

AN APPRAISAL OF THE INTELLECTUAL PROPERTY RIGHTS IN e-LEARNING IN NIGERIA

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ABSTRACT

The emergence of eLearning in Nigeria has brought about significant advancement in the education sector, providing increased access to education, flexibility, and cost-effectiveness. However, this mode of education has also presented several challenges, particularly in the area of intellectual property rights. The growth of eLearning has led to the creation of educational materials that are distributed globally. However, this expansion has raised questions and concerns about intellectual property rights among content developers and providers. Creators wonder about issues such as digital ownership of their materials and content, institutional or organizational limits of ownership, patenting their work, and using content that is easily downloadable from other organizations. This paper provided an overview of the intellectual property rights challenges of eLearning in Nigeria. The paper examined the relevant laws and regulations governing intellectual property rights in Nigeria and how they impact eLearning. The paper also highlighted the ethical implications of using intellectual property in eLearning environments, such as copyright infringement. The findings of this paper revealed that intellectual property rights challenges in eLearning in Nigeria are significant and require urgent attention to protect the rights of creators and promote ethical practices in education. Therefore, the paper provided recommendations for institutions and policymakers on how to protect intellectual property rights while promoting

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access to education. The paper concluded by emphasising the importance of awareness, education, and collaboration among stakeholders in the education sector to address the intellectual property rights challenges of eLearning in Nigeria.

Key Words: eLearning, Intellectual Property rights, Trademark, Copyright

1.1 Introduction

Intellectual property rights have become increasingly important in the age of e-learning. With the advent of technology, it has become easier to access and distribute digital content. In Nigeria, the use of e-learning platforms has grown in recent years, and as a result, there has been a need to evaluate the intellectual property rights associated with this method of education. Proper management of intellectual property (IP) rights is crucial for the successful implementation of eLearning courses and materials. This applies especially in the educational sector, where a sound understanding of IP rights is essential in a knowledge-based economy. Originally associated with laptop computers and mobile carts moved between classrooms, eLearning and mLearning have since evolved with technological changes that have created new digital publishing formats and tools. However, the legal provisions have not kept pace with these advancements, leading to concerns among practitioners about the legal implications of their work.

The development of IP rights has been impacted by changes in education, technology, and commerce, necessitating a clear understanding of what is permissible and impermissible in the creation, development, and implementation of eLearning content. As digitized and eLearning courses become more widely available, practitioners have valid concerns about the ownership of copyrighted or digitized products, the distinction between private and public content, legal downloading of copyrighted materials, and issues related to patents and trademarks.

This article aims to raise awareness about fundamental intellectual property rights in the context of eLearning content creation and development. It outlines relevant aspects of IP rights in eLearning and provides guidelines or best practices for managing IP rights in the

development and use of eLearning materials, including third-party resources. Ultimately, the article emphasizes the potential benefits for eLearning course developers in incorporating IP rights management into their project planning and management activities.

1.2 The Concept of Intellectual Property Rights

Intellectual property rights are legal rights granted to individuals or corporate entities, which enable them to have exclusive control over the exploitation of their work for a limited period.³ These rights cover two main branches: copyright and industrial property. Copyright mainly deals with the protection of literary, musical, and artistic creations such as books, music, arts, films, broadcasts, live performances, expressions of folklore, and multimedia productions accessible through computer programs. Industrial property, on the other hand, deals with patents, trademarks, industrial designs, geographical indications and appellations of origin, utility models, and more.⁴

Intellectual property rights are treated like any other property right - they can be assigned, mortgaged, owned, or licensed. However, unlike possessory rights, most intellectual property rights are choses in action that can only be enforced through legal action. In *Torkington v. Magge*,⁵ Channell J. described choses in action as legal expressions used to describe all personal rights that can only be enforced through action, and not by taking physical possession.

