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LIABILITY OF INTERNET SERVICE PROVIDERS FOR THIRD-PARTY ONLINE COPYRIGHT INFRINGEMENT IN NIGERIA

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Abstract: *The rapid evolution of digital technologies has fundamentally transformed the dissemination of creative works, positioning Internet Service Providers (ISPs) as indispensable intermediaries in the online ecosystem. However, this pivotal role has simultaneously exposed ISPs to significant legal scrutiny regarding their responsibility for copyright infringements committed by third parties through their networks. This paper examines the liability of ISPs for third-party online copyright infringement within the Nigerian legal framework, with particular focus on the transformative provisions of the Copyright Act 2022. The paper employs the doctrinal research methodology, analyzing statutory provisions, regulatory instruments, and case law, while adopting a comparative approach with the United States' Digital Millennium Copyright Act and the European Union's E-Commerce Directive and Digital Single Market Directive. The paper evaluates the legal basis for ISP liability under the Copyrights Act 2022, assesses the extent of their responsibility for user-generated infringements, and identifies critical gaps in the new Act. It further explores the challenges posed by anonymity, cross-border platforms, and enforcement difficulties within Nigeria's digital ecosystem. The paper concludes with targeted recommendations for policy reforms, industry-specific measures, and enhanced dispute resolution mechanisms to strike an optimal balance between protecting copyright owners' rights and fostering a vibrant digital economy. The findings underscore the imperative for robust regulatory guidelines, institutional capacity building, and stakeholder education to ensure the effective implementation of Nigeria's nascent ISP liability regime.*

Keywords: *Internet Service Providers, Copyright Infringement, Third-Party Liability, Notice-and-Takedown*

Introduction

The intersection of copyright law and digital technology has engendered one of the most complex and contentious debates in contemporary intellectual property jurisprudence. At the heart of this discourse lies the question of the extent to which Internet Service Providers (ISPs) should bear responsibility for copyright infringement committed by third parties through their networks and platforms (Riordan, 2016: 3). This issue has gained particular attention in Nigeria where the exponential growth of internet penetration, coupled with the proliferation of user-generated content platforms and peer-to-peer file-sharing technologies, has created unprecedented challenges for copyright enforcement (Fasoyin, 2024).

Internet Service Providers function as the indispensable gatekeepers of the digital ecosystem, providing the infrastructure and services that enable users to access, transmit, and share information across the global network (Edwards, 2011). Their functions encompass a spectrum of activities, including providing connectivity, storing content on servers, facilitating efficient data transmission through caching, and enabling content discovery through search engines and indexing services (OECD, 2011). Third-party online copyright infringement refers to the unauthorized use, reproduction, distribution, or communication of copyrighted works by individuals or entities other than the ISP itself, utilizing the ISP's services or infrastructure (Toritseju, 2024). This phenomenon manifests in various forms, including the uploading of pirated films and music to hosting platforms, the sharing of copyrighted software through peer-to-peer networks, the unauthorized streaming of protected content, and the dissemination of infringing materials via social media and messaging applications (Goel, et al, 2010: 6). The scale and frequency of such infringements in the digital environment render traditional enforcement mechanisms, which target individual infringers, largely ineffective and economically impracticable (Strowel, 2009: 45).

The emergence of third-party online copyright infringement as a systemic challenge can be traced to the fundamental characteristics of digital technology. The digitization of creative works enables their reproduction in unlimited quantities without any degradation in quality, while the global reach of the internet facilitates instantaneous dissemination across jurisdictional boundaries (WIPO, 2002: 26). The convergence of these technological capabilities with the rise of Web 2.0 platforms, which encourage user-generated content and social sharing, has exponentially multiplied the opportunities for copyright infringement (Waelde & Edwards, 2005).

In Nigeria, this phenomenon has assumed alarming proportions. The country's internet penetration rate has grown substantially, with over 134 million Nigerians connected to the internet as of 2024, representing a penetration rate of approximately 42.24 percent (Okamgba, 2024). This dramatic expansion of connectivity has been accompanied by a corresponding surge in online piracy, particularly affecting the Nigerian film industry (Nollywood) and the music sector (Iwuh et al., 2023: 26). Industry reports indicate that piracy, including online infringement, costs the Nigerian creative industries billions of naira annually in lost revenues, undermines investment in content production, and threatens the livelihoods of countless creators and rights holders. The availability of Nigerian content on pirate websites, peer-to-peer platforms, and unauthorized streaming services has become so pervasive that some industry observers describe it as an existential threat to the continued viability of the creative sector (Junda, 2021).

