



What Can Libraries in Nigeria Do Under the 2022 Copyright Act?

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Introduction

After the adoption in March 2023 of the 2022 Copyright Act, Nigeria has one of the most progressive copyright laws in the world with respect to libraries.¹ This guide explains the library activities permitted under the 2022 Copyright Act.²

Part 1 is a brief summary of the key provisions for libraries in the Copyright Act, 2022.

Part 2 evaluates the Copyright Act, 2022 against the EIFL Core Library Exceptions Checklist.

Part 3 is a legal analysis of the provisions related to libraries and library activities.

Part 4 is the text of library-related provisions in the Copyright Act, 2022

The guide can be used by the local library community, policymakers and legal practitioners to raise awareness of what the new law means for libraries and library activities in Nigeria. It can support new library services enabled by the law, and can help identify new opportunities to promote Nigerian culture and heritage at home and abroad, assist online education and build accessible collections for persons with print disabilities. It can also support the development of library copyright policies, and the ability of libraries in Nigeria to participate in international activities, such as the ABC Global Library Service for persons with print disabilities or projects on preservation, for example, where demonstration of legal compliance is required by the funder. Additionally, the guide can be used to inspire libraries and policymakers in other countries in Africa, and around the world, that are updating and modernizing their copyright laws.

The guide is a good faith interpretation of the Nigerian Copyright Act, 2022. The information does not constitute legal advice, if in doubt seek local support.

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1. The Act's progressive nature is visible from the outset in section 1, which states that the Act's objectives are both to "protect the right of authors to ensure just rewards and recognition for their intellectual efforts" and to "provide appropriate limitations and exceptions to guarantee access to creative works." Thus, user access is given the same weight as the rights of the authors.

2. While this document focuses on libraries, the provisions in Section 25 also apply to archives, museums and galleries. This document does not address the provisions concerning education and research institutions of which libraries may be a part. See, e.g., exceptions for purposes of education, sections 21-24; establishment of compulsory licenses for translations for purposes of research, scholarship or teaching; exceptions for reproduction of works not sold in Nigeria and necessary for instructional activities; and exceptions for the purpose of rectifying the abuse of a dominant market position or to promote public interest. Sections 31-35.

1 Summary of Key Library Provisions

The Nigerian Copyright Act, 2022 is among the most progressive copyright law in the world with respect to libraries. It has a near-perfect score on the EIFL Core Library Exceptions Checklist: 34 out of a possible 36 points. (See ‘Rate my copyright law’ at the end of the document).

The 2022 Act contains two new exceptions that allow libraries to make copies consistent with their mission. First, the specific exception in section 25 for galleries, libraries, archives, and museums (“GLAMs”) permits libraries to make and distribute copies for preservation, replacement, and ordinary activities. Second, the implementation of the Marrakesh Treaty for Visually Impaired Persons in section 26 allows authorized entities to make and distribute copies for people with print disabilities. Additionally, Section 20(1) of the Copyright Act, 2022 increases the flexibility of the fair dealing provision, thereby enabling libraries to engage in conduct that might not fall within the scope of specific exceptions. Furthermore, section 20(3) nullifies any licence term that purports to limit an exception, and section 50(7) provides that the new prohibition on the circumvention of technological protection measures does not apply to circumventions for the purpose of employing an exception.

The 2022 also retains important features of the 1988 Act, such as limiting the rights of distribution in section 9, 11, and 12 to distribution for commercial purposes. This ensures that libraries can lend works in their collections. Libraries continue to have the ability to import non-infringing copies of works, and the pre-existing library-specific exceptions have also been retained.

2 Library Exceptions Checklist

This section evaluates the Nigerian Copyright Act, 2022 Act against the EIFL Core Library Exceptions Checklist that sets out provisions that every copyright law should have to support library activities and services in the digital age.

COLLECTION DEVELOPMENT

MAY A LIBRARY BUY LAWFULLY PRODUCED BOOKS AND OTHER MATERIALS FROM ANOTHER COUNTRY FOR INCLUSION IN ITS COLLECTION?

