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Home / copyright / copyright amendment / Desmond Oriakhogba / fair dealing / nigeria / [Guest Post] Nigeria quietly, but surely, embracing balance, openness and flexibility in her copyright regime?

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👤 Chijioke Okorie Monday, October 18, 2021 - copyright, copyright amendment, Desmond Oriakhogba, fair dealing, nigeria

As readers may be aware, Nigeria is also on the journey to amending its copyright statute and last week, the Senate organised a joint public hearing on 2 copyright amendment Bills currently tabled before it.

Katfriend, Desmond Oriakhogba attended the hearing on behalf of the **Electronic Information for Libraries (EIFL)** and the **Program on Information Justice and Intellectual Property (PIJIP)** and now reports on how it went and what to expect. Here is what Desmond says:

Nigeria quietly, but surely, embracing balance, openness and flexibility in her copyright regime? by Desmond Oriakhogba

Sometime in 2012, Nigeria began the process of reforming her over three-decade old copyright law. The extant **Copyright Act** was enacted in 1988, with some amendments in the early and late 90s. The reform process led to the production of a **Draft Copyright Bill** (DCB), which was open for **comments sometime in 2015** by the Nigeria Copyright Commission (NCC), to repeal the extant Act and re-enact a new Act in Nigeria.

The DCB was eventually approved by the **Federal Executive Council (FEC) in 2018** for transmission to the National Assembly for consideration. The National Assembly in Nigeria, the legislative arm of government, comprises the Senate (upper chamber) and the House of Representative (lower chamber). **The FEC approved bill was eventually sent to the Senate in May 2021**. Before then, however, another Copyright Bill developed by private individuals drawing from the DCB, but sponsored by a Senator **had found its way to the Senate and had passed through the second reading**. Thus, two Copyright Bills - the **executive or public Bill (SB769)** and the **private Bill (SB688)** - are currently before the Senate.



When faced with such situation as the foregoing, the practice is for the Senate to harmonise the Bills essentially coalescing them. To this end, and since the **executive Bill has also passed the second reading**, the Senate organised a joint public hearing on both Bills on 12 October 2021 through its committees on Trade and Investment, and Judiciary, Human Rights and Legal Matters.

The executive and private Bills

The executive Bill proposes 109 sections and 1 schedule. The schedule covers supplementary provisions relating to the proposed governing board of the NCC. The private Bill on the other hand proposes 72 sections and 5 schedules. The schedules relate to copyright duration, general and other exceptions, compulsory licensing, and transitional and saving provisions.

On a broad level, a large part of the sections proposed by the private Bill are similar in effect to some of the provisions in the executive Bill. Examples in this regard may be found in the provisions of both bills on anti-piracy, anti-circumvention of technological protection measures, and those relating to online contents (Parts VI and VII of the executive Bill; Part II of the private Bill), among others.

Nonetheless, both Bills differ on some very important issues. For instance, while the executive Bill sets out what will be the objectives of the new copyright regime in Nigeria, the private Bill is silent on this. However, in his remark at the public hearing, **the sponsor** of the private Bill had echoed the objectives set out in the executive Bill as the goal, which the private Bill seeks to achieve. According to the proposed section 1 of the executive Bill, the

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 this Act.

The foregoing provision is important because, if enacted, it will be a very useful tool in the interpretation of the specific provisions of the Bill especially in a manner that promotes balance, openness and flexibility within the Nigerian copyright system. Another key distinction between both Bills is in the arrangements of their provisions. While the executive Bill presents all its provisions on the body of the proposed Copyright Act, the private Bill moves some of its provisions, especially copyright duration and exceptions, to schedules. The private Bill merely adopts the approach in the extant Copyright Act. Such approach may give laypersons the impression that copyright exceptions and duration are not important within the copyright scheme of things.

More importantly, while the executive Bill proposes exceptions to copyright that will ensure a balanced, open and flexible copyright regime for Nigeria, the exceptions being proposed in the private Bill will substantially perpetuate the lopsided and close system enshrined under the extant Copyright Act. The major innovation of the private Bill relating to copyright exceptions is the proposed section 2 of the second schedule, which lifted almost verbatim from the **Marrakesh Treaty**.

On its part, the executive Bill proposes a section 20 containing some general exceptions, including an open and flexible fair dealing provision that resembles the fair use stipulations under US copyright law (section 20(1)(a)), and a provision that will protect persons with disabilities beyond the Marrakesh Treaty (section 20(1)(n)). The executive Bill also proposes some specific exceptions including those relating to acts for purpose of instruction or examination (section 21), recording of broadcasts by educational establishments (section 22), restrictions on reprographic copying by educational institutions (section 23), special provisions for archives, libraries, museums and galleries (sections 24 and 50(4)), compulsory licensing (sections 31-33 and 35) and the Marrakesh Treaty styled special exceptions for blind, visually impaired, or otherwise print disabled persons (section 26).

The exceptions in the executive Bill, are not only important in their capacity to promote balance, openness and flexibility, but will also be significant models for the formulation of normative frameworks for the protection of persons with disabilities beyond the Marrakesh Treaty, and for safeguarding the interests of libraries, archives, and museums in the global copyright forum.

The public hearing

Various stakeholders such as **representatives from the Federal Ministry of Justice, collective management organisations, rights owners' unions such as PMAN, MPAN, RLAN, IFPI, IPLAN, disabled persons groups and the national agency responsible for persons with disabilities** attended the public hearing.

Gauging the pulse from stakeholders within the Nigerian copyright ecosystem, one cannot but conclude that there is general support for the Bills, especially the balanced, open and flexible provisions in the executive Bill. This is so because there was hardly any opposition to those provisions both at the public hearing, and the technical consultative meeting organised by the NCC before the hearing.

The reservations to, and recommendations for revision of, the Bills largely relate to their provisions on voluntary registration, the regulatory agency, collective management, criminal sanctions, and internet service providers, among others. Even so, this writer believes that some of the reservations flowed from ignorance of how the copyright system works and failure to study the provisions of the Bills before the public hearing. The strongest support for the balanced, open and flexible exceptions in the executive bill came from the EIFL and PIJIP through their respective comments (**EIFL's comments here** and **PIJIP's comment here**), which were presented by this writer.

In their remarks, both chairmen of the Senate committees, including the representative of the Senate President, expressed theirs and the Senate's unwavering commitment to the passage of a harmonised Bill, hopefully before December 2021, and the readiness of the President to assent the Bill once it is transmitted to his office. If these commitments are matched with action, Nigeria will sooner than later be producing a Copyright Act that will be a model for balance, openness and flexibility in copyright systems globally, especially for countries in the global South.

Next steps

With the public hearing done, officers of the Ministry of Justice, who have been working on the executive Bill will now liaise with the promoters of the private Bill to produce a harmonised Bill, taking cognisance of comments from the hearing. The harmonised Bill will then be reported to the Senate for further action. Upon conclusion of its work on the harmonised Bill, the Senate will forward it to the House of Representative for concurrence before it will be sent to the President for assent.

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