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**The Protection of Performers' Rights under the Copyright Act 2022: A**

**Critique**

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**Stephen Alabi\***

**Abstract**

*The protection of Neighbouring Rights is an essential aspect of the legal regime of copyright in every jurisdiction. This is more so in Nigeria where there has been an explosion of the film industry, musical performances and radio and television broadcasting which these rights protect and an even greater explosion of technology with which rights protectable under copyright statutes can be infringed upon. The Nigerian Copyright Act Cap. C28 Laws of the Federation of Nigeria 2004 made copious provisions for the protection of Neighbouring Rights in Part II thereof. However, over time, these provisions became inadequate to secure the protectable interests of performers with the increase in open and sleuth technology and the tenacity of infringers to undermine the interests of rights owners. The agitation of stakeholders to review the statute to accommodate new challenges in the industry has yielded fruit with the signing into law of the new Nigerian Copyright Act 2022 by former President Muhammadu Buhari. This paper looks at the provisions of the new Act to ascertain how well they protect performers' rights against the background of the challenges that led to a review of the old Act. The paper does a comparison of the new provisions with the old provisions and with provisions in similar jurisdictions outside Nigeria. The paper finds that the new Act has greatly improved the protection available to performers and adequately meets international standards.*

**Keywords:** Copyright, Neighbouring Rights, Performers' Rights, Protection and Rights Holders

## 1.0 Introduction

Neighbouring Rights are part and parcel of copyright. They flow from the rights pertaining to intellectual property. Intellectual property rights are the rights accruable to persons over the works they create from their minds. These rights endow such persons with an exclusive right over the use of the works they create for a given period of time.<sup>1</sup> Globally, these rights are subject to legal protection to save creators of intellectual property from unscrupulous elements who not only benefit from the creativity of others illicitly but also deny them the legitimate fruits of their works.

A popular case of infringement of intellectual property rights in Nigeria is that of the late renowned comedian, Moses Adejumo (aka Baba Sala) whose investments in the production of an epic film, *Orun Mooru*, did not fetch the desired fruits but most unfortunately landed him in bankruptcy as a result of the deadly activities of pirates. Adejumo had secured a bank loan of ₦500,000 to produce the film but pirates hijacked it and consigned him to financial disaster from which he did not recover till he died in 2018.<sup>2</sup>

There are two main aspects of intellectual property rights: *copyright and rights related to copyright* and *industrial property*. Neighbouring Rights, also called related rights, belong to the first group. They are rights that traditionally accrue to three sets of rights owners: performers, producers of phonograms and broadcasting organisations.<sup>3</sup> Under international treaties, the subjects of Neighbouring Rights are sound recordings, broadcasts and

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<sup>1</sup> World Trade Organization, *What are intellectual property rights?*, <[www.wto.org](http://www.wto.org)> accessed 29 March 2023

<sup>2</sup> Temitayo Odunlami, 'Baba Sala: The Dénouement', *Daily Trust online* (Lagos, 20 October 2018),  
<<https://dailytrust.com/baba-sala-the-denouement/>> accessed 29 March 2023

<sup>3</sup> WIPO, *Basic Notions Of Copyright And Neighbouring Rights*, Document prepared by the International Bureau of WIPO, <[https://www.wipo.int/edocs/mdocs/tk/en/wipo\\_indip\\_rt\\_98/wipo\\_indip\\_rt\\_98\\_2\\_add.html](https://www.wipo.int/edocs/mdocs/tk/en/wipo_indip_rt_98/wipo_indip_rt_98_2_add.html)> accessed 22 June 2023

performers.<sup>4</sup>The treaties classify these subjects to include audio performances, singing, dancing, acting, films and expressions of folklore.<sup>5</sup> All these fall under the title of Neighbouring Rights on the international plane.

But in Nigeria, Neighbouring Rights do not have a straight forward classification as it obtains under international treaties. While sound recordings and broadcasts are protected by the main copyright law,<sup>6</sup> other aspects of Neighbouring Rights enjoy protection under classification as Rights of Performers and Expressions of Folklore.<sup>7</sup> The old Copyright Act, which designated Part II therein as Neighbouring Rights, provided only for Performers' Right and Expressions of Folklore.<sup>8</sup>

In clear terms, Neighbouring Rights in Nigeria cover only rights of performers and expressions of folklore. Other rights covering rights of producers of phonograms and broadcasts protected under the international regime of Neighbouring Rights are protected by the main copyright law. However, these rights, howsoever couched, deal essentially with the entertainment industry.

The evolution of the law on the rights that constitute Neighbouring Rights impacts on the Nigerian entertainment industry which is one of the fastest growing in the world. Its film industry, Nollywood, is reputed to be the 'second most prolific film industry in the world.'<sup>9</sup>The US Department of Commerce quotes PwC Global Entertainment and Media Outlook as crediting Nollywood with '2.3% contribution and about ₦239 billion (\$660

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<sup>4</sup> These treaties include the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, Agreement on Trade Related Aspects of Intellectual Property Rights (the TRIPS Agreement) and Beijing Treaty on Audiovisual Performance 2012

<sup>5</sup> See Article 2 (a) Beijing Treaty on Audiovisual Performance 2012

<sup>6</sup> See s. 1 (1) Copyright Act Cap C28, LFN 2004; s. 2 (1) Copyright Act 2022

<sup>7</sup> See ss. 63 and 74 Copyright Act 2022

<sup>8</sup> See ss. 26-33 Copyright Act Cap C28, LFN 2004

<sup>9</sup> US Dept. of Commerce, *Nigeria – Country Commercial Guide – Media and Entertainment, International Trade Administration*, <<https://www.trade.gov.country-commercial-guides/nigeria--media-and-entertainment>> accessed 29 March 2023

million)' to the nation's Gross Domestic Product, GDP.<sup>10</sup> The report added that Nollywood and music recording industry 'exceeded 2020 projected \$806 million revenue contributing about ₦730 billion (\$1.8 billion) to the country's GDP.'<sup>11</sup>

The International Monetary Fund projected that Nollywood would generate \$10.8 billion this year and account for 1.4% of the nation's GDP while PwC Global Entertainment and Media Outlook projected an annual growth rate of 8.6% and a compound annual growth rate (CAGR) of 19.3% for the Nigerian entertainment industry from 2018 to 2023.<sup>12</sup> The report further stated that,

*'The country's television and video market grew by 7.49% to \$806 million in 2020, up from \$732 million in 2018. The industry is projected to earn about \$900 million in 2023.'*<sup>13</sup>

Local estimates say the copyright industry contributes about ₦1.2 trillion annually to the Nigerian economy while the Nollywood film industry alone generates annual revenue of between US\$200 and \$300 million.<sup>14</sup> The rebasing of the Nigerian economy in 2014 classified the Nollywood industry as having made a huge leap to about ₦9 trillion in size from being classified earlier among 'other services' that barely contributed ₦5 billion to the nation's annual GDP.<sup>15</sup>