These legal rights, though abstract in nature, vest the holder with the sole and exclusive privilege of multiplying copies of their creative work by publishing, selling, or disposing of it as they please for a stated period of time. Intellectual property rights play a crucial role in the economic life of any nation, particularly in this age of technological

³ Odinkonigbo, J., Meghoma, O., & Okpiaifo, D. (2023). *The challenges of protecting intellectual property rights in nigeria in the age of social media*. https://www.templars-law.com/app/uploads/2023/05/03052023-THE-CHALLENGES-OF-PROTECTING-INTELLECTUAL-PROPERTY-RIGHTS-IN-NIGERIA_.pdf

⁴ Ibid,

⁵ (1902) 2 KB 427

development. They protect the rights of inventors, writers, artists, and the public generally.⁶

1.2.1 Features of Intellectual Property Rights

Intellectual property rights have four principal characteristics: territoriality, exclusivity, divisibility, and volatility.

Thus, firstly, territoriality is a basic characteristic of intellectual property because it is created by statutes and confined to the territory where it is created, even though its importance transcends national boundaries. Intellectual property conventions, like the Berne Convention and Paris Convention, reflect some of their provisions in national legislations, such as the Copyright, Designs, and Patents Act of Nigeria. No intangible subject matter is protected by one uniform right applying worldwide. Instead, technical inventions, works of literature and arts, signs, and others are subject to a bundle of possibly more than 150 territorial rights of national or regional provenance. These rights are independent from each other so that an invention, work, and so on, may be protected in one country but remain unprotected in another.⁷

Nigerian law only applies to conduct that occurs within the territory of Nigeria, and thus, an intellectual property right can only be considered infringed by conduct that occurs within the territory of Nigeria. However, this territoriality principle has several distinct dimensions on the level of substantive IP law, private international law, and international conventions. Due to the possibilities of worldwide communication and trade, the principle of territoriality is coming under increasing pressure of justification.

The introduction of the Agreement of Trade-Related Aspects of Intellectual Property Rights (TRIPs) changed the position of strict territoriality. TRIPs preach a free-market economy as opposed to the earlier practices by least developed countries of reducing benefits to innovators (working requirement and compulsory licensing). WIPO

⁶ World Intellectual Property Organization (WIPO). (2020). World Intellectual Property Organization Annual Report, p. 23

⁷ Peter, G.J. (1997) Source Book on Intellectual Property London: Cavendish Publishing Ltd pp 14-16: In Mukhtar, N. (2013) Nature and Scope of Intellectual Property Law: An Appraisal of Concepts, Issues and Prospects for Developing Economies, p.203

has achieved this result by establishing international standards for intellectual property laws and practices among its member states. It also encourages the growth of international common principles and rules governing intellectual property, requiring extensive consultations with states and other interested groups.⁸

Another feature is exclusivity. Exclusivity or the monopolistic nature of intellectual property rights refers to an individual's or an organization's right to control the use or dissemination of ideas or information. It is the idea of being monopolistic in nature, having the right to exclude others from using or reproducing one's work. Present-day intellectual property legislation contains many built-in safeguards to ensure that a balance is struck between the rights of the intellectual property owner and free competition.⁹ Some of these safeguards require the owner to pay renewal fees regularly (in the case of trademarks, patents, and registered designs), while others require regular use of the intellectual property right by the owner.¹⁰

Various systems of legal rules empower individuals and organizations to exercise such control. Copyright law confers upon creators of "original forms of expression" (for example, books, movies, musical compositions, and works of art) the exclusive right to reproduce, adapt, and publicly perform their creations.¹¹ Patents law enables inventors of new products and processes to prevent others from making, using, or selling their inventions. Trademark law empowers sellers of goods and services to apply distinctive words or symbols to their products and to prevent their competitors from using the same or confusingly similar insignia or phrasing.¹² Trade-secret law prohibits rival companies from making use of wrongfully obtained confidential commercially valuable information (for example, soft-drink formulas or secret marketing strategies).¹³