ISPs occupy a unique and powerful position within the digital content distribution chain and they possess the technical capacity to monitor, filter, block, or remove infringing content or offenders (Farano, 2012). This gatekeeping function makes them attractive targets for right holders seeking effective enforcement mechanisms, particularly given the practical difficulties of identifying and pursuing individual infringers who often operate anonymously or pseudonymously. The enforcement gaps manifested in multiple dimensions. The anonymity afforded by the internet made it extraordinarily difficult for right holders to identify and locate individual infringers, rendering direct enforcement against primary infringers largely futile. Even when infringers could be identified, the costs of pursuing litigation against numerous individuals were prohibitively high, and the potential recovery often insufficient to justify the expense. The territorial nature of copyright law also created additional complexities, as infringing content hosted on servers outside Nigeria remained accessible to Nigerian users but fell outside the effective jurisdiction of Nigerian courts. These enforcement deficits created a permissive environment for online piracy, with significant adverse consequences for the Nigerian creative industries.

The enforcement gaps identified above underscored the imperative for legislative intervention to establish a clear and balanced framework for ISP liability. Without such a framework, copyright holders were left without effective remedies against online infringement, while ISPs operated in a state of legal uncertainty regarding their potential exposure to liability for the activities of their users (Jemilohun, 2019: 352). This paper is motivated by three principal objectives. First, it seeks to examine the legal basis for ISP liability in online copyright infringement within the Nigerian legal framework, with particular focus on the provisions of the Copyright Act 2022. Second, it aims to assess the extent of responsibility that ISPs bear for third-party infringements, analyzing the conditions under which liability attaches and the limitations on such liability provided by the statutory safe harbours. Third, the paper identifies critical gaps in the current framework and proposes targeted recommendations for reform to enhance the effectiveness of enforcement while maintaining an appropriate balance among the competing interests of right holders, ISPs, and internet users.

The paper employs the doctrinal methodology, which involves the analysis of primary and secondary legal materials to elucidate the current state of the law and identify areas requiring reform. It also incorporates a comparative dimension, examining the ISP liability regimes of the United States and the European Union.

1. Legal and Regulatory Framework for ISP Liability in Nigeria

The legal and regulatory framework for ISP liability in Nigeria has evolved significantly to address the challenges of third-party online copyright infringement in the digital environment. Prior to 2022, Nigeria lacked specific statutory provisions for intermediary liability, relying on general copyright principles that exposed ISPs to potential secondary liability without clear protections (Jemilohun, 2019). The Copyright Act 2022 introduced Part VII, which establishes a structured regime for online content.

Before the enactment of the Copyright Act 2022, Nigeria's legal framework for addressing ISP liability was fragmentary and largely inadequate for the complexities of the digital environment. The principal legislative instrument, the Copyright Act, 2004, was enacted at a time when internet penetration in Nigeria was nascent and the phenomenon of online copyright infringement was not yet a pressing concern for policymakers (Toritseju, 2024). Consequently, the 2004 Act contained no provisions specifically addressing the role or responsibility of ISPs for copyright infringements committed by third parties through their networks. The enforcement provisions of the 2004 Act were predicated on a paradigm of direct infringement, targeting individuals who physically engaged in acts of reproduction, distribution, or communication of copyrighted works without authorization. Section 14 of the 2004 Act defined copyright infringement by reference to acts done "without the license or authorization of the owner of the copyright", but provided no elaboration on how this standard might apply to intermediaries whose involvement in infringing activities was indirect and facilitative rather than direct. This legislative silence created significant uncertainty regarding the potential liability of ISPs for the activities of their subscribers.

In the absence of specific statutory provisions, rights holders seeking to assert claims against ISPs were compelled to rely on general principles of tort law, including the doctrines of vicarious liability and contributory infringement (Vinciūnas & Magnus, 2012: 57). However, these common law doctrines, developed in the context of physical world interactions, proved ill-suited to the distinctive characteristics of digital networks (Riordan, 2016). The requirement under vicarious liability that the defendant have the right and ability to control the primary infringer's activities was difficult to satisfy in the context of ISPs, given the automated nature of network operations and the vast volume of data transmitted through their systems. Similarly, the knowledge requirement for contributory liability posed substantial evidentiary challenges for rights holders seeking to establish that ISPs had actual or constructive awareness of specific infringing activities occurring through their networks.

Although the Nigerian Communications Commission (NCC), established under the

Nigerian Communications Act, 2003 as the primary regulator of the telecommunications sector, issued the Consumer Code of Practice Regulation 2007, which imposed obligations on licensees to address consumer complaints and maintain quality of service standards, these provisions were directed primarily at consumer protection rather than copyright enforcement. Even the Cybercrime (Prohibition, Prevention, etc.) Act, 2015, which attempted to impose duties on ISPs regarding data retention and law enforcement cooperation (s.38), did not provide a clear civil liability framework for digital copyright enforcement. The Copyright Act 2022 however, represents a transformative moment in Nigeria's copyright jurisprudence, introducing for the first time a comprehensive statutory framework governing the liability of ISPs and other online intermediaries for third-party copyright infringements.