In June 2014, the Association of Movie Producers in Nigeria estimated that the film industry created over two million jobs within 20 years.<sup>16</sup> In January 2022, Jobberman, a job interview

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<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Afam Ezekude, 'Nigeria's Anti-Piracy Drive Yields Result', *WIPO Magazine*,

<[https://www.wipo.int/wipo\\_magazine/en/2012/03/article\\_0004.html](https://www.wipo.int/wipo_magazine/en/2012/03/article_0004.html)> accessed 29 March 2023

<sup>15</sup> 'How Entertainment Contributes to Nigeria's GDP', *Leadership newspaper*, (Lagos, 9 April 2014)

<<https://www.latestnigeriannews.com/news/605357/how-entertainment-contributes-to-nigerias-gdp.html>> accessed 29 March 2023

<sup>16</sup> 'Nollywood Adds Two Million Jobs To Nigerian Economy in 20 Years', *Saharareporters*, (Lagos, 24 June 2014), <[www.saharareporters.com](http://www.saharareporters.com)> accessed March 29, 2023

firm, projected that the nation's creative industry 'could create an additional 2.7 million jobs in 2025.'<sup>17</sup> Early in the expansion of the creative industry in Nigeria, it was estimated that illicit digital duplication, online piracy and unauthorized rental of video works in Nigeria cost rights holders a whopping sum of ₦4.2 billion.<sup>18</sup>

It has been estimated that the entertainment industry lost over ₦81 billion to counterfeiting and piracy in 20 years between 2006 and 2016.<sup>19</sup> It was revealed in 2012 that the Nigerian Copyright Commission 'undertook 26 anti-piracy raids, made 145 arrest and seized over 6 million pirated works – including films, sound recordings, books, software and broadcast equipment – with a street value of some US\$4.6 million' the previous year alone.<sup>20</sup>

The estimated population of Nigeria as at May 2023 is 221,982,539 which is equivalent to 2.64% of the global population.<sup>21</sup> The nearest to Nigeria is Ethiopia which has a population of 126.5 million by 2023 figures, followed by Egypt with 112.5 million.<sup>22</sup> With this, Nigeria has the largest consumer market in Africa. The potential for illicit profiting from others' intellectual efforts in such a huge consumer market is a cause for concern.

## 2.0 Meaning and Nature of Neighbouring Rights

Neighbouring rights are, technically speaking, adjuncts to copyright. Also known as related rights and rights neighbouring to copyright, they were created for three categories of people

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<sup>17</sup> Bunmi Bailey, 'Fast growing Nollywood creates the most jobs in 5 yrs', *BusinessDay online*, (Lagos, 10 January 2022) <<https://businessday.ng/big-read/article/fast-growing-nollywood-creates-the-most-jobs-in-5yrs/>> accessed 29 March 2023

<sup>18</sup> Sunday Osanyituyi, 'The Effects of Piracy in Nigeria', in Edet Essien, 'Video Film Piracy in Nigeria: Interfacing to integrate the Pirate', *A Journal of Contemporary Research*, [2016], (14) (1), 159

<sup>19</sup> KM Waziri, 'Intellectual Property Piracy and Counterfeiting in Nigeria: The Impending Economic and Social Conundrum', in Edet Essien, 'Video Film Piracy in Nigeria: Interfacing to integrate the Pirate', *A Journal of Contemporary Research*, [2016], (14) (1), 159

<sup>20</sup> (n. 14)

<sup>21</sup> Worldometer, 'Nigeria Population (2023)', <[www.worldometer.info/nigeria-population/](http://www.worldometer.info/nigeria-population/)> accessed May 29, 2023

<sup>22</sup> World Population Review, Countries in Africa 2023, <<https://worldpopulationreview.com/country-rankings/countries-in-africa>> accessed 22 June 2023

who are not technically, authors: performing artists, producers of phonograms, and those involved in radio and television broadcasting.<sup>23</sup>

The nature of Neighbouring Rights relates to the protection of the 'legal interests of certain persons and legal entities who either contribute to making works available to the public or produce subject matter which, will (sic) not qualifying as "works" under the copyright systems of all countries, express creativity or technical and organizational skill sufficient to justify recognition of a copyright-like property right.'<sup>24</sup> They are so called because 'the law of neighbouring rights deems that the productions which result from the activities of such persons and entities are deserving of legal protection in themselves, as they are "neighbours" to the protection of works of authorship under copyright.'<sup>25</sup>

Both copyright and neighbouring rights are similar to those granted by intellectual property titles, but the moral right is of greater importance for copyright and neighbouring rights than for other intellectual property rights as it protects the integrity of a work.<sup>26</sup> Moral right is the personal and non-economic right that protects the honour and reputation of the maker of a work. It protects the 'author's rights to be known as the author of a work' and 'ensures that the work [is] not distorted, mutilated, or misrepresented in a way that would injure the author's reputation.'<sup>27</sup>

The need for neighbouring rights arose in the middle of the last century with the invention of the gramophone which all but extinguished the need to contract performers to play songs live.

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<sup>23</sup> *About Copyright & Neighbouring Rights*, European Space Agency website <[www.esaint>AboutUs/Industry/Intel](http://www.esaint>AboutUs/Industry/Intel)> accessed 12 March 2023

<sup>24</sup> (n. 3)

<sup>25</sup> Ibid

<sup>26</sup> (n. 23)

<sup>27</sup> Deborah E. Bouchoux, *Intellectual Property: The Law of Trademarks, Copyrights, Patents and Trade Secrets*, (Delmar Cengage Learning, New York, 4<sup>th</sup> edn 2012) 220

All a radio station needed to do was to buy a record and play it on-air.<sup>28</sup> The technological development that took place in the world after World War I created these new interests that required copyright protection. There was no international legal regime to protect the interests of producers of phonograms, performers and broadcasters. They were thus vulnerable to others cornering their remuneration.<sup>29</sup>

In 1961, European lawmakers acted fast and agreed to the International Convention of Rome for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations. The Convention protects the rights of performers in performances, the rights of producers in phonograms, and the rights of broadcasting organisations in broadcasts.<sup>30</sup> Over the years, various international treaties have been made to offer further protection of Neighbouring Rights for beneficiaries.<sup>31</sup>

### **3.0 Neighbouring Rights in Nigeria before the Copyright Act 2022**

In Nigeria, the Neighbouring Rights recognised by law are slightly different from their meaning in the global context. While international statutes codify rights of performing artists, producers of phonograms, and those involved in radio and television broadcasting under Neighbouring Rights, Nigerian statutes classify only rights of performers and expressions of folklore as Neighbouring rights.<sup>32</sup> The other rights pertaining to producers of phonograms and broadcasts are protected as copyright.<sup>33</sup> In effect, what amount to Neighbouring Rights under Nigerian law are rights of performers and expressions of folklore.

