

TWO PILLARS OF IP

CONTRASTING THE LEGAL ARCHITECTURE OF TRADEMARK AND COPYRIGHT

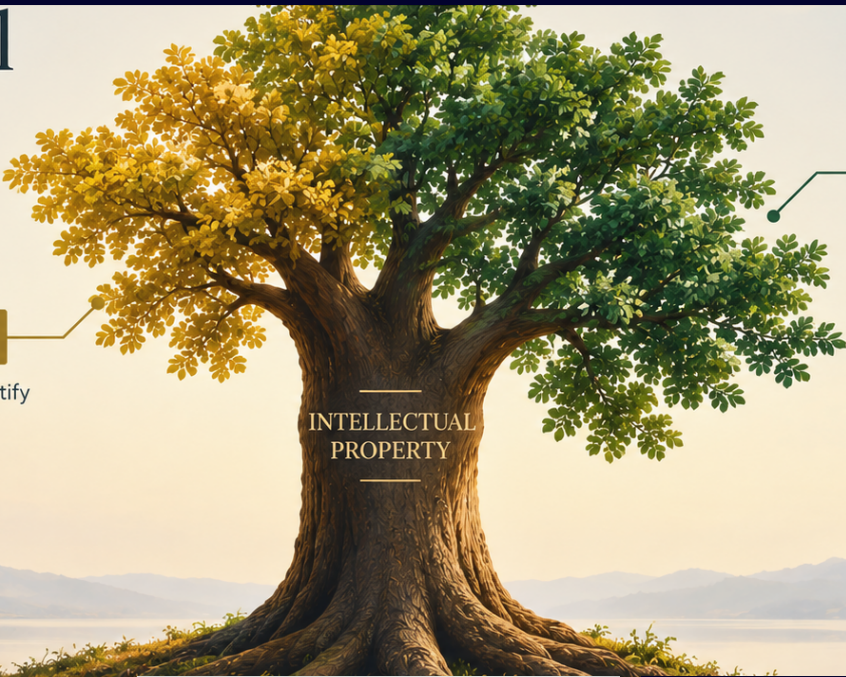
Intellectual Property: *A Tree with Two Branches.*

Trademark

Protects signs that identify and distinguish goods and services.

Copyright

Protects original works of authorship.



INTELLECTUAL
PROPERTY

INTRODUCTION

Intellectual Property is like a tree with many branches. Copyright and trademark are the most common intellectual property branches known to the majority. While both rights protect valuable intellectual assets, they differ in their operations.

The divergence will be examined through six (6) lenses: the framework for registration; the administration of rights; the scope and duration of protection; licensing; renewal; and enforcement.



THE CONVERGENCE

They are the most common forms of intellectual property

Both are commonly encountered in the commercial space and may attach to the same subject matter. E.g., a logo may be the subject of copyright protection due to its artistic nature and simultaneously be covered by trademark as well due to its distinctive features; yet, the rules governing their creation, administration, and enforcement differ.

THE DIVERGENCE

CONCEPTUAL FOUNDATIONS

Copyright subsists in original literary, musical, artistic, audiovisual, and related works, and its central doctrinal requirement is originality.

Copyright protects the expression of ideas, not the ideas themselves, and, subject to formalities discussed below, arises automatically upon fixation of an original work in a definite medium.

TRADEMARK LAW PROCEEDS FROM AN ENTIRELY DIFFERENT PREMISE.

A trademark is a sign or symbol capable of distinguishing the goods or services of one undertaking from those of another; its function is not to reward creative labour but to protect the integrity of the link between a mark and its commercial source.

Whereas copyright is oriented toward the author, trademark is oriented toward the market and the consumer within it. This difference in orientation is the thread that runs through, and substantially explains, the structural divergences examined in the sections that follow.

1. REGISTRATION FRAMEWORK

Copyright subsists automatically once a qualifying work is original and fixed in a tangible medium.

Registration is therefore evidentiary rather than constitutive: the Register itself serves as prima facie evidence of facts recorded in it, such as authorship and date of creation, which may assist a claimant in infringement proceedings, but non-registration does not affect the underlying right.

REGISTRATION IS THE FOUNDATION FOR TRADEMARK PROTECTION

Registration is not a mere evidentiary convenience but the foundation of the statutory right itself.

Section 3 of the Trade Marks Act provides that no person may institute proceedings for infringement of an unregistered mark.

This contrast is worth underscoring; whereas an unregistered copyright work is nonetheless a fully protected work, an unregistered trademark receives no protection under the Trade Marks Act as such, although, as discussed in Section 8 below, the common law tort of passing off provides a partial and separate remedy in that scenario.

2. ADMINISTRATION OF RIGHTS

Copyright is administered by the Nigerian Copyright Commission (NCC), whose functions extend beyond registration to anti-piracy enforcement, the approval and oversight of collective management organizations, and international treaty compliance.

Trademark administration, by contrast, sits with the Trademarks Registry, whose role is statutory, administrative, and quasi-judicial exercised through its tribunals.

3. DURATION OF PROTECTION

Copyright Act fixed duration according to the category of work -

- Literary, musical, and artistic works other than photographs: protection lasts for the life of the author plus seventy (70) years from the end of the year of death
- Audiovisual works, photographs, and sound recordings are protected for fifty (50) years from first publication (or from creation, if unpublished within that period), and broadcasts for fifty (50) years from the year of first transmission.