⁸ Peukert, A (2011) Beyond Territoriality: Transnational legal Authority in an Age of Globalization. Goethe University Frankfurt, Faculty of Law, Cluster of Excellence Normative Orders, p.1. See also http://www.ip.mpg.de/en/pub/research_teaching/ip/main_areas/concept_of_territoriality.cfm. Accessed on 18th April, 2024 at 11.00am

⁹ Ibid,

¹⁰ Ibid,

¹¹ Ibid,

¹² Ibid,

¹³ Ibid,

Intellectual property can be protected from invasion, assigned, or leased, but it cannot be taken into physical possession and can only be realized through an action in court.¹⁴ Non-proprietary rights such as confidential information and the acts violating the law of passing off are also protected by intellectual property law. This confers on the owner or producer exclusive rights that can be assigned, licensed, mortgaged, and bequeathed. The common feature of intellectual property rights confers owners the right to stop others from taking their creations, preserving to a reasonable extent the integrity of and reserve the exploitation and representation of such creations for the right owners.¹⁵

The third feature is divisibility. Divisibility is another feature of intellectual property rights, as they exist independently of each other. They are, however, capable of being divided in many different ways.¹⁶ For example, the rights in different countries can be sold or licensed to different people, and each type of intellectual property is itself a bundle of rights. Copyright comprises the exclusive right to authorize reproduction, distribution, and others, while trademark prohibits the forgery or falsification of any genuine trademark calculated to deceive users.¹⁷

Intellectual property is indeed dynamic. For example, before printing was invented, literary works required no protection as they resided in the memory of the author.¹⁸ Trademarks only became important when society moved on from one in which individuals traded their products. Technological development has advanced the area of mass production of goods and services. The increasing economic significance of this branch of law to countries with any degree of industrial development is making it both international and more complex.¹⁹

¹⁴ Odinkonigbo, Meghoma, & Okpiaifo, Op.Cit., 23

¹⁵ Ibid,

¹⁶ Peukert, Op. Cit., 1

¹⁷ Ibid,

¹⁸ Ibid,

¹⁹ World Intellectual Property Organization Handbook (2004) Law, Policy and Use WIPO Publication in Mukhtar, N. op cit.

3.2 Legal Framework for the Protection of Intellectual Property Rights in Nigeria

The legal framework for protection and enforcement of the intellectual property law include the following;

1. Constitution of the Federal Republic of Nigeria
2. Copyright Act
3. Trademarks Act
4. Patent and Design Act
5. The Nigeria Police Act
6. Cyber Crimes (Prohibition Act) 2015
7. Customs and Excise Management Act
8. Federal High Court Rules, 2000.

These legal mechanisms will be discussed under the subsequent subheadings.

3.2.1 Constitution of the Federal Republic of Nigeria

The 1999 constitution of the Federal Republic of Nigeria (As amended) is the supreme law of the country. Therefore, its provisions where applicable, would affect the interpretation and application of any legislation concerning intellectual property rights in Nigeria. In other words, constitution is the touch stone of any legislation concerning copyright law in Nigeria. Thus where “any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void.”²⁰ Furthermore, the constitution expressly conferred the National Assembly with the exclusive power to make laws on the subject matter of intellectual property rights such as copyright, trademark, patent and design and so on.²¹

Sections 251(1) (f) and (3) of the Constitution gives recognition to intellectual property rights in Nigeria and provides that civil and criminal proceedings for enforcing intellectual property rights have to be brought in the Federal High Court. This was not always the case

²⁰ Section 1(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

²¹ Combined reading of Section 4 and the exclusive legislative list set out in part 1 of the Second Schedule to this constitution

prior to the establishment of the Federal Revenue Court (the initial name of the Federal High Court) in 1973.