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<sup>28</sup> Tom Pakinkis, 'Everybody Needs Good Neighbouring Rights', <[www.musicweek.com](http://www.musicweek.com)> accessed 12 March 2023

<sup>29</sup> Tanya Aplin and Jennifer Davis, *International Property Law: Text, Cases & Materials*, (Oxford University Press, 3<sup>rd</sup> edn, 2017) 66-67

<sup>30</sup>(n. 26)

<sup>31</sup> (n. 4)

<sup>32</sup> (n. 7)

<sup>33</sup> (n. 6)

Before the signing into law of the Copyright Act 2022, the regulations governing Neighbouring Rights in Nigeria were codified in Part II of the old Copyright Act.<sup>34</sup> Part II consisted of eight sections, Section 26 to 33. It dealt essentially with the right of a performer over his performance, what constituted infringement of that right, and the remedies available to the performer for such infringement. It included protection of expressions of folklore and infringement thereof.

For Performers' Right, the Act stipulated that a performer shall have the exclusive right to control, in relation to his performance, the following acts: performing; recording; broadcasting live; reproducing in any material form; and adaptation of the performance.<sup>35</sup> The Act defined 'performance' to include: a dramatic performance (which includes dance and mime); a musical performance; and a reading or recitation of literary act or any similar presentation which or so far as it is, a live performance given by one or more individuals.<sup>36</sup> It put the duration of a performer's right at 50 years.<sup>37</sup>

By the provisions of the Act, a performer's right was infringed by a person who, without the performer's consent or authorisation in writing, did any of the following:

a. made a recording of the whole or substantial part of a live performance; provided that, where the consent sought was to make a recording of the work for research, private or domestic use

, such consent shall not be unreasonably refused;

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<sup>34</sup> Copyright Act Cap C28, LFN 2004

<sup>35</sup> Copyright Act Cap C28, LFN 2004 s. 26(1)(a-e)

<sup>36</sup> Copyright Act Cap C28, LFN 2004 s. 26(2)(a-c)

<sup>37</sup> Copyright Act Cap C28, LFN 2004 s. 27: *The right conferred by this Act shall subsist in relation to the performance until the end of the period of fifty years from the end of the year in which the performance first took place.*



- b. broadcast live, or included live in a cable programme, the whole or a substantial part of the live performance;
- c. performed in public the whole or a substantial part of the performance;
- d. showed or played in public the whole or a substantial part of the performance for commercial purposes;
- e. broadcast, or included in a cable programme, a substantial part of the performance by means of recording which was, and which that person knew or had reason to believe was made without the performer's right;
- f. imported into the country otherwise than for his private or domestic use, a recording of a performer's work which was an infringing recording; or
- g. in the course of trade or business, sold or let for hire, offered, distributed or displayed for sale or hire, a recording of a performer's work which was an infringing recording.<sup>38</sup>

Infringement of a Performer's Right was actionable under the Act. It provided for both civil and criminal actions against anyone who infringed a performer's right. Under civil action, an infringement of a right protected under the Act was actionable by the person entitled to the right as a breach of statutory duty and the performer was entitled to damages, injunction, and account for profit or conversion. Where a person had in his possession, custody or control, in the course of trade or business or otherwise than for a private or domestic use, an unauthorised recording of a performance, a person having the performer's right or recording

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<sup>38</sup>Copyright Act Cap C28, LFN 2004 s. 28

rights in relation to the performance was entitled to an order of the court that the recording be forfeited and delivered up to him.<sup>39</sup>

A person was criminally liable if he did any of the infringing acts set out in the Act, unless he proved to the satisfaction of the court that he did not know that his conduct was an infringement of the performer's right. Such a person was liable on conviction -

- a. in the case of an individual to a fine not exceeding ₦10,000,
- b. in the case of a body corporate, to a fine of ₦50,000
- c. in all other cases, to a fine of ₦100 for each copy dealt with in contravention or to imprisonment for twelve months or to both such fine or imprisonment.

A court before which an offence against a performer's right was tried was empowered to order that the recording or any other part thereof be delivered to the performer.<sup>40</sup>

The Act protected expressions of folklore against reproduction; communication to the public by performance, broadcasting, distribution by cable or other means; and adaptations, translations, and other transformations.<sup>41</sup> It however made certain exceptions to the rule when such were made either for commercial purposes or outside their traditional or customary context. The exceptions included: the doing of any of the acts by way of fair dealing for private and domestic use, subject to the condition that, if the use was public, it should be accompanied by an acknowledgment of the title of the work and its source; the utilisation for purposes of education; utilisation by way of illustration in an original work of an author,

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<sup>39</sup>Copyright Act Cap C28, LFN 2004 s. 29

<sup>40</sup>Copyright Act Cap C28, LFN 2004 s. 30

<sup>41</sup>Copyright Act Cap C28, LFN 2004 s. 31(1)

provided that, the extent of such utilisation was compatible with fair practice; and the incidental utilisation of expressions of folklore.<sup>42</sup>

The Act also provided for both civil and criminal actions against anyone who infringed the protective right on expressions of folklore. Under civil action, any person who, without the consent of the Nigerian Copyright Commission, used an expression of folklore in a manner not permitted by the Act, shall be in breach of statutory duty and be liable to the Commission in damages, injunction and any other remedies as the court may deem fit to award in the circumstances.<sup>43</sup>

From the above provisions, the Act protected the economic rights accruing to the performer but it did not explicitly protect his moral rights. The Act granted economic rights to the performer to control the reproduction, adaptation, communication, rental, lending and distribution of his works but left his moral rights to presumption.<sup>44</sup>

Whereas the Act granted moral right to authors under Section 12, it did not do so for performers. By this, performers were robbed of the benefits accruable from exercising moral right over their works. This was a gap that needed to be reviewed and addressed for performers to have full rights over their works.<sup>45</sup>

### **3.1 Neighbouring Rights under the Nigerian Copyright Act 2022**

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<sup>42</sup>Copyright Act Cap C28, LFN 2004 s. 31(2)

<sup>43</sup>Copyright Act Cap C28, LFN 2004 s. 32

<sup>44</sup> Lawal-Arowolo, Ayoyemi, 'Performers' Rights Under the Nigerian Copyright Act: An Appraisal of the Rome Convention', *Social Science Research Network* <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1609983](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1609983)> accessed 23 June 2023