Once this term expires, the work enters the public domain and may be freely used, adapted, or reproduced by anyone.

TRADEMARK PROTECTION FOLLOWS A FUNDAMENTALLY DIFFERENT FRAMEWORK

Trademark is valid for an initial period of seven (7) years from the filing date, and is thereafter renewable indefinitely in a successive fourteen (14) year term, provided the requisite renewal fee is paid.

There is, in principle, no upper limit on the lifespan of a trademark; unlike copyright, whose term is fixed and finite, a trademark may in theory subsist in perpetuity so long as it continues to be used and renewed.

This reflects the different justification for the regimes. Copyright's fixed term reflects a policy balance between rewarding authors and eventually enriching the public domain, whereas a trademark's potentially indefinite life reflects the ongoing, undiminishing public interest in accurate source-identification for as long as a business continues to trade under the mark.



4. LICENSING

Copyright may be assigned or licensed, exclusively or non-exclusively. A complicating feature of copyright licensing is the existence of moral rights, the author's right to be identified as such and to object to derogatory treatment of the work, which, under the 2022 Act, may pass to an author's heirs or estate but remain tied to the underlying economic term and lapse once the work enters the public domain.

Moral rights are, moreover, generally non-assignable even where economic rights are transferred, meaning a licensee or assignee of the economic rights in a work does not thereby acquire the author's moral rights.

TRADEMARK LICENSING IN NIGERIA PROCEEDS THROUGH THE REGISTERED-USER MECHANISM

Both assignment and licensing of a registered mark are permitted and may be recorded against the Register.

A structurally important constraint distinguishes trademark licensing from copyright licensing, because a trademark exists to guarantee the consuming public a consistent connection between a mark and a particular quality or source; a licensor is generally expected to exercise quality control over a licensee's use of the mark.

5. RENEWAL

Renewal obligations mirror the duration analysis above and further illustrate the divergence between the regimes. Because copyright's term is fixed by statute according to the category of work, no renewal filing is contemplated or required. The right simply expires by effluxion of time.

TRADEMARK PROTECTION, BY CONTRAST, IS CONTINGENT ON ACTIVE RENEWAL

There is no statutory limit on how many times a mark can be renewed. Failure to renew exposes the mark to removal from the Register, though a mark removed for non-renewal is treated as remaining on the Register for a fresh application for one (1) year following removal, unless the mark was in any event unused for the two (2) years preceding removal.



BOTH COPYRIGHT AND TRADEMARK ARE ENFORCEABLE AT THE FEDERAL HIGH COURT

Remedies include damages, account of profits, injunctions, declaratory reliefs, and award of costs.

Where a mark is unregistered, the proprietor cannot sue for infringement under the Trade Marks Act, but Section 3 of the Act expressly preserves the common law tort of passing off as an alternative route to protection.

To succeed in passing off, a claimant must generally establish three (3) elements: the existence of goodwill attached to the goods or services in the mind of the purchasing public; a misrepresentation by the defendant leading, or likely to lead, the public to believe the defendant's goods are those of the claimant; and damage suffered, or likely to be suffered, as a result.

POINTS OF CONVERGENCE AND TENSION

Although copyright and trademark are conceptually distinct, they are

not hermetically sealed from one another. A logo or brand device, for instance, may simultaneously qualify as an artistic work attracting copyright and function as a registered or unregistered trademark; the two rights subsist independently, may be held by different parties, and may expire on entirely different timelines.

Tension can arise when a business uses a copyrighted work - a jingle, a character design, packaging artwork - as a source identifier without registering it as a trademark. The work enjoys copyright protection for a fixed term regardless of commercial use, but any trademark-style protection against confusingly similar use by competitors depends on either registration or the harder-to-establish common law route of passing off. It is important not as substitutes but complimentary of each other when advising brands

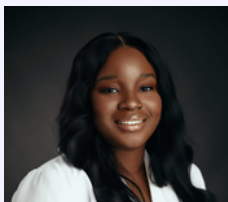
6. ENFORCEMENT

Copyright owners are armed with both civil and criminal remedies. Civil remedies for infringement include damages, injunctions, accounts of profits, etc. While registration of copyrighted works is not a precondition for the underlying remedies, it is capable of significantly strengthening a claimant's evidentiary position in such proceedings.

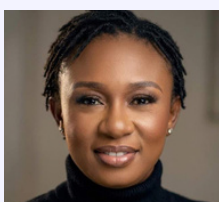
The Copyright Act introduced expanded anti-piracy measures, including an administrative website-blocking procedure aimed at online infringement, alongside the Commission's longstanding investigative and prosecutorial functions against physical piracy.

CONCLUSION

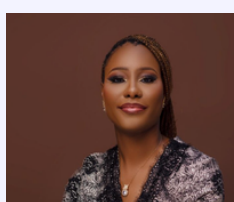
The comparison undertaken demonstrates that copyright and trademark, while both properly described as intellectual property, are governed by architectures shaped by fundamentally different purposes. Copyright's automatic subsistence, fixed term, and orientation toward the individual author reflect its role in incentivizing creative expression while ultimately enriching the public domain. Trademark's registration-dependent statutory right, potentially perpetual duration, and orientation toward the marketplace reflect its role in protecting consumers and businesses from source confusion for as long as commercial use continues.



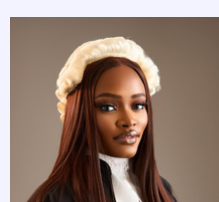
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