

# INTELLECTUAL PROPERTY LAW

## Securing International intellectual property rights protection over Nigerian innovations

Yunus Adelodun\* and O M Oyadambi\*\*

### Introduction

According to intellectual property, rights are limited to the territory of the country where they have been granted. Thus, where a creative produces a work, the principle anticipate that he only enjoys protection of his intellectual property rights within the country of creation.<sup>1</sup> Whereas, given the increasing emphasis on globalization, there are situations where the work protected under the IP laws of some countries, Nigeria for instance, may move beyond the shores of the country. Where this occurs, it would thus be worrisome to national creatives, whose work may travel beyond borders, about how protected their intellectual property (IP) rights are in the global IP context. However, the evolution of international intellectual property protection allows the safeguarding of intellectual property beyond an intellectual property holder's immediate jurisdiction. This global protection mechanism has allowed intellectual property rights holders the latitude to maximize their intellectual property, both locally and internationally.

This article also recognizes the present reoccurring trend of the extraterritoriality of Intellectual Property laws in the United States, and how Nigerian legislatures and judiciary can learn from the former's mistakes and draws inspiration on their areas of improvement. Against that backdrop, this article examines the intellectual property rights in Nigeria and enforcement for breach. Riding on the principle of territoriality side by side, the extraterritoriality of IP laws (using the United States as a case study) the article assesses various global mechanisms and multi-lateral agreements for the protection of intellectual property rights of Nigerian creatives and inventors. This article pays particular attention to how innovators in Nigeria can dispense with the worry over the territorial limitation of the right over their innovation, secure of their IP rights under international intellectual property rights protection. Given the robust nature of copyright protection in Nigeria, the work explains the vaguely stated provisions and puts them in perspective in light of court decisions.

### Intellectual property rights

Intellectual property is intangible property. It is said to be owned as a result of the use of the human intellect and effort to create things.<sup>2</sup> IP pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation.<sup>3</sup> This refers to the legal rights accorded to an inventor or creator over his work in order to protect his invention or creation, usually for a determined period of time.<sup>4</sup> These legal rights called IPR confers on the creator exclusivity in dealing with his intellectual property, such that only the creator/inventor or his assignees or franchisees can fully utilize such invention or creation. The reason for this 'right to exclusivity' has been linked to the role which IP plays in the modern economy. Since creative products are derived from intellectual labour, such

---

\* LL.B, (University of Ilorin), B.L. Associate Babalakin & Co.

\*\* LL.B (University of Ilorin), B.L, ACIS, ACiarb, Associate, Folashade Alli & Associates.

<sup>1</sup> Trimble, Marketa, "The Territorial Discrepancy between Intellectual Property Rights Infringement Claims and Remedies" (2019). Scholarly Works. 1251.

<sup>2</sup> Chandra Nath Saha and Sanjib Bhattacharya, "Intellectual Property Rights: An Overview and Implications in Pharmaceutical Industry", Journal of advanced Pharmaceutical Technology and Research, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/> accessed the 7<sup>th</sup> December, 2022.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

intellectual labor associated with the innovation should be given due importance. This is because public good emanates from it.<sup>5</sup>

Evidence of intellectual labour that may warrant these exclusive rights can be found in what is considered to be a 'quantum jump' - the amount of money being spent on research and development (R&D) over the years or the associated costs in investments and efforts required for putting a new technology in the market.<sup>6</sup> Developers, investors, researchers and all stakeholders having invested money and effort towards an invention or creation thus must have their products protected from unlawful use. This allows stakeholders the time to recoup their capital and gain profit over some definite period. Thus, Intellectual Property Rights are very valuable business assets, as they not only contribute to the general profitability of a business, but also leads to the advancement of the innovative and technological sectors of every country.<sup>7</sup>

The World Intellectual Property Organization (WIPO) defines intellectual property as a category of property that includes the intangible creations of the human intellect.<sup>8</sup> The overarching principle is that intellectual property should not be used or taken without the consent or approval of the owner.<sup>9</sup> The legal phrase intellectual property encapsulates some specific intellectual rights that the law seeks to protect. In Nigeria, such rights include copyright, trademark, patents, and industrial designs, and the principal laws governing intellectual property rights include the Copyright Act, the Trademarks Act, and the Patent and Designs Act; discussions on these are presented below.

### *Copyright*

Copyright is a form of intellectual property that covers all forms of literary, artistic and musical works created by an 'author'. Copyright is the rights or literary property as recognised and sanctioned by positive law. It is intangible, an incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested for a limited period with the sole and exclusive privilege of the use of such product for commercial and other purposes.<sup>10</sup> The principal legislation that regulates copyright in Nigeria is the Copyright Act.<sup>11</sup> The Act provides for a specific category of works

---

<sup>5</sup> A.S. Gutterman, B.J. Anderson, *Intellectual Property in Global Markets: A Guide for Foreign Lawyers and Managers*. London: Kluwer Law International; 1997.

<sup>6</sup> Chandra Nath Saha and Sanjib Bhattacharya, *op cit.*, Footnote 5.

<sup>7</sup> F.K. Beier, G. Schricker, 'IIC Studies: Studies in Industrial Property and Copyright Law, From GATT to TRIPS – The Agreement on Trade Related Aspects of Intellectual Property Rights'. (1996) Max Planck Institute for Foreign and International Patent. Munich: Copyright and Competition Law.

<sup>8</sup> World Intellectual Property Organization, 'Understanding Intellectual Property' (2016) Available at <https://www.wipo.int/publications/en/details.jsp?id=4080> Accessed on the 30<sup>th</sup> of September, 2021

<sup>9</sup> L. Liberti, 'Intellectual Property Rights in International Investment Agreements: An Overview', (2010) OECD Working Papers on International Investment, 2010/01, OECD Publishing

<sup>10</sup> Brian Garner, *Black's Law Dictionary*, (2014) (5th ed. Thomson Reuters, St. Paul, MN) 94.

<sup>11</sup> Copyright Act, CAP C28, Law of the Federation of Nigeria, 2004.

that are protected under copyright.<sup>12</sup> They are literary works,<sup>13</sup> artistic works,<sup>14</sup> musical works,<sup>15</sup> sound recordings,<sup>16</sup> cinematography, and broadcast.<sup>17</sup> Where any person, regardless of whether he is a Nigerian citizen, makes any of the above works, he immediately acquires the rights to use them exclusively without undue interference from a third party.