Also, sections 43 and 44 of the CFRN provides for the acquisition of movable and immovable property which same property includes interest in Copyright.²²

3.2.2 Copyright Act, 2022

The Copyright Act 2022 repeals the 2004 Act and now serves as Nigeria's principal legislation on copyright protection. It affirms that copyright grants authors exclusive control over the use, reproduction, distribution, and communication of their works, subject to statutory exceptions.²³ The Act protects six categories of works, literary, musical, artistic, audiovisual works, sound recordings, and broadcasts, as listed under Section 2(1) (a–f). It also provides dual civil and criminal liability for infringement and empowers copyright owners, assignees, and exclusive licensees to institute actions for remedies such as damages, injunctions, and accounts of profits under Section 37(1). Nigerian courts have continued to apply these enforcement provisions, convicting infringers in cases such as *NCC v. Godwin Kadir*²⁴ and *NCC v. Nwoke Israel*.²⁵

A key innovation introduced by the Act is the revised originality threshold. Under Section 2(2), a literary, musical, or artistic work only needs to show “some effort” rather than the previous requirement of “sufficient effort” to qualify for copyright protection. The Act also codifies exclusions for ineligible works such as ideas, procedures, official government texts, state symbols, and banknote designs, as provided in Section 3(1). It incorporates international standards by affirming, in line with the Berne Convention, that copyright protection does not depend on formalities, now expressly recognized under Section 4. Further, the Act expands rights by strengthening moral rights, including the right to object to false attribution under Section 14(3) and by enhancing performers' rights, granting them exclusive

²² Section 11 of the Act

²³ Copyright Act 2022, *Section 1* (exclusive rights of authors)

²⁴ FHC/B/43C/2010, (Federal High Court, Benin City, 17/12/2012).

²⁵ FHC/ABJ/CR/90/2013, (Federal High Court, Abuja. 19/06/2013).

control over the fixation, reproduction, distribution, and making-available of their performances under Sections 60–66.

The Act also introduces modern, detailed exceptions to exclusive rights. It provides clear statutory criteria for fair dealing under Section 20, considering the purpose of use, nature of the work, the amount used, and market impact. New general exceptions include transient technological copies,²⁶ educational access through dedicated terminals in libraries and archives,²⁷ and necessary reproduction or adaptation of computer programs for use, backup, or repair (Section 28). The Act further introduces special exceptions for persons with disabilities, allowing authorized entities to create accessible formats pursuant to Nigeria's obligations under the Marrakesh Treaty, as reflected in Section 29. Despite these advancements, the Act has shortcomings, including the introduction of a Register of Works,²⁸ which contradicts the principle of automatic copyright, the limited provision for heirs and successors, and the broad, potentially overreaching powers granted to the Nigerian Copyright Commission under Sections 86–87.

3.2.3 Trademarks Act, Cap. T13, Laws of the Federation of Nigeria, 2004

Nigeria is Africa's most populous nation with the largest economy in the continent and a fast-growing services sector with an increasing need for consumer goods. This factor makes trademark registration important. The laws governing trademark in Nigeria are Trade Marks Act,²⁹ and the Trademark Regulations 1990. The Act defines a mark as including a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.³⁰ The Act defines a trade mark to mean a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods, and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person.³¹ Trademarks are used to identify and distinguish the source of the goods

²⁶ *Section 26(1) of the Copy*

²⁷ *Section 26(2) of the Copyright Act*

²⁸ *Section 88 of the Copyright Act*

²⁹ Cap T 13, Laws of the Federation of Nigeria 2004.

³⁰ Trademark Act 1967, S.67(1).

³¹ *Ibid.*

of one party from those of others in the course of trade. For the purpose of registration of trademarks, Nigerian law classifies goods into the thirty-four international classes. Multi-class applications are not allowed so a separate application must be made for registration in each of these classes. It is important to note that unlike in other jurisdictions, 'use' is not a requirement for registration of a trademark in Nigeria.

The Trademarks Act provides for registration in Parts A and B of the Trademarks Register. For registration in Part A, a trademark must have the quality of distinctiveness, that is, contain at least the name of the applicant (represented in a special manner), or signature of the applicant, or an invented word(s), or a word(s) having no direct reference to the character, quality or geographical name of the goods or any other distinctive mark. While registration under Part B of the Register may only be obtained in the case where the mark is capable of distinguishing goods with which the proprietor is connected in the course of trade from goods or any other distinctive mark.

