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ABSTRACT

Devoid of any vituperations, it's a truism to say that many people are green-horns in the area of intellectual property. Intellectual property is an emerging area of law and considering growing number of people harnessing their intellectual capacity and productivity, it's worthwhile to know the rights accruing to such individuals and the duration of such rights. Nigeria being blessed with abundant natural resources is also blessed with talented people. Everyday we see upcoming artists being signed up, writers publishing their manuscripts and cinematographers producing their movies. However, many of these individuals do not have an idea about the rights they have over these IPs (intellectual property) nor the duration of such rights. This paper will appraise the tenable intellectual property rights and the duration of such rights using available legislations.

Keywords: Intellectual property, intellectual property rights, Durations of intellectual property rights

1.0 INTRODUCTION

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.¹ It's concern with creative products of ones' mind. Furthermore, that it's the product of the mind doesn't mean everything that comes from the mind is qualified to be called an IP, for an idea to be called an IP it must be expressed, marketable and valuable in some manner.² IP can be divided into two, which include: Copyrights and Industry property. Also, the holders or owners of these intellectual property have what we call intellectual property rights. Intellectual property rights are the rights given to persons over the creations of their minds³, these rights could be economic or moral rights (if it's under copyright). The fulcrum of this article is to give an overview of such rights and its duration.

2.0 LEGAL FRAME WORKS OF INTELLECTUAL PROPERTY IN NIGERIA

Before we delve into the topic for discussion, it's pertinent to give a cursory gaze at the legal frame works regulating intellectual property. Under Nigeria's legal system the following Acts are the major regulatory laws of intellectual property, they include:

¹ <"What is Intellectual Property?" <https://www.wipo.int/about-ip/en/>> 29 | 12 | 2022

² <"Intellectual Property Law | What is Intellectual Property Law? - Video & Lesson Transcript | Study.com" <https://study.com/learn/lesson/what-is-intellectual-property-law.html>> 29 | 12 | 2022

³ <"WTO | intellectual property (TRIPS) - what are intellectual property rights?" https://www.wto.org/english/tratop_e/trips_e/intell_e.htm> 29 | 12 | 2022

- Patent & Designs Act Cap P2, Laws of the Federation of Nigeria 2004
- The Trademarks Act Cap T3, Laws of the Federation of Nigeria 2004
- Copyright Act Cap 68, Laws of the Federation of Nigeria, 2004,
- The Constitution Of Federal Republic Of Nigeria 1999 (As amended)

Furthermore, the above stated legislations regulating intellectual property recognized the following types of Intellectual property rights: Copyrights, Patent, Industrial Designs and Trade Mark. Other forms of Intellectual property rights which include: Trade secrets and Geographic indications do not have *sui generis* legislations that provide for their protection. However, Trade secret protection in Nigeria is mostly derived from the common law. Therefore, persons and enterprises have relied upon contract law, torts, and other basic legal principles to prove a claim for the misappropriation of trade secrets⁴. On the other hand, GIs have been recognized by international Organizations and conventions such as WTO Agreement on Trade- Related Aspects of Intellectual Property Rights (TRIPS) and the Paris Convention for the Protection of Industrial Property (Paris Convention) which Nigeria is a signatory to. However it hasn't be domesticated by the National Assembly in compliance with the provisions of the constitution.⁵

⁴ by [Inioluwa Olaposi](#) (*The Rhetoric Of Trade Secrets In Nigeria And Other Jurisdictions*) July 2022 <"The Rhetoric Of Trade Secrets In Nigeria And Other Jurisdictions - Trade Secrets - Nigeria" <https://www.mondaq.com/nigeria/trade-secrets/1212628/the-rhetoric-of-trade-secrets-in-nigeria-and-other-jurisdictions>>

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⁵ Section 12 of the CFRN 1999(as amended)

3.0 INTELLECTUAL PROPERTY RIGHTS AND THEIR DURATIONS

Intellectual property rights are spelt out and protected by intellectual property laws_ IP Law is the body of laws that governs all the relevant aspects (i.e. ownership, registration, protection, licensing, assignment, lifespan, etc.) of IP Rights.⁶ These laws made provisions for the duration of the various tenable IP rights. The IP rights and their durations according to their specific legislations are:

I. COPYRIGHTS:

This is one of the tenable rights in IP which is accrued to owner of an IP. Literally, it means to copy or to reproduce, this means that the original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work.⁷ Also, it gives to the owner of an IP economic and moral rights over his IP which he can delegate to others.

Although, Copyright is one of the rights obtainable in Intellectual property it doesn't mean that it covers all types of work/intellectual property. According to section 1 of the Copyright Act 1999, they following works/IP enjoy Copyright:

- a) literary works;
- b) musical works;
- c) artistic works;
- d) cinematograph films;
- e) sound recordings; and

⁶ By a4id(*Intellectual property law, Nigeria*) 2016 <www.a4id.org> 3rd January 2023

⁷ By WILL KENTON(Copyrights Explained) March 2022<<https://www.investopedia.com/terms/c/copyright.asp>> 3rd January 2022

f) broadcasts.

However, not all IP listed above can be clothed with Copyright, for such a work to enjoy Copyright is must eligible (original and fixed).

The right of Copyright is not perpetual, rather, it has its duration. The first schedule of the Copyright Act 1999 made provisions for the duration of Copyrights which are:

- Musical, literary and artistic works other than photographs will expire seventy years after the end of the year in which the author died. However, if such works are from government or corporations it will expire seventy years after the end of the year which the work was published.
- In respect to cinematography films and photographs, it will expire fifty years after the end of the year in which the recording was first made.
- In broadcasts, the right will expire in fifty years after the end of the year when the broadcast first took place.

II. PATENTS:

According to World Intellectual Property Organization, “A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.” A patent when granted gives the owner an exclusive right to produce and sell his/her invention. Patent is regulated by the Patent and Design Act 1970, it made provisions for inventions that are patentable and the duration of patent right.

According to section 1 of Patent and Design Act, the following inventions are patentable:

- (1) Subject to this section, an invention is patentable--
 - (a) if it is new, results from inventive activity and is capable of industrial application; or
 - (b) if it constitutes an improvement upon a patented invention and also is new, results from inventive activity and is capable of industrial application.
- (2) For the purposes of subsection (1) of this section—
 - (a) an invention is new if it does not form part of the state of the art;
 - (b) an invention results from inventive activity if it does not obviously follow from the state of the art, either as to the method, the application, the combination of methods, or the product which it concerns, or as to the industrial result it produces; and
 - (c) an invention is capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture.

Also, in Subsection 4-5 it listed things that can't be patented, they are:

- (a) Plant or animal varieties, or essentially biological processes for the production Of plants or animals (other than microbiological processes and their products);
- (b) Inventions the publication or exploitation of which would be contrary to public Order or morality (it being understood for the purposes of this paragraph that The exploitation of an invention is not contrary to public order or morality Merely because its exploitation is prohibited by law).

(5) Principles and discoveries of a scientific nature are not inventions for this Act.

Before an invention can be patented it has to be registered through an application and in compliance with section 3 and 4 of Patent and Design Act. The patent right is not perpetual, according to section 7(1) of the Patent and Design Act, a patent right will expire after twenty years. However, it shall elapse if the prescribed annual fee is not paid.

III. INDUSTRIAL DESIGNS:

According to section 12 of Patent and Design Act, it defined Industrial Design as

Any combination of lines or colors or both, and any three-dimensional form, Whether or not associated with colors, is an industrial design, if it is intended by the Creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a result.

In other words, Industrial Design is a design, sketch, color or ornamental decorations on a product which distinguishes it from others. For a design to be registered as Industrial design or be eligible, it must be new and not against public policy or morality.

Also, unlike Copyright where one enjoys automatic right without registration an industrial design must be registered before an individual will be entitled to such rights. According to section 12(1) of Patent and Design Act, They rights one is entitled to after the registration of an industrial design are:

- (1) Reproducing the design in the manufacture of a product;
- (2) Importing, selling or utilizing for commercial purposes a product reproducing the design; and

(3) holding such a product for the purpose of selling it or of utilizing it for commercial purposes.

However, these rights are not perpetual but last over a period of time_ according to section 12 of the Patent and Design Act, an industrial design right last for the period of five years and can be renewed for another subsequent five years after the payment of the prescribed fee. Also, an industrial design can be annulled legally, in compliance with section 22 of the Patent and Design Act.

IV. TRADEMARK:

According to World Intellectual Property Organization, A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are regulated by the Trademark Act 1967 and according to section 3 and 4 of Trademark ACT, a trademark must be registered before one can be entitled to the rights tenable from the Act. A Trademark when registered grants to the proprietor exclusive rights to use his trademark in relation to the goods and services it was registered for and also institute an action in Court for the infringement made on such trademark or to prevent the unauthorized use of the mark (s).⁸ However, these rights are not perpetual, the proprietor of trademark enjoys it over a period of time. Section 23 of the Trademark Act 1967, Provide as follows:

- (1) The registration of a trademark shall be for a period of seven years

⁸ By Resolution law firm (*TRADEMARK INFRINGEMENT AND ENFORCEMENT OF TRADEMARK RIGHTS IN NIGERIA*)2021<<https://www.resolutionlawng.com/trademark-infringement-and-enforcement-of-trademark-rights-in-nigeria/>> 3rd January 2023

But maybe renewed from time to time in accordance with the provisions of this section: Provided that, in relation to a registration as of a date before the commencement of this Act, this subsection shall have effect with the substitution of a period of fourteen years for the said period of seven years.

From the foregoing, it can be deduced that trademark right is not perpetual rather, it's meant to last over a period of time. Also, apart from the limited duration of the right, it can be nullified based on non-use, if it's deceptive and scandalous etc.

CONCLUSION:

Intellectual property is not given adequate attention in Nigeria, and many creatives are ignorant of their intellectual property rights, due to low publicity and archaic legislation which does not fit in to the modern world. Creatives need to be educated on their tenable rights and its durations in order to increase and encourage the growth of intellectual property.