Any author arguably begins to enjoy his exclusive right the moment it is created in a fixed and definite medium.<sup>18</sup> Thus, there is no strict requirement as to registration of any work with a regulatory body, although it is recommended to register a piece of work. In the same vein, the mere fact that a person created work does not automatically qualify the work to benefit from the protection of the Act unless two conditions are met

First, the author must have expended sufficient effort on giving the work an original character; the work need not be unique or of literary quality; originality is more concerned with the manner in which the work was created and thus must not be a copy of another person's work. Thus, in *Offrey v Chief S. O. Ola & Ors*,<sup>19</sup> the plaintiff designed a new school record book consisting mainly of several vertical and horizontal lines which the defendant publishing company copied from pages 1 to 42, although added their own pages. The defendant publisher was found to have known about the plaintiff book but published nonetheless. It was held that copyright would have existed if such product is the result of some substantial or real intellectual effort or hard-work and the labour was not a common place one.<sup>20</sup> In Nigeria, an artistic work would also not be eligible for copyright if, at the time when the work is made, it is intended by the author to be used as a model or pattern to be multiplied by any industrial process.<sup>21</sup> Second, the work must also have been fixed in any definite medium of expression whether currently known or to be developed later. From this medium, it could be perceived or reproduced either directly or with the aid of any machine or device. The body saddled with the responsibility of the administration and management of all matters relating to copyright in Nigeria is the Nigerian Copyright Commission,<sup>22</sup> who maintains an effective data bank of authors and their work.<sup>23</sup> It is also pertinent to

---

<sup>12</sup> A "work" is defined as any translations, adaptation, new versions or arrangements of pre-existing works and anthologies or collection of works which by reason of the selection and arrangement of their content, present an original character. See Section 51 of the Copyright Act Cap, C.28 Laws of the Federation 2004. The term is also defined under section 1(1) of the Copyright Act as including all forms of literary, musical and artistic works, cinematograph films, sound recordings and broadcasts. Section 1(1) (a-f) of the Copyright Act.

<sup>13</sup> Literary work whether or not considered within the literary community to be of literary quality includes, (a) Novels, stories and poetic works; (b) Plays, stage directions, film scenarios and broadcasting scripts; (c) Choreographic works; Computer programmes; (e) Textbooks, treatises, histories, biographies, essays and articles; (f) Encyclopedias, dictionaries, directories and anthologies; (g) Letters, reports and memoranda; (h) Lectures, addresses and sermons; (i) Law reports, excluding decisions of courts; (j) Written tables or compilation. Any of the literary work above or similar to the works above qualify as a literary work.

<sup>14</sup> Artistic work includes, irrespective of artistic quality, any of the following work or works similar thereto:- (a) Paintings, drawings, sketching, lithographs, woodcuts, engravings and prints; (b) Maps, plans and diagrams; (c) Works of sculpture (d) Photographs not comprised in a cinematograph film; (e) Works of architecture in the form of buildings models; and (f) Works of artistic craftsmanship and also (subject to subsection (3) of Section 1 of this Act) pictorial woven tissues and articles of applied handicraft and industrial art. Cinematograph film includes the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and includes the recording of a sound track associated with the cinematograph film.

<sup>15</sup> Musical work means any musical composition, irrespective of musical quality and includes works composed for musical accompaniment.

<sup>16</sup> Sound recording means the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced, but does not include a sound track associated with a cinematograph film. Broadcast means sound or television broadcast by wireless telegraph or wire or both, or by satellite or cable programmes and includes rebroadcast.

<sup>17</sup> Broadcast means sound or television broadcast by wireless telegraph or wire or both, or by satellite or cable programmes and includes rebroadcast.

<sup>18</sup> Section 1(2) of the Copyright Act

<sup>19</sup> *Offrey v Chief S. O. Ola & Ors* Suit No. HOS/23/68 decided 27th June 1969

<sup>20</sup> C. Nwabachili, 'The Infringement of Copyright in Nigeria: An Overview', <https://www.globalacademicgroup.com/journals/knowledge%20review/Nwabachili.pdf> accessed 7<sup>th</sup> December, 2022.

<sup>21</sup> Ibid.

<sup>22</sup> Section 34 of the Copyright Act

<sup>23</sup> Section 34 (3)e of the Copyright Act

note that the court vested with the jurisdiction to hear copyrights infringement disputes is the Federal High Court of Nigeria.<sup>24</sup>

When a person uses the work of another that is protected by the copyright law, in a manner that is inconsistent with the right of the owner and without the authorization of the owner, such a person is said to have infringed on the owner's copyright and the law prescribes both civil and criminal sanctions to such a person. This includes an action for conversion,<sup>25</sup> damages, or monetary compensation,<sup>26</sup> injunctions,<sup>27</sup> and account for profits. Copyright infringement also carries criminal liability with penalties of fine and terms of imprisonment.<sup>28</sup> The NCC is the body with appropriate prosecutorial powers to institute such criminal proceedings. In Nigeria, where the relevant prosecutorial body has instituted a criminal action against an offender, there is no restriction on the copyright owner to institute a civil action. For criminal liability, the offender would not be liable where it can be established to the satisfaction of the court that he did not know or believe he was infringing on such copy at the time of committing the offence.<sup>29</sup> Lastly, it is essential to note that the duration of copyright for literary, artistic and musical works is throughout the owner's entire lifetime and 70 years after his death.<sup>30</sup>

### *Trademarks*

A trademark is the most popular form of intellectual property in Nigeria.<sup>31</sup> This can be attributed to its constant usage in trade and commerce. It refers to a type of intellectual property that protects the distinctive mark of a business.<sup>32</sup> Distinctive mark refer to the words and devises that make up the name or logo of a business. The Trademark Act regulates the use of trademarks in Nigeria, and unlike copyright, a trademark is expected to be registered at the trademark registry.

The procedure for the registration of a trademark begins when the applicant carries out a search at the registry to find out whether the mark they are about to register is available for registration;<sup>33</sup> that is, whether or not there is an existing mark similar to the one they intend to register. Suppose the mark is available to be registered. In that case, the applicant goes on to file an application, and the registrar would thereafter publish his notice of application in the trademark journal. The publication of the application is to give room for anyone who wants to oppose the registration of the trademark to file a notice of opposition.<sup>34</sup> After the notice of opposition is filed, the applicant is allowed to file a counterstatement, and thereafter evidence shall be taken, and the registrar shall decide whether or not

---

<sup>24</sup> Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>25</sup> By s.16 of the Copyright Act, all infringing copies of the works copyright subsists, or of any substantial part thereof, shall be deemed to be the property of the author or owner. Therefore, the owner may seek the order of the court for the conversion of the infringed copyright materials.

<sup>26</sup> This could either be Special or General Damages. The author need not prove actual damage as the damages is said to be at large meaning an award that has no exact measurement.