While registration under part B of the Register may only be obtained in the case where the mark is capable of distinguishing goods with which the proprietor is connected in the course of trade from goods in which no such connection exists. Marks that are names of single chemical element or compound, deception and/or scandalous cannot be registered under the Trademarks Act. Section 5, 6, 7 and 8 of the Trademarks Act provides that, a proprietor of a registered trademark shall have the exclusive right to prevent third party usage of an identical or similar mark in the course of trade in goods and services identical to his, where such is likely to cause confusion. Under Nigeria law the right is similar, but the difference is that the proprietor has a right to exclusive use of the mark subject to vested rights of earlier users.

However, despite the Act having some salient provisions of trade mark protection in Nigeria, however the Act is not devoid of its shortcomings. One of its shortcomings is that the Act is an old act and some of its provisions may not be tenable in the current times. Times change, and the law in its dynamism should change too. An Act of 1967 ought to be amended or changed by now to fit to current trends. Also, some of the words used in the Act were not defined in its interpretative section. For instance, "Distinctiveness" used in Section 9 and 10 of the Act was not defined in the Act. This may prompt resort to dictionary

meaning which may not give the true import of the word as used in the Act.

3.2.4 Patent and Design Act, Cap P2, Laws of the Federation Nigeria 2004

Patent is an exclusive right granted for an invention, a product or process providing or offering a new practical solution to a problem or dilemma. Patent application in Nigeria is regulated by the Patents and Design Act.³² Patent right grants the 'statutory inventor' (first to file) a temporary, but exclusive right to the commercial exploitation of an invention. It gives the inventor the exclusive right to exclude others from producing, using, or selling the patented invention in that country without the patent owner's consent or being permitted by law, for the duration of 20 years subject to renewal.³³ Contrary to widely held view, not all inventions qualify for a valid patent. For an invention to be patentable, the invention must satisfy the criteria set out in Section 1(1) of the Patent and Design Act³⁴ which is that an invention is patentable if it is new, results from inventive activity and is capable of industrial application, or if it constitutes an improvement upon a patented invention and also is new, results from inventive activity and is capable of industrial application. Sections 3, 4, and 5 of the Patents and Designs Act provide that patent application is to be made to the Registrar at the Trademarks, Patents and Designs Registry and shall contain certain information.

A search will be conducted to ensure the invention has not already been patented. If the result of the search shows there is no previous registration, the application to the registrar must contain:

- a. A petition or request for a patent signed by the applicant or his agent and containing the applicant's full name and address.
- b. specification, including a claim or claims in duplicate; plans and drawings, if any, in duplicate.

³² Cap P2 LFN 2004.

³³ W Famojuro, 'Patent Registration in Nigeria' <http://www.lexology.com/library/detail> accessed 26 April, 2022.

³⁴ *Ibid.*

- c. where appropriate, a declaration signed by the true inventor requesting that he be mentioned as such in the patent and giving his name and address.
- d. a signed power of attorney or authorization of agent if the application is made by an agent.
- e. an address for service in Nigeria if the applicant's address is outside Nigeria; and payment of the prescribed fee.

Afterwards, the patent application is examined by the Registrar. This is done to ascertain formal compliance with the requirement of the Act. Once the application satisfies the statutory requirements, the Registrar is likely to grant the patent without enquiries to its novelty, inventiveness and industrial applicability or whether the specification sufficiently discloses the invention. In Nigeria, patents are granted at the risk of the patentee and without guarantee as to their validity. Whether an invention is a product or process, the same registration procedure is adopted.

Be this as it may, while this is the extant law on patents and designs in Nigeria, however it is the position of this paper that some of the provisions of the Patents and Designs Act 1968 are obsolete as new trends in technology are being formed. Thus, there is a need for the provisions of our laws to accommodate such innovations that were not envisaged in 1968. Thus, this article recommends that the National Assembly should amend the provisions of the Patents and Designs Act 1968 or better still enact a new Act just like as the Copyright Act 2022. Also, some of the terms used in the Act are not clearly defined, thus this paper recommends that same be amended to clearly define them.