<sup>45</sup> Dorcas A. Odunaike, 'Performers' Rights and Evolution of Performance in Nigeria', *Journal of Law, Policy and Globalization*, [2016] (53) 67 ISSN 2224-3259 (Online)

The new Copyright Act 2022, which former President Muhammadu Buhari assented to on Friday, March 17, 2023, repealed the Copyright Act, Cap. C28, Laws of the Federation, 2004.<sup>46</sup> Its objectives are to:

- 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 effective regulation, administration, and enforcement of the provisions of the Act.<sup>47</sup>

Without expressly mentioning Neighbouring Rights like the old Act did in its Part II except as an explanatory memorandum, the new Act has expanded the scope of Neighbouring Rights beyond what the old Act provided. But unlike the old Act, the new Act has different parts for rights of performers and expressions of folklore.<sup>48</sup> Essentially, these form the Neighbouring Rights that the Act protects. The others are protected as a matter of course by the main copyright clauses.<sup>49</sup>

Under the new Act, a performer now has exclusive right to control, in relation to his performance, fixation of his unfixed performance; reproduction of a fixation of his performance, in any manner or form; distribution to the public by sale or other transfer of

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<sup>46</sup> Itodo Daniel Sule, 'Buhari Signs Copyright Bill To Protect Authors, Toughens Sanctions,' Daily Trust, <<https://dailytrust.com/buhari-signs-copyright-bill-to-protect-authors-toughens-sanctions/>>(Lagos, 23 March 2023) accessed 23 March 2023

<sup>47</sup> Ibid

<sup>48</sup> Copyright Act 2022 Ss. 63-75

<sup>49</sup> Copyright Act Cap C28, LFN 2004 s. 2

ownership, of a fixation of his performance, or copies thereof, that have not been subject to a distribution authorised by the performer; broadcasting or communicating to the public an unfixed performance of such performer, unless the performance used in the broadcast or communication to the public is itself a broadcast performance; renting or lending to the public or public lending of a fixation or copies of the fixation of his performance irrespective of the ownership of the copy rented or lent; and making available to the public of his fixed performance by wire or wireless means, in a way that members of the public may access them from a place or at a time individually chosen by them.<sup>50</sup>

The Act classifies performance to include dramatic performance, which includes dance and mime; musical performance; and reading or recitation of literary act or any similar presentation which is a live performance given by one or more individuals.<sup>51</sup> This is in para materia with S. 26 (2) of the old Act. The new Act adds a subsection which defines who a performer is. The term 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.<sup>52</sup>

The new Act introduced six clauses covering areas that the old Act did not cover. These are:

1. Protected performance: Under this, the Act clarifies that the rights granted to a performer shall apply in respect of any performance where, on the date of the performance, at least one of the performers is a citizen of, or habitually resident in, Nigeria, or the performance takes

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<sup>50</sup> Copyright Act 2022 s. 63(1)

<sup>51</sup> Copyright Act 2022 s. 63(2)

<sup>52</sup> Copyright Act 2022 s. 63(3)

place or is first fixed in Nigeria or in a country which is a party to an obligation in a treaty or other international agreement to which Nigeria is party.<sup>53</sup>

2. Presumption of consent: The Act clears the air on the presumption of a performer's consent to the effect that, in the absence of express agreement to the contrary, a performer's consent to the broadcasting of his performance shall be deemed to include his consent to an authorised rebroadcasting of his performance, the fixation of his performance for broadcasting purposes and the reproduction for broadcasting purposes of such fixation.<sup>54</sup>

3. Moral rights of performers: Unlike the old Act, the new Act makes provision for moral rights for performers. A performer now has the right to be identified as the performer in connection with any use of his performance or the fixation thereof; and to object, and prevent any distortion, mutilation or other modification of his performance or the fixation of the performance, and any other derogatory action in relation thereto where such action will be or is prejudicial to his honour or reputation.<sup>55</sup> These rights are however not transmissible during the life of the performer, but upon his death, they become transmissible by testamentary disposition or by operation of law.<sup>56</sup>

4. Collective performances: The Act takes care of who gives consent where several performers take part in the same performance as a group. According to the Act, it shall suffice, if the consent is given by any person in charge of the group and any payment for the use of the performance may, unless otherwise stipulated, be made to such person and, subject to any contract between them, be divided equally among all the performers.<sup>57</sup>

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<sup>53</sup>Copyright Act 2022s. 64(1)

<sup>54</sup>Copyright Act 2022s. 65

<sup>55</sup>Copyright Act 2022s. 66(1)

<sup>56</sup>Copyright Act 2022s. 66(2)

<sup>57</sup>Copyright Act 2022s. 67

5. Exceptions to performer's rights: Unlike the old Act, the new Act makes provisions for exceptions to performer's rights. The exceptions include where a performer consents to the inclusion of his performance in a visual or audio-visual fixation, and where a performance, a fixation of a performance or a reproduction of such a fixation is used for certain fair use purposes. These purposes include demonstration in good faith of radio or television receivers or recording or playback equipment to clients by a dealer in those receivers or that equipment on his premises; reproduction of short extracts from an object of performer's rights in reports on current events, to the extent justified by that purpose; research or private study of an object of performer's rights kept in publicly accessible libraries, educational establishments, museums or archives, on the premises of the said institutions; reproduction for the benefit of people with disability, which is directly related to the disability and of a non-commercial nature, to the extent required by the disability; and making of an ephemeral recording of an object of performer's rights by broadcasting organizations by means of their own facilities and for their own broadcasts, provided that the recordings may be preserved for a period not exceeding thirty days and must be erased after their use for broadcasting; and the recordings of an exceptional documentary character may be transferred to designated archives for preservation.<sup>58</sup>

6. Transfer of performer's rights in audio-visual fixations: The Act makes provisions for the performer to be able to assign his rights or give a licence of this in accordance with the precepts prescribed by the Act in Section 30.<sup>59</sup> A performer who has authorised the fixation of his performance in an audio-visual work shall, in the absence of any agreement to the contrary, be deemed to have granted to the person by whom the arrangements for such

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<sup>58</sup>Copyright Act 2022s. 68

<sup>59</sup>Copyright Act 2022s. 69(1)

fixation is made, the exclusive rights accruable to him in Section 63 (1) of the Act.<sup>60</sup> However, notwithstanding this provision, the Act grants a performer to share in any payment received by the person who arranges for the fixation of the audio-visual work in respect of the broadcast or communication to the public of the fixed performance.<sup>61</sup>

Like the old Act, the new Act prescribes a period of 50 years for the duration of a performer's rights commencing from the end of the year when the performance was first fixed.<sup>62</sup> The Act has compressed the acts and omissions that constitute infringement of performer's rights to four from seven. They are:

