THE INTERNATIONAL LEGAL FRAMEWORK FOR PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN NIGERIA

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Abstract
From time immemorial, several communities or countries have entered into relationship with each other whether friendly or hostile. From such relationships, rules of conduct have evolved and over the years became tradition. In due course these traditions became collectively described as a set of laws - the laws of nations otherwise called International Law. Just as William Fullbright puts it, "insofar as international law is observed, it provides us with stability and order and with a means of predicting the behavior of those with whom we have reciprocal legal obligations". Intellectual Property laws are no exception to this development. In a bid to protect and enhance the intellectual property of citizens of member States, States have collectively come together to make treaties which is geared to ensuring that States in their respective accord to these treaties protect the intellectual property of their citizens municipally, and that other State parties also ensure the respect of those member State citizens in their respective jurisdictions. As a result of this dynamism, international legal frameworks have evolved in shaping the state of our laws as it relates to Intellectual Property laws in Nigeria. In this article, an appraisal look shall be made at the international legal framework for protection of intellectual property rights and its consequent influence in the protection of intellectual property in Nigeria. This study shall also evaluate these international legal frameworks to see if there are lacunae in them. This study adopts the doctrinal research approach, utilizing primary and secondary sources of data collection. In the final analysis, this article shall have critically looked at the various international legal framework on intellectual property in Nigeria and how same have influenced the national legal framework on intellectual property in Nigeria.

KEYWORDS: Intellectual Property, International, Legal Framework, International Law.

1.0 Introduction

The need for a more conducive Intellectual Property laws to match the ever-growing digital environment in Nigeria cannot be over emphasized. The histories of Intellectual Property laws in Nigeria have evolved at different times depending on the prevailing circumstances at that time. In this article, we are going to look at the International legal framework for protection of intellectual property rights in Nigeria. This will go a long way in assisting all the stakeholders in understanding the entire laws governing the subject matter of this article in Nigeria.

1.1 Clarification of Concepts

Intellectual property is that intangible property which has no physical existence. It is a right conferred by law on human innovators and creators and even entrepreneurs to protect the fruits or products of their intellect, their innovative and creative efforts and their commercial reputation and goodwill. The World Intellectual Property Organization (WIPO) refers it to as creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.[1] Kenton sees intellectual property as a broad categorical description for the set of intangible assets owned and legally protected by a company or individual from outside use or implementation without consent.[2] He goes further to describe intangible asset as a non-physical

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[1] World Intellectual Property Organization, 'What is Intellectual Property' *WIPO (*11 March. 2023) < https://www.wipo.int/about-ip/en/> Accessed 10 January, 2024.

[2] W. Kenton, 'What is Intellectual Property, and What Are Some Types?' *Investopedia (6 October, 2023)* <https://www.investopedia.com/terms/i/intellectualproperty.asp> Accessed 10 January, 2024

asset that a company or person owns[3]. Intellectual property is 'choses in action' and incorporeal hereditaments. Such rights are conferred by law in order to promote creativity, innovation and societal good. In this connection, the right enables creators and innovators to prevent access to the product of their intellect or allow access thereto either freely or for economic gain. The right is not absolute but is limited by time and certain exception. Oyewunmi, sees intellectual property as the legal rights conferred to those who engage in creative, inventive and promotion activities which have resulted in original, useful or other beneficial outputs. Such outcome is classified as a form of property, *albeit* of the intangible, incorporeal variety. This means that unlike physical property, it is incapable of being physically owned or possessed and can therefore be simultaneously enjoyed by different users without being lost to the creator or owner.[4] Oxford Dictionary of Law[5] defined intellectual property as "intangible property that includes patents, trademarks, copyright registered and unregistered design right." Among the different forms of intellectual property, Mereth[6] identified patents, trademarks and copyright as the three most important forms of intellectual property rights while Cornish, posits that they see them as models to which aspirants will turn to for the protection of other ideas, information and trade values.[7] According to Adewopo, the expression intellectual property is taken to mean the legal rights which may be asserted in respect of the product of the human intellect.[8] Intellectual property objectives are rooted in international human rights legal framework such as United Nations Declaration on Human Rights, 1948[9] and the International Convention on Economic, Social and Cultural Rights 1966.[10]

