creators' copyright rights, and summary of findings. Finally, section five presents the conclusion and recommendations.

2.0 The Idea of Copyright

Copyright protection in Nigeria derives from the Nigerian Copyright Act of 2022, bolstered by constitutional provisions under the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended). The National Assembly is authorized to enact laws on matters listed in the Exclusive Legislative List detailed in Part 1 of the Second Schedule of the Constitution, as stipulated in section 4 (2) of the Constitution. Copyright specifically falls under item 13 of Part 1 of the Second Schedule. Section 318 (1) of the Constitution defines the 'exclusive legislative list' as the list found in Part 1 of the Second Schedule to the Constitution.

Glory asserts that copyright is a legal protection that prevents unauthorized exploitation of intellectual property. Its primary function is to safeguard the creations of authors from unjust appropriation.² Copyright is a form of property right that includes the exclusive privilege to reproduce, publish, and distribute copies of a literary work, thereby preventing others from doing so without authorization.³ **Black's Law Dictionary** defines copyright as the right to copy; specifically a property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute perform, and display the work.⁴

Copyright provides protection upon the creation of a work in a fixed form; the work must be original in content with some effort dispensed on it. As part of its objectives⁵, the copyright law seeks to:

² Onoyeyan Glory, "Copyright Law and Photocopying Practice in Nigeria" (2018) (2179) (4) Library Philosophy and Practice. www.https://digitalcommons.unl.edu accessed 2/2/2023

³ Osborne's Concise Law Dictionary (8th edn; London: Sweet and Maxwell, 1993) p.91.

⁴ Byran A. Garner, *Black's Law Dictionary* (8th edn; Dallas: Texas, 1999) p.361.

⁵ Copyright Act 2022, section 1.

- (a) protect the rights of authors to ensure just rewards and recognition for their intellectual efforts;
- (b) provide appropriate limitations and exceptions to guarantee access to creative works;
- (c) facilitate Nigeria's compliance with obligations arising from relevant international copyright treaties and conventions; and
- (d) enhance the capacity of the Nigerian Copyright Commission for effectual regulation, administration and enforcement of the provision of this Act.

These objectives of the Nigerian Copyright law as listed in section 1 of the Act above underpins the theoretical justifications of this area of intellectual property. Considering the objectives vis-à-vis the theoretical validations of copyright, the objectives in other words seeks to:

- (a) Guarantee, first and foremost, the authorship theory of copyright. This is a moral right which cannot be taken from the creator of a work. An author deserves to have right - an unlimited right to his work, because this is a form of self-preservation; an embodiment of a creator/author's personality. This objective, in the same vein, justifies the labour, reward, and unjust enrichment theories of copyright. For a creator is genuinely nothing more than a slave if what he creates is taken from him. The perspective that copyright is a form of property right, granting creators exclusive ownership and control over their intellectual property entitles the author or creator of a work to be adequately rewarded for the labour expended.
- (b) Promote the utilitarian theory of copyright. This second objective aims at sustaining and encouraging creativity and innovation, leading to a greater societal benefit. The belief that copyright provides, sustains, and enlivens life is the motor and expression of societal activity and advancement.
- (c) Guarantee the social contract theory of copyright. The new era has seen a quickening expansion of new resources, systems and high-tech maneuvers in communication, particularly for conveying and receiving signals and messages. These in turn, lead people from instinct to inspiration, through variegated developments and systems; they create common pool of ideas, strengthen the feeling of togetherness through exchange of

messages and translate thought into action, reflecting every emotion and need from the humblest tasks of human survival to supreme manifestations of creativity. As a result, the social contract theory of copyright assumes a compact that balances the interests of the public interest and individual rights with those of the state, creators, and society.