1.3 Intellectual Property Rights and eLearning

The importance of intellectual property rights in the context of eLearning is a growing concern among experts and practitioners. With the rise of eLearning courses and materials that can be accessed on mobile devices, there is a shift in the way practitioners manage and deliver content. However, this also presents legal challenges related to intellectual property rights. Until recently, knowledge about intellectual property rights has been relatively obscure in the eLearning and mobile learning world. But as practitioners make significant strides

in content development, delivery, and management, access to vital legal information is becoming essential.

It is crucial for eLearning practitioners, individuals, students, digital libraries, and repositories to have knowledge about intellectual property rights. This information records who owns the eLearning resources, who can access and use it, and under what conditions the resources are made available. As the capabilities of mobile technologies increase, the legal questions and concerns surrounding intellectual property rights become more critical. Therefore, practitioners require access to legal information that will assist them in their content development, delivery, and management.

1.3.1 Copyrights in eLearning

Copyright is a legal term describing rights that creators have in their literary and artistic works. With copyright protection creators and owners of works are given legal protection against unauthorized copying and piracy.³⁵ Copyright provides protection for original works of authorship that are fixed in a tangible medium of expression. These works include literary, musical, and dramatic works, photographs, audio and visual recordings, software, and other intellectual works.³⁶ Copyright protection begins as soon as the work is fixed in a tangible medium,³⁷ and eLearning practitioners should use the copyright symbol immediately upon commencing the development of their original works to inform others that they intend to exercise control over the production, distribution, display, and performance of their work.³⁸ While it is not necessary to file for copyright protection, doing so for works of significant value makes it easier to seek court enforcement if there is a material breach.

It is worthy for eLearning practitioners to realize that copyrights do not protect ideas but how ideas are expressed.³⁹ Moreover, copyright

³⁵ WIPO, *What is Copyright?* (WIPO, 2023) <https://www.wipo.int/en/web/copyright> accessed 14 November 2025

³⁶ Ibid,

³⁷ WIPO, *Understanding Copyright and Related Rights* (WIPO Publication No 909(E), 2016) https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909.pdf accessed 14 November 2025

³⁸ Ibid,

³⁹ WIPO, *Copyright: Frequently Asked Questions* (WIPO, 2023) <https://www.wipo.int/en/web/copyright/faq-copyright> accessed 14 November 2025

protects only expression of thought and not an idea or imaginations in one's brain or mind. Copyright-protected works for eLearning practitioners include literary, musical, and dramatic works, photographs and graphics, audio and visual recordings, software, and other intellectual works.⁴⁰ Copyright owners have exclusive rights to reproduce their work, publicly display or perform their work, and create derivative works.

An owner of a copyright work is entitled to two rights which are economic and moral rights. While economic rights give owners the right to derive financial reward from the use of their works by others, moral right allows the owner or author to commence a legal action, if the integrity of the work is violated or tampered with.⁴¹ As a result of the porousness of the digital environment, there is genuine concerns by copyright owners regarding diminishing profit and increased piracy resulting from wide spread of uploaded protected works on the internet.

A copyright provides protection for original works of authorship that are fixed in any tangible medium of expression.⁴² For the work to be "fixed in a tangible medium of expression," it means that it has been set in a form in which it can be perceived either directly or with the aid of a device. Thus, in *Donoghue v. Allied Newspaper Ltd*⁴³ the court further reiterates the principle that a work must be fixed in a material form if it is to enjoy copyright, and stated:

There is no copyright in an idea or ideas. A person may have a brilliant idea for a story or for a picture or for a play and one which appears to him original, but if he communicates that idea to an author or an artist or playwright, the production which is the result of the communication of the idea....⁴⁴

The owner of a copyright has the exclusive right to control the reproduction, distribution, performance, and display of the work, and the preparation of derivative works. The original ownership of the