The legal framework for any research work basically refers to the legal foundations on which the entire research will be based. What suffices here is what the law says as regards issues relating to the subject-matter of the research as it relates to International legal framework in Nigeria. In this article, we are going to look at the international legal framework for protection of intellectual property rights in Nigeria. In our discussion, both judicial and otherwise academic views shall be discussed.

2.0 The International Legal Framework for Protection of Intellectual Property Rights in Nigeria

Under this head, we are going to look at Berne Convention for the Protection of Literary and Artistic Works of 1886; Trade Related Aspects of Intellectual Property (TRIPS) Agreement of 1995; The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) of 1961; The World Intellectual Property Organization Copyright Treaty (WCT) of 1996 and the Universal Copyright Convention (UCC) of 1952.

2.1 Berne Convention for the Protection of Literary and Artistic Works of 1886

This is an International Copyright Treaty called the Convention for the Protection of Literary and Artistic works signed at Berne, Switzerland in 1886 under the leadership of Victor Hugo to protect literacy and artistic works. It has more than 145 member nations. The United State became a party to the Berne Convention in 1989. The Berne Convention is administered by WIPO and is based on the precept that each member nation must treat nationals of other member countries like its own

[3] *Ibid*

[4] Oyewunmi, A., *'Nigerian Law of Intellectual Property'* (2015).

[5] Martin, E.A, and Law, J. *'Oxford Dictionary of Law'* (6th edition eds) (Oxford University Press 2006) 280.

[6] Mereth P., '*Intellectual Property Law*' (1996).

[7] Cornish N., 'Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights, 4th edition (1999).

[8] Adewopo A., '*According To Intellectual Property: A Pro-Development Vision of the Law and the Nigerian Intellectual Property Law and Policy Reform in the Knowledge* Era'(NIALS, 2012).

[9] UDHR, Article 27.

[10] ICESCR, Article 27.

nationals for purposes of copyright (the principle of "nation treatment"). In addition to establishing a system of equal treatment that internationalized copyright amongst signatories, the agreement also required member States to provide strong minimum standards for copyrights law. It was influenced by the French "right of the author." The Berne Convention deals with the protection of works and the rights of their authors. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them.[11]

The three basic principles are as follows:

a. Works originating in one of the contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other contracting States as the latter grants to the works of its own nationals (principle of "national treatment").
b) Protection must not be conditional upon compliance with any formality (principle of "automatic" protection).
c) Protection is independent of the existence of protection in the country of origin of the work (principle of 'independence' of protection). If, however, a contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases.[12]

The minimum standards of protection relate to the works and rights to be protected, and to the duration of protection. As to works, protection must include "every production in the literary, scientific and artistic domain, whatever the mode or form of its expression."[13] However, it shall be a matter for legislation in the countries of the Union[14] to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.[15] Subject to certain allowed reservations, limitations or exceptions, there are certain rights that must be recognized as exclusive rights of authorization. Those rights are as follows:

a) The rights to translate[16];
b) The rights to make adaptations and agreements of the work[17];
c) The rights to perform in public dramatic, dramatic-musical and musical works[18];
d) The rights to recite literary works in public[19];

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[11] Summary of the Berne Convention for the protection of literally and artistic works, <https://www.wipo.int/treaies/en/ip/berne/summary-berne.html> accessed 10 May, 2022.

[12] *Ibid*.

[13] Article 2(1) of the Convention.

[14] These are countries to which the Convention applies for the protection of the rights of authors in their literary and artistic works. See Article 1 of the Berne Convention 1886.

[15] Berne Convention 1886, Article 2(2).