- a. doing or causing any person to do any of the acts which constitute rights of performers in Section 63 of the Act;
- b. broadcasting a substantial part of the live performance by means of a recording, which the person knows or has reason to believe was made without the performer's consent;
- c. importing for reasons other than his private or domestic use a recording of a performer's work which is an infringing recording; or
- d. in the course of trade or business, selling or letting for hire, offering, distributing or displaying for sale or hire, a recording of a performer's work which is an infringing recording.<sup>63</sup>

The Act retains the provisions of Section 29 of the old Act which makes any breach of the rights of a performer as stated above actionable as a breach of statutory duty and the person

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<sup>60</sup>Copyright Act 2022s. 69(2)

<sup>61</sup>Copyright Act 2022s. 69(3)

<sup>62</sup>Copyright Act 2022s. 70

<sup>63</sup>Copyright Act 2022s. 71



having the right entitled to damages, injunction, and account of profits or conversion.<sup>64</sup>

Where a person, in the course of trade or business, has in his possession, custody or control, an unauthorised recording of a performance, the person having the performer's right or recording right in relation to the performance, shall be entitled to an order of the court that the recording be forfeited and delivered up to him.<sup>65</sup>

Section 30 of the old Act on Criminal liability in respect of infringement of performer's right is reproduced in the new Act with the modification of individual fine from not exceeding ₦10,000 to not less than ₦100,000 and corporate fine from ₦50,000 to not less than ₦2,000,000.<sup>66</sup> The provisions of the old Act on protection of expressions of folklore, its infringement and criminal liability thereof in Section 31 to 33 are reproduced in the new Act without any amendment or alteration except in the increase in corporate fine for criminal liability from ₦500,000 to not less than ₦2,000,000.<sup>67</sup>

The new Act retains the Nigerian Copyright Commission as the regulatory body in charge of copyright with responsibilities covering enforcement, granting of compulsory licences, approval of organisations as collecting societies, making of regulations (subject to the approval of the supervising Minister), and appointment of Copyright Inspectors, now designated as Copyright Officers.<sup>68</sup> Like in the old Act, jurisdiction for the trial of offences or disputes under the new Act lies exclusively with the Federal High Court.<sup>69</sup>

Flowing from above, performers now enjoy exclusive rights of control over the fixation and reproduction (of a fixation) of their live performances and the distribution and accessibility of their fixed and unfixed performances to the public. In addition, there has been an upward

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<sup>64</sup>Copyright Act 2022s. 72(1)

<sup>65</sup>Copyright Act 2022s. 72(2)

<sup>66</sup>Copyright Act 2022s. 73

<sup>67</sup>Copyright Act 2022ss. 74-76

<sup>68</sup>Copyright Act 2022ss. 77-78

<sup>69</sup>Copyright Act 2022s. 103

adjustment of fines for infractions of performers' rights to conform to current economic realities.<sup>70</sup>

It is significant that the protection of the rights of performers under the new Act is applicable to citizens and residents in Nigeria and performances that take place in Nigeria and extends to performances that take place in countries which are parties to treaties or international agreements to which Nigeria is a party. The Act is seen as a major advancement in the combat against all forms of copyright infringement with its wide remedies for infractions.<sup>71</sup>

It is noteworthy that the Act protects folklore from exploitation and makes it mandatory that consent must be obtained from the indigenous group and or the regulatory body before folklore can be used for commercial purposes. It is also good that the breach of this is criminalised with appropriate penalties.<sup>72</sup>

#### **4.0 Neighbouring Rights in Other Jurisdictions**

The intellectual property markets in Ghana and South Africa should interest us in Nigeria because Nigerian artistes are quite popular in these countries. In this respect, it is profitable that we examine the neighbouring rights statutes in these jurisdictions.

#### **4.1 Neighbouring Rights in Ghana**

In Ghana, the statute governing neighbouring rights is the Copyright Act, 2005.<sup>73</sup> It does not specifically mention Neighbouring Rights but has provisions for the 'Protection of

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<sup>70</sup>Adeoluwa Ademola, Ifeoluwa Ebiseni and Nenjom Asuk, 'An overview of the Copyright Act 2022', *BusinessDay* (Lagos, 8 May 2023) <<https://businessday.ng/news/legal-business/article/an-overview-of-the-copyright-act-2022/>> accessed 24 June 2023

<sup>71</sup> Emmanuel Agherario and Esther Ugwuezi, 'Notable Provisions Of The Copyright Act 2022', *Olisa Agbakoba Legal*, <<https://oal.law/notable-provisions-of-the-copyright-act-2022/>> accessed 25 June 2023

<sup>72</sup> Maureen Esegi, 'Nigerian Copyright Act 2023: An In-Depth Overview', *The Metro Lawyer*, (Abuja, 1 June 2023) <<https://themetrolawyer.com.ng/nigerian-copyright-act-2023-an-in-depth-overview-by-esegi-maureen/>> accessed 24 June 2023

<sup>73</sup> Ghana Copyright Act, 2005 (Act 690)

Performers and Broadcasting Organisations'<sup>74</sup> and the 'Use of Folklore'<sup>75</sup> which aggregate to what amount to Neighbouring Rights in Nigeria.

Under it, a person shall not without the authorization of a performer broadcast or communicate a performance of the performer directly or indirectly to the public except where the broadcast or communication to the public is made from a previously authorised fixation, or where the transmission is one that has been authorised by the broadcasting organisation that transmits the first performance; arrange the fixation of a performance not previously fixed on a physical medium; exercise the right of reproduction of the fixation in any manner or form; provide the first public distribution of the original or a copy of a fixation of a performance; provide or obtain a rental of the original or a copy of the performance for the purpose of direct or indirect commercial advantage irrespective of the ownership of the original or copy rented; or make available to the public a fixed performance by wire or wireless means, in a way that members of the public may access it from a place and at a time individually chosen by them.<sup>76</sup>

The Act grants performers the exclusive right to authorise or prohibit the rebroadcasting, rental and distribution of a fixation of the performance; the fixation of the performance; the reproduction of a fixation of the performance; or the communication to the public of the performance except where the performance has been lawfully fixed on audio visual or audio recording media which may be broadcast without the consent of the performer, if the recordings have been published; subject to the payment of equitable remuneration to the

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<sup>74</sup> Ghana Copyright Act, 2005 (Act 690) ss. 28 -37

<sup>75</sup> Ghana Copyright Act, 2005 (Act 690) s. 64

<sup>76</sup> Ghana Copyright Act, 2005 (Act 690) s. 28(1)

performer.<sup>77</sup> Where the performer is a group, the leader or a representative exercises this exclusive right on behalf of the group.<sup>78</sup>

The Act protects the rights of a performer in respect of the performance for a period of 70 years starting from the end of the calendar year in which the performance was fixed on a physical medium or in the absence of such a fixation, from the end of the calendar year in which the performance took place.<sup>79</sup>