Part VII of the Act, comprising sections 54 to 62, establishes the framework for Service Provider Liability. This Part represents the first codified expression in Nigerian law of the principles governing intermediary liability for copyright infringement, drawing inspiration from international models while adapting them to the Nigerian context. Section 108 of the Act defines "service provider" broadly to encompass the range of entities that may function as intermediaries in the digital environment. It defines a service provider as:

> A provider of online services or network access, including operators of such facilities and any entity offering the transmission, routing or providing of connections for digital online communications, between or amongst points specified by a user, of material of the user's choosing without modification to the content of the material as sent or received.

This expansive definition reflects an understanding that intermediary functions in the digital environment are diverse and evolving, and that the liability framework must be capable of applying to new forms of intermediation as they emerge (Jemilohun, 2023). The definition specifically includes any entity offering transmission, routing, or connections for digital online communications where the material is transmitted at the user's choosing without modification of content. The Act, however, limits the application of its online content provisions to the neutral, automatic, and passive activities of service providers. This is reinforced by the requirement that service providers seeking the benefits of liability protection must not take an active role, intervene, or participate in the making available of content (s.62).

Section 54 of the Act establishes a notice-and-takedown procedure, which provides rights holders with an administrative mechanism for securing the removal of infringing content from service providers' platforms without immediate recourse to judicial proceedings. Copyright owners who have suffered infringement may issue notice to the relevant service provider requesting the takedown or disabling of access to infringing content or links hosted on its system or network. The provision prescribes formal requirements for a valid notice, which must be in writing and may be transmitted electronically. The notice must include a physical or electronic signature of an authorized person, identification of each work allegedly infringed, and sufficient information to enable the service provider to locate the infringing material. Additionally, the notice must provide contact information for the complaining party, a declaration on oath that the complainant believes the use is not authorized, and a statement confirming the accuracy of the information and the complainant's authority to act. Upon receiving a compliant notice, the service provider is required to promptly notify the subscriber responsible for the content and expeditiously take down or disable access to the infringing content or links (s.55). The service provider must thereafter notify the copyright owner of the action taken.

Notwithstanding the above, section 55(2) of the Act establishes a counter-notification procedure, which enables subscribers whose content has been removed to challenge the removal. A service provider may restore removed content if it receives a written counter-notice from the subscriber, forwards it to the copyright owner, and does not receive a response from the owner within seven days indicating that no authorization was granted. Service providers are subject to an ongoing obligation to take effective steps, in accordance with high industry standards, to prevent content taken down from being reloaded onto their systems or networks. Where removed content is reloaded despite such steps, the service provider must promptly remove or disable access to it without further notice to the subscriber.

Section 55(4) of the Act provides that persons dissatisfied with the determination or action by the service provider or copyright owner under the notice-and-takedown procedure, may refer the matter to the Nigerian Copyright Commission for determination. Service providers acting in good faith in taking down content are granted immunity from liability to any person for such actions. However, service providers who fail to comply with the notice-and-takedown requirements are liable for breach of statutory duty and for infringement of the content to the same extent as the person responsible for placing the content on the system or network (s. 55(6)).

Section 56 of the Act imposes an affirmative obligation on service providers to address repeat infringers through a graduated response mechanism. Upon receiving repeated notifications of infringements for a particular account, the service provider must promptly send a warning to the identified subscriber, informing him that another notification will lead to suspension of the account and requiring confirmation of receipt of the warning. After a second notification relating to the same account, where no challenge is pending, the service provider must suspend the account for a period of not less than one month. Subscribers may challenge warning notices on grounds of mistake or misidentification. Within ten days of receiving a warning, a subscriber may send a signed counter-notice to the service provider furnishing full contact details and the factual basis for believing the account was misidentified or that the use was not infringing. Where the basis for challenge cannot be resolved within ten days of receipt of the counter-notice, the matter must be referred to the Commission to determine the validity of the challenge. Service providers acting in good faith in suspending accounts based on information contained in infringement notifications are granted immunity from any claim based on the suspension.

The Act establishes penalties for knowing misrepresentations in connection with the notice-and-takedown process (s. 57). Any person who knowingly misrepresents that material or activity is infringing, or that material or activity was removed or disabled by mistake or misidentification, is liable for damages incurred by any person injured by such misrepresentation as a result of the service provider's reliance upon it.