[16] See Article 8 of the Convention which gives authors of literary and artistic works protected by the Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

[17] See Article 12 which gives authors of literary or artistic works the exclusive right of authorizing adaptations, arrangements and other alterations of the works.

[18] See Berne Convention 1886, Article 11(1).

[19] See Article 11ter which gives authors of literary work the exclusive right of authorizing the public recitation of their works, including such public recitation by any means or process and any communication to the public of the recitation of their works.

e) The rights to communicate to the public the performance of such works[20];
f) The rights to broadcast (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization)[21];
g) The right to make reproductions in any number or form (with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the author; and the possibility that a Contracting State may provide, in the case of sound or visual recordings of musical works, for a right to equitable remuneration).[22]
h) The right to use the work as a basis for an audiovisual work, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work.

The Convention also provides for "moral rights", that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation. Article 6(1)bis of the Berne Convention 1886 provides to the effect that independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which will be prejudicial to his honor or reputation. Furthermore, the moral rights granted to the author shall, after his death, be maintained, at least until the expiry of the economic rights and shall be exercisable by the person or institutions authorized by the legislation of the country where protection is claimed. [23]

As to the duration of protection, the general rule is that protection must be granted until the expiration of the 50th year after the author's death. This rule is consistent with Article 7 of the Convention which provides that the term of protection granted by the Convention shall be the life of the author and fifty years after his death. There are however, exceptions to this general rule. In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author's identity or if the author discloses his or her identity during that period. In the latter case, the general rule applies[24]. In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 years after the making available of the work to the public ("release") or - failing such an event - from the creation of the work[25]. In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of the work[26]. The above duration of protection is also applicable in the case of works of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the surviving author.[27] However, countries of the Union may grant a term of protection in excess of those provided by the Convention.[28]

The Berne Convention allows certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation. These limitations are commonly referred to as

[20] See Article 11(1) of the Convention which gives authors of dramatic, dramatico-musical and musical works the exclusive right of authorizing the public performance of their works by any means or process or any communication to the public of the performance of their works.
[21] See Berne Convention 1886, Article 11bis.
[22] See Berne Convention 1886, Article 9.
[23] *Ibid* Berne Convention 1886, Article 6(2) bis.
[24] See Berne Convention 1886, Article 7(3).
[25] Berne Convention 1886, Article 7(2)
[26] Berne Convention 1886, Article 7(4)
[27] Berne Convention 1886, Article 7bis
[28] Berne Convention 1886, Article 7(6)

"free uses" of protected works, and are set forth in Articles 9(2),[29] 10,[30] and 10(b).[31] For instance, Article 10 (1) of the Convention provides to the effect that it shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose. In the same vein, Article 10(2) of the Convention provides to the effect that it shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified for the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practices. Similarly, Article 9(2) of the Convention provides that countries of the Union can by legislation permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. The Appendix to the Act of the Convention also permits developing countries to implement non-voluntary licenses for translation and reproduction of works in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, subject to the payment of remuneration to be fixed by the law.

The Berne Union has an Assembly[32] which consist of countries of the Union and the union is saddled with the duties and responsibilities as provided under Article 22 (2) which *inter alia* include dealing with all matters concerning the maintenance and development of the Union and the implementation of the Convention, electing the members of the Executive Committee of the Assembly, adopting the financial regulations of the Union, reviewing and approving the reports and activities of the Director General of the organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union. The Assembly has an Executive Committee[33]. The Executive Committee consist of countries elected by the Assembly from among countries of the Assembly[34], and the government of each country member or the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.[35]Every country that is a member of the Union and has adhered to at least the administrative and final provisions of the Stockholm Act is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member ex - officio.