- (d) Recognise due enforcement of the law in the event of a breach. Copyright is a negative right which precludes others from exploiting such creations without lawful justification. This fourth objective accords with the human rights and deontological theories of copyright. Copyright integrates knowledge, organisation and power; it serves as a thread connecting humankind's earliest memories to its highest goals through unceasing pursuit of a better existence. It is submitted that one of the fundamental reasons for this particular objective is that copyrightable works are of economic value and usually will be result of investment and a significant amount of work. **Bainbridge** posits that without protection there are many who would freely copy such things without having to take the trouble to create them for themselves and who, would be able, as a consequence, to sell the copied items more cheaply than the person who developed or produced the original.⁶

To qualify for copyright protection, it must be a work of authorship which is original in character with some efforts dispensed on it and must be fixed in a medium of expression now known or later to be developed from which it can be perceived.⁷ It doesn't matter how good the work is; what matters is that such work qualifies for protection. The Act lists the works that qualify for and do not qualify for copyright protection. For reproduction sake, the works eligible for copyright protection in Nigeria are: literary works, musical works, artistic works, audio visual works, sound recordings, and broadcasts.

For literary, musical, and artistic works, the law demands that they must be original unlike the others which are derivative works. Originality here is not to be taken in the dictionary definition of the word, but that such works must not be slavishly copied from another work. Such work must be a function of an independent contribution to the state of creativity. Thus, “the requirement of ‘originality’ should not be confused with novelty, worthiness, or aesthetical

⁶ David Bainbridge, *Intellectual Property* (4th edn; England: Pearson Longman, 1999) p.31.

⁷ Copyright Act 2022, section 2.

appeal”.⁸ A work can be original even if it is extremely similar or alike to another. The Nigerian copyright law, as with the other copyright laws world over, only requires originality, meaning independent creation by the author. Consequently if two artists create a life drawing of a peacock or if two photographers each take photographs of the Faculty of Law Complex, Redeemer’s University, Ede-Osun State, Nigeria, each artist or photographer will have copyright protection for the work as long as one did not copy the other.⁹ Originality does not mean ‘first’; it merely means ‘independently created’ rather than copied hook, line and sinker from others works. In regard to the level creativeness vital for copyright protection, the threshold is quite low.¹⁰

The copyright Act safeguards creative works that are permanently affixed to any tangible medium of expression, whether it be one that is currently in use or one that is yet to be invented, and from which they can be viewed, reproduced, or shared in any other way.¹¹ A live performance, lecture, or oral presentation is not considered fixed unless it is reduced to writing or recorded on video or audio. Therefore, fixation happens when a work is reduced to text, numbers, sounds, or shapes and recorded on a permanent or stable medium. Fixation necessitates that a work be embodied in some sufficiently stable or permanent form to be noticed.

Since copyright is a property right, this begs significant queries regarding the means of copyright exploitation. As long as a work is not produced when a person is employed, in which case the employer will have the copyright from the beginning, the creator is considered the author. Authorship is not always, for all times and purposes, the same thing as ownership; however, an author may be the owner of his/her work.

3.0 Content Creation

In the contemporary era, new tools, methods, and technological advancements in communication—especially in signal and message transmission and reception—have been developed at an accelerated rate. One discovery followed another with speed. The phonograph

⁸ Deborah E. Bouchoux, *Intellectual Property: The Law of Trademarks, Copyrights, Patents and Trade Secrets* (4th edn; New York: Delamar Cengage Learning, 2013) p.193.

⁹ See *Ladbroke Ltd v William Hill Ltd* (1964) 1 WLR 273 @ 291.

¹⁰ Copyright Act 2022, section 2 (3).

¹¹ *Ibid*, section 2 (2) (b).

was invented by Edison early in the second part of last century; that was in August 12, 1877.¹² Samuel Morse and Sir Charles Wheatstone devised telegraphy in 1840. Bell conveyed the first telephone communication via wire in 1876; the first public telegraph message was made in 1844. In or around 1895, Marconi and Popoff independently achieved wireless message transmission and reception. Fessenden used radio to communicate the human voice in 1906. Daguerre developed a useful photography technique in 1839. 1894 saw the screening of the first film. The Berlin System, a photographic equipment, transmitted the first photograph as early as 1904; nonetheless, television did not debut until 1923. The earliest networks for radio broadcasting were set up in the 1920s, followed by television broadcasting in the 1930s and regular colour television transmission starting in 1954.¹³

Communication-related technology has changed dramatically during the past 150 years – this has particularly been inventive, creative, imaginative, and productive. In 2004, Facebook and Twitter were co-founded by Mark Elliot Zuckerberg with his roommate in Harvard. WhatsApp was founded by two Ex-Yahoo employees, Brian Acton and Jan Koum in 2009. Instagram was also the invention of Mark Zuckerberg, it was launched in 2010.¹⁴

Advances in the new science of informatics have created, stored, and transmitted millions of pieces of information through computers, laptops, smart devices, and data banks, greatly expanding the amount of information available to those with access to modern technologies. These new technologies open paths for a new era in communication and creation known as **content creation**. Content creation is the process of making and sharing various types of content such as texts, images, videos, and more on social media platforms.¹⁵ The content of messages are localised and individualised to a large extent; it is possible to create contents to multiply information and foster exchange between individuals.