The Act in section 58 establishes safe harbour protections that limit the liability of service providers for copyright infringement arising from the storage of material at the direction of users. To qualify for these protections, service providers must satisfy several cumulative conditions. First, the service provider must lack actual knowledge that the material or an activity using it is infringing. In the absence of actual knowledge, the provider must not be aware of facts or circumstances from which infringing activity is apparent. Where such knowledge or awareness is obtained, the provider must act expeditiously to remove or disable access to the material. Second, the service provider must not receive financial benefit directly or indirectly attributable to the infringing activity where it has the right and ability to control such activity. Third, the service provider must, upon notification of infringement, respond expeditiously to remove or disable access to the material claimed to be infringing. Fourth, the service provider must comply with the procedure for suspension of accounts of repeat infringers as provided in the Act.

Section 59 extends similar safe harbour protection to service providers offering information location tools, including directories, indices, references, pointers, or hypertext links. The conditions for this protection mirror those for storage providers, requiring absence of actual knowledge or awareness of apparent infringement, expeditious removal upon obtaining such knowledge, and no receipt of financial benefit attributable to the infringing activity where the provider has the right and ability to control such activity.

Under section 60, the Act empowers copyright owners or their agents to apply to the court for an order requiring a service provider to identify an alleged infringer. The application must be accompanied by a copy of the infringement notification and a sworn declaration that the purpose of the order is to obtain the identity of an alleged infringer and that such information will only be used for protecting rights under the Act. Upon receipt of such application, the court may order the service provider to expeditiously disclose to the copyright owner information sufficient to identify the alleged infringer, to the extent that such information is available to the service provider.

The Act also grants the Nigerian Copyright Commission independent enforcement authority, enabling it to directly block or disable access to any content, link, or website hosted on a system or network that it reasonably believes to infringe copyright (s. 61). This power may be exercised notwithstanding any other law and may be implemented directly by the Commission or with the assistance of any other person. The Act preserves the availability of injunctive relief, providing that its online content provisions are without prejudice to the powers of the court or any administrative authority to require or direct the service provider to terminate or prevent an infringement (s. 62). This savings clause ensures that the liability limitations established in the Act do not affect the possibility of obtaining injunctions against service providers.

2. Impact of the Copyright Act 2022 on ISP Liability for Third-Party Infringement

The impact of the transformative legislative intervention of the Copyright Act 2022 on ISP liability reverberates beyond corporate sanctions, and directly affects the behaviour of stakeholders within the entire copyright protection ecosystem in Nigeria (Jemilohun, 2019). First, the conditional safe harbour provisions of the Copyright Act 2022 create powerful incentives for ISPs to cooperate with rights holders while protecting themselves from potentially ruinous liability. Prior to the 2022 Act, ISPs faced substantial legal uncertainty regarding their exposure to liability for user-generated content, as the pre-2022 framework contained no provisions specifically addressing ISP responsibility for third-party infringements.

Section 58 provides that a service provider shall not be liable for monetary relief for copyright infringement arising from the storage of material at the direction of users, provided that the service provider meets four cumulative conditions: lack of actual knowledge of infringement; expeditious intervention upon obtaining such knowledge; not received financial benefit attributable to infringing activity; and compliance with the procedure for suspension of accounts of repeat infringers. The conditional nature of the safe harbour provision creates a strong incentive for ISPs to establish efficient procedures for receiving, processing, and responding to infringement notices (Farano, 2012). An ISP that receives a compliant notice and fails to act expeditiously risks losing safe harbour protection and becoming subject to monetary liability under section 55(6) of the Act.

Second, the notice-and-takedown procedure under sections 54–55, combined with the NCC's site-blocking and disablement powers under section 61, significantly strengthens the position of right holders, particularly in the music and film industries. Right owners can now issue formal notices requiring expeditious removal or disablement of infringing material, with counter-notice safeguards to prevent abuse. These mechanisms have enabled faster takedown of pirated Nollywood films and Afrobeats tracks on local and accessible platforms, reducing unauthorized distribution and supporting legitimate revenue streams (Chibueze, 2025). Post-2022 enforcement actions demonstrate the practical utility of these tools. In July 2025, the NCC secured the suspension of MovieBox.ng, a website notorious for streaming pirated movies, music, and live sports (The Guardian Editorial, 2025). In November 2025, the NCC suspended seven additional .ng domains following a request from the International Federation of the Phonographic Industry (Olufemi, 2025). These swift actions demonstrate growing enforcement capacity and the effectiveness of collaboration between the NCC and rights holders.