Under section 36(b), a copyright owner cannot prevent the importation of non-infringing copies of works. This allows a library to import lawfully made copies of works for the purpose of collection development.

MAY A LIBRARY LEND A PHYSICAL BOOK/CD/DVD TO A LIBRARY USER, OR TO ANOTHER LIBRARY?

Under section 9(f), the owner of the copyright in a literary or musical works has the exclusive right to distribute “to the public, for commercial purposes, copies of the work, through sale or other transfer of owners provided the work has not been subject to distribution authorized by the owner.” Because a library lends materials but does not transfer their ownership, and does so for non-commercial purposes, library lending does not infringe the owner’s exclusive rights.³ Likewise, under sections 11(g) and 12(f), the owner of the copyright in an audiovisual work or a sound recording has the exclusive right to distribute “to the public, for commercial purposes, copies of the work, through sale or other transfer of ownership provided the work has not been subject to distribution authorized by the owner.”

However, under the related rights for performers, section 63(1)(e), the performer has the exclusive right of “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.” Accordingly, a library would need to rely on the exceptions set forth in section 68 to lend a copy of a performance. Under section 68(2), the “provisions of Part II of this Act, shall apply, with necessary modifications, in respect of performances.” The lending of a copy of a performance likely would be permitted under section 25(1)(a) as an ordinary activity of a library. Alternatively, it would be a fair dealing under section 20.

³ This assumes that library lending does not constitute publication. Under section 9(b), the copyright owner has the exclusive right to “publish” a work as well as reproduce it (section 9(a)) and distribute it (section 9(f)), but “publish” is not defined.

MAY A LIBRARY BY LAW LEND AN E-BOOK TO A LIBRARY USER?

Section 25 likely would be interpreted to permit the lending of an e-book. The precise analysis would depend on the nature of the e-book and how the library obtained it. For example, section 25(1)(d) would permit a library to digitize an analog book that is not available in a digital format; and section 25(2)(a) would allow the library to lend that digital copy. If the library obtained access to the e-book under a license, the library would be able to circumvent the technological protection measure in order to make a back-up copy, see sections 25(1)(b) and 50(7), and it could then lend that copy under section 25(2)(a), notwithstanding license terms to the contrary. See Section 20(3).

SUPPORT FOR EDUCATION AND RESEARCH

MAY A LIBRARY SUPPLY A COPY OF A WORK SUCH AS A JOURNAL ARTICLE OR BOOK CHAPTER, EITHER IN HARD COPY OR ELECTRONICALLY, TO A PERSON FOR RESEARCH OR PRIVATE USE, OR TO ANOTHER LIBRARY?

A library should be able to make and distribute a copy of a journal article or a book chapter to an individual researcher or to another library under section 25(1)(a) (part of an ordinary activity of a library⁴) or a fair dealing under section 20(1)(a) (private use) or (c) (noncommercial research and private study). If the work was unpublished, the library could also rely on section 20(1)(n). Further, if library is a prescribed public library, it could make such a copy under section 20(1)(i), where the reproduction is in the public interest and would not substantially harm the market for the work. The scope of the term “public library” is unclear; for example, whether it includes

libraries within public universities and schools. If public libraries have been prescribed in accordance with this provision, the supply of a copy of a journal or book chapter to an individual may be in the public interest, and therefore permitted. However, the scope of the “public interest” remains unclear.

MAY A LIBRARY SEND AND RECEIVE SUCH COPIES ACROSS BORDERS?

If the making of a copy for a user is a fair dealing or otherwise permitted, there is nothing in the copyright law that would prevent the library from sending it across borders. Similarly, nothing in the copyright law appears to prevent a library from receiving individual copies from overseas if they are non-infringing.

⁴ Although section 25(1)(a) grants libraries significant leeway, one can expect courts to interpret it a reasonable manner. Providing a researcher with a copy of a journal article would be part of the ordinary activities of a library, while providing multiple students in a course with a copy of the textbook might not.