The establishment of the biennial program and budget of the WIPO Secretariat - as far as the Berne Union is concerned - is the task of its Assembly. The Berne Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979. The Convention is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO.[36]

However, the Convention is not devoid of its drawbacks. One of the major drawbacks of the convention is that Countries of the Union are at latitude to implement the provisions of the Convention based on their own Constitution and what they think is a "necessary measure" to implement same. In this regard,

[29]Reproduction in certain special cases.
[30] Quotations and use of works by way of illustration for teaching purposes.
[31] Reproduction of newspaper or similar articles and use of works for the purpose of reporting current events.
[32] Berne Convention 1886, Article 22.
[33] Berne Convention 1886, Article 23.
[34] Berne Convention 1886, Article 23(2)
[35] Berne Convention 1886, Article 23(2)(b)
[36] Berne Convention 1886, Article 29.

Article 36(2) of the Convention provides that at the time a country becomes bound by the Convention, it will be in position under its domestic law to give effect to the provision of the Convention. The effect of this provision is that Countries of the Union are left at their liberty to decide when to give effect to the provision of the Convention pursuant to its domestic laws. Thus, a Country of the Union may decide not to give effect to the provisions of the Convention under its domestic laws till infinity despite being a signatory to the Convention. This in effect rubbishes the purpose of the Convention and reduces it to a mere "piece of paper' in the form of a convention. Thus, this paper suggest that this is a lacuna in the Convention which countries of the Union can harp on to derogate from their obligations to the Convention in their respective countries. Therefore, this study recommends that this provision should be amended to include some obligations on the part of the Countries to the Convention to effect the provisions of the Convention under their respective domestic laws within a reasonable time. Also, the Convention failed to provide any punishment mechanism for Countries who fail in their obligations to the Convention. The effect of this is that when State Parties to the Convention fail to keep to the obligations under the Convention, there is no laid down mechanism to punish such erring State. Also, while the Convention gives the International Court of Justice the jurisdiction in any dispute between two or more countries of the Union concerning the interpretation or application of the Convention not settled by negotiation[37],however, each country may at the time it signs the Convention or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the jurisdiction of the International Court of Justice. [38] The effect of this is that makes nonsense of the jurisdiction of the International Court of Justice in the case of dispute between State parties since parties can *ab initio* decide not to be bound by the jurisdiction of the International Court of Justice. This does not help for accountability on the part of member States to the Convention. Therefore, this article posits that this is another lacuna in the Convention. Thus, this article recommends that the Convention be amended to give the ICJ jurisdiction in any dispute arising under the Convention without the opportunity of any party to decide otherwise as same will make for accountability.

2.2 Trade Related Aspects of Intellectual Property (TRIPS) Agreement of 1995

The World Trade Organization recognizing the significant links between intellectual property and trade included the Trade-Related Aspect of Intellectual Property Rights 1994 (hereinafter referred to as "TRIPS Agreement") as an annex to the WTO agreement. It is the premier agreement introducing intellectual property principles into the system of multilateral trade. The TRIPS Agreement is meant to ease trade in creativity and innovation, aid the resolution of trade dispute among/between member States over intellectual property and to afford member States the space to pursue and achieve their domestic goals concerning intellectual property[39]. The objectives of the TRIPS Agreement are clearly spelt out in Article 7 which is to the effect that the protection and enforcement of intellectual property should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. The TRIPS

[37] Berne Convention 1886, Article 33(1).

[38] *Ibid,* Article 33(2)

[39] Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement 1994.

Agreement is also built on some principles which is provided Article 8 which gives member States the liberty in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provision of the Agreement. Moreso, appropriate measures, provided that they are consistent with the provisions of the TRIPS Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.[40]

Indeed, the TRIPS Agreement assures member States the latitude to maintain the requisite balance between the long-term benefits of providing incentives for innovation and the creativity and the possible short-term cost of limiting access to intellectual creation. This is made possible through the minimum standards set by the TRIPS Agreement for the protection of intellectual property and the in-built flexibilities that enable the provision of limitations, exception and exclusions to intellectual property. The WTO's dispute settlement mechanism is deployed to resolve trade disputes relating to the application of the TRIPS Agreement.[41]