Third, the Act significantly enhances the powers and responsibilities of the Nigerian Copyright Commission, positioning it to play a more effective role in overseeing the digital copyright ecosystem. Section 78 vests the Commission with comprehensive powers of supervision, control, and enforcement, including authority to issue regulations and guidelines for implementation of the ISP liability framework. Section 55(4) empowers the Commission to determine matters referred by persons dissatisfied with actions taken under the notice-and-takedown provisions. Section 61 grants the Commission independent authority to block or disable access to infringing content. The creation of the Special Taskforce against Online Piracy (STOP) demonstrates the Commission's strategic approach to enforcement (Igbintade, 2025). The Taskforce's ability to investigate, collaborate with international partners, and coordinate with domestic infrastructure managers reflects sophisticated understanding of multi-stakeholder enforcement (Olufemi, 2025; Chibueze, 2025).

3. Concerns Regarding ISP Liability and Third-Party Infringement in Nigeria

Despite the advancements in the Copyright Act, 2022, significant concerns persist regarding ISP liability for third-party online copyright infringement in Nigeria. These concerns are driven by the inherent nature of digital risks, practical enforcement challenges, and the socio-economic context of widespread piracy that continues to plague Nigeria's creative industries (Toritseju, 2024). The tension between protecting the rights of copyright owner, particularly in Nollywood and the Afrobeats music sector and avoiding the imposition of undue burdens on ISPs that could hinder internet access, stifle innovation, and infringe on free expression remains a central policy challenge (Jemilohun, 2019).

3.1 Nature of infringement risks involving ISPs

By the nature of their functions, ISPs often become unwitting facilitators of copyright infringement through the services they provide (Waelde & Edwards, 2005). The unauthorized hosting of infringing content occurs when users upload copyrighted materials such as Nollywood films, Afrobeats music, and other audiovisual works to platforms that store such content on ISP servers (Oluwaseunfunmi, 2022: 25). This is prevalent on file-sharing networks, streaming websites, and social media platforms where users can upload and share content without adequate oversight (Asadi, 2023: 39).

Linking activities pose another significant risk, as websites may provide hyperlinks to infringing content hosted elsewhere, effectively directing users to pirated materials while the linking site itself does not store the infringing copies (Riordan, 2016). This practice complicates enforcement because the linking site may argue that it is merely providing references to content rather than engaging in direct infringement (Jemilohun, 2019). The transmission of pirated content across ISP networks occurs whenever users download or stream unauthorized materials (Waelde & Edwards, 2005). Each instance of streaming or downloading a pirated film or song involves the reproduction and communication of the work to the public, acts that are exclusively reserved to copyright owners under section 36 of the Copyright Act 2022. The cumulative effect of these activities is staggering economic losses for rights holders. Industry estimates indicate that piracy accounts for between 50% and 70% of potential film revenue in Nigeria's creative sector (Aderinola, 2025). The Nigerian Copyright Commission has publicly stated that the country loses billions of naira annually to piracy, underscoring the economic magnitude of the problem and the urgent need for effective enforcement mechanisms (Spectrum Television, 2025).

3.2 Challenges from anonymity, scale, and cross-border platforms

The digital environment presents structural challenges that fundamentally complicate the enforcement of copyright against online infringers (Ibe & Udeoji, 2019: 110). The scale of user-generated content traversing Nigerian networks is immense, with millions of uploads, shares, and downloads occurring daily across countless platforms (Atoyebi, 2026). No ISP or regulatory authority possesses the resources to manually review this volume of content for potential infringement. User anonymity compounds this challenge. Infringers can register for services using pseudonyms, employ anonymizing technologies such as VPNs, or access the internet through shared connections in cybercafés or public Wi-Fi hotspots (Fenjan, 2023:199). Even where IP addresses are logged, they may identify only the account holder, who may not be the individual responsible for the infringing activity.

The cross-border nature of the internet creates jurisdictional complexities that further frustrate enforcement. Infringing content may be hosted on servers located outside Nigeria while remaining fully accessible to Nigerian users through local ISPs (Jemilohun, 2019). Nigerian audiences frequently access international platforms such as Facebook, YouTube, Instagram, and TikTok, all of which are hosted outside Nigeria (Agboola, 2022: 33). While these platforms may have local offices or representatives, their operations are governed primarily by the laws of their home jurisdictions, and their compliance with Nigerian legal requirements may be inconsistent (Wanjiru, 2023).

Decentralized technologies such as BitTorrent and anonymizing tools like VPNs obscure the origins of infringing activities, making it extraordinarily difficult for rights holders to identify and pursue legal action against primary infringers (Zakir, et al 2024). In such cases, the involvement of ISPs becomes crucial, as they may be the only identifiable parties with some connection to the infringing activity.