⁴⁰ Ibid,

⁴¹ WIPO, *Copyright: Economic and Moral Rights* (WIPO, 2022) <https://www.wipo.int/copyright/en> accessed 14 November 2025

⁴² Section 26 of the Copyright Act

⁴³ (1938) CH 106 at 109

⁴⁴ Ibid, p.109

copyright is granted to the author of the work. However, if the author creates the work in the scope and course of employment, the employer is considered the author under the “work for hire” doctrine. A party may also be considered the author of certain works if the work is commissioned, and the contract specifically states that the "work for hire" doctrine applies. Ownership of a copyright can be transferred, and a transfer of the owner's exclusive rights must be made in writing.

1.3.2 Patents in eLearning

Patent grants the sole right to an individual to manufacture, utilize, or sell a product or invention.⁴⁵ Similarly, according to Curzon,⁴⁶ a patent is an exclusive right given to the inventor or discoverer of a process, machine, and so on, to manufacture, use, sell, or assign it for a specific duration, usually twenty years, which can be extended. Osborn⁴⁷ describes it as the right given by letters patent to exclusively use and benefit from a new invention that can be industrially applied. Patents, also known as "patents for invention," protect inventions. If an individual believes that they have created an invention, they can file an application with the Patent Office requesting the government to issue a document stating that the invention belongs to them.

Patent rights in eLearning refer to the legal protection granted to inventors or creators of new and unique inventions or processes related to eLearning. These rights allow the holder to prevent others from making, using, or selling the patented invention for a certain period of time. Patents are particularly important in eLearning as they can protect innovative products or processes that give a competitive advantage to eLearning practitioners or content developers.⁴⁸

In eLearning, patents can cover a wide range of inventions, including new methods of delivering eLearning content, innovative authoring tools, or unique virtual reality environments. To obtain a patent,

⁴⁵ Hornby, A.S. (2007) *Oxford Advanced Learner's Dictionary of Current English*, 7th ed, Oxford University Press p.325

⁴⁶ Curzon, L.B. and Richards P.H. (2007) *The Longman Dictionary of Law* 7th ed. Pearson Longman p.138.

⁴⁷ Roger, B. (1983) *Osborn's Concise Law Dictionary*, 7th ed. London, Sweet & Maxwell, p.94

⁴⁸ Jasmine Renner, 'Intellectual Property Rights in E-Learning' (*Clear Point* 2 August 2015) <<https://www.clearpnt.com/intellectual-property-rights-in-elearning/>> accessed 22 April 2024.

eLearning practitioners must ensure that their invention is new, useful, and non-obvious, and that they have a clear understanding of who owns the invention. This can be particularly important in an employment context, as intellectual property produced in the course of employment generally belongs to the employer. For example, a software developer who creates a new program while working for a tech company does not own the copyright; it belongs to the employer. Likewise, a graphic designer who produces a logo or branding materials during employment has no personal rights in the work, as the intellectual property automatically vests in the employer. Similarly, a research scientist who discovers a new formula in the course of laboratory work cannot claim the patent, because the invention is legally owned by the employing company.

1.3.3 Trademark in eLearning

A trademark is a symbol that is affixed or linked to goods that are available for purchase in the market. Its purpose is to differentiate them from similar goods and to identify them with a specific business, indicating that they were produced, processed, imported, selected, certified, or sold by that business or individual. It can also be registered under the Act as a trademark of a particular trade.⁴⁹ It is used by a trader during the course of trade to differentiate the goods on which it is applied from other goods of the same kind.

Trademarks in eLearning are an important aspect of intellectual property rights. Trademark law seeks to protect others from using the same or a confusingly similar name for their products as yours. This is particularly important in eLearning as it can help distinguish competitors from each other and prevent confusion among clients and consumers. Trademarks can cover a wide range of identifying marks, including names, logos, and slogans. For example, the names “ABU DLC” “eLearning Consulting” and “Course4You” and their logos are trademarks or service marks of eLearning Consulting, LLC.⁵⁰ These

⁴⁹ Okany, M.C. (1986) Nigerian Law of Property, Enugu Fourth Dimension Publishers, p.333

⁵⁰ Learning Consulting, ‘eLearning Consulting Terms and Conditions’ (www.e-learningconsulting.com2021) <<https://www.e-learningconsulting.com/terms.html>> accessed 22 April 2024.

trademarks help to identify and distinguish eLearning Consulting's products and services from those of other companies.

