

POLICY CHALLENGES AND THE DEVELOPMENT OF THE PERFORMING ARTS: A CRITICAL EVALUATION OF NIGERIA'S CULTURAL POLICY AND THE COPYRIGHT LAW

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Abstract

The need to critically evaluate policy challenges as they affect the development of the performing arts as encapsulated in the Nigeria Cultural Policy and the Copyright Law gave impetus to this study. Policies are made by the government or its agencies to ease administration as well as clarify functions and avoid clashes between different agencies of government. However, some policies if not well articulated, may become clogs in the progress of the organization it is meant to assist. The study adopted the content analysis approach of the qualitative research methodology which involves critically analyzing the Nigeria Cultural Policy and Copyright Law to point out some challenges which may hinder the full implementation of the policy. It was discovered that though the cultural policy was drafted in good faith, it contains many superfluous, unnecessary and phoney directions aimed at passing responsibility to nobody. Again, the multifaceted nature of arts, demands that arts should be given detailed attention in the cultural policy, specifically with modalities for funding. Furthermore, the most debilitating challenge is the lack of willpower to fully interpret and implement the policy as spelt out in the document. On the other hand, piracy poses a very devastating challenge towards the welfare of performing artists and the implementation of the copyright law. In addition, lack of funds and a database of artists

are some of the challenges unearthed that may hinder the realization of the copyright law and cultural policy. The study recommends adequate funding, training and retraining of officials saddled with the implementation of the policies as well as adherence to modern trends of technology to fast-track the development of performing arts.

Keywords: Policies, Challenges, Cultural Policy, Copyright Law, Evaluation

Introduction

Policies are made by the government or its agencies to ease administration as well as clarify functions and avoid clashes between different agencies of government. To a layman, policy is regarded as guidelines from the government to its departments or agencies for implementation and actualization of government goals. Individuals and private organizations make policies to guide their daily operations. When government makes policies, they are authenticated through the legislatures who scrutinize and pass such proposal into law and accented by the executive. “Policy documents often come with the endorsement or signature of the executive powers within an organization to legitimize the policy and demonstrate that it is considered in force” (1, www.ruforum.org).

Policy is very crucial to the success of any enterprise. Therefore, the importance of policy cannot be underestimated. No wonder, Sherri Torjman equates the importance of policy especially public policy to the air we breathe and water we drink. According to him, “public policy determines the quality of the air we breathe and the water we drink. It affects the food we eat – how it is harvested, where it is distributed and sold, and how much we pay. (www.waytree.com 1). Policies affect public lives “both profoundly and pervasively” (1). Such policies follow some standards outlined below:

- A purpose statement, outlining why the organization is issuing the policy, and what the desired effect or outcome of the policy should be.
- An applicability and scope statement, describing who the policy affects and which actions are impacted by the policy. The applicability and scope may expressly exclude certain people, organizations, or actions from the policy requirements.
- An effective date which indicates when the policy comes into force. Retroactive policies are rare but can be found.
- A responsibility section, indicating which parties and organizations are responsible for carrying out individual policy statements.
- Responsibilities often include the identification of any relevant oversight and/or governance structures.
- Policy statements indicating the specific regulations, requirements, or modifications to organizational behaviour that the policy is creating. (www.ruforum.org 1).

Nigeria's cultural policy and the copyright law belong to government policies. Nigeria's cultural policy was made for the smooth running of all culture-related enterprises. What is culture and why do we have a policy for the administration of culture? Simply, Culture is a way of life. According to National Cultural Policy, it is the "totality of the way of life, endowed by a people in their attempts to meet the challenge of living in their environment which gives order and meaning to the social, political, economic, aesthetic and religious norms and modes of organization, thus distinguishing a people from their neighbours"(5) The document further classifies culture into four major categories or aspects as summarized below:

1. Material aspects made up of tools, clothing, foods, medicine, utensils, housing etc.

2. Institutional deals with the political, social, legal and economic structures erected to achieve material and spiritual objectives.
3. Philosophical, made up of ideas, beliefs and values.
4. Creative concerns people's literature and written visual and performing art monuments, festivals, crafts, national dresses, etc.