3.3 Low awareness among users and ISPs and enforcement difficulties

A significant barrier to effective copyright enforcement in Nigeria is the low level of awareness among both internet users and ISPs regarding copyright obligations (Nwakaego, 2020: 25). Many Nigerian internet users operate under the misconception that content freely accessible on the internet is not protected by copyright and may be freely downloaded, shared, or otherwise exploited (Ibe & Udeoji, 2019: 115). This misunderstanding extends to social media, where sharing content is often viewed as fundamentally different from, and less legally consequential than, more traditional forms of distribution.

Surveys conducted by the Nigerian Copyright Commission have documented widespread ignorance of copyright norms among internet users, with a substantial majority not considering the copyright implications of downloading movies, music, or software from unauthorized sources (Ogundele, 2025). Even among users who are generally aware of copyright, there is often a perception that enforcement actions are unlikely to be taken against individual users, reducing the deterrent effect of legal prohibitions (Miocevic, 2022: 1). Within the ISP community, awareness and understanding of copyright liability requirements vary significantly. Major telecommunications operators such as MTN Nigeria, Airtel Nigeria, and Globacom, generally have dedicated legal and compliance teams that are knowledgeable about regulatory requirements. However, numerous smaller ISPs, hosting providers, and platform operators lack the resources and expertise to develop sophisticated copyright compliance programs. Many may be unaware of their obligations under the Copyright Act 2022 or may lack the capacity to implement effective notice-and-takedown procedures.

The Nigerian Copyright Commission itself faces structural and resource limitations that impede effective enforcement (Okeke, 2025: 1). While vested with significant powers under the 2022 Act, the Commission operates with constrained staffing, budget, and technical capabilities relative to the vast scale of its mandate (Oyinwola, 2022). The volume of online infringement far exceeds the Commission's capacity for direct enforcement, necessitating reliance on private enforcement mechanisms such as notice-and-takedown and collaboration with international partners.

Judicial capacity also presents challenges. The technical complexity of ISP liability cases may further extend proceedings, as courts grapple with unfamiliar concepts and evidentiary issues (Aniche & Obi, 2020: 12). The absence of specialized intellectual property courts or fast-track procedures for copyright cases compounds these challenges.

4. Case Studies of Infringement and ISP Involvement in Nigeria

The Nigerian digital ecosystem has witnessed numerous instances of online copyright infringement involving local platforms and international services accessed by Nigerian users (Nwachukwu & Ikechukwu, 2022). Piracy remains rampant on local platforms, social media channels, and file-sharing sites that distribute unauthorized copies of Nollywood films, Afrobeats tracks, and live sports streams (Akanni, 2025).

Social media platforms have emerged as significant vectors for copyright infringement (Kumar, 2025). Facebook, Instagram, Twitter (X), and TikTok are widely used to share copyrighted content without authorization (Ferris, 2025). Users may upload full-length films, television episodes, or music tracks directly to these platforms, or may share links to infringing content hosted elsewhere (Adebayo, 2021). A particularly concerning trend involves the use of WhatsApp groups and Telegram channels to distribute infringing content (Devi & Mishra, 2023). These platforms enable the rapid dissemination of copyrighted materials to large, targeted audiences. Nollywood films and Nigerian music are frequently shared through such channels, often accompanied by minimal commentary or attribution (Lawal-Arowolo, 2015). The private nature of group communications makes detection and enforcement particularly challenging, as infringing materials may be shared among trusted networks without being publicly accessible.

Dedicated file-sharing platforms and cyber-locker services have long been recognized as significant sources of infringing content. In Nigeria, platforms such as Naijaloaded and various torrent sites have been identified as major distributors of pirated music and films (Itanyi, 2022). These platforms often operate on advertising-supported business models, generating revenue from traffic attracted by popular copyrighted content. One of the most prominent enforcement actions under the Copyright Act 2022 involved the website MovieBox.ng, which had become notorious for streaming pirated movies, music, and live sports (Ikuomola, 2025). In July 2025, the Nigerian Copyright Commission, in collaboration with the Nigeria Internet Registration Association (NiRA), secured the suspension of the MovieBox.ng domain. The activities of the website involved a coordinated attempt to sustain piracy using clone and fallback domains where the operators used multiple mirror domains to access and promote pirated content, with domain histories linked to known piracy operations. In November 2025, the NCC also suspended seven additional .ng domains in Nigeria following a request from the International Federation of the Phonographic Industry (IFPI) (Chibueze, 2025). These sites were involved in illegal sharing of unlicensed music and audiovisual works belonging to both Nigerian and foreign rights holders.