Technological advancement gave birth to social media platforms like Facebook, Twitter, Instagram, WhatsApp, and LinkedIn. The society advanced from analog to digital. Social media has become an essential component of our lives in the current digital era. Social networking platforms have completely changed the way we exchange and consume information, whether it

¹² Library of congress, 'Today in History', <https://www.loc.gov> accessed 14/6/2024

¹³ Sean MacBride et al, *Many Voices, One World* (Ibadan: University Press, Ibadan, 1980) p.10.

¹⁴ Quora Digest, <https://www.quora.com> accessed 14/06/2024.

¹⁵ Content Creation, <https://www.sprinklr.com> accessed 4/6/2024.

be for keeping in touch with loved ones or keeping up to current on the newest events and fashions. That being said, there has been a major shift in the production, distribution, and consumption of material. Consequently, today, anyone can share thoughts, ideas, and creations with the community so long as there is an Internet connection; this is a game-changer for content distribution.

Content creation takes place not just because of hi-tech discoveries, but also because there is a realization of prospects and needs such as social, educational, political, economic, cultural and spiritual. It could also take place just for entertainment purposes. It is submitted that content creators want to add aspirations towards human growth to the satisfaction of material, emotional, and psychological needs.

3.1 Functions of Content Creation

If content creation is seen in its fullest definition, encompassing not only the sharing of information and news but also individual and group activities that involve the transmission and sharing of ideas, facts, and data, its primary purposes in this digital era include but not limited to:

- (a) ***Socialisation***: the availability of a shared body of information that helps people function as productive members of the society in which they reside, promotes social cohesiveness and awareness, and allows for active participation in public life.
- (b) ***Information***: the gathering, storing, processing, and distribution of information necessary to comprehend and respond intelligently to one's own circumstances as well as those of others on a national and worldwide scale, and to enable one to make the right decisions.
- (c) ***Education***: knowledge transfer with the goal of promoting character development, intellectual growth, and the learning of abilities and skills at all life phases. This function is quite instructive because education is the process through which the intellectual and moral capabilities of an individual are developed to make him a cultured member of the society he belongs.
- (d) ***Entertainment***: propagation of amusement through signs, symbols, sounds, and sights, including dance, theatre, art, literature, music, comedy, sports, and games, for the delight of both individuals and groups.

- (e) **Integration:** the provision to all interested persons, groups and actions of access to the variety of messages which they need in order to know and understand each other and to appreciate other's living condition, viewpoints and aspirations.

It is imperative to acknowledge that the various functions of content creation may exhibit distinct and even incongruous attributes, contingent upon the prevailing environmental and economic circumstances. Although the material frequently helps people maintain their sense of self, it could also cause attitudes and goals to become more uniform. The plain fact is that content creation's purposes are basically based on the diverse demands of individuals from various socioeconomic and educational backgrounds; this is because "human being, being not machine, does not act with the characteristic automation of machine".¹⁶

3.2 Theoretical justifications for Content Creation

The theoretical justifications for content creator's rights can be grounded in the following:

- a) **The human rights theory:** the Universal Declaration on Human Rights [UDHR], Article 27 states that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author. The protection of a creator's content is in effect a measure of human rights. Consequently, viewing content as intellectual property deserving protection and exclusive control. Again, the human rights approach suggests that copyright should be limited to ensure that it does not unduly restrict access to information and creativity. It focuses on public interest by emphasizing the importance of considering public interest in copyright policy.