Gloria Ernest Samuel, admits that culture is a “descriptive and complex concept with wide-ranging and comprehensive connotations, which refers to and reflects a people's way of living, permutation, ideologies, belief, etcetera”. She concludes by quoting Broom who avers that “culture refers to a social hostage that is, all the knowledge, beliefs, customs and skills that are available to the members of a society” (www.ajol.info). It is, therefore, evident that culture is all-embracing as it fully encompasses the people's way of life. This is rightly observed by Emmanuel Iroh who copiously quoted Wole Soyinka, where he submits that culture is not often a sum of parts but a summation... a synthesis nothing is exempted not even the malfunctions” (2). Again, Olivier Serrat further submits that culture is “the totality of a society's distinctive ideas, beliefs, values, and knowledge. It exhibits the ways humans interpret their environments” (2).

Cultural Policy, according to SC Ward, C Bagley, J Lumby, et al who quoted Olssen et al. is “any course of action . . . relating to the selection of goals, the definition of values or the allocation of resources” for the administration of culture-related enterprises. Continuing, they further relied on Ball SJ who argues that “policies are . . . ways of representing, accounting for and legitimating political decisions” (124) This view is countered by Josephine Caust who opines that in “formulating a cultural policy, there is an implication of an intervention, if not expectation, of how ‘culture’ should be interpreted and delivered” (np, www.researchgate.net) This is very true of the Nigeria cultural policy which was

formulated in 1988 by the Federal Military Government. One of the challenges Nigeria's cultural policy faces is the fact that the policy was enacted by a military regime without wide consultation. The case of Australia is the opposite of Nigeria. In Australia for example:

in August 2011, a Cultural Policy Discussion Paper was released by the Federal Labor Arts Minister and feedback and responses were invited from whoever was interested by October 2011. Several hundred individuals and organizations responded to the invitation to engage (including this author). These responses were then posted on an online site for others to view... it was not until March 2013 that the new policy, Creative Australia was announced (np, www.researchgate.net).

On the other hand, Kunle Ola opined that "Copyright is a legal system that protects the creative outputs of authors by granting them exclusive rights to control the use of their creations for a limited time, subject to certain limitations, exceptions and statutory licensing arrangements allowing use and exploitation without the author's consent"(np.www.researchgate.net). Glory Onoyeyan, O opines that "The law protects indiscriminate copying and distribution of an author's work without the permission of the author". (np, www.researchgate.net). According to Odunowo in Onoyeyan, copyright law protects the owner of property rights in literary and artistic works against those who adopt the exact form of words or arrangement employed by the author in the production of his work. What this statement means is that all plagiarized works are liable for prosecution under the copyright act. Again, since Nigeria is a signatory to many conventions which give protection to creative and artistic works, literary, and musical; the copyright law was enacted to protect works of not only her nationals but of other international artists, producers and writers alike.

Before the enactment of the 1988 Copyright Act, Nigeria's copyright was governed by the English Copyright Act of 1911 which was applicable here until 1970 when it was replaced by the Copyright Act of 1970. Copyright matters in Nigeria are administered through the Nigerian Copyright Commission established on 19 August 1989 under section 34 of the Copyright Act (Cap C28, Laws of the Federation of Nigeria, 2004). The commission was formally known as the Nigerian Copyright Council, before it was upgraded to a Commission in April 1996. The Act has been severally amended through the copyright amendment decree 98 in 1992, and 1999 and recodified in 2010. This was regarded as a great boost despite its inadequacies. Section 1(1) of the copyright law specifies the coverage of the act:

Section 1 (1) of the Copyright Act, Laws of the Federation of Nigeria 2010 specifies works eligible for copyright to include literary works, musical works, artistic works, cinematograph works, sound recordings, and broadcasts ...Literary works include novels, poems, plays, reference works, newspapers etc. Musical works cover musical scores in the form of sheet music, broadsheets or other notation, artistic works include paintings, drawings, sculpture, maps etc (np).