MAY A LIBRARY CREATE DATABASES OF COLLECTION MATERIAL, INCLUDING E-RESOURCES MANAGED BY THE LIBRARY, TO FACILITATE TEXT AND DATA MINING BY RESEARCHERS?

A library could argue that creation of a database to facilitate text and data mining—that is, to facilitate quotation, research, or criticism—falls within the scope of the fair dealing provision, section 20(1). Courts in Nigeria could look to precedent in other common law countries, for example in the United States several courts have ruled that the fair use provision permits the creation of search databases for text and data mining.

MAY A LIBRARY PROVIDE COPIES OF COLLECTION MATERIAL FOR USE IN VIRTUAL LEARNING ENVIRONMENTS TO FACILITATE DISTANCE LEARNING?

While the 2022 Act expanded the exceptions for libraries in the new section 25, the exceptions relating to education were not similarly modernized. Thus, the lawfulness of uses by instructors, students, and libraries in the distance learning context depends entirely on the fair dealing provision, section 20(1). Whether a particular use by a library in a virtual environment would be a fair dealing would involve a careful application of the four fair dealing factors. In brief, the first fair dealing factor, the purpose and character of the use, generally would favour the use because of the public interest in education. Whether the second fair dealing factor, the nature of the work, favoured fair dealing would depend on the work. If it was a textbook or similar work targeted to the education market, this factor might tilt away from fair dealing. On the other hand, if the work was a novel or film aimed at a more general market, fair dealing would be favoured. The third factor, the amount of the use in proportion to the work as a whole, would be more favourable to fair dealing the less of the work that was used. The fourth factor, the impact of the use on the market, would largely be a function of the second and third factors.

It should be noted that a court in the United States found that fair use permitted the operation of an electronic reserves system for chapters of books that were not available electronically.⁵ And educational institutions in the United States routinely rely on fair use to supply materials to students in virtual learning environments. This was particularly the case during the COVID-19 pandemic during lockdowns when institutions were closed to physical access.

MAY A LIBRARY DIGITIZE ORPHAN WORKS IN ITS COLLECTION, AND MAKE THEM AVAILABLE ONLINE?

Sections 25(1)(d) and (e) allow the digitization of copies of orphan and out-of-commerce works. Section 25(2)(a) permits the lending of these copies, including presumably online.

5. *Cambridge Univ. Press v. Patton*, 769 F.3d 1232 (11th Cir. 2014).

PRESERVATION AND REPLACEMENT

MAY A LIBRARY MAKE COPIES OF WORKS IN ITS COLLECTION IN ANY FORM FOR PRESERVATION OR BACK-UP, AND PROVIDE ACCESS TO THESE COPIES?

Section 25(1)(b) permits a library to make copies of works in its collection for back-up and preservation. The exception is not worded in a manner that suggests any limitation as to format. Accordingly, an analog work could be preserved in a digital format. Pursuant to section 25(2)(a), a library could lend the copies to users.

MAY A LIBRARY PROCURE FROM ANOTHER LIBRARY THE MISSING PARTS OF ANY WORK IN ITS COLLECTION?

Section 25(1)(c) permits a library to procure “a copy of any missing part of a work in its collection from another institution.”

MAY A LIBRARY WEB ARCHIVE, I.E. PRESERVE PUBLICLY ACCESSIBLE WEBSITES?

Website archiving should be permitted as a fair dealing under section 20(1). Libraries in the United States routinely rely on fair use to engage in website archiving.

PERSONS WITH DISABILITIES

MAY A LIBRARY MAKE AN ACCESSIBLE FORMAT COPY OF A WORK AND PROVIDE IT TO A PERSON WITH A DISABILITY?

Section 26 domesticates the Marrakesh Treaty in the Nigerian copyright law. It permits an authorized entity to make an accessible format copy of a work and provide it to a person with a print disability. Section 26(7)(c) contains a definition of authorized entity broad enough to include most libraries. In addition, the Act retains the preexisting exception that applies to all disabilities: “use for the benefit of persons with disabilities and of a non-commercial nature, to the extent required by the specific disability.” Section 20(1)(p).

MAY A LIBRARY SEND AND RECEIVE ACCESSIBLE FORMAT COPIES TO AND FROM OTHER COUNTRIES?

Section 26(5) permits an authorized entity to export an accessible format copy. Section 26(6) permits an authorized entity to import and accessible format copy.

FORMAT NEUTRAL

MAY A LIBRARY MAKE COPIES IN ANY FORMAT, INCLUDING DIGITAL COPIES?

Section 25(1)(4) specifically permits a library to “make or procure a copy of any work that is or should be available in its collection in any chosen format, where the work cannot reasonably be acquired in that format through general trade or from the publisher.” This permits a library to format shift copies in its collection if the work is not reasonably available from the publisher in the desired format. The other provisions of section 25 are technologically neutral, and do not limit the format in which copies may be made.

SAFEGUARDING EXCEPTIONS IN THE DIGITAL ENVIRONMENT

ARE THE EXCEPTIONS GRANTED TO LIBRARIES IN COPYRIGHT LAW SAFEGUARDED FROM OVERRIDE BY LICENSE TERMS?

Section 20(3) voids “any contractual term which purports to restrict or prevent the doing of any act permitted” under the Act. Section 20(3).

WHERE LEGAL PROTECTION IS GRANTED TO TECHNOLOGICAL PROTECTION MEASURES (TMPS), MAY A LIBRARY CIRCUMVENT THE TPM TO AVAIL ITSELF OF AN EXCEPTION TO COPYRIGHT?

The provision prohibiting the circumvention of technological protection measures specifies that it “shall not affect the exercise of any exception provided in this Bill as it relates to the work in respect of which the technological protection measure is applied.” Section 50(7). Thus, a library may circumvent a TPM to avail itself of an exception to copyright.

LIMITATION ON LIABILITY

DOES THE LAW PROTECT LIBRARIANS FROM BEING SUED IN THE COURSE OF THEIR DUTIES?

The copyright law does not limit the liability of librarians for any copyright infringement they commit in the course of performing their duties.

A FLEXIBLE EXCEPTION

IN ADDITION TO ANY SPECIFIC LIBRARY EXCEPTIONS, ARE LIBRARY ACTIVITIES ALSO SUPPORTED BY A FLEXIBLE EXCEPTION SUCH AS FAIR USE OR FAIR DEALING?

Library activities are supported by the fair dealing provision in section 20(1). As discussed above, the 2022 Act expanded the closed list of permitted purposes to an open one. This makes the fair dealing provision far more flexible and “future-proofs” the Act to accommodate technological innovation.

3 Legal Analysis

LIBRARY LENDING

One of the most basic functions of libraries is to lend books and other materials in their collections to members of the public. The exclusive rights of copyright owners under 2022 Act are sufficiently crafted as to not interfere with the ability of libraries to lend materials. Under section 9(f), the owner of the copyright in a literary or musical work has the exclusive right to distribute “to the public, for commercial purposes, copies of the work, through sale or other transfer of owners provided the work has not been subject to distribution authorized by the owner.” Because a library lends materials but does not transfer their ownership, and does so for non-commercial purposes, library lending does not infringe the owner’s exclusive rights.⁶

Likewise, under sections 11(g) and 12(f), the owner of the copyright in an audiovisual work or a sound recording has the exclusive right to distribute “to the public, for commercial purposes, copies of the work, through sale or other transfer of ownership provided the work has not been subject to distribution authorized by the owner.” However, under the related rights for performers, the performer has the exclusive right of “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.”⁷ Accordingly, a library would need to rely on an exception to the related right to lend a copy of a sound recording. Fortunately, as discussed in Part 3 below, the 2022 provides such an exception.

COLLECTION DEVELOPMENT

Under section 36(b), a copyright owner cannot prevent the importation of non-infringing copies of works. This allows a library to import lawfully made copies of works. Thus, a library can include in its collection works that are not sold in Nigeria.

LIBRARY COPIES

The 2022 Act contains two new exceptions that allow libraries to make copies consistent with their mission: 1) the specific exception in section 25 for galleries, libraries, archives, and museums (“GLAMs”); and 2) the specific exception in section 26 for authorised

6. This assumes that library lending does not constitute publication. Under section 9(b), the copyright owner has the exclusive right to “publish” a work as well as reproduce it (section 9(a)) and distribute it (section 9(f)), but “publish” is not defined.

7. Section 63(1)(e).

entities to make and distribute copies for people with print disabilities. It also retains the library exceptions from the 1988 Act.

SECTION 25—GALLERIES, LIBRARIES, ARCHIVES, AND MUSEUMS

Section 25, in clear and direct language, permits several uses by for GLAMs for non-commercial purposes.

- Subsection (1)(a) allows a GLAM to make and distribute copies of works as part of their “ordinary activities.” The statute does not specify what constitutes an “ordinary activity,” but this term should be construed broadly because GLAMs are trusted institutions acting in the public interest. Making copies for the research needs of users should be treated as an ordinary activity of a library.
- Subsection (1)(b) allows GLAMs to make copies of works in their collections “for the purpose of back-up and preservation.” The GLAMs can perform this preservation preemptively, before the copies in the collection begin to deteriorate, as recommended by the WIPO Toolkit on Preservation.
- Subsection (1)(c) permits a GLAM to make a copy of a missing part of a work in its collection from a copy of that work in another institution.
- Subsection (1)(d) allows a GLAM to engage in format-shifting where the work cannot reasonably be acquired in that format from the publisher. In other words, if a library has an analog version of a work in its collection, and the publisher does not distribute a digital version, the library is allowed to digitize the work.
- Subsection (1)(e) allows a GLAM to make copies of orphan or out-of-commerce works.

Significantly, the copies made under this section can be lent to users or viewed on the premises of the library. Thus, section 25 arguably allows a library to engage in “controlled digital lending;” it could digitize a work in its collection and lend it to users, if the publisher did not make available a digital version of the work.

SECTION 26—LIBRARIES SERVING PERSONS WITH PRINT DISABILITIES - AUTHORISED ENTITIES.

Section 26 implements the Marrakesh Treaty for persons with print disabilities by enabling “authorised entities” to make and distribute accessible format copies for people with print disabilities. The definition of “authorised entity” in Section 26(7)(c) is broad enough to include libraries.⁸

OTHER LIBRARY-SPECIFIC EXCEPTIONS

In addition to these two new provisions, the Copyright Act, 2022 still retains the exceptions for libraries contained in the 1988 Copyright Act. However as the new provisions are significantly more generous than the exceptions in the 1988 Act, libraries

⁸ The Act retains the exception in the 1988 Act that applies to all disabilities: “use for the benefit of persons with disabilities and of a non-commercial nature, to the extent required by the specific disability.” Section 20(1)(p).

likely will not need to rely upon them. The library provisions carried over from the 1988 Copyright Act are part of the fair dealing provision of section 20 and thus presumably are subject to the four factor analysis discussed below in Part 3D.⁹ Thus, the exclusive rights of the copyright owner do not include the right to control the use by way of fair dealing for the purpose of

- a use made by a prescribed public library, where the use is in the public interest, provided that no revenue is derived and the use does not substantially affect the potential market or value of the work;¹⁰
- the making of not more than three copies of a work for the use of a public library, where the work is not available for purchase;¹¹
- reproduction for the purpose of research or private study of an unpublished work in the library's collection.¹²
- communication or making available of works and other material not subject to purchase or licensing terms to members of the public for the purpose of research or private study through dedicated terminals on the premises of publicly accessible libraries, educational establishments, museums and archives.¹³

Although these provisions no longer are necessary,¹⁴ they also do no harm.

FAIR DEALING

The 2022 Act replaces the 1988 Act's fair dealing provision based on the English copyright law with an open provision that is more akin to the U.S. Copyright Act's fair use right. The 1988 Act permitted the use of a work "by way of fair dealing for purposes of research, private use, criticism or review or the reporting of current events...." In contrast, section 20(1)(a) of the 2022 Act permits the use of a work "by way of fair dealing for purposes such as" private use, etc. By making clear that the list of permitted purposes are only examples, the provision is more flexible and adaptable to new uses enabled by digital technology.

Additionally, the new law contains four factors a court is to consider "in determining whether the use of a work in any particular case is fair dealing." Those four factors—the purpose and character of its usage; the nature of the work, the amount and substantiality of the portion used in relation to the work as a whole; and the effect of the use upon the potential market or value of the work—feature in section 107 of the U.S. Copyright Act.

9. The four fair dealing factors are listed after section 20(1)(d), but appear to apply to all of purposes itemized in section 20(1).

10. Section 20(1)(i).

11. Section 20(1)(m).

12. Section 20(1)(n).

13. Section 20(1)(r).

14. Although section 25 does not contain a provision that expressly allows the making of a copy for research or private study, the making of such a copy should fall within the section 25(1)(a) exception for the making and distribution of copies as part of a library's ordinary activities—regardless of whether it is published or unpublished.

By rendering the fair dealing provision more open, the Act could enable other library uses that do not already fall within the scope of section 25, provided that they satisfy the four factors. For example, a court could conclude that the archiving of websites is not permitted under section 25(1)(a) because it is not an ordinary activity of a library; nor is it permitted under section 25(1)(b) because the website is not part of the library's collection. Nonetheless, the court could allow this activity as a fair dealing. Similarly, the expanded fair dealing provision could allow a library to perform films in connection to a lecture series on film history, or to engage in text and data mining. Significantly, by incorporating the four fair use factors of the U.S. Copyright Act, the new fair dealing provision encourages Nigerian judges to look for guidance to judicial decisions in other jurisdictions with the four factors, including the United States, Singapore, and Israel. Thus, a Nigerian court might find persuasive *Authors Guild v. Hathitrust*, a decision of the U.S. Court of Appeals for the Second Circuit that found a library consortium's creation of a database of books for the purpose of text and data mining to be a fair use.

OTHER PROVISIONS BENEFICIAL TO LIBRARIES

The 2022 Act contains three other provisions beneficial to libraries in the digital environment.

The library exceptions are safeguarded from contract terms and digital locks. The 2022 Act contains a provision that voids "any contractual term which purports to restrict or prevent the doing of any act permitted" under the Act (Section 20(3)). This is particularly important as libraries license increasingly more electronic materials from publishers, and the licenses often prohibit the making of copies, even if permitted by law. Likewise, the new provision prohibiting the circumvention of technological protection measures specifies that it "shall not affect the exercise of any exception provided in this Bill as it relates to the work in respect of which the technological protection measure is applied." (Section 50(7)). In other words, a library could circumvent a technological protection measure for the purpose of make a copy permitted under section 25 (Special provisions for archives libraries, museums and galleries).

Further, Part VII of the 2022 Act provides a safe harbour for online service providers. Because libraries provide a range of online services to users, including Internet access, libraries will benefit from these safe harbors. (The notice and takedown regime is similar to that of the U.S. Digital Millennium Copyright).

Text of Library-Related Provisions in the 2022 Copyright Act

EXCLUSIVE RIGHTS

Literary or musical works: 9(f)—”distribute to the public, for commercial purposes, copies of the work, through sale or other transfer of ownership provided the work has not been subject to distribution authorised by the owner;”

Audiovisual works: 11(g)—”distribute to the public, for commercial purposes, copies of the work, through sale or other transfer of ownership provided the work has not been subject to distribution authorised by the owner;”

Sound recordings: 12(f)—”distribute to the public, for commercial purposes, copies of the work, through sale or other transfer of ownership provided the work has not been subject to distribution authorised by the owner.”

Importation: 36(b)—”imports or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy under this Act;

Circumvention: 50.—(1) Subject to the provisions of Part II of this Act, no person shall knowingly circumvent a technological protection measure that effectively protects access to a work protected under this Act.

(4) A non-profit library, archive or educational institution, which gains access to a commercially exploited copyright work in order to make a good faith determination only, of whether to acquire a copy of the work for the purpose of engaging in conduct permitted under this Act shall not be in violation of the provisions of this section, provided that a copy of a work to which access has been gained under this subsection may not be — (a) retained longer than necessary to make the good faith determination; and (b) used for any other purpose.

(5) The exemption under subsection (4) shall only apply with respect to a work, when an identical copy of that work is not available in another form.

(7) The provisions of this section shall not affect the exercise of any exception provided in this Act as it relates to the work in respect of which the technological protection measure is applied.

Performer’s Right: 63(1)--(e) 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;

Exceptions to Performer's Right: 68—use permitted for the purpose of (c) 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; (d) reproduction for the benefit of people with a disability, which is directly related to the disability and of a non-commercial nature, to the extent required by the disability;

EXCEPTIONS TO COPYRIGHT

20.—(1) The rights conferred in respect of a work under sections 9-13 of this Act, do not include the right to control any of the acts specified in those sections by way of fair dealing for purposes such as —

- (a) private use;
- (b) parody, satire, pastiche, or caricature;
- (c) non-commercial research and private study;
- (d) criticism, review or the reporting of current events, subject to the condition that, if the use is public, it shall, where practicable, be accompanied by an acknowledgment of the title of the work and its author except where the work is incidentally included in a broadcast:

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

- (i) purpose and character of its usage,
 - (ii) nature of the work,
 - (iii) amount and substantiality of the portion used in relation to the work as a whole, and (iv) effect of the use upon the potential market or value of the work;
- (i) any use made of a work by or under the direction or control of the Government or by such public libraries, non-commercial documentation centres and scientific or other institutions as may be prescribed, where the use is in the public interest, provided that —
- (i) no revenue is derived, and
 - (ii) the use does not substantially affect the potential market or value of the work;
- (m) the making of not more than three copies of a work, by or under the direction of the person in charge of a public library, for the use of the library, where such a work is not available for purchase;
- (n) reproduction for the purpose of research or private study of an unpublished literary or musical work kept in a library, museum or other similar institutions to which the public has access;

(r) communication or making available of works and other material not subject to purchase or licensing terms to members of the public for the purpose of research or private study through dedicated terminals on the premises of publicly accessible libraries, educational establishments, museums and archives.

(3) Any contractual term which purports to restrict or prevent the doing of any act permitted under this Act shall be void.

25.—(1) Notwithstanding the provisions of sections 9-13 of this Act, archives, libraries, museums and galleries, may for non-commercial purposes —

(a) make and distribute copies of works protected under this Act as part of their ordinary activities;

(b) make copies of works in their collection for the purpose of back-up and preservation;

(c) make or procure a copy of any missing part of a work in its collection from another institution;

(d) make or procure a copy of any work that is or should be available in its collection in any chosen format, where the work cannot reasonably be acquired in that format through general trade or from the publisher; or

(e) make or procure a copy of any work where the permission of the owner of the copyright cannot be obtained, after reasonable effort, or where the work is not available by general trade or from the publisher.

(2) Copies of works made in whatever format in accordance with subsection (1) may be —

(a) lent to users; or

(b) used for private study or research on the premises of the institution with or without the means of technical equipment.

26.—(1) Notwithstanding the provisions of any other section of this Act, an authorised entity may, without the permission of the owner of copyright in a work, make or procure an accessible format copy of a work or subject matter and supply the copy to beneficiary persons by any means, including non-profit lending, or electronic communication by wire or wireless means, on the condition that the —

(a) authorised entity desiring to undertake any of the activities under this section has lawful access to that work or subject matter or a copy of that work or subject matter;

(b) work or subject matter is converted to an accessible format copy;

(c) accessible format copy is supplied to be used exclusively by beneficiary persons; and

(d) activity is undertaken on a non-profit basis.

