



# Jackson, Etti & Edu

*JEE Sector Thought Leadership Series*

## **NO INTELLECTUAL PROPERTY! NO ACTION!**

*UNDERSTANDING THE ROLE OF IP LAWS IN FILM PRODUCTION*



**Ngozi Aderibigbe  
and  
Terry Akaluzia**

Unlike other industries that may get by without much reliance on the law, the movie industry, along with the entertainment industry in general, is built on the backbone of a set of laws called intellectual property law. Their very existence and exploitation are premised on the framework and protection intellectual property law affords them.

Intellectual Property law is the set of laws that recognizes and protects intellectual and creative activities as a category of property for which the creators have exclusive rights of ownership. These intellectual and creative activities are called Intellectual Property and are typically protected as copyrights, trademarks, industrial designs, patents, trade secrets amongst others. Unlike physical properties like lands and machines which exists without the interference of law because they can be seen and touched intellectual property is both intangible and abstract and would not exist without the law's specific recognition of it as property.

Intellectual property is the very essence of the film industry, and the creative process and business model of the industry is shaped by intellectual property law. Thus, if by some stroke of great misfortune, Copyright laws are done away with, the Film industry would shrivel into nonexistence almost immediately. There will be no commercial justification for producing any film, for the rationale for film production is the certainty that the film



producer would have exclusive ownership of the film and can therefore commercialise the film. That certainty is based on intellectual property law.

By granting each creator in the film production value chain (not just the producer) the exclusive rights to control the exploitation of their creative work, intellectual property provides an avenue through which each creative contributor to a film can negotiate a fee with anyone who seeks to enjoy the benefit of his/her creative work. This, essentially, is how film making has become an industry – by trading the exclusive rights conferred by intellectual property for commercial value.

In the film industry, the most relevant intellectual property law is copyright law. The essence of copyright law is captured in the quote below:



**“The law of copyright rests on a very clear principle: that anyone who by his or her own skill and labour creates an original work of whatever character shall, for a limited period, enjoy an exclusive right to copy that work. No one else may, for a season, reap what the copyright owner has sown.”** - Lord Bingham of Cornhill in *Designers Guild Ltd v Russell Williams (Textiles) Ltd* (2001) 1 All ELR 700

Having established that the only avenue for film production to become a commercially viable undertaking is by placing reliance on intellectual property laws, it is therefore paramount that film makers have a good understanding of how intellectual property law can be employed to maximise the commercial value of every creative contributor.

## **Intellectual Property Law as a Means of Revenue Generation**

As previously alluded to, a peculiar feature of intellectual property is its abstract or intangible nature which affords the owner the opportunity, through properly drafted contracts, of giving out rights in the intellectual property to various persons without the property necessarily diminishing. The resultant effect of the foregoing being that a music artist can give separate music licenses to film producers, tv channels, radio stations, companies

and brand owners, etc while still retaining the intellectual property. In practical terms, , in many cases, the more licenses the artist gives, the more valuable his intellectual property becomes, because intellectual property is enhanced by the proliferation of authorized use.

The benefits from intellectual property law is not limited to just film producers, but also extends to every other person whose intellectual property contribution is required in the film industry. From screenwriters to directors, there is significant commercial value that can be harnessed by using intellectual property rights creatively and strategically. For instance, a screenplay writer, puts in a lot of sweat to create an original story which she pens down as a screenplay in the hope of giving a film producer the right to use the screenplay for a film. Like most screenplay writers, she would happily sell her entire rights in the screenplay to a film producer for a tidy sum and consider herself to have made a good bargain. Again, this simple transaction is made possible only because copyright law gives her the exclusive rights to the work, making it impossible for the film producer to lawfully use the work without first getting the rights from the screenplay writer. The above scenario simply illustrates how intellectual property aids creatives in generating income.

The right legal advice can serve as a tool in the arsenal of a screenplay writer who intends to generate revenue from his or her craft, by strategically taking advantage of his/her intellectual property rights. For instance, the screenplay writer may create a short story or novel which may then be adapted for a screenplay. The short story or novel vests separate intellectual rights from the screenplay. That way, even if she gives away her entire rights to the screenplay and the film makes such good success, she still retains her intellectual property rights to the book which she can publish and sell to make money. This presents an even better deal than the first option.

Furthermore, the screenwriter can have a carefully drafted agreement with a film producer

in which she only gives the film producer a license to produce the film from the screenplay, and nothing more. This affords her the opportunity of having a separate license (with separate fees) for any sequels that may be required for the film – particularly, if the first film becomes a commercial success. She can also retain her merchandising rights to the fictional characters created in the book. The point is that with proper legal advice and smartly drafted contracts, each intellectual property work can create multiple streams of income.

J. K. Rowling's case represents a prime example for the foregoing discourse. When she set pen to paper for the Harry Potter story,



her intention was simply to create a literary work that would excite her readers. She did just that and was successful at it. She was also smart enough to realise that the success of her story meant that she could do much more with her intellectual property. Her journey to fortune was accelerated when Warner Bros bought the film rights to her first books. Rather than give the entire rights to Warner Bros, she sliced off just enough license to enable Warner Bros create the movies and retained everything else for herself, including merchandising rights. By commercializing virtually every creative strand from the Harry Potter series (including selling branded broomsticks!) J.K. Rowlings has literarily built a multi-million-dollar enterprise from her literary creativity.

Whilst the J.K. Rowling's success might seem like an outlier, the principles of law that she has applied to multiply her success is available to every intellectual property holder. The point being that intellectual property law is a tool for mining economic value from the creative activities, and intellectual property lawyers understand how to use this tool to achieve strategic objectives.

In conclusion it should be noted that intellectual property lawyers are professionally trained to help creatives identify their intellectual property rights, protect them, draft commercially viable contracts that would aid in the proper exploitation of intellectual property rights.

Jackson, Etti & Edu is a full-service law firm with a sector focus, rendering legal services to Nigerian, Pan-African and International clients in diverse jurisdictions. We have earned a reputation for delivering commercial advice across all the key sectors: energy & natural resources, fast moving consumer goods (FMCGs), financial services, health & pharmaceuticals, real estate & infrastructure, and technology, media & entertainment. Further information about the firm is available at [www.jacksonettiandedu.com](http://www.jacksonettiandedu.com). This is a publication of Jackson, Etti & Edu and is for general information only. It should not be construed as legal advice under any circumstances.

For further information, please contact us at [jacksonettiedu@jacksonettiandedu.com](mailto:jacksonettiedu@jacksonettiandedu.com)

## Key Contacts



### **Ngozi Aderibigbe**

Sector Head, Technology, Media & Entertainment  
[ngoziaderibigbe@jacksonettiandedu.com](mailto:ngoziaderibigbe@jacksonettiandedu.com)



### **Terry Akaluzia**

Associate  
[terryakaluzia@jacksonettiandedu.com](mailto:terryakaluzia@jacksonettiandedu.com)