Conversely, "Intellectual Property ("IP") is a generic term that describes creations of the intellect about which the law ascribes exclusive right of appropriation to the designated owners. According to Justus A. Sokefun, "the law deters others from copying or taking unfair advantage of the work or reputation of another and provides remedies where this arises" (np, www.nou.edu.ng) 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" (np, www.a4id.org). Udoma and Osagie further state that "Under Nigerian law, there are

four distinctive types of IP, namely: i. Copyright; ii. Trademark; iii. Patent; and iv. Industrial Design” (np).

Copyright is essential if creativity is to be sustained. Countries around the world enact copyright laws to protect not only intellectual property but also industrial property. Intellectual properties deal with literary and artistic creations, while industrial property covers scientific innovations, inventions and designs. According to Udo Udoma and Bello Osagie, “copyright is the exclusive and assignable legal right, given to the author of a literary, artistic or musical work, to print, publish, perform, license and assign the work for a fixed number of years” (np, www.a4id.org).

According to Ola in Ismail Olatunji Adeyemi, “literary, musical, and artistic works, due to their economic and commercial value, are the core of copyright in Nigeria”, while “cinematography films, sound recordings and broadcasts are just bye-products”. The result is reckless and unrestrained copyright infringement. The following are some of the functions stipulated for the commission under the copyright law. They include:

- a) To be responsible for all matters provided for in this Act.
- b) To monitor and supervise Nigeria’s position about international conventions and advise the government thereon.
- c) To advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country.
- d) To enlighten and inform the public on matters relating to copyright.
- e) To maintain an effective data bank on authors and their works.
- f) To be responsible for such other matters related to copyright in Nigeria as the minister may from time to time, direct.

The commission is empowered to appoint a Copyright Inspector who shall:

- a) enter, inspect and examine at any reasonable time any building or premises which he reasonably suspects is being used for any activity which is an infringement of copyright under this Act, such as piracy;
- b) arrest anyone who he reasonably believes has committed an offence under this Act;
- c) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with;
- d) request the production of the register required to be kept under section 14 of this Act and to inspect, examine and copy it;
- e) request any person who he finds in such building or premises to give such information as it is in his power to give about any purpose specified in this Act;
- f) carry out such examinations, tests or analysis within or outside the premises as is required to give effect to any provision of the Act; and
- g) exercise such other powers as the commission may delegate to it to give effect to the provision of this Act (np, www.aejournal.com).

The Arts, Performing Arts, the National Cultural Policy and the Copyright Law

The provisions for arts administration in the national cultural policy are located in section 6.1. as stated below:

6.1.1 The state shall preserve, promote and establish conducive conditions for creativity by encouraging the establishment of

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strong national professional associations for artists, authors, dramatists, film makers etc

- 6.1.2 the state shall promote and encourage the establishment of writers' clubs, art clubs, and creative centres for encouraging creativity and popularizing the arts
- 6.1.3 the state shall support the associations and clubs through subventions, grants and other forms of assistance
- 6.1.4 the state shall encourage through these creative movements and government institutions international links and exchanges for the nation's developmental and cultural benefits
- 6.1.5 the state shall make provision for the custodianship of international cultural materials to bring into proper focus, Nigerian culture in the Black and African world
- 6.1.6 the state shall establish institutions and programmes for the preservation, presentation, promotion and development of the literary, performing and visual arts.
- 6.1.7. the state shall promote the continuity of traditional arts, and the development of Nigerian arts and artists and give full scope to artists to project their art and skills as part of national growth and development.
- 6.1.8 the state shall promote the functionality of the arts to enhance their viability
- 6.1.9 the state shall enact laws to protect Nigerian artists and writers and ensure that they enjoy the fullest material and spiritual benefits from the product of their artistic and literary works
- 6.1.10 the state shall guarantee freedom of artistic expression make institutional and infrastructural provisions for housing and developing the arts and promote competitions, expositions and talent hunts in all the arts.