<sup>27</sup> Injunctions could be interim or interlocutory for the purpose of restraining the person from further infringing on the copyright. If it is an interim injunction, it lasts for a short time and is usually granted only in cases of urgency requiring immediate relief. It is made pending the happening of an event such as the hearing and determination of a motion on notice or until a named date. If it is an interlocutory injunction, it is to be granted pending the final determination of a case on the merits. It ensures that the parties to the case maintain the status quo pending the determination of the substantive suit. It could also be perpetual injunction otherwise called permanent injunction, a final relief which ensure that the infringer never infringes with the author's work again. There is also the Anton Piller injunction for inspection and seizure of the infringing materials.

<sup>28</sup> C C. Nwabachili, *op cit*. Footnote 23.

<sup>29</sup> Section 20 of the Copyright Act.

<sup>30</sup> Section 2 Copyright Act, 1st Schedule.

<sup>31</sup> Muhammad Murtala, 'Trademarks in Nigeria: An Overview', (2016) 4(4) International Journal of Innovative Legal & Political Studies, <https://seahipaj.org/journals-ci/dec-2016/IJILPS/full/IJILPS-D-2-2016.pdf> accessed December 2nd, 2022.

<sup>32</sup> Anne-Marie Mooney Cotter, *Intellectual Property Law: Professional Practice Guide*, (London: Cavendish Publication Ltd, 2003), p.7

<sup>33</sup> Section 17 of the Trademark Act

<sup>34</sup> Olusola John, 'Nigeria: Procedure for Trademark Search and Online Registration in Nigeria', <https://www.mondaq.com/nigeria/trademark/976986/procedure-for-trademark-search-and-online-registration-in-nigeria> accessed the 4<sup>th</sup> December, 2022.

the application is valid<sup>35</sup>. If the decision of the registrar favours the party filing the opposition, the application would be refused. However, if it favours the applicant, or there was no one who filed an opposition, the registrar shall register the trademark and issue a certificate of registration to the applicant.<sup>36</sup>

After the registration of a trademark, the owner gets a guaranteed protection of that trademark for seven years,<sup>37</sup> and thereafter the trademark is renewable for another period of 14 years.<sup>38</sup> This means that within those periods when the trademark enjoys protection, no individual or entity is allowed to register or use that same mark for any reason. However, the trademark owner can grant permission to a third party to use his trademark. This can be done through a franchise, an assignment, or a transfer.<sup>39</sup> Furthermore, when a person's trademark has been or is about to be infringed upon, they can enforce their right as a trademark owner in several ways. If they wish to do this before the registration of the offending trademark, they are expected to file a notice of opposition as well as a statutory declaration after the offending mark has been published in the trademark journal. If the mark is being used already by the infringer, they may apply to a court for an Anton-Piller Order, or they may write a cease-and-desist letter to the infringer.<sup>40</sup>

A notable point here is that the law requiring a trademark to be registered does not mean that an unregistered trademark cannot enjoy protection under the law. An unregistered trademark would enjoy protection under common law to such extent that the owner would be able to restrict another person from using it under the tort of 'passing off,' provided that the owner has been in continuous use of that unregistered trademark.<sup>41</sup> This is basically to protect consumers from confusion arising from the use of the same trademark by another person.

#### *Patents and industrial designs*

Patent as a type of intellectual property is quite different from industrial designs. However, the law protects and regulates both under a single legislation - the Patent and Designs Act. Patent is the type of intellectual property that protects inventions; for an invention to be patentable, it must be new, it must result from an inventive activity and it must be capable of industrial application: that the invention must be able to be manufactured and used in any kind of industry, including agriculture.<sup>42</sup>

A person desirous of getting a patent for their invention is expected to make an application to the Registrar, and the application must contain their name and the description of their invention among other things. If the registrar is satisfied that the application has complied with the provision of the law, the patent shall be granted to the applicant.<sup>43</sup> A patent confers upon the owner the right to use and preclude any other person from using, importing, or selling the invented product. The duration for a patent is twenty years, starting from the date when the application for the grant of patent is submitted to the registrar. For an industrial design to be protected by intellectual property laws, it must also be registered. However, it must be new and it must not be contrary to public order or morality<sup>44</sup>.

---

<sup>35</sup> Section 20 of the Trademark Act.

<sup>36</sup> Section 22 of the Trademark Act.

<sup>37</sup> Muhammad Murtala, *Op cit.* Fn. 13,15

<sup>38</sup> Section 23 of the Trademarks Act

<sup>39</sup> Banwo & Ighodalo, 'Trademark Licensing in Nigeria', <https://www.banwo-ighodalo.com/assets/grey-matter/2b19b06b5a62ddb8f345122a028676b9.pdf> accessed the 4<sup>th</sup> December, 2022.

<sup>40</sup> Fred Onuobia, Similoluwa Oyelude, "Nigeria", in Global Legal Group, *International Comparative Legal Guides: Trade Marks, 2021*, p.195 [https://www.gelias.com/images/Newsletter/TM21\\_Chapter-21\\_Nigeria\\_compressed\\_opt.pdf](https://www.gelias.com/images/Newsletter/TM21_Chapter-21_Nigeria_compressed_opt.pdf) accessed 4<sup>th</sup> December, 2022.

<sup>41</sup> Chukwunweike Anukenyi, Sylvester Ndubuisi, 'Jurisdiction in Actions for Infringement of Trade Marks and Passing-Off in Nigeria', [2013] Vol.11, *The Nigeria Juridical Review*, <https://law.unn.edu.ng/wp-content/uploads/sites/12/2016/08/Article-5-Jurisdiction-in-Actions-for-Infringement-of-Trademarks-and-Passing-Off-in-Nigeria-Chukwunweike-A.-Ogbuabor1.pdf> accessed the 5<sup>th</sup> December, 2022.

<sup>42</sup> Section 1 of the Patent and Designs Act.

<sup>43</sup> Section 3 of the Patent and Designs Act.

<sup>44</sup> Section 31 of the Patent and Designs Act.

The intellectual property rights regarding an industrial design are vested in the statutory creator,<sup>45</sup> a person who, whether or not they are the true creator, is the first to file an application for the registration of the design. An application for the registration of an industrial design shall contain a request for the registration of the design together with the name and address of the person who wants to register it and the specimen of the design. After submitting these things, the person intending to register the design would pay a prescribed fee. Thereafter, the registrar shall examine the application and after they are satisfied that the application has complied with the law, the registrar shall issue a registration certificate to the statutory creator which is a proof that the design has been registered.

