

# LEGAL AND ETHICAL CONSIDERATIONS OF AFRIKAN VISUAL DESIGN IN THE DIGITAL AGE

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## ABSTRACT

The world is enthralled by the digital age and visual design because of its untold benefits for a greater tomorrow. Africa is not left out in considerations of the effect of visual design in all aspects of individual lives and the society in general. In the legal profession, visual design plays a particularly crucial role as legal practitioners interact with visual design by creating visual material across a variety of formats like the web, publishing and the industry in order to convey ideas and concepts. As such, the legal practitioner plays multiple roