

OVERVIEW OF INTELLECTUAL  
PROPERTY LAW AS IT RELATES TO  
THE ENTERTAINMENT INDUSTRY

---

BOLUWATIFE J. SANYA ESQ.

“

*“A business that has not protected its intellectual property assets is akin to a bottle of water without lid”*

”

---

*Boluwatife Sanya*

# Tangible v. Intangible Property

---



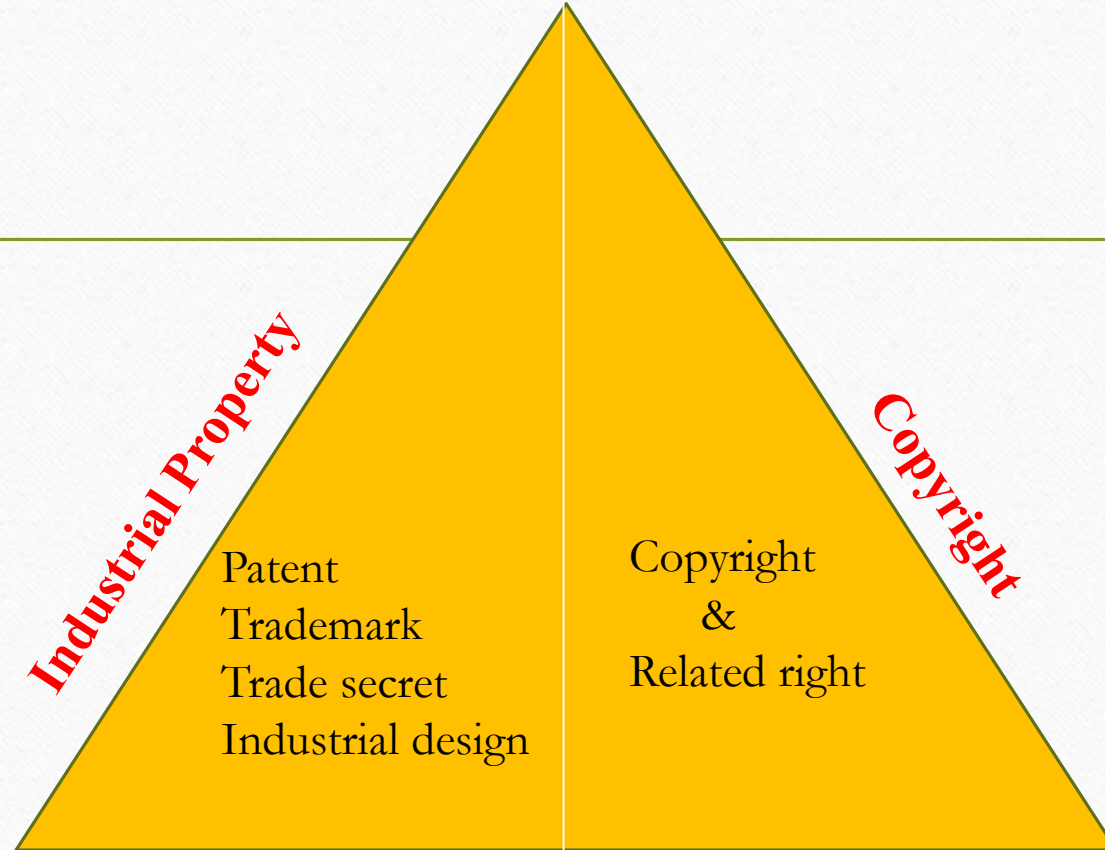


# What is intellectual property?

---

*Creation of the mind such as inventions, literary and artistic works, designs and symbols, names and images used in commerce.*

## TYPES OF INTELLECTUAL PROPERTY



- **Copyright:** Protects literary and artistic works such as music, books, photographs etc.
- **Trademark:** Distinguishes ones mark from that of a competitor.
- **Patent:** Protects inventions or a substantial improvement on an existing invention.
- **Industrial design:** protects the aesthetics ornamental aspect of an object or design.
- **Trade secret:** Protects confidential information. i.e coca cola formula

## Trade marks

- NOKIA
- Product "208"
- Start-up tone

## Patents & utility models

- Data-processing methods
- Operating system
- Operation of user interface



## Design

- Form of overall phone
- Arrangement and shape of buttons
- Position and shape of screen

## Copyright

- Software
- User manuals
- Ringtones
- Start-up tone
- Images

## Trade secrets

- Some technical know-how kept "in-house" and not published



# **IP RIGHTS IN THE ENTERTAINMENT INDUSTRY**

---

**Trademark**

**Copyright**

# Trademark

---

- WIPO- A trademark is any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors.
- INTA: A trademark is any word, name, symbol or device (or any combination thereof) that identifies and distinguishes the source of the goods of one party from that of another.
- Simply, trademark is any sign or mark that distinguishes one entity's goods or services from that of its competitors.
- Trademarks are broadly registered under the NICE Classification system which has 45 classes.
- Classes 1 – 34 – Goods
- Classes 35-45- Services

---

For a mark to be considered as a trademark, it must have the capacity to identify its source and differentiate it from other brands of competitors. Thus, it has to be Distinctive. To be Distinctive, it must not be;

- Deceptive
- Descriptive
- Generic
- Or Violate public order or morality

# Distinctiveness of Trademark

A trade mark must be distinctive and not descriptive of the good or service. Certain marks are naturally distinctive while some acquire distinctiveness over time.

When the consumer sees the mark, which good or service comes to mind

Apple for telephone, samsung, nokia for Phones. BMW, BENZ for cars. They may have no meaning.



Mercedes-Benz



---

The proprietor of a mark must ensure that the mark does not lose its distinctiveness by becoming generic. i.e aspirin

A registered trademark could lose its distinctiveness and become generic if the consuming public uses it as the name for a category of products.

Aspirin was created in 1897 and originally trademarked by Bayer AG. However, it has lost its distinctiveness and has now become generic. Many consumers now refer to pain relief drugs as aspirin.

# Example of TM that has become Generic Mark



---

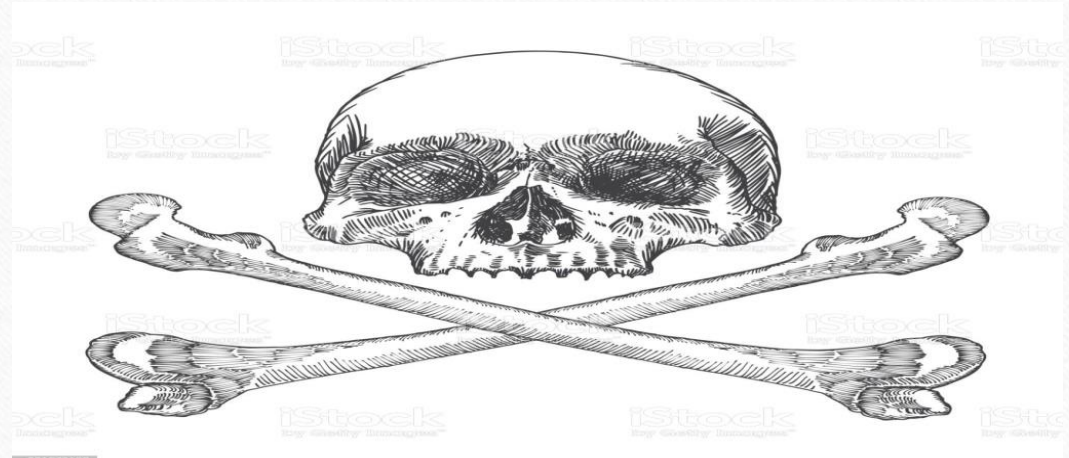
A mark is generic when it is already been used as a name for a category of goods. I.e cornflakes



# Non-registrable marks

---

- Descriptiveness
- Deceptive or misleading mark
- Marks against public morality or policy





# What can be Trademarked?

---

- Names i.e name of artiste. Omotola Jolade, Cubana, Kiss Daniel v. Kizz Daniel
- Logo i.e record label logo
- Slogan i.e popular slang coined from a song i.e “e don cast” “e choke”
- Tagline
- 3 D shapes
- Combination of any of the above

- 
- TM- Still in process of registration
  - R- Registered
  - SM- Service Mark in process of registration.



# Copyright

---

Copyright are exclusive rights conferred on a creative to control the use of his works; literary, Musical, Artistic, Audio-visual, Sound recording, Broadcasts.

Copyright protects the expression of ideas and not the idea simpliciter.

# Works Protected by Copyright

---

- Literary
- Musical
- Artistic
- Audio-visual
- Sound recording
- Broadcasts.

# Literary Works

---

- Novels, stories and poetical works
- Plays, stage directions, audiovisual work scenarios and broadcasting scripts
- Choreographic works
- Computer programmes
- Textbooks, treatises, histories, biographies, essays and articles
- Encyclopaedias, dictionaries, directories and anthologies
- Letters, reports and memoranda
- Lectures, addresses and sermons
- Law reports, excluding decisions of courts ; and

# Musical & Sound recordings

---

- **Musical works (Publishing):** musical composition; notes, lyrics, beats, chords and melodies.
- **Sound recording (Masters):** means the fixation of a sequence of **sound** capable of being perceived aurally and of being reproduced but does not include a sound track, accompanying or incorporated in an audiovisual work

# Artistic Works

---

- Paintings, drawings, etchings, lithographs, woodcuts, engravings and prints.
- Maps, plans and diagrams
- Sculpture
- Photographs not comprised in an audiovisual work
- Works of architecture in the form of building models

# Requirements of copyright protection

---

- Originality
- Fixation



# Originality

---

- This does not mean novelty or newness or inventive thought.
- It only connotes that the work must have been **independently created** by the creative/author.
- The work must not be a reproduction of another. It must not have been copied from an already existing work.
- The quality of the work does not matter.

Is your work/creation original if it is similar or almost a reproduction of an already existing work? **Sheldon's Case**

# Fixation

---

- **Expressed** in a definite medium of expression where it can be perceived, reproduced or communicated either directly or with the aid of any machine or device.
- *Yeni Anikulapo Kuti & ors. v. T.M Iseli & Ors (2003-2007) 5 I.P.L.R. 53*

# Copyright registration

---

- Not necessary. Once a work is original and fixed, it automatically enjoys copyright protection.

- **Why should you register it regardless?**

To establish ownership during litigation

To establish “earlier existence”

# Copyright in Music Industry

---

Song Writer



Performer



Producer/Beats maker



# Which rights do you acquire through copyright?

---

Broadly, they are:

- Economic rights
- Moral rights

# Economic rights

---

- Reproduction
- Adaptation
- Distribution
- Public performance
- Translation
- Broadcast

Economic rights can be commercially exploited and transferred to a 3<sup>rd</sup> party. i.e assignment, license

# Moral Rights

---

- **Integrity:** right to prevent anyone from mutilating, distorting or modifying his works which may appear derogatory. The rationale for the integrity right is that a work is deemed to be a reflection of the author's personality.
- **Paternity:** the author should be acknowledged wherever his work is used.

Moral right is no longer for life.

Cannot be assigned to a 3<sup>rd</sup> party except upon the death of the author, it can be transferred by Will. See 14 (3) NCA

# Ownership

---

- The general rule is that copyright is vested and or owned by the **author**. An author is the individual who creates the work.
- In employment, copyright is only owned by the employer when there is a contract (i.e contract of employment) assigning the works of the employee to the employer.
- When in a contract for service (independent contractor) or in fulltime employment of a government agency, international or inter-governmental agency or ministry, in the absence of an agreement, the government agency owns copyright.



- 
- Subject to any agreement between the parties, where a person for private and domestic purpose, commissions the taking of a photograph, painting or drawing of a portrait, making of an audio-visual work, the person who commissioned the work shall have:
    - i. Non-exclusive licence to exploit the commissioned work for non-commercial purposes.
    - ii. Has a right to restrain the publication, exhibition, broadcasting, communication, distribution and making available to the public.

- 
- **Collective work:** the entire work was contributed by several authors.
    - i. The person on whose initiative the collective work was created or directed owns the copyright.
    - ii. The above does not stop each of the authors from exploiting their individual works.

# Collective Management Organisations

---

- History of CMO's which birthed Societe des Auteurs Compositeurs et Editeurs de Musique
- Due to the various places where music can be played at the same time and the fact that the copyright owner cannot be at all these places, an organisation known as collective management organisation are usually responsible for monitoring, licensing and collecting royalties on behalf of the copyright owner.
- An author, performer or producer, for instance, cannot contact every single radio station to negotiate licenses and remuneration for the use of their songs. On the other side, it is not practical for a radio station to seek specific permission from every author, performer and producer for the use of each song.

# Functions of CMO's

---

- **Monitoring**
- **Negotiates**
- **Licenses**
- **Collects**
- **Distributes**

In Nigeria, we have the Copyright Society of Nigeria (COSON) as CMO.

# Common Copyright Infringement issues in the Entertainment Industry

---

- **Sampling:** incorporating parts (composition and sound) of an already existing song in that of a new one by a different owner. i.e many musicians have sampled the Late Fela Anikulapo's music. **Wizkid** in his song 'Jaiye Jaiye' sampled **Fela Anikulapo Kuti's 'Lady'** and **Flavour** in his 2011 hit song 'Nwa Baby (Ashawo Remix)' sampled 'Sawale' by **Rex Lawson**. This is an adaptation or even reproduction. **Ajibola Danladi Danny Young v. Tiwa Savage FHC/L/CS/230/2019-** Danny Young filed a copyright infringement suit against Tiwa Savage and her then record label, Mavin Records, on the grounds that Tiwa Savage allegedly lifted lyrics from his 'Oju Tiwon' song and used same in her 2018 song 'One'.
- Sampling can be done legally by getting a sampling clearance from the copyright owner (owner of composition and sound recording).

- 
- **Interpolation:** this is the re-recording of parts of the composition. This is only the composition. Hence, a mechanical licence only will be gotten from the song writer/composer.
  - For instance, at the end of Michael Jackson 1982 song, 'Wanna Be Startin' Somethin', the phrase 'mama say mama sa mama coo sa' was repeated many times. This phrase was borrowed from Cameroonian musician Manu Dibango's song, 'Soul Makossa'

- 
- **Unauthorised Performance:** D.J's who play in public places without licences or musicians who perform other people's song without licence.
  - **Unauthorised Distribution:** uploading on facebook, telegram etc

---

Registration of ones intellectual property is the first step in protecting your intellectual property.

**Register your works today!!!**



---

**BOLUWATIFE J. SANYA ESQ.**

**Managing Partner,**

**Paddle Solicitors**

+2348147439799

[boluwatifesanya1@gmail.com](mailto:boluwatifesanya1@gmail.com)

[boluwatifesanya@paddlesolicitors.com](mailto:boluwatifesanya@paddlesolicitors.com)



# References

---

- <https://keydifferences.com/difference-between-tangible-and-intangible-assets.html>
- [https://twitter.com/EU\\_IPO/status/872362204238147584/photo/1](https://twitter.com/EU_IPO/status/872362204238147584/photo/1)
- WIPO website