Lastly, infringement of a patent or a design occurs when a person uses the patent or the design in a manner that is inconsistent with the right of the owner, without the authorization of the owner.<sup>46</sup> That is, if a third party makes, sells, import or stocks or use the patent or the design without the consent of the owner. Upon infringement, the owner has a right to seek redress in court against the infringer and the owner is entitled to relief such as damages, injunctions, account for profit and others.<sup>47</sup>

### **An analysis of the extraterritoriality of intellectual property rights and the application of international protection of such rights**

Due to the complex nature of the protection of the numerous rights established under the various rules of intellectual property, law and the uniqueness of determining the extent of the level of ownership and control of the rights of producers, many have posited that the application of another country's law in matters that emanate from another country will birth complexities, and there is an increased possibility of conflict of laws. In order to perform an analysis, the rules and practices of the United States with respect to the intellectual property rights will be established.

The judicial arm of government of the United States have continuously attempted, to resolve these issues, including establishing the presumption against the extraterritorial application of US law.<sup>48</sup> The school of thought that is against the above rule rely on in further preaching and establishing the rule of extraterritoriality of IP rights, and is the incurring inconsistency of the courts in the United States to apply the presumption. The presumption stems from the Restatement (Fourth) of the Foreign Relations Law of the United States, with the overall interest of protecting the international community from potential clash and conflicts of law.<sup>49</sup> To provide further justification for the emphasis on the presumption,<sup>50</sup> the court has over time emphasized the doctrine of separation of power: the executive and legislature have the ability to work at the international community, and the judicial arm are restricted by the United States law extra-territorially.<sup>51</sup> The idea of extending diverse countries' IP rights to another is heavily criticized due to the possibility of questioning the sovereignty of the other country. Matters centred on the aforementioned issue are usually confronted with the provisions of conflicts of law to prevent unnecessary interference.

In order to ameliorate the issue of preventing the possibility of the US courts not performing its duty as 'the last hope of the common man' via the application of the presumption, the court will evaluate the circumstance of the case together with the applicable laws and determine whether the presumption has been negated by the congress via providing that the law should have an international reach; in other words, it must be applicable outside the United States. In the event that the presumption has not been negated by any law, the courts has overtime expanded the law of the United States to apply extraterritorially in the event that the conduct in which the matter stemmed from occurred domestically.<sup>52</sup> Irrespective of the United States inconsistent application of the presumption, the court

---

<sup>45</sup> Section 14 (1) of the Patent and Designs Act.

<sup>46</sup> Section 25 (1) of the Patent and Designs Act.

<sup>47</sup> Section 25 (2) of the Patent and Designs Act.

<sup>48</sup> *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129, 2136 (2018)

<sup>49</sup> Restatement (Fourth) of the Foreign Relations Law of the United States § 404, Reporters' Notes 1 (Am. L. Inst. 2018).

<sup>50</sup> Restatement (Fourth) of the Foreign Relations Law of the United States § 405 (Am. L. Inst. 2018).

<sup>51</sup> Curtis A. Bradley, Territorial Intellectual Property Rights in an Age of Globalism, 37 VA. J. INT'L L. 505, 516 (1997).

<sup>52</sup> William S. Dodge, 'The New Presumption against Extraterritoriality' 133 Harv. L. Rev. 1582, 1595-97 (2020)

has also overtime assented to the ground of licensing the extraterritorial application of the United States law in matters that establish damages and liability.<sup>53</sup>

*Microsoft Corp v. AT&T Corp.*,<sup>54</sup> is a notable case on the evaluation of the extraterritoriality of IP rights. The defendant argued that since the various copies of the software created overseas emanated via express supply from the United States, that master software emanated from the United States. The Supreme Court reasoned that since the entire copies emanated outside the United States via supply from outside the country, the patented invention and liability must be controlled by the foreign law. It further held that if there is any doubt in the mind of the defendants with regards the conduct of Microsoft falling outside the dictates of s.271(f), such doubt was to be expunged by the presumption against extraterritoriality. The possibility of a loophole to be maximized by software makers to create copies in various foreign companies was tagged by the Court to be an issue for “congress to consider”.

Subsequently, in 2012 the Federal Circuit observed the circumstances of a particular case which is centered round the liability of manufacturers of pest control supplements. They were held liable for inducement under the extant provision of s.271(b) for the sale and manufacturing of the Perot control supplements outside the United States i.e. in a foreign land. In *Merial Ltd. v Cipla Ltd.*,<sup>55</sup> the Court held that the defendant was liable for inducement on the ground that it had a fundamental role in the packaging, manufacturing and provision of aid in the creation and development of the product which was used as a tool by the direct infringer for sale in the United States. It further held that the provisions of s.2151(b) cannot be limited by territorial boundary, and that the defendant attracted the application of the doctrine of extraterritoriality in inducting the act of infringement which occurred with the four corners of the United States. Relevantly, the case of *Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.*,<sup>56</sup> the argument of Power Integration that due to the fact that it established an underneath act of domestic infringement, it had the legal right of full compensation for ever damage suffered as a result of the infringement, was clearly rejected by the Federal Circuit. The court further held that the foreseeability theory of damages set into motion by power integration kick-start the presumption against extraterritoriality.

In 2018, the Federal Circuit received an application to overturn the decision of the district court in granting a motion of summary judgment in the case of *Texas Advanced Optoelectronic Solutions, Inc. v. Renesas Electronics America, Inc.*<sup>57</sup> The patentee was held by the district court to lack the ability to claim damages for light sensors, which were packaged, manufactured and tested in a foreign land and subsequently shipped to distributors and sales persons abroad. The court held the patentee was not entitled to compensation irrespective of the evidence rendered to reveal that Apple made sales of iPhones in the United States (including the gadgets of the accused). The court’s affirmation of the summary judgment was premised on the ground that there was insufficient evidence to attach the foreign sales to the products made, sold, used and offered for sale on the United States under s.271(a).

In 2018, the Supreme Court, in *WesternGeco LLC v. ION Geophysical Corp.*,<sup>58</sup> scrutinized the issue of extraterritoriality in a wider context and categorized the divergent components of patented invention from the United States under s.271(f)(2). The decision of the Federal Circuit was reversed by the Supreme Court on the ground that ss.271(a) and 271(f) have a relationship due to the inability of patent owners to receive damages from the loss of foreign sales. The court further established the grounds for questioning the extraterritoriality of IP rights from the position of the court in *RJR Nabisco, Inc. v. European Community*.<sup>59</sup> It turned down the presumption against extraterritoriality due to the fact that its application will birth absurdity on the end of recant statutes, particularly the Patent Act. The Court

---

<sup>53</sup> *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129, 2134 (2018). See Thomas F. Cotter, Extraterritorial Damages in Patent Law, 39 CARDOZO ARTS & ENT. L.J. 1, 3 (2021).