Unfortunately, performing arts was not given adequate attention in our cultural policy. Although section 6.1 talked about the arts in

general in the ten paragraphs above, section 6.3 discussed the performing arts in just three paragraphs as represented below:

- 6.3.1 The state shall preserve and present Nigeria music, dance and drama on film, video and audio tapes, slides and in written form etc
- 6.3.2 The state shall establish a national troupe of Nigeria whose repertoire shall draw their materials from drama, dance and music
- 6.3.3 The national troupe of Nigeria shall be part of the National Arts Theatre

Challenges of the Cultural Policy

The multifaceted nature of arts should have been given detailed attention in the cultural policy. Culture embodies all human activity. Olivier Serrat sees culture as “the totality of a society’s distinctive ideas, beliefs, values, and knowledge. It exhibits the ways humans interpret their environments” (np, www.researchgate.net). This is authenticated by Soyinka in Emmanuel Iroh, who submits that “culture is not often a sum of parts but a summation... a synthesis nothing is exempted not even the malfunctions” (np, www.nigerianjournalonline.com). It has to be noted that ideas for cultural policy are gathered from many sources. According to Girard in Ayibadeinyefa A. Timi-Ekubo, they include “traditional practices in diverse societies, from philosophers and theoreticians, from accounts of history and utopian speculations” (np, www.ichekejournal.com). Therefore, arts and performing arts should have a prime place in the cultural policy to ensure proper coverage of the diverse sphere of human endeavours.

If we adopt the definition of policy by Augustin Girard in Yudhishthir, Raj Isar “as a system of ultimate aims, practical objectives and means, pursued by a group and applied by an authority [and]...combined in an explicitly coherent system” and

apply it to the Nigeria cultural policy, it will be observed that there is no coherent system of policy implementation to ensure development captured in the policy. Rather, the Nigeria cultural policy is filled with superfluous, unnecessary and phoney directions aimed at passing responsibility to nobody. There are no clear directions for the implementation of the policy. To avoid this pitfall, there is a need to review the policy with unambiguous directives on the responsibilities of the agencies and departments in culture-related activities.

Closely related to the above is the need to adapt to change. It is a truism that the only thing constant is change. Unfortunately, the cultural policy of Nigeria does not seem to understand this phenomenon. Change in time and technology has to be taken into consideration, especially in this digital era. If current technological innovations are imbibed through the training and retraining of administrators, Policy implementation and development will be sustained.

Perhaps, the most debilitating challenge is the lack of willpower to fully interpret and implement the policy as spelt out in the document. Section 10.3.1 which supports the financing of cultural activities through a national endowment fund to be jointly financed/contributed by government, organizations and individuals has not seen the light of day. This may be attributed to the overreliance on government subvention or lack of willpower by administrators to implement the policy.

Challenges of the Copyright Law

Perhaps, the provisions of Section 6.1.9 of the Nigerian Cultural Policy as enumerated above may have given impetus to the establishment of the Nigeria copyright law to “protect Nigerian artists and writers and ensure that they enjoy the fullest material and spiritual benefits from the product of their artistic and literary works” (np). However, piracy of intellectual property constitutes a great impediment to the implementation of copyright law. This

assertion is supported by Mary Imelda Obianuju Nwogu who opined that “piracy constitutes a serious threat to the sustenance of creative industries. As a result of piracy, the creators who have put their energies, time and money into producing sound recordings, films, books, computer programs, etc suffer huge losses in revenue” (np,www.aejournal.com). This is very pitiable. Enormous funds, and collaboration with security agents, artists and stakeholders are needed to fight piracy, but unfortunately, the paucity of funds occasioned by poor budgetary allocation has hindered the realization of this objective.

