[Guest Post] Nigeria quietly, but surely, embracing balance, openness and flexiblility in her copyright regime?

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 executive Bill as the goal, which the private Bill seeks to achieve. According to the proposed section 1 of the executive Bill, the Nigeria Copyright Commission (NCC), to repeal the extant Act and re-enact a new Act in Nigeria. 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 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:

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by Desmond Oriakhogba

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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 201(a)), and a provision that will protect persons with disabilities beyond the Marrakesh Treaty (section 201(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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