<sup>54</sup> 550 U.S. 437 (2007).

<sup>55</sup> 681 F.3d 1283 (Fed. Cir. 2012)

<sup>56</sup> 711 F.3d 1348, 1370-1371 (Fed. Cir. 2013)

<sup>57</sup> F.3d 1304 (Fed. Cir. 2018).

<sup>58</sup> 138 S.Ct. 2129 (2018).

<sup>59</sup> 579 U.S. 325 (2016)

further established that the intent of Congress was to regulate matters on infringement. Further, infringement as contained in ss.284 and 271(f)(2) of patent law must extend to the domestic conducts of manufacturing and supplying diverse components of an invention within the United States with the intention of combining such process outside the United States “in a manner that would constitute an infringement of patent when such combination occurred within the United States.”

Most recently, in 2022, the Federal Circuit in *California Institute of Tech. v. Broadcom Ltd.*,<sup>60</sup> supported the decision of the district court to ignore the argument on the presumption against extraterritoriality. The position of the federal circuit was premised around the truism that the issue was not centered on whether or not the infringement policy should have a domestic or extraterritorial effect, plus, counsel failed to establish whether or not the cited laws apply domestically. The crux of the argument on both sides was on whether or not the relevant transactions that led to the creation of the intellectual property right were extraterritorial or domestic in nature. The district court held that:

...the moment an alleged infringer is held liable for infringement following a claim from a patent holder; such position can only come into existence once the patent holder proves on preponderance of evidence that the infringer imports, sells, offers to sell without the patent user’s authorization within the United States.

The court gave a succinct instruction to the jury on the requisite grounds before determining whether or not a sale should be adjudicated on based on the United States law. The evidence of the accused being supplied to Apple following the Master Development and Supple Agreements executed in the United States is sufficient evidence of the extraterritorial application of the United States Patent law.

The extent of the applicability and enforceability of trademark extraterritoriality is gently emerging as a ground for conversation. A country such as the United States, while evaluating the extent of the applicability of the above area, have recognised the matter as a fast-growing legal issue. An example of the aforementioned is the position of the United State court in the case of *Abitron Austria GmbH v. Hetronic Int’l, Inc.*<sup>61</sup> In 2016, in *Trader Joe’s Co. v. Hallatt*,<sup>62</sup> the Ninth Circuit, independently reversed the decision of a lower court via the dismissal of an action instituted by Trader Joe against a Canadian retailer; the Canadian retailer contacted and subsequently pitched ideas of brands produced from Trader Joe in the United States and went on to sell the product in Canada. In the course of giving judgment, the Ninth Circuit openly adopted the two-step framework.<sup>63</sup>

In evaluating the level of extraterritoriality of trademark laws, courts are legally obligated to examine the law to determine whether or not the drafters of such laws intend to make it apply outside the four corners of the originating country. This is done by examining whether there is a clear and affirmative instruction to give it such widespread application. The US Supreme Court gave an intelligent mode of identifying this intention by holding that the Lahman Act, for example, employed the use of the words “use in commerce” - the use of commerce reveals the intention of the congress to allow the act have extraterritorial effect.<sup>64</sup> In the absence of the above, the court must evaluate the law and investigate whether the draftspersons intend to ensure the law has a general and foreign application. In 2020 the circuit employed the test that requires the conduct of foreign producers to have a stronger commercial ground in the United States over the requirement of the forge in strangers having some effect in the United States.<sup>65</sup> The tests are: whether or not the defendant is a citizen of America must be determined: how much has the dependent affected the e-commerce of the United States by his conduct; and whether there would be the possibility of having conflicts between the applied law and the foreign law. The requirements as established above have over the years been applied by the Tenth Circuit, while rejecting

---

<sup>60</sup> 25 F.4th 976, 992 (Fed. Cir. 2022)

<sup>61</sup> 143 S. Ct. 398 (2022).

<sup>62</sup> 835 F.3d 960; 9th Cir. 2016.

<sup>63</sup> The two-step framework of *RJR Nabisco*. Id. at 966 (citing *RJR Nabisco, Inc. v. European Cmty.*, 579 U.S. 325 (2016)).

<sup>64</sup> *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952).

<sup>65</sup> *IMAPizza, LLC v. At Pizza Ltd.*, 965 F.3d 871, 880 (D.C. Cir. 2020) (citing *Trader Joe’s*, 835 F.3d at 969; *McBee v. Delica Col, Ltd.*, 417 F.3d 107, 120 (1st Cir. 2005).



the *Timberlake* and *Vanity Fair* tests. In cases where the defendant is a foreigner, the onus is on the plaintiff to establish that the act of the defendant had a costly effect on the commerce of the United States.

While National or domestic intellectual property laws are limited to a country, innovators need to protect their intellectual property outside the country where they are domiciled, lest they be counterfeited and pirated. This protection is crucial because a third party can register in another jurisdiction fraudulently or innocently, thereby excluding the original owner or first inventor from maximizing their intellectual property in that jurisdiction. International legal instruments to protect IP are available through treaties, conventions, protocols, agreements, charters and declarations. Before examining the applicability of international laws in Nigeria, it is important to mention that the applicability of international laws in Nigeria is subject to ratification: therefore, the country must submit its instrument of ratification besides being a signatory to the international legal instrument.

### **The extraterritoriality of trademark laws and applicability of international trademark laws in Nigeria: UA as a cases study**

To have an understanding of the extent of the extraterritorial application of trademarks laws, the rule of priority and the level of its expansion from the United States to other countries will be adopted as a case study. Upon careful scrutiny of the United States trademark law, it is clear a prior user has an advantage over a foreign user. Put differently, a foreign user cannot claim priority over a previous user in the United States. However, foreign users have over time seek solace in the mark doctrine. However, in practice, the mark doctrine has failed to receive judicial recognition, as the court and the Trademark Trial and Appeal Board (TTAB) have constantly rejected arguments centred on the mark doctrine.

An example of such case is the case of *Jung v. Magic Snow*.<sup>66</sup> In this case, Jung filed an application in court alleging the grave possibility of the presence of confusion with the use of his mark. In canvassing her argument, she attached the alleged fame of her mark in Asia and posited that this same mark has popularity in the United States, due to her overall effort in developing the mark in Korea. The Trademark Trial and Appeal Board expressly dismissed the argument of Jung on the ground that the entirety of her argument failed to establish the point of having prior use of the design, the action also failed as a result of the inability of the Trademark Trial and Appeal Board to recognize the well-known doctrine in establishing priority.