To protect their trademarks, eLearning practitioners should conduct thorough research to ensure that their proposed trademarks do not infringe on someone else's trademark. This can involve conducting an initial or preliminary trademark search to ensure that the proposed trademark is not already in use by someone else.

Moreover, eLearning practitioners should have sensible policies and practices in place for managing IP rights. This can include conducting thorough research to ensure that their ideas do not infringe on someone else's patent or trademark, prototyping their ideas, and documenting and maintaining written records of all substantial transactions related to their intellectual property. Additionally, participating institutions and organizations should include IPR management in their project planning and ensure that they have clear agreements in place regarding ownership and control of intellectual property.

Challenges in Intellectual Property Rights in e-Learning in Nigeria

One major challenge is **weak enforcement of IP laws** in the digital context, which undermines protection of e-learning content. The Nigerian Copyright Commission (NCC) has powers to investigate and prosecute piracy, but it is under-resourced and underfunded, making it difficult to police unauthorized copying of digital educational materials effectively.⁵¹ This problem is compounded by the low capacity of enforcement officers, they often lack training in digital forensics, and judicial processes for IP infringement are slow and cumbersome, discouraging rights holders from seeking redress.⁵²

Another significant issue is the **lack of awareness and IP literacy** among content creators, institutions, and e-learning practitioners. Many educational institutions and course developers do not fully understand their intellectual property rights, nor the benefits of formally registering or protecting their works.⁵³ This is especially true for smaller

⁵¹ See Nigerian Copyright Commission, *Anti-piracy & Enforcement* (NCC) <https://www.copyright.gov.ng/> accessed 14 November 2025

⁵² O T Afolayan, 'Protecting Intellectual Property Rights' (2019) *Journal of Information & Knowledge Management* 5

⁵³ Ibid,

organizations and individuals, who may operate in informal settings or lack the financial resources to engage in costly IP registration and litigation.⁵⁴ In the e-learning context, this means that valuable educational content may remain unprotected, or creators may neglect to use measures such as digital rights management, watermarking, or licensing models.

Finally, **digital piracy and unchecked distribution** present a severe threat to the sustainability of e-learning in Nigeria. Unauthorized sharing of e-books, videos, lecture notes, and course modules is widespread, particularly on informal platforms and peer-to-peer networks, undermining the economic incentive for content creators and institutions.⁵⁵ The educational publishing sector has even sounded the alarm, noting that piracy erodes quality in education and deprives legitimate publishers and creators of revenue.⁵⁶ Coupled with this is the technological challenge: once digital content is distributed online, it can be easily copied and redistributed, and tracing infringers is difficult under the current legal and technical regime.⁷

1.4 Conclusion

Through an analysis of relevant laws, regulations, and ethical considerations, the paper sheds light on the complex interplay between eLearning, copyright, patents, and trademarks in the Nigerian educational landscape. The findings of the paper underscore the significant challenges faced by content developers, practitioners, and institutions in navigating the intricacies of IPR in eLearning. Furthermore, the paper emphasizes the urgent need for awareness, education, and collaboration among stakeholders to address these challenges effectively. One of the central conclusions drawn from the paper is the critical importance of protecting the rights of creators while promoting access to education.

⁵⁴ Ibid,

⁵⁵ WIPO, 'Nigeria's Anti-Piracy Drive Yields Results' (WIPO Magazine) <https://www.wipo.int/en/web/wipo-magazine/articles/nigerias-anti-piracy-drive-yields-results-38120> accessed 14 November 2025

⁵⁶ Ibid,