Overall, the TRIPS Agreement deal with five broad issues, namely:

1. The general provisions and basic rules of the multilateral trading system applicable to international intellectual property;[42]
2. The minimum standards for the protection of intellectual property by member States[43];
3. The intellectual property rights enforcement procedures that member States should provide;[44]
4. Intellectual property dispute settlement mechanisms between member States; and
5. Special transitional arrangements for the implementation of TRIPs Agreement Provisions.[45]

Any international discussion of trademarks protection regime today must stem from the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). TRIPS administered under the platform of the World Trade Organization (WTO) and is a detailed and comprehensive agreement establishing minimum standards for protection and substantial differences and some similarities between the Trademarks Acts and TRIPS; some of which I shall highlight below. TRIPS make no provision for separate registers or regimes, compared to the provisions of Trademarks Act. It obliges criteria of distinguishability and leaves other criterion to discretion of its members. Article 15 of TRIPS defines a trademark as any sign or combination of signs, capable of distinguishing the goods and services of one undertaking from those of other undertaking. Section 67(1*)* of the Trademark Act*[46]* on the other hand, defines a trademark as a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person. In 2007, the then Minister of Commerce and Industry, acting

[40] *Ibid,* Article 8(2).

[41] Taubman, A.et al, (eds), *'A Handbook on the WTO TRIPS Agreement'* (Cambridge University Press 2012).

[42] TRIPS Agreement 1994, Part I

[43] TRIPS Agreement 1994, Part II

[44] *Ibid*, Part III.

[45] The TRIPS Council created under the WTO Agreement is the main institution saddled with the responsibility to administer the TRIPS Agreement. The council which serves as a forum for discussion between member States, monitors the operation of the TRIPS Agreement. In the performance of its duties, the council is empowered to cooperate with the WIPO and other international organizations focusing on intellectual property issues.

[46] Trademarks Act 1967.

under his powers in the Act, extended the classification of marks in the Fourth Schedule to the Trademark Act from classes 35 to 45, providing for varying services to be registered as trademarks.

Under the said Article 16 of TRIPS, 'well known' or 'famous' marks are protectable, with or without registration. The Trademarks Act, however, does not provide for protection of well-known or famous marks and as such, even though Nigeria is obliged to enforce TRIPS provisions and Paris Convention for the Protection of Industrial Property,[47] it may be difficult to enforce as these treaties have not yet been domesticated under Nigerian law and so it would appear that the only option for protecting such marks is by the common law action for passing off.[48]

In section 7 *of* the Trade Marks Act, however, such well known/famous marks can be protected against their registered counterparts as the Trade Marks Act recognizes the rights of owner or user of unregistered trademarks, which are identical with or nearly resembling a registered trademark. This is provided that the unregistered owner or user can show that he or his predecessor in title has continuously used that trademark from a date previous to the use or registration by the registered user. Geographical indications identify goods as originating from a particular territory or region in a country, and indicative of quality, reputation or other characteristics attributable to that territory or region. These indications are protected under TRIPS and members could either refuse granting registration or even nullify same where there is a false or misleading indication. While the Trademarks Act does not specifically provide for Geographical indications, they can be subsumed under section 43 (1) of the Trademarks Act. The regime of certification marks, that is, marks that certified as to origin, quality or other characteristic.

In the enforcement of intellectual property rights under the TRIPS Agreement, members have a general obligation to ensure that enforcement procedures as specified are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by the Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringement.[49] Importantly, these procedures are to be applied in such manner as to avoid the creation of barriers of legitimate trade and to provide for safeguards against their abuse.[50]Also, these procedures shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time limits or an unwarranted delay.[51] Under the TRIPS Agreement, subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out under the Agreement[52]. And in regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.[53] In conclusion, while Nigeria has substantially complied with the provisions of TRIPS, she is still in default of several key provisions, the most important of which are the provisions for the protection of well-known or famous marks. It is hoped that upon the enactment or amendment of the existing legislation this issue shall be resolved.