It is expedient to establish that when considering arguments that sway on the end of the extraterritoriality of trademark law, experts fail to recognize the peculiar importance of intellectual property rights established under foreign laws. In order to settle this, lower courts in the United States have delineated seven hyper intelligent conditions before a patent law or trademark law can become extraterritorial (it is important to note that these conditions are outside the provisions of intellectual property law). The conditions are: the extent at which the law conflicts with a foreign policy or law: the allegiance or nationality of the parties in dispute and the location where the parties agreed, and the principal location of business; the mode of enforcement coupled with the ease of enforcement by either state to achieve maximum compliance with the extent to which enforcement by either state can be expected to achieve compliance; the effect the enforcement of the law will have on the United States as compared to the originating nation; an evaluation on whether or not the enforcement of such law would harm or negatively affect the American commerce as a whole: the level and height of the foreseeability of the effect of applying such law extraterritorially would have on the foreign country and the United States as a whole; and the comparative and juristic relevance of the conduct abroad and the violation charged of the conduct within the United States.<sup>67</sup> It is clear that the above conditions are not centered on the principles of Intellectual Property law. Instead, they are wide spread conditions applicable across

---

<sup>66</sup> LLC, 124 U.S.P.Q.2d 104102 (T.T.A.B. 2017).

<sup>67</sup> *Decca Ltd. v. United States*, 544 F.2d 1070, 1074 (Ct. Cl. 1976).

diverse legal areas to understand and weigh the issue of extraterritoriality of Intellectual Property Rights.

In furtherance of the earlier established subdivision, it is pertinent to establish international laws applicable in Nigeria and the mode of entrenching these laws into Nigerian law. There are three basic international laws applicable in Nigeria: the Paris Convention for the Protection of Industrial Property,<sup>68</sup> TRIPS, and the Madrid Agreement Concerning the International Registration of Marks of 1891. The Paris Convention for the Protection of Industrial Property was signed in Paris on the 20 March, 1883, as one of the first Intellectual Property Treaties. It established a union for the protection of Industrial Property. As of January 2019, the convention has 178 contracting member countries, making it one of the most widely adopted treaties worldwide. The substantive provision of the Convention is divided into three: national treatment, right of priority, and the common rules. It takes a range of forms, including patents for inventions, industrial designs, trademarks, service marks, commercial names and designations amongst others. Nigeria has been a contracting party to this convention since the 2<sup>nd</sup> of September, 1963.<sup>69</sup>

The Trade Related Aspect of Intellectual Property Rights (“TRIPS”) is an international legal agreement between all World Trade Organization member nations. The agreement was negotiated during the 1986-1994 Uruguay rounds.<sup>70</sup> It introduced intellectual property rules into the multi-lateral trading system for the first time. It came into effect on the 1 January 1995 and it is the most comprehensive multi-lateral agreement on intellectual property.<sup>71</sup>

The TRIPS agreement plays a critical role in facilitating trade in knowledge and creativity, resolving trade disputes over intellectual property, and assuring WTO members the latitude to achieve their domestic objectives. The agreement is a legal recognition of the significance of links between intellectual property and trade.<sup>72</sup> The TRIPS Agreement covers five broad areas namely: what general provisions and basic principles of the multi-lateral trading system apply to international intellectual property; what the minimum standards of protection are for intellectual property rights that members should provide; which procedures members should provide for the enforcement of those rights in their own territories; how to settle disputes on intellectual property between members of the WTO; special transitional arrangements for the implementation of TRIPS provisions. Nigeria is a signatory to the WTO agreement on Trade Related aspects of Intellectual Property rights.<sup>73</sup>

### **The extraterritoriality of trademark laws and applicability of international trademark laws in Nigeria: USA as a cases study**

The extraterritorial application of patent law must be distinguished from that of trademark laws. The practice of the United States is noteworthy when it comes to distinguishing the two areas. As established earlier, in the United States a prior foreign user of a trademark lacks priority over a previous user in the United States. Patent users on the other hand are expected to understand that the patent law denies foreign users following prior patent foreign activity.<sup>74</sup> Unlike the United States trademark law, the United States patent rights and its extraterritoriality is not as straight forward, as is its trademark laws

---

<sup>68</sup> The Paris Convention, adopted in 1883, applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition. <https://www.wipo.int/treaties/en/ip/paris/index.html>

<sup>69</sup> World Intellectual Property Organisation, ‘Nigeria: Jurisdiction – General Information’, <https://inspire.wipo.int/system/files/ng.pdf> accessed the 5<sup>th</sup> December, 2022.

<sup>70</sup> Mirësi Çela, *op cit.*, Fn 33, 279.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> International Trade Administration, ‘Nigeria: Country Commercial Guide: Trade Agreements’, <https://www.trade.gov/country-commercial-guides/nigeria-tradeagreements#:~:text=Nigeria%20ratified%20the%20WTO%20Trade,are%20ongoing%20within%20these%20fora>. Accessed 5<sup>th</sup> December, 2022.

<sup>74</sup> *ITC Ltd. v. Punchgini, Inc.* 482 F.3d 135 (2d Cir. 2007); 35 U.S.C. § 102 (both pre- AIA and AIA).

and their enforcement outside the United States. One of the reasons for this complication is premised on the ground of the multitudinous definition of the word ‘infringement’.

The judiciary have tried in multiple occasions to settle this difficulty. For example, in *NTP v. RIM*;<sup>75</sup> the Federal circuit distinguished between a system claim and method claim. A system claim has the ability of being infringed in the event that a significant amount of the system can be located outside the United States, whereas a method claim lacks the ability of being infringed in cases where a single step was carried outside the United States.<sup>76</sup> However, an analysis of the American Invents Act reveals that the level of the extraterritoriality of the patent law has been expanded. A good example can be revealed in the express denial of patent rights and protection on the end of public foreign users and calls for the sale of inventions outside the four corners of the United States.

Hence, upon careful examination of the above, it is clear that there is difficulty in establishing the extraterritoriality of the patent legislation, the language employed by the act and the words used by the drafters of the legislation, can be attached to this difficulty. There is evidently no clear cut rule and each extraterritorial patent case must be held based on circumstance of each case and carefully evaluated. In 2007, the Supreme Court expressed its knowledge and interpretation of the extraterritoriality of the patent law by holding that the respective copies of computer soft wares developed outside United States cannot be tagged the various components of an invention that should be protected by patent as established in s.271(f)(1).