The exclusive rights granted under the Ghana Copyright Act do not cover fair usage such as acts concerned with private use; the reporting of current events, which involves the use of only short excerpts of a performance, sound recording, audio visual work or broadcast; teaching or scientific research; quotations in the form of short excerpts of a performance, sound recording, audio-visual work or broadcast, which are compatible with fair practice and are justified by the informative purpose of those quotations.<sup>80</sup>

The Act grants performers to enjoy royalty for the performance of their sound recording or audio-visual work in any public place by means of broadcasting, cinematography, jukebox or other apparatus.<sup>81</sup> It protects expressions of folklore against reproduction; communication to the public by performance, broadcasting, distribution by cable or other means; and adaptation, translation and other transformation and vests the rights of folklore in the President on behalf of and in trust for the people of the Republic.<sup>82</sup>

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<sup>77</sup>Ghana Copyright Act, 2005 (Act 690) s. 28(2)

<sup>78</sup>Ghana Copyright Act, 2005 (Act 690)s. 28(4)

<sup>79</sup>Ghana Copyright Act, 2005 (Act 690)s. 29

<sup>80</sup>Ghana Copyright Act, 2005 (Act 690)s. 35

<sup>81</sup>Ghana Copyright Act, 2005 (Act 690)s. 37(1)

<sup>82</sup>Ghana Copyright Act, 2005 (Act 690)s. 4

The Act does not make particular provisions for infringement of neighbouring rights. Rather, it has a section captioned *Copyright and related offences*<sup>83</sup> under which infringers may be apprehended and prescribes fines and imprisonment of not more than three years for convicts.<sup>84</sup>

The Act does not provide specifically for expressions of folklore. It only makes provision for an intended user of folklore to apply to the National Folklore Board<sup>85</sup> for permission. The application is done in a prescribed form accompanied by payment of a fee determined by the Board.<sup>86</sup> The functions of the Board are mainly to administer, monitor and register expressions of folklore and preserve and monitor their use.<sup>87</sup>

#### **4.2 Neighbouring Rights in South Africa**

In South Africa, the rights that approximate to the Neighbouring Rights in Nigeria are the rights of performers and expressions of folklore. Expressions of folklore are not specifically mentioned by the law protecting them but are coded as 'indigenous cultural expressions.' While rights of performers are governed and protected by the Performers' Protection Act,<sup>88</sup> as amended by the Performers' Protection Amendment Act,<sup>89</sup> indigenous cultural expressions are covered by the Protection, Promotion, Development and Management of Indigenous Knowledge Act.<sup>90</sup> In effect, unlike Nigeria and Ghana which have one statute each, two statutes govern rights of performers and expressions of folklore in South Africa.

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<sup>83</sup>Ghana Copyright Act, 2005 (Act 690) s. 42

<sup>84</sup>Ghana Copyright Act, 2005 (Act 690) s. 43

<sup>85</sup>Ghana Copyright Act, 2005 (Act 690) s. 59

<sup>86</sup>(n. 75)

<sup>87</sup>Ghana Copyright Act, 2005 (Act 690) s. 63

<sup>88</sup>South Africa Performers' Protection Act No. 11 of 1967

<sup>89</sup>South Africa Performers' Protection Amendment Act No. 8, 2002

<sup>90</sup>South Africa Protection, Promotion, Development and Management of Indigenous Knowledge Act No. 6 of 2019

In South Africa, no person shall, without the consent of the performer, broadcast or communicate to the public an unfixed performance of such performer, unless the performance used in the broadcast or the public communication is itself already a broadcast performance [or is made from a fixation of the performance or from a reproduction of such a fixation]; or make a fixation of the unfixed performance of such performer; or make a reproduction of a fixation of a performance of such if the original fixation, other than a fixation excluded by the Act from the necessity for obtaining the consent of the performer, was itself made without his or her consent; or if the reproduction is made for purposes other than those in respect of which such performer gave his or her consent to the making of the original fixation or of a reproduction thereof; or if the original fixation was made in accordance with the provisions of the Act, and the reproduction is made for purposes not covered by those provisions; or by means of a fixation of a performance published for commercial purposes, without payment of a royalty to the performer concerned broadcast the performance; cause the performance to be transmitted in a diffusion service unless such service transmits a lawful broadcast, including the performance, and is operated by the original broadcaster; or cause any communication of the performance to the public.<sup>91</sup>

Like in Ghana, the Act confers the rights aforementioned on the leader or representative of a group where the performer is a group.<sup>92</sup> It protects these rights for a period of 20 years.<sup>93</sup> It grants non-performers to use the works protected by it if such are for the purposes of private study or personal and private use; criticism or review or reporting on current events, provided that not more than short excerpts from the performance are used and, whenever possible, the performer's name or the names of the leading performers are acknowledged; or teaching or scientific research; or legal proceedings; or for the demonstration of recording, amplifying or

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<sup>91</sup> South Africa Performers' Protection Act 1967 (as amended) s. 5

<sup>92</sup> South Africa Performers' Protection Act 1967 (as amended) s. 6(1)

<sup>93</sup> South Africa Performers' Protection Act 1967 (as amended) s. 7

similar apparatus, provided that the demonstration is made by a licensed dealer on his premises to a specific client.<sup>94</sup>

The Act provides for offences and penalties. Any infringement of the rights protected by the Act in the form of knowingly selling or letting for hire or distributing for the purposes of trade, or by way of trade exposing or offering for sale or hiring, any fixation of a performance or a reproduction of such a fixation or making, or possessing, a plate or similar contrivance for the purpose of making fixations of a performance or reproductions of such fixation amounts to an offence and punishable by fine or imprisonment not exceeding six months.<sup>95</sup>

The performer may also sue the infringer for damages or interdict.<sup>96</sup>

The Protection, Promotion, Development and Management of Indigenous Knowledge Act defines indigenous cultural expressions as expressions that have a cultural content that developed within indigenous communities and have assimilated into their cultural and social identity. Such include but are not limited to phonetic or verbal expressions, musical or sound expressions, expressions by action and action tangible expressions.<sup>97</sup> Indigenous cultural expressions are part of indigenous knowledge which the Act protects.<sup>98</sup>

The Act grants exclusive rights to indigenous communities holding indigenous knowledge to enjoy any benefits arising from its commercial use, be acknowledged as the origin of the knowledge and limit its unauthorised use.<sup>99</sup> The Act provides for offences and penalties.