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[47] Which also provides for protection of well-known marks.
[48] See *Exxon v. Exxon Nominees* (1989) FHCR 1.
[49] TRIPS Agreement 1994, Article 41
[50] *Ibid*
[51] *Ibid,* Article 41(2)
[52] TRIPS Agreement 1994, Article 59
[53] *Ibid*

2.3 The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) of 1961

The Rome Convention was established on October 26, 1961 and was intended to cater to the challenges posed by the emergence of new technologies like tape recorders that made the reproduction of sounds and images easier and cheaper than ever before. Copyright protection was under this convention extended for the first time from the author of a work to the creators and owners of a particular physical expression of that work of IP such as audiocassettes or DVDs.

The Rome Convention therefore came in response to the unfolding difficulties emanating from ideas variously represented in easily reproduced units by covering performers and producers of recordings under copyright. Each Member State is there under required to apply national treatment in respect of rights conferred on performers, record producers and broadcasting organizations.[54] In addition, member States must offer those from other States who are protected by the Convention certain minimum rights.

The Rome Convention protects performers[55] against certain acts they have not consented to. These include the broadcasting and communication to the public of their live performance, fixation of their live performance and reproduction of such fixation if the original was made without their consent or if the reproduction is made for different purposes from those for which they gave consent.[56] The Rome Convention also gives producers of phonograms[57] the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Broadcasting organizations have the right to authorize or prohibit certain acts, namely; the broadcasting of their broadcast, the fixation of their broadcast, the reproduction of such fixation, the communication to the public of their television broadcasts if such communication is made places that the public have access to against payment of an entry fee.[58]

The Rome Convention makes provisions for limitations and exceptions to the above-mentioned rights in national laws as regards private use, use of short excerpts in connection with reporting current events, ephemeral fixation by a broadcasting organization using its own facilities for its own broadcasts, use solely for the purpose of teaching or scientific research and in any other case where national law provides exceptions to copyright in literary and artistic works.[59]

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[54] Rome Convention, Article 2.

[55] Rome Convention, Article 2(a) defines performers to mean actors, singers, musicians, dancers and other persons who act, sing, deliver, play in, or otherwise perform literary or artistic works.

[56] Adewopo A., *'Nigerian Copyright System: Principles and Perspectives'* (Odade Publishers 2012) 53.

[57] Phonograms are defined under Article 2 (b) of the Rome Convention as any exclusively aural fixation of sounds of a performer or of other sounds.

[58] Rome Convention, Article 13.

[59] WIPO, Summary of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting organization (!961) http://www.wipo.int/traties/en/ip/rome/summary-rome.html accessed 19 March 2022', See also Article 51(1) of the Rome Convention. Article 24 of the Convention States that the Convention Shall be Subject to ratification or acceptance by the signatory states. Lt further provides that the Convention Shall be open foe accession by any State invited to the Conference and by any State Member of the United Nation, provided that in either case such State is a party to the Universal Copyright Convention or a member of the International Union for the protection if Literary and Artistic Works. The Rome Convention is administered by the WIPO in conjunction with the international Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). These three organizations constitute the secretariat of the intergovernmental Committee set up under the Convention consisting of 12 contracting states. Nigeria become