The United States Supreme Court is not silent in this matter, as the court specifically held that “virtually every foreign conduct is generally streamlined around the circumference of foreign laws”. Foreign laws were further held to include ‘the diversity of every judgment and policies streamlined around the rights open to investors, the public and competitors in patented inventions’.<sup>77</sup> The same Supreme Court in a case centered around the ability of the plaintiff to recover damages in an extraterritorial matter ignored the earlier established possibility of conflict of law and further held that the laws of the Supreme Court had the ability to assume jurisdiction in the matter, irrespective of whether or not it was an extraterritorial matter.<sup>78</sup>

On the applicability of international patent laws in Nigeria, the most common international law on patents is the Patent Cooperation Treaty of 1970, as well as the Paris Convention for the protection of Industrial Property. The Treaty is administered by the World Intellectual Property Organization (WIPO) and it has more than 148 contracting states. It provides a system of filing a patent application, and allows a person to obtain patents in multiple countries around the world on the basis of a single patent application. It also simplifies the procedure for obtaining patent protection in many countries, making it more efficient and economical for both the users of the patent system as well as the national offices. A patent application under the Patent Cooperation Treaty has the same legal effect as a national patent application in each of the contracting states. Therefore, it saves the applicant the time of going to file a separate patent application in each country independently. Nigeria is a signatory to the patent corporation treaty. It was signed in 2003 and the instrument deposited to the WIPO office in 2005. Therefore, a Nigerian innovator who wishes to have an international protection over his innovation only has to register and apply for protection under the Patent Cooperation Treaty.<sup>79</sup>

Summarily, the comparison of the position of the United States Supreme Court in matters centered on the extraterritoriality of patent and trademark law reveals that the court played a significant role in solving the conflicting disputes in the extraterritoriality of trademark laws. Even before the existence of the presumption, the Supreme Court had always held that trademark law had the flexible ability to

---

<sup>75</sup> 418 F.3d 1282 (Fed. Cir. 2005)

<sup>76</sup> *U.S. NTP, Inc. v. Research in Motion, Ltd.*, 418 F. 3d 1282, 1317-1318 (Fed. Cir. 2005).

<sup>77</sup> *Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 455 (2007) (quoting Brief for United States as Amicus Curiae at 28).

<sup>78</sup> *WesternGeco*, 138 S. Ct. at 2129. The dissent in *WesternGeco*, however, did raise such concerns. See *ibid*, 2143 (Gorsuch, J., dissenting).

<sup>79</sup> WIPO, “Nigeria Accedes to WIPO’s Patent Cooperation Treaty”,

[https://www.wipo.int/pressroom/en/prdocs/2005/wipo\\_upd\\_2005\\_238.html](https://www.wipo.int/pressroom/en/prdocs/2005/wipo_upd_2005_238.html) accessed the 5<sup>th</sup> December, 2022.

be applied extraterritorially.<sup>80</sup> However, it is clear that recent decisions of the Federal Circuit Court and the Supreme Court sway on the end of the extraterritoriality of patent laws. Thus, Nigeria has a lot to learn when it comes to extending Nigeria Patent laws to apply outside her four corners. The decisions of the United States courts should be consulted and relevant deductions must be made.

### **Applicability of international copyright laws in Nigeria**

The benefit of international copyright protection is that the owner of the work need not register their work in multiple jurisdictions to obtain protection, because the Berne Convention for the Protection of Literary and Artistic Works.<sup>81</sup> This provides that a country that is a member of the Berne Union must afford copyright protection to foreign nationals without a requirement of any formalities like use of a copyright notice or a registration requirement. The Berne Convention is the oldest international convention governing copyright. Copyright protection under the Berne convention is for a minimum of 50 years from the year of the author's death.<sup>82</sup> For photographic works and works of applied art, the minimum term of protection is 25 years after making the work.<sup>83</sup>

Also, the Trade Related Aspect of Intellectual Property Rights ("TRIPS") agreement provides that countries that have ratified the agreement comply with the provisions of the Berne Convention.<sup>84</sup> However, the agreement extends copyright protection to computer programmes and original databases, which are not clearly protected in the Berne Convention. The agreement generally seeks to provide for copyright for works relating to new technologies. It also provides for other concepts such rental rights.<sup>85</sup> Another important instrument is the WIPO copyright treaty. It stipulates that the provisions of the Berne Convention apply in the digital environment so that rights such as the right of reproduction apply to reproduction on internet platforms. On 4 October, 2017, the World Intellectual Property Organization's Director General received Nigeria's instruments of accession and ratification of the WIPO copyright Treaty, the WIPO performances and Phonograms Treaty,<sup>86</sup> the Marrakesh Treaty,<sup>87</sup> and the Beijing Treaty<sup>88</sup>.

In determining the extraterritoriality of IP laws, the case of *Halo Elecs., Inc. v. Pulse Elecs.*,<sup>89</sup> is important for a proper understanding of the possibility of the extraterritoriality of Nigerian Intellectual Property Laws. This is because the Federal Circuit upon evaluating the distinguished prohibition imposed on the defendant making the entire sale procedure a domestic sale held that there was no error, even with the existence of circumstances such as; halo admitting to the truism that the entire stage of contracting and pricing negotiations occurred within the United States, they further averred that it does not fall within the requirements for extraterritorial activities within the purpose of s.271(a). The Federal Circuit established that the plaintiff "must understand that the design is not a blanket holding that must

---

<sup>80</sup> Timothy R. Holbrook, *Is There a New Extraterritoriality in Intellectual Property?*, 44 COLUM. J.L. & ARTS 457, 463 (2021).

<sup>81</sup> Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, revised at Rome on June 2, 1928, revised at Brussels on June 26, 1948, and revised at Stockholm on July 14, 1967 (with Protocol regarding developing countries).

<sup>82</sup> Article 7(1) of the Berne Convention.

<sup>83</sup> Article 7(4) of the Berne Convention.

<sup>84</sup> Mirësi Çela, 'Trade Related Aspects of Intellectual Property Rights and Developing Countries', [2014] Vol. 3 No. 2, *Academic Journal of Interdisciplinary Studies*, 281.

<sup>85</sup> *Ibid.*

<sup>86</sup> The WIPO Performances and Phonograms Treaty (WPPT) deals with the rights of two kinds of beneficiaries, namely (i) performers (actors, singers, musicians, etc.); and (ii) producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds) <https://www.wipo.int/treaties/en/ip/wppt/> accessed the 5<sup>th</sup> December, 2022.

<sup>87</sup> The Marrakesh Treaty is an international legal instrument which makes it easier for blind, visually impaired and print disabled people to access works protected by copyright.