- b) **Personality theory:** Immanuel Kant and George Wilhelm Friedrich Hegel are the key advocates of the personhood theory, which posits that an individual's personality is shaped and expressed through their creative endeavours, innovative ideas, and productive work. According to this view, a person's unique identity and selfhood are formed and reflected in the environment of creativity, innovation, and intellectual pursuits. Consequently defending the right to one's own expression by viewing content creation as a continuation of the creator's identity. The personhood theory, as proposed by Kant and

¹⁶ *Owie v Ighini* (2005) 10 WRN 65 per Tobi JSC.

Hegel, has a significant impact on content creators' copyright rights. According to this theory, a creator's work is an extension of their personality, and therefore, copyright protection is essential to safeguard the creator's personal and moral rights. In effect, the theory establishes a personal connection between the creator and their work, making copyright infringement¹⁷ a violation of the creator's personality and dignity. In sum, this theory aims to protect the intellectual personality of content creators, which includes their reputation, creativity, and individuality.

- c) **Free speech theory:** section 39 (1-2) CFRN 1999 (as altered) provides that “every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference... Every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions”. Thus, protecting a content creator's freedom of expression and speech. It is a constitutional right which cannot be taken away nor regarded lightly. This is a right inherent to content creators and are essential for ensuring their individual liberty, justice, and equity. More so, this theory ensures that content creators are treated with dignity and respect. The free speech theory requires a balancing of the rights of copyright holders (content creators) against the rights of users and the public interest in accessing information and expressing themselves.

4.0 Is ‘Content Creation’ Coterminous with ‘Authorship’?

According to the copyright Act, original works of authorship that are fixed in any tangible medium of expression—now known or hereafter developed—and that can be viewed, reproduced, or conveyed in any other way—either directly or with the assistance of a machine—are protected by copyright. The provision that copyright exists in a fixed medium now “known or later to be developed” indicates the legislature's intention to new forms of expression that are not yet existence.

¹⁷ Copyright Act 2022, section 36 provides for the infringement of copyright. Infringement of copyright is the doing of an act restricted by copyright includes doing it to any substantial part of the work. See *Spectravest Inc v Aperknit Ltd* [1988] FSR 161 @ 170.

The individual who creates a piece is its author. Regarding certain kinds of works, this will be obvious: the writer of a literary piece is its author; the photographer is the photograph's author, and so on. The person who made the arrangements for the sound recording to be recorded is referred to as the author of the sound recording.¹⁸ It is pertinent to state that unless the producer and principal director are one and the same, a film is treated as work of joint-authorship.

The question under focus is: can content creators be called authors even though there is nowhere the phrase 'content creation' appeared in the Nigerian copyright Act? The answer is affirmative 'Yes'. Content creation is coterminous with authorship. By the express provisions and extension of the Act, content creators are authors, "they cannot be blown away, as it were, by a side wind".¹⁹ The works of content creators fall within the purview of section 2 (1) (a-d) the Copyright Act. In some situations these authors may have created their work based on a previous original work, but they do make considerable alterations to give their work distinct originality. Most importantly, the works are fixed on social media platforms from where they can be perceived, reproduced, and distributed to the public. Content creation is the act of producing and sharing information or media content for specific audiences, particularly digital content. Simply put, content creators are people who create and publish digital content. Content creators include:

- a. **Influencers:** - these build audience and monetize their content on social media platforms.
- b. **Social media managers:** - these manage social media listening, content production, campaign planning, and reporting.
- c. **Writers:** - these generate content for websites, blogs, e-books, white papers, news articles, voice-over scripts, brochures, web copy, and email marketing copy.
- d. **Photographers and videographers:** - these produce engaging images and videos for social media, websites, blogs and e-commerce sites.
- e. **Vloggers and streamers:** - these share their daily life, thoughts, or expertise through video blogs or live streams.

¹⁸ Copyright Act 2022, section 108.

¹⁹ *AG Bendel v Aideyan* (1989) 4 NWLR (Pt. 118) 635.

4.1 Understanding Content Creators' Copyright Rights

In line with the provisions of section 9-14 of the Nigerian Copyright Act, content creators as authors of their works have the following copyright rights: -

(a) ***Freedom to decide how their work is used:*** - content creators have the right to control or choose how their work can be used or circulated. The right to control the use of work is a logic of industrialisation, and it offers the needed protection. This right grants holders the entitlement to a fair distribution of benefits and participation. The entitlement to a fair distribution of benefits would seem to imply that a violation occurs when content creation does not deliver benefits for those affected or, perversely, harm the right holders. Content creation have economic value, and as a result content creators ought to guard their work jealously to avoid people imitating them because of the time, energy, and resources invested in producing them. The law came to the rescue by helping them do exactly that.