2.4 The World Intellectual Property Organization Copyright Treaty (WCT) of 1996

This is one of the 26 treaties currently administered by the World Intellectual Property Organization (WIPO).[60] The Treaty alongside the WIPO Performances and Phonogram Treaty (WPPT) are commonly regarded as the WIPO internet treaties. It is a special agreement under the Berne Convention that concerns the protection of works and the rights of their authors in the digital space.[61] This treaty provided a watershed for the protection of copyright and neighboring rights in cyberspace by establishing the new international legal norms for the protection of technological measures like the Digital Right Management Technique (DRM) used to provide technical means to ensure that copyright holders can maintain control of their content by safeguarding them from unauthorized access and use.[62] As to the rights granted to authors, apart from the rights recognized by the Berne Convention, the Treaty also grants: (i) the right to distribution; (ii) the right of rental; and (iii) a broader right of communication to the public.[63] As to limitations and exceptions, Article 10 of the WCT incorporates the so-called 'three-step' test to determine limitations and exceptions as provided for in Article 9(2) of the Berne Convention, extending its application to all rights. The Agreed Statement accompanying the WCT provides that such limitations and exceptions as established in National law in compliance with the Berne Convention may be extended to the digital environment. Contracting States may device new exceptions and limitations appropriate to the digital environment. Once the conditions of the 'three-step' test are satisfied, extension of existing or creation of new limitations is allowed.[64] The Treaty was concluded in 1996 and entered

a member having ratified the Convention on October 29 1993. The Convention has a total of 93 contracting parties.

[60] The 26 treaties include the WIPO Convention, the Berne Convention, the Paris Convention, the WIPO Copyright Treaty 1996. The performance and phonograms Treaty 1996, the Beijing Treaty on Audio Visual Performances 2012, the Patent Cooperation Treaty 1970, the Libson Agreement Concerning Protection of International Registration of Industrial Designs 1925, the Trademark Law Treaty 1994, the Singapore Treaty on the Law of Trademarks 2006, Patent Law treaty 2000, Nice agreement Concerning the International classification of goods and services for the purposes of the Registration of Marks 1957and the Marrakesh Print Disabled 2013, among others. See WIPO Intellectual Property Handbook (WIPO, 2004) http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo-pub_489.pdf accessed 19 March, 2022.

[61] WCT Summaryhttps://www.wipo.int/treaties/en/ip/wct/summary-wct.html accessed 20 March, 2022.
Any contracting party (even if it not bound by the Berne Convention) must comply with the substantive provisions of the 1971 (paris) Act of the Berne Convention of the Protection of Literary and Artistic Work (1886). Furthermore, the WCT mentions two subject matters to protected by copyright.: (i) computer programs, whatever the mode or form of their expression; and (ii) compilation of data or other material ('Database'), in any form which by reason of the selection or arrangement of their contents, constitute intellectual creations. Where a database does not constitute such a creation, it is outside the scope of this Treaty.

[62] Adewopo A., *op.cit*, 55.

[63] *Ibid*. the right of distribution is the right to authorize the making available to the public of the original and copies of a work through sale or other transfer of ownership. The right of rental is the right to authorize commercial rental to the public of the original and copies of three kinds of work: (i) computer programs (except where the computer itself is not essential object of the rental; and (ii) Cinematographic works (but) only in cases where commercial rental has led to widespread copying of such works, materially impairing the exclusive right of production:

(i) Works embodied in phonograms as determined in the national laws of Contracting Parties (except for countries which since April 15, 1994 have had a system in force for equitable remuneration of such rental). The right of communication to the public is the right to authorized any works in a way that the members of public may access the work from a place and at time individually chosen be them". The quoted expressing covers, in particular on demand, interactive communication through the internet.

[64] As to duration, the term of protection must be at least 50 years for any kind of work. The enjoyment and exercise of the right provide for in the Treaty cannot be subject to any formality. The Treaty obliges contracting parties to provide legal remedies against the circumvention of technological measures (e.g) encryption) used by authors in connection with exercise of their rights and against the removal or altering of information, such as certain data that

into force in 2002. The Treaty is open to States members of WIPO and to the European community. The Assembly constituted by the treaty may decide to admit other intergovernmental Organization to become party to the treaty. Instruments of ratification or accession must be deposited with the Director General of WIPO.