Another challenge in the administration and enforcement of copyright law is the lack of a data bank of artists, musicians, cinematography films, and sound recordings. This is because, since authors and artists “can optionally register themselves and their works alike with the Nigerian Copyright Commission”, it becomes very difficult to track copyrighted works. Again, some circumstances may prevent a work from having legal protection under the copyright law. According to Adeyemi,

under section 1(2) of the Copyright Act (Cap C28, Laws of the Federation of Nigeria, 2004) states that a literary, musical or artistic work shall not be eligible for copyright unless the following criteria is fulfilled; and sufficient effort has been expended on making the work to give it an original character; and the work has been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device. (np)

Inadequate funds and manpower pose a great challenge to the administration of both the cultural policy and the enforcement of the copyright law. There is no doubt that proper funding oils administrative machinery for proper functioning. Funding enables agencies to finance projects and hire capable manpower for the

smooth operation of the agencies. Therefore, funding as stated earlier is very crucial to the effectiveness of any agency.

Many artists and practitioners feign ignorance of the existence of the law or do not repose any iota of trust in the commission. This has resulted in a refusal to register their works to be protected by the commission under the law that established it. However, the present amendment proposal 2021 has specified Part 1 (5) that “eligibility for copyright under this Act shall not be subject to any formality including registration” (np, www.nass.gov.ng). What this portends is that all creative works shall be protected by the law.

Globalization and the attendant digital technology have made it increasingly difficult to regulate the performing arts. The advent of social media has made almost every tom and dick a content producer and provider. Again, the availability of cheap and easily affordable recording and dubbing equipment has not helped matters as tracking has become difficult and cumbersome in the face digital world which has made most laws obsolete and difficult to administer. According to Nwogu, although, the “Copyright Act empowers the copyright inspector to prosecute, conduct or defend before court any charge, information, complaint or order proceedings arising under the Act” (np, www.aejournal.com); She however, regrets that the “Act did not expressly in any of its provisions empower the copyright inspector to institute civil proceedings in respect of infringement of copyright” (np, www.aejournal.com). This is a big setback to the implementation of the copyright law and has caused the law to be subjected to many interpretations by lawyers.

Again, the punishment to be meted out for copyright infringement is very laughable. According to www.cyrilla.com, Section 30 spells out the Criminal Liability in respect of infringement of the performer's right. It stipulates that:

(1) Notwithstanding the provisions of section 28 of this Act, a person who does any of the acts set out in the said section 28

shall, unless he proves to the satisfaction of the court that he did not know that his conduct was an infringement of the performer's right, be liable on conviction-

(a) in the case of an individual, to a fine not exceeding N10,000;

(b) in the case of a body corporate, to a fine of N50,000;

(c) in all other cases, to a fine of N100 for each copy dealt with in contravention or to imprisonment for twelve months or to both such fine and imprisonment.

(2) A court before which an offence under this section is tried shall order that the recording or any other part thereof be delivered to the performer (np).

How will piracy not thrive if the offender knows that after making millions from pirated work and being caught, his fine/ punishment is only a paltry sum? The law rather than prevent piracy, is surreptitiously aiding its growth which is detrimental to the good of the artist.

Conclusion

This study which investigated policy challenges and the development of the performing arts: a critical evaluation of the cultural policy and the copyright law discovered that though there are no perfect policies as all policies are made by fallible men, efforts should be made to strengthen some aspects of the policies to make for a better upliftment of the agencies they are made for. It was discovered that though the cultural policy was drafted in good faith, it contains many superfluous, unnecessary and phoney directions aimed at passing responsibility to nobody.

Again, the multifaceted nature of arts demands that arts should be given detailed attention in the cultural policy specifically with modalities for funding. Furthermore, the most debilitating challenge is the lack of willpower to fully interpret and implement

the policy as spelt out in the document. On the other hand, piracy poses a very devastating challenge towards the welfare of performing artists and the implementation of the copyright law. Also, lack of funds and a database of artists are some of the challenges unearthed which may hinder the realization of the copyright law and the cultural policy. This is also in agreement with Olatunji Olugbenga A's submission that "with adequate funding, the regulations themselves can enjoy robust implementation and enforcement"(np,www.researchgate.net).

Recommendations

The study recommends adequate funding, training and retraining of officials saddled with the implementation of the policies as well as adherence to modern trends of technology to fast-track the development of performing arts. There is also a need for a round table with discussion with artists and other stakeholders to fashion out collaborative measures to each other.

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