5. Comparative Analysis of ISP Liability for Third Party Infringement in the United States and European Union

The legal regimes governing the liability of Internet Service Providers (ISPs) for third-party copyright infringement in the United States and the European Union represent two of the most influential intermediary liability models in contemporary copyright law. Both systems seek to balance the protection of intellectual property rights with the need to foster technological innovation and maintain the open architecture of the internet. However, while they share certain foundational principles, their regulatory approaches reveal notable doctrinal and policy differences that could benefit regulation in Nigeria.

In the United States, the liability of internet intermediaries is principally regulated by the Digital Millennium Copyright Act (DMCA) of 1998. Title II of the Act introduced a comprehensive safe harbour regime designed to shield service providers from monetary liability for copyright infringements committed by users of their services, provided that the service providers comply with specific statutory conditions. The provisions governing intermediary liability are codified in section 512 of the Act and apply to a broad category of entities defined as "service providers". The section establishes four distinct safe harbour categories that correspond to the various technical functions performed by internet intermediaries. These include transitory digital network communications; system caching; storage of information at the direction of users; and information location tools. Each category imposes different conditions which service providers must satisfy in order to benefit from the statutory immunity. In particular, service providers hosting user-generated content must demonstrate that they lack actual knowledge of infringing activity and are not aware of facts or circumstances from which infringing activity is apparent. Where such knowledge is obtained, the service provider must act expeditiously to remove or disable access to the infringing material in order to retain safe harbour protection.

A central feature of the U.S. model is the notice-and-takedown procedure, which enables copyright owners to notify service providers of allegedly infringing content. Upon receiving a valid notification containing the information required under the statute, the service provider must remove or disable access to the identified material. The DMCA also incorporates a counter-notification mechanism that allows users to contest the removal of their content where they believe the takedown was erroneous or based on misidentification. In such cases, the service provider may restore the removed material unless the copyright owner initiates legal proceedings within the statutory period. Safe harbour eligibility is further conditioned upon the adoption and reasonable implementation of a policy providing for the termination of repeat infringers in appropriate circumstances. The interpretation of these statutory provisions has been significantly shaped by United States jurisprudence, particularly decisions clarifying the meaning of "actual knowledge", "red flag awareness" and the requirement that a service provider must not receive a direct financial benefit from infringing activity where it has the right and ability to control such activity.

For instance, in *Viacom International Inc v YouTube Inc* (2012) the United States Court of Appeals for the Second Circuit held that general awareness of infringing activity on a platform is insufficient to establish knowledge under the DMCA; rather, the statute requires knowledge of specific infringing material. Similarly, in *Perfect 10 Inc v Amazon.com Inc* (2007) the Ninth Circuit clarified the scope of liability for search engines and other intermediaries providing information location tools, emphasising that the DMCA safe harbour may apply where the intermediary performs a neutral technical function. In another influential decision, *Capitol Records LLC v Vimeo LLC* (2016) the court addressed the application of the safe harbour provisions to online video-sharing platforms, reaffirming that the statutory immunity may extend to a wide range of digital intermediaries where the conditions of section 512 are satisfied.

In contrast, the European Union has developed a broader and more integrated regulatory framework governing intermediary liability. The foundational regime was established under the Directive 2000/31/EC, which created liability exemptions for intermediary service providers performing mere conduit, caching, and hosting functions. Unlike the United States model, which focuses primarily on copyright infringement, the European framework adopts a horizontal approach applicable to various forms of unlawful online content, including copyright violations, defamation, and other forms of illegal material.

Under this regime, hosting providers are exempt from liability where they do not have actual knowledge of illegal activity or information and act expeditiously to remove or disable access once such knowledge is obtained (Art. 14). In addition, Article 15 of the Directive prohibits Member States from imposing general monitoring obligations on intermediaries, thereby preventing governments from requiring service providers to actively monitor user communications for potential infringements. This prohibition reflects a deliberate effort to protect fundamental rights such as freedom of expression and the free flow of information within the digital single market. The Court of Justice of the European Union has played a significant role in interpreting the scope of these liability exemptions. In *Google France SARL v Louis Vuitton Malletier SA* (2010) the Court held that an intermediary may rely on the hosting exemption only where it plays a neutral and passive role in relation to the stored data. Similarly, in *L'Oréal SA v eBay International AG* (2011) the Court ruled that online marketplace operators cannot rely on the hosting safe harbour where they play an active role that gives them knowledge or control over the stored information.

The Court has also emphasised the limits of intermediary monitoring obligations. In *SABAM v Netlog NV* (2012) the Court rejected an injunction requiring a social networking platform to implement a general filtering system to prevent copyright infringement, holding that such an obligation would violate the prohibition on general monitoring and interfere with fundamental rights. Likewise, in *UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH* (2014) the Court confirmed that national courts may issue blocking injunctions against internet access providers, provided that the measures are proportionate and do not unnecessarily restrict lawful access to information.