<sup>88</sup> It grants performers four kinds of economic rights for their performances fixed in audio-visual fixations, such as motion pictures: (i) the right of reproduction; (ii) the right of distribution; (iii) the right of rental; and (iv) the right of making available. [https://www.wipo.int/treaties/en/ip/beijing/summary\\_beijing.html](https://www.wipo.int/treaties/en/ip/beijing/summary_beijing.html) accessed the 5<sup>th</sup> December, 2022.

<sup>89</sup> *Inc.*, 831 F.3d 1369, 1378 (Fed. Cir. 2016),

emanate from a sale cycle, as such cannot be regarded as a domestic transaction”. The court further upheld the decision of the lower court in holding that the extraterritoriality of patent laws is a possibility under the United States of America legal circumference.

### Concerns in cross-border enforcement of the IPR of Nigeria creatives

Several international treaties and multilateral agreements mandates each state party to accord protection to creatives or works of creatives who are nationals of or registered in the states of other State parties on the exact terms as they do to their nationals.<sup>90</sup> This underscores the legal principle popularly known as ‘national treatment’.<sup>91</sup> As party to a number of treaties containing significant provisions for reciprocal protection of copyright, Nigeria has indubitably committed to extending copyright protection to works of nationals and works first published in countries that are State parties to these international agreements.<sup>92</sup> It is important however to note that being a country that subjects treaties to ratification and domestication before it can be enforced within the country. Thus, there is a situation where an obligation exists to give national treatment under international law while these treaties have no force of law in domestic courts except as enacted into law by the National Assembly.<sup>93</sup> Thus, no right of action against infringement will exist.

For instance, in *Island Records Ltd v Pandun Technical Sales and Services Ltd & Anor*,<sup>94</sup> the first to sixth plaintiffs were recording companies incorporated in the United States of America and the United Kingdom. Their joint claims against the defendants were, *inter alia*, for an injunction restraining the defendants from further infringing on the copyright of their sound recording. The seventh to ninth plaintiffs were recording companies incorporated in Nigeria. The Federal High Court held that under the Copyright Act of 1970, a work produced by a person who is not a citizen of or domiciled in or a body incorporated under Nigerian law is not protected under Nigerian laws. The court held further that pursuant to s.2(1)(b) and 3(1) of the 1970 Act, the first set of plaintiffs, being foreign companies when the work was first recorded, had no basis to institute the action and thus were outside the protection of Nigerian law.

Similarly, this happened in *Société Bic S. A. v Charzin Industries Limited & Anor*.<sup>95</sup> The plaintiff was a corporation registered under the law of France, and its claim was for, *inter alia*, infringement of intellectual property rights. The defendant raised a preliminary objection, asking the court for an order striking out the part of the plaintiff’s claim dealing with copyright infringement on the ground that the plaintiff was not a qualified person within the meaning of s.2(1)(a) of the Copyright Act 1988, to be conferred with copyright in Nigeria. The Court accepted this argument and declared that by that provision only a Nigerian Citizen or Nigerian incorporated companies can sue in this court for infringement of copyright. This line of decision has been replicated in the following decisions: *Microsoft Corporation v Franike Associates Ltd*,<sup>96</sup> and much more recently in *Voice Web International Limited v Emerging Markets Telecommunication Services Ltd & Ors*.<sup>97</sup>

This line of decisions seems to emphasise that even in the broader context of global Intellectual property protection, the approach in Nigeria is not influenced by being a signatory to relevant treaties and multi-lateral agreements. The question therefore is whether Nigerian creatives will be afforded the protection where the country itself does not protect the intellectual property of foreigners. This, indubitably, will

---

<sup>90</sup> Adebambo Adewopo, Nkem Itanyi, ‘Protection of Copyright in Foreign Works in Nigeria: An Analysis of the Decision in *Voice Web International Limited v Emerging Markets Telecommunication Services Ltd & Ors*’, GRUR International, (2021), 70(12), 1174–1180.

<sup>91</sup> Robert Brauneis, ‘National Treatment in Copyright and Related Rights: How Much Work Does It Do?’ (2013) GW Law Faculty Publications & Other Works 810.

<sup>92</sup> Adebambo Adewopo, Nkem Itanyi, *op cit.*, n 66.

<sup>93</sup> *ibid.*

<sup>94</sup> *Island Records Ltd v Pandun Technical Sales and Services Ltd & Anor* [1993] FHCLR 318.

<sup>95</sup> *Société Bic S. A. v Charzin Industries Limited & Anor* [1997] 1 FHCLR 727.

<sup>96</sup> *Microsoft Corporation v Franike Associates Ltd* [2011] LPELR8987 (CA) 17[G-18[A].

<sup>97</sup> *Voice Web International Limited v Emerging Markets Telecommunication Services Ltd & Ors*, Suit No FHC/L/CS/576/2017.

put the works of Nigerian creatives at further risk, as the principle of reciprocity, which is fundamental to global IPR protection, is not observed by Nigeria. Thus, even where Nigerian creatives are protected under global treaties and multilateral agreements, there is the likelihood of encountering enforcement problems, except where Nigerian creatives register their works in the states where they will mostly need such IP protection.

From the earlier established United States cases, it is clear that the principles of Nigerian intellectual property laws can be expanded to be applied on a foreigner, even in matters where the cases emanate from a foreign land. The duty is on Nigerian judges to expand these laws to have extraterritorial applicability. The Nigerian legislatures are also saddled with the responsibility of redrafting intellectual property legislation in a way that ensures that it has extraterritorial applicability. These are recommendations deciphered from the position of the Federal Circuit and the U.S Supreme Court in the earlier cases.

## **Conclusions**

The article's focus was a comparative analysis between the practice of extraterritoriality of the United States intellectual property laws in order to decipher the possibility of expanding Nigerian intellectual property rights outside of Nigeria, and to examine how international intellectual property rights can be secured over Nigerian innovations. With regards to copyright, the Berne Convention for the Protection of Literary and Artistic Works 1886 mandates every country that is a member of the Berne Union to afford copyright protection to foreign nationals without the requirement of any formalities such as the use of a copyright notice or registration requirement. For trademarks, the Paris Convention for the protection of Industrial Property, as an international agreement, helps creators ensure that their trademarks are protected in other countries. For patents, the Patent Corporation Treaty allows an applicant to file a patent application, which then allows them to obtain patents in multiple countries around the world with a single patent application. Nigeria is a signatory to these treaties and conventions, and Nigerian creatives can protect their intellectual properties under them. It is important to note that the expansive application of Nigeria's Intellectual property laws lies on the acceptance of the doctrine by the Nigeria judiciary and the belief of the practicability of the extraterritoriality of Nigeria's intellectual property laws by the Nigerian legislature.