Anyone who knowingly makes commercial use of indigenous knowledge in a manner not in

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<sup>94</sup> South Africa Performers' Protection Act 1967 (as amended) s. 8(2)

<sup>95</sup> South Africa Performers' Protection Act 1967 (as amended) s. 9(1)

<sup>96</sup> South Africa Performers' Protection Act 1967 (as amended) s. 10

<sup>97</sup> South Africa Indigenous Knowledge Protection Act s. 1

<sup>98</sup> s. 1 of the Act defines 'indigenous knowledge' as knowledge which has been developed within an indigenous community and has been assimilated into the cultural and social identity of that community, and includes—

(a) knowledge of a functional nature;

(b) knowledge of natural resources; and

(c) indigenous cultural expressions.

<sup>99</sup> South Africa Indigenous Knowledge Protection Act s. 13 (1)

accordance with an agreement entered into with the indigenous community and infringes its rights is guilty of an offence and on conviction liable to pay a fine as prescribed.<sup>100</sup>

## **5.0 International Legal Framework for Neighbouring Rights**

In addition to the Rome Convention, there are other international instruments that are geared toward protecting Neighbouring Rights. These include the Agreement on Trade Related Aspects of Intellectual Property Rights (the TRIPS Agreement) and Beijing Treaty on Audiovisual Performance 2012

### **5.1 International Convention of Rome for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations**

The Rome Convention covers performers, producers and broadcasting organisations of recordings under copyright. It protects performers (actors, singers, musicians, dancers and other persons who perform literary or artistic works) against the broadcasting and the communication to the public of their live performance, the fixation of their live performance, and the reproduction of such a fixation if the original fixation was made for purposes different from those for which they gave their consent.<sup>101</sup>

It grants producers of phonograms the right to authorise or prohibit the direct or indirect reproduction of their phonograms.<sup>102</sup> It empowers broadcasting organisations to authorise or prohibit the rebroadcasting of their broadcasts, the fixation of their broadcasts, the reproduction of such fixations, and the communication to the public of their television

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<sup>100</sup>South Africa Indigenous Knowledge Protection Act s. 28

<sup>101</sup> Rome Convention Art. 7

<sup>102</sup> Rome Convention Art. 10



broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.<sup>103</sup>

The Rome Convention provides protection duration of 20 years for neighbouring rights<sup>104</sup> and made room for certain exceptions in national laws to the rights granted under it. The exceptions are in respect of private use; use of short excerpts in connection with the reporting of current events; ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts; use solely for the purpose of teaching or scientific research; and in any other cases where the national law provides exceptions to copyright in literary or artistic works.<sup>105</sup>

## **5.2 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**

This Agreement, which became effective on January 1, 1996, introduced intellectual property law into the international trading system for the first time. It sets standards for members of the World Trade Organization (WTO) to provide copyright rights covering content producers, including performers, producers of sound recordings and broadcasting organisations, among others.<sup>106</sup>

The Agreement makes specific provisions for the protection of performers and extended the term of protection to 50 years as against 20 years prescribed by the Rome Convention.<sup>107</sup> Under the Agreement, performers shall have the possibility of preventing the unauthorized fixation of their performance on a phonogram, the reproduction of such fixations

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<sup>103</sup> Rome Convention Art. 13

<sup>104</sup> Rome Convention Art. 14

<sup>105</sup> Rome Convention Art. 15

<sup>106</sup> World Trade Organisation, *Overview: The TRIPS*

*Agreement*, <[https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm)> accessed 25 June 2023

<sup>107</sup> TRIPS Agreement Art. 14 (5)

and the unauthorized broadcasting by wireless means and the communication to the public of their live performance.<sup>108</sup>

In the same manner, the Agreement covers exclusive reproduction right of producers of phonograms<sup>109</sup> and the right of broadcasting organisations to prohibit the unauthorised fixation, reproduction of fixations and re-broadcasting by wireless means of their broadcasts.<sup>110</sup>

The Agreement provides general principles for the enforcement of rights and 'contains provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures, which specify, in a certain amount of detail, the procedures and remedies that must be available so that right holders can effectively enforce their rights.'<sup>111</sup>

### **5.3 WIPO Performances and Phonograms Treaty (WPPT)**

This is an international treaty adopted by the member-states of the World Intellectual Property Organisation (WIPO) on December 20, 1996 to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible.<sup>112</sup>

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<sup>108</sup>TRIPS Agreement Art. 14 (1)

<sup>109</sup>TRIPS Agreement Art. 14 (2)

<sup>110</sup> TRIPS Agreement Art. 14 (3)

<sup>111</sup> (n. 106)

<sup>112</sup> World Intellectual Property Organisation,

<[www.wipo.int/treaties/WIPO\\_Performances\\_and\\_Phonograms\\_Treaty](http://www.wipo.int/treaties/WIPO_Performances_and_Phonograms_Treaty)> accessed March 7, 2023

Like the Rome Convention, the Treaty sets a minimum term of protection of producers' and performers' rights at 20 years from the end of the year in which the phonogram was first published and in which the performance was made.<sup>113</sup>

The Treaty grants moral and economic rights to performers. The moral rights cover the right to claim to be identified as the performer of his performances, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation even after the transfer of the economic rights.<sup>114</sup> These rights shall be maintained after the performer's death at least until the expiry of the economic rights.<sup>115</sup>

The economic rights accruable to the performer under the Treaty include exclusive right of authorizing the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance and the fixation of the unfixed performances.<sup>116</sup> Others are the right of reproduction of their performances fixed in phonograms,<sup>117</sup> right of distribution of the original and copies of their performances fixed in phonograms,<sup>118</sup> right of rental<sup>119</sup> and right of making same available to the public.<sup>120</sup> These last four rights are also available to producers of phonograms.<sup>121</sup> These rights are however only in respect to audio recordings.

#### **5.4 Beijing Treaty on Audiovisual Performances (2012)**

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<sup>113</sup>WPPT Art. 4

<sup>114</sup> WPPT Art. 5 (1)

<sup>115</sup> WPPT Art. 5 (2)

<sup>116</sup> WPPT Art. 6

<sup>117</sup> WPPT Art. 7

<sup>118</sup> WPPT Art. 8

<sup>119</sup> WPPT Art. 9

<sup>120</sup> WPPT Art. 10

<sup>121</sup> WPPT Art. 11-14

The latest international treaty on performers' rights is the Beijing Treaty on Audiovisual Performances.<sup>122</sup> It is an improvement on earlier instruments, especially the Rome Convention and the WPPT. It is the first treaty to acknowledge the 'rights of performers with regard to their audiovisual performances.'<sup>123</sup> The Treaty shares some similarities with the WPPT. It grants similar moral and economic rights obtainable under WPPT to performers.<sup>124</sup> It fixes the term of protection for 50 years computed from the end of the year in which the performance was fixed.<sup>125</sup>