More recently, the European intermediary liability regime has undergone further development through the adoption of the Digital Services Act 2022. The Regulation modernises the regulatory framework by restating the traditional intermediary liability exemptions while introducing additional obligations relating to transparency, risk assessment, and content moderation for digital platforms. Article 7 of the Regulation further clarifies that voluntary own-initiative investigations or proactive content moderation measures undertaken by service providers do not automatically deprive them of the benefit of the liability exemptions provided under the Regulation.

Another important development within the European copyright framework is Article 17 of the Directive (EU) 2019/790, which establishes a specialised liability regime for online content-sharing service providers. Under this provision, such platforms are deemed to perform an act of communication to the public when they give the public access to copyright-protected works uploaded by users. As a result, these platforms may incur direct copyright liability unless they demonstrate that they have made best efforts to obtain authorisation from rights holders and to prevent the availability of identified infringing works. This framework effectively introduces a more proactive enforcement model often described as a notice-and-stay-down approach.

A comparative evaluation of these regimes reveals that although both jurisdictions recognise the importance of limiting intermediary liability in order to encourage innovation, they adopt different regulatory philosophies. The United States framework is largely reactive and relies heavily on the notice-and-takedown mechanism, which places the primary burden of detecting infringement on copyright owners. By contrast, the European Union has increasingly moved toward a system that imposes greater responsibilities on digital platforms to prevent the dissemination of infringing material, particularly in the context of large-scale user-generated content platforms. Both regimes, however, strictly prohibit "general monitoring obligations", ensuring that ISPs are not required to investigate every packet of data on their networks. This global tension is reflected in the Nigerian Copyright Act 2022, which modernizes the Nigerian framework by introducing domestic safe harbour provisions. While Nigeria draws on the

DMCA's notice-and-takedown mechanics, its framework also mirrors the EU's broader “blocking injunction” capabilities, allowing the Nigerian Copyright Commission (NCC) or courts to order ISPs to disable access to infringing sites.

Drawing from both the US and EU approaches, several key considerations emerge for the Nigerian digital ecosystem:

1. Nigeria could adopt a functional approach that provides different rules for different types of ISPs e.g., a telco vs. a social media site.
2. It could provide clear definitions of “actual knowledge” and standardized “Notice-and-Takedown” forms to reduce legal uncertainty and prevent enforcement gaps.
3. To prevent censorship, Nigeria needs a robust, accessible counter-notification and redress mechanism so users can challenge wrongful content removals.
4. The Nigerian legislative framework should explicitly protect against general monitoring and ensure that any injunctions like site blocking are proportionate and effective without being overly broad.
5. The framework must be future-proof, acknowledging that as technology evolves, the judiciary will play a critical role in interpreting these laws for new business models.

Conclusion

The Copyright Act 2022 represents a significant achievement in Nigerian copyright jurisprudence, providing a comprehensive framework that balances the interests of rights holders, ISPs, and internet users. The post-2022 enforcement actions demonstrate that the NCC is capable of wielding its enhanced powers effectively when supported by international partners and domestic stakeholders. However, the implementation and enforcement framework under the Act remains a work in progress, as inter-agency cooperation that is essential for effective enforcement is still being formalized and the ADR mechanism that promise faster dispute resolution is yet to be fully implemented. The future of ISP liability in Nigeria will be shaped by how effectively stakeholders address these implementation challenges over the next several years. The foundation is sound; what remains is the hard work of building the institutional capacity, operational systems, and collaborative relationships necessary to make the framework work in practice.

With continued commitment from government, industry, and rights holders, Nigeria can build an ISP liability regime that protects creative works, fosters digital innovation, and respects fundamental rights. The economic stakes could not be higher, Nigeria's creative industries are vital contributors to national development, and effective copyright protection is essential for their continued growth and sustainability.

This paper has demonstrated that the Nigerian framework draws considerable inspiration from international best practices, particularly the intermediary liability regimes developed in the United States and the European Union. The comparative analysis of the safe harbour provisions under the Digital Millennium Copyright Act and the intermediary liability framework established under the Directive 2000/31/EC reveals that effective regulation of ISP liability depends on carefully balancing copyright enforcement with the preservation of technological innovation and fundamental rights. The path forward requires sustained effort, but the destination is worth pursuing: a digital ecosystem where creators are rewarded for their work, ISPs can operate with legal certainty, and users can access creative content through legitimate channels. This goal is achievable if all stakeholders embrace their responsibilities and work collaboratively toward its realization.

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