(b) ***Right to duplicate their work:*** - the law generally speaking, is the guide post for minimally acceptable behaviour in the society, thus the copyright law grants content creators the exclusive right to exploit their work by duplicating it if and when they wish to; this right is an offshoot of establishing standards. This is a right provided by the Nigerian Copyright Act 2023. Content creators can reproduce their creations in whatever form they choose.

(c) ***Right to earn from their work:*** the work of content creators must enhance their living conditions which is an essential – if not the essential – object of the entire exercise. This financial enhancement is an integral part of their copyright rights. Consequently, content creators have the right to earn from their works. Copyright law serves as an instrument of economic development, social cohesion, and of creative commons. Copyright can induce financial development but does not by itself effect such development. However, copyright law through the people effect the needed financial or economic development; this can only happen if and when people recognise and respect the rights.

(d) ***Right to transfer/sell ownership:*** - Content creation is considered personal property, similar to other intellectual property rights, and can be mortgaged, licensed, or assigned. In tandem with the provisions of section 30 of the Nigerian Copyright Act, content creation may be

dealt in; for instance Genevieve sold the *Lions Heart* movie to Netflix. Furthermore, it can be used as collateral or security for a loan.

(e) ***Right of paternity and integrity***: - this is also known as the moral rights of an author. This moral right is allodial. Section 14 of the Copyright Act specifically provides that the right to authorship exists for the creator of a work in which copyright is in effect. This authorship right is specifically related to the acts mentioned in sections 9, 10, and 11 of this Act. It further states that a person has the right to object to a work being falsely attributed to him as the author. Content creators have the right to object to changes or modifications to their work that may harm their reputation.

(f) ***Right to litigation***: - content creation are those intangible facets of human creation; they are chose in action which are only enforceable through a court action in the event of a breach. These ideas once put into writing or any form of creativity become an exclusive preserve of the owner of the ideas, and no one can use them without the permission of the owner. However, the human society isn't always made up of law abiding citizens; there are those who would always illegally reap from another's labour and sweat. Hence, in the event of an infringement, content creators have the right to sue. This is because some semblance of order is necessary in the civil society and is thus reflected in the copyright law. When the law is upheld, it establishes order in accordance with social norms.

4.2 Summary of Findings

Although copyright appears straightforward, it's actually a highly intricate and rapidly evolving concept that varies significantly depending on your location, such as Abuja, Lagos, Jamaica, China, New York, or Canada – a lot is dependent on contexts and perspectives. Nonetheless, copyright rules effectively grant content producers the only authority to exploit their works within the ambits of the law.

According to the Nigerian Copyright law, content creators are implicitly considered authors, granting them exclusive rights to:

- Distribute and produce their work.

- Display their work publicly.
- Create derivative works based on the original.
- Exercise moral rights, such as the right to be recognised as the creator.
- Enjoy economic rights, including the right to receive compensation for their work.

These copyright rights acknowledge the content creators' ownership and control over their intellectual property.

5.0 Conclusion and Recommendations

In the Capitalist United States of America, the State of Massachusetts Legislature of 1789 opined that no property is more peculiarly a man's own than that which is produced from the labour of his mind. In other words, content creation, as an aspect of intellectual property, which deals with the creation of the mind is as much a property; and as such a subject of copyright protection. The notion of copyright law is to protect creations which originates from the mind. Copyright in Nigeria is a statutorily granted right exercisable by certain groups of persons, over some designated works of creativity and upon specified terms and conditions as provided by law. Based on this, it is a fundamental principle of copyright law that protection is afforded to material expressions of a work and not to the underlying ideas of a work. Content creators are authors who lucidly express and create ideas in their own unique ways and this affords them the right to be protected under the copyright Act. These rights accrue to them naturally. If and when a work attracts enough attention, then the law automatically provides a shield and fortress that may not be easily overcome. The medium is the message.