Some differences however exist between the Treaty and the others. The basic difference between it and WPPT is 'the inclusion of a specific provision recognising the legitimacy of various mechanisms at national level regarding the transfer of the exclusive economic rights in the treaty to the producer' which is absent in the WPPT.<sup>126</sup>

The Treaty 'specifically protects audiovisual fixations' which the Rome Convention did not. Unlike the Convention, the Treaty grants moral right to audiovisual performers. Under the Convention, performers only have 'the right to oppose certain uses of their performances' while the Treaty 'grants them a comprehensive list of exclusive rights.'<sup>127</sup>

## **6.0 Performers' Rights under the new Act vis-à-vis International Treaties**

The international Neighbouring Rights legal regime essentially protects performers, producers of phonograms and broadcasting organisations.<sup>128</sup> This is more expressive than the

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<sup>122</sup>This Treaty was adopted by the Diplomatic Conference on the Protection of Audiovisual Performances in Beijing, on June 24, 2012

<sup>123</sup>WIPO, *What is the Beijing Treaty?*, <<https://beijingtreaty.com/about/what-is-the-beijing-treaty/>> accessed 25 June 2023

<sup>124</sup> Beijing Treaty Art. 5-10

<sup>125</sup> Beijing Treaty Art. 14

<sup>126</sup>(n. 124)

<sup>127</sup>WIPO, *Summary of the Beijing Treaty on Audiovisual Performances*

(2012) <[https://www.wipo.int/treaties/en/ip/beijing/summary\\_beijing.html](https://www.wipo.int/treaties/en/ip/beijing/summary_beijing.html)> accessed 24 June 2023

<sup>128</sup> (n. 23)

Nigerian regime which classifies rights of performers and expressions of folklore as Neighbouring Rights.<sup>129</sup> The Nigerian Copyright Act 2022 is therefore assessed against the international regime of these and no more.

Performers' rights guaranteed in the new Act largely conform to the standards of the international legal regime. The key issues in the international instruments under review are well established in the new Act. The Act protects performers' moral and economic rights in tandem with the same manner the international instruments do.

It also establishes proprietary rights for the performer for his audiovisual fixations not exactly the way the Beijing Treaty does. While the Treaty specifically accords protection for audiovisual fixations,<sup>130</sup> the Act talks in general terms of fixation in any manner or form<sup>131</sup> and mentions audiovisual fixations directly in the provision on 'Transfer of performer's rights in audiovisual fixations.'<sup>132</sup>

The Act fixes the term of protection of performers' rights at 50 years.<sup>133</sup> This accords with the standard in the TRIPS Agreement and Beijing Treaty and is an improvement on the 20 years prescribed by the Rome Convention and WPPT.

## 6.0 Comparison of Performers' Rights in Nigeria with Other Jurisdictions

The provisions of the Nigerian Copyright Act 2022 on neighbouring rights are more comprehensive than the statutes governing these rights in Ghana and South Africa. However, there are similarities in the rights conferred on performers in the three jurisdictions despite the more comprehensive provisions in the Nigerian statute. In the three jurisdictions, the

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<sup>129</sup> (n. 7)

<sup>130</sup> Beijing Treaty Art. 11 (1) is to the effect that, '*Performers shall enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.*'

<sup>131</sup> Copyright Act 2022 s. 63 (1) (b) and s. 68

<sup>132</sup> Copyright Act 2022 s. 69

<sup>133</sup> Copyright Act 2022 s. 70

performer enjoys exclusive right to control his works, authorize or prohibit the use of his works and have access to remedies in court for the infringement of his rights.

The Nigerian statute states in clear terms the exclusive right the performer has over his works and defines who a performer is and what performance means.<sup>134</sup> This is a better codification than what obtains in the statute of South Africa. The South African statute only defines who a performer is but not what performance means.<sup>135</sup> The Ghanaian statute is similar to the Nigerian statute in respect of these.

While in Nigeria, the period for the subsistence of neighbouring rights is 50 years,<sup>136</sup> it is 70 years in Ghana<sup>137</sup> and 20 years in South Africa.<sup>138</sup> Although the statutes in the other two jurisdictions have provisions for matters the new six clauses in Ss. 64-69 of the Nigerian Copyright Act 2022 provide for, they are not as well spelt out as in the Nigerian statute. It has more copious provisions for matters of protected performance, presumption of consent, moral rights of performers, collective performances, exceptions to and assignment of performers' rights.

Whereas the Nigerian statute contains provisions for infringement of performers' rights, remedies available to them and penalties for offenders, and the South African law provides for offences and penalties, the Ghanaian law has no specific provisions for the breach of the rights as such. Instead, performers can only benefit from general provisions on the breach of copyright. There are provisions for exceptions to the performers' rights in the statutes in the three jurisdictions mainly in respect of fair usage.

## 7.0 Conclusion

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<sup>134</sup> Copyright Act 2022 pt. VIII

<sup>135</sup> South Africa Performers' Protection Act 1967 (as amended) s. 1

<sup>136</sup> (n. 46)

<sup>137</sup> (n. 58)

<sup>138</sup> (n. 68)

It is submitted that the Nigerian Copyright Act 2022 is a good response to the challenges posed by infringers of performers' rights which the old Act could not deal with adequately, particularly the issue of open and sleuth technology on the enjoyment of these rights by the holders. The criminalization of doing any act that contravenes performers' rights which Section 63 confers and protects makes it more difficult than before for infringers to take advantage of lax or inadequate legislation to milk performers. It is therefore safe, on the strength of Cap. VIII of the new Act, to submit that performers' rights will be better secured and protected in this new dispensation.

This paper notes that new Act retains the provisions of the old Act on the protection of folklore without reviewing it to meet the challenges of intrusion of imported folklore on our traditional corpus. It is suggested that future review of the Act or the making of subsidiary legislation should strengthen the provisions on the protection of folklore to halt 'the threatened loss and disappearance of certain elements of folklore, particularly in the face of modern communication technologies which facilitate the importation of foreign cultures, (replace) local cultural traditions and promote the hegemony of imported cultures.'<sup>139</sup>

There is also the need to increase public awareness for these specialised rights in Nigeria and accentuate their impact on the economic value derived by the rights owners and their contribution to the national economy. Legislations on neighbouring rights need to be constantly reviewed and updated to keep pace with developments in technology.

New technology holds the key to new challenges in the protection of any intellectual property, particularly performers' rights. The ability of the law to respond swiftly to

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<sup>139</sup> Report of the WIPO Committee of Governmental Experts on the Safeguarding of Folklore, in Paul Kuruk, 'Protecting Folklore Under Modern Intellectual Property Regimes', *American University Law Review*, [2015] (48) <[www.aulawreview.com](http://www.aulawreview.com)> accessed 11 March 2023

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advancements in technology will determine how effective the legal regime of performers' rights is at any given point in time.