2.5 The Universal Copyright Convention (UCC) of 1952

There was need to strike a balance between the necessity to bring the United States within general network of international copyright relations and the enduring need to maintain the basic tenets of the Berne Convention which had all the more been strengthened after its revision of 1948 at Brussels. It was after this that the UNESCO took the initiative by promoting the Universal Copyright Convention of 1952.[65] The Convention is predicated on the principle of national treatment. That is that the protection afforded to literacy, artistic and scientific works of nationals of an adhering State must be no less effective than that granted to works of nationals of the adhering State in which protection is sought.[66]

The UCC was developed under the auspices of the United Nations, Educational Scientific and Cultural Organization (UNESCO) as an alternative to the Berne Convention for countries which disagreed with some aspects of the provision of the Berne Convention but which desired to participate in some form of multilateral copyright protection. These countries included developing countries and the old Soviet Union which felt that the strong copyright protection under the Berne Convention was mainly advantageous to western countries which were copyright-exporting nations. However, many countries that are members of the Berne Convention also became part of the UCC to secure protection for their works in the Berne-Convention States. Nigeria became a member of the UCC on February 14, 1962, following her ratification of its Treaty.[67]

3.0 Conclusion

We were able to look at International Legal Framework for Protection of Intellectual Property Rights in Nigeria. Such International Legal Framework includes (1) Berne Convention for the Protection of Literary and Artistic Works of 1886; (2) Trade Related Aspects of Intellectual Property (TRIPS) Agreement of 1995; (3) The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) of 1961; (4) The World Intellectual Property Organization Copyright Treaty (WCT) of 1996; and (5) the Universal Copyright Convention (UCC) of 1952. This article has gone a long way in assisting the stakeholders in understanding the International Legal Framework for Protection of Intellectual Property Rights in Nigeria. It is no gainsaying that these convention and treaties have had great influence on our national laws such as the Copyright Act 2023, Trademarks Act 1967, and the Patents and Designs Act 1971. A meticulous look at these national legal frameworks will reveal that they have been substantially modelled after the provisions of these international legal

identify works or their authors, necessary for the management (e.g, licensing, collecting and distributing of royalties) of their rights ("rights management information").

[65] Cornish W. and others, *'Intellectual Property: Patents, Copyright, Trademarks and Allied Rights'* (7th edn., Sweet and Maxwell 2010) 407. Adewopo A., *op.cit*, 52.

[66] Article 2 of the UCC. The Convention also provides that the duration of the protection of the work is to be governed by the law of the contracting state in which protection is claimed. It further provides that the term of protection under the convention shall not be less than the life of the author and 25 years after his death. The Convention also provides that it shall be without prejudice to any of the provisions of the Berne Convention. However, the UCC is no more as significant as it used to be since the advent of international Trade and World Trade Organization.

[67] Adewopo A., *op.cit*., 52.

frameworks. Thus, these international legal framework on intellectual property has had a great impact on the intellectual property legal framework in Nigeria.

4.0 Recommendations

While these international legal framework on intellectual property have had a great impact in the development of the national legal framework on intellectual property in Nigeria, however some of the international legal framework have some of their shortcomings. One major shortcomings of these international legal frameworks is that there is no effective enforcement mechanisms to ensure that members keep to their general obligations pursuant to the treaties or conventions. Also, ostensible liberty is given to member States in effecting the provisions of these conventions and treaties of which some of them hid under them to derogate from their obligations under these provisions. For instance, as seen above, article 36(2) of the Berne Convention 1886 provides that at the time a country becomes bound by the Convention, it will be in position under its domestic law to give effect to the provision of the Convention. The effect of this provision is that Countries of the Union are left at their liberty to decide when to give effect to the provision of the Convention pursuant to its domestic laws. Thus, a Country of the Union may decide not to give effect to the provisions of the Convention under its domestic laws till infinity despite being a signatory to the Convention. This in effect rubbishes the purpose of the Convention and reduces it to a mere "piece of paper' in the form of a convention. Therefore, this paper recommends that these lacunae and gaps in these provisions be amended to make them more viable and to make for accountability.