(2) For the purpose of the requirement of subsection (1) (c), an authorised entity shall establish and follow its own practices, to —

- (a) establish that the persons it serves are beneficiary persons;
 - (b) limit its distribution to beneficiary persons or authorised entities and in making available of accessible format copies;
 - (c) discourage the reproduction, distribution and making available of unauthorised copies ; and (d) maintain due care in, and records of, its handling of copies of works or other subject matter while respecting the privacy of beneficiary persons.
- (3) A beneficiary person is permitted to make an accessible format copy of a work or other subject matter for his personal use, where he has lawful access to that work or subject matter or a copy of that work or subject matter.
- (4) A person acting on behalf of a beneficiary person, including a primary caretaker or caregiver, may assist the beneficiary person to make accessible format copies where the beneficiary person has lawful access to that work or subject matter or a copy of that work or subject matter.
- (5) An authorised entity may, without the permission of the owner of a copyright, distribute or make available accessible format copies to an authorised entity in another country for the exclusive use of beneficiary persons or to a beneficiary person in another country, provided that prior to the distribution or making available, the authorised entity did not know or have reasonable grounds to know that the accessible format copy would be used other than for the beneficiary persons.
- (6) An authorised entity, a beneficiary person or a person acting on his behalf including a primary caretaker or caregiver, may without the permission of the owner of copyright import an accessible format copy, including by wire or wireless means.
- (7) For the purposes of this section —
- (a) — works include literary and artistic works in the form of text, notation or related illustrations that are not available in accessible formats;
 - (b) — accessible format copy means a copy of a work in an alternative manner or form which — (i) gives a beneficiary person access to the work, as feasibly and comfortably as a person without visual impairment or other print disability, and (ii) respects the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons;
 - (c) — authorised entity means —
 - (i) an entity that is authorised or recognized by the government, or receives financial support from the government, to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis, or

(ii) a government institution or non-profit organisation that provides education, instructional training, adaptive reading or information access to beneficiary persons as part of its primary activities or institutional obligations; and

(d) — beneficiary person means a person who, regardless of any other disabilities—

(i) is blind,

(ii) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability, or

(iii) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.

SOURCE: Federal Republic of Nigeria Official Gazette, Vol. 110 No. 56, Lagos - 27th March, 2023. Government Notice No. 24

	YES	PARTLY	NO
	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 0
May a library procure from another library the missing parts of any works in its collection?	<input checked="" type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/>
May a library web archive, i.e. preserve publicly accessible websites?	<input checked="" type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/>
PERSONS WITH DISABILITIES			
May a library make an accessible format copy of a work and provide it to a person with a disability?	<input checked="" type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/>
May a library send and receive accessible format copies to and from other countries?	<input checked="" type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/>
FORMAT NEUTRAL			
May a library make copies in any format, including digital copies?	<input checked="" type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/>
SAFEGUARDING EXCEPTIONS IN THE DIGITAL ENVIRONMENT			
Are the exceptions granted to libraries in copyright law safeguarded from override by licence terms?	<input checked="" type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/>
Where legal protection is granted to technological protection measures (TPMs), may a library circumvent the TPM to avail itself of an exception to copyright?	<input checked="" type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/>
LIMITATION ON LIABILITY			
Does the law protect librarians from being sued in the course of their duties?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> 0
A FLEXIBLE EXCEPTION			
In addition to any specific library exceptions, are library activities also supported by a flexible exception such as fair use or fair dealing?	<input checked="" type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/>

Does your law measure up?

TOTAL SCORE	<input type="text" value="34"/>	TYPE OF LIBRARY	<input type="text" value="Any e.g. public, research, academic"/>	LAW*	<input type="text" value="Copyright Act, 2022"/>
COUNTRY	<input type="text" value="Nigeria"/>	DATE	<input type="text" value="17 March 2023"/>	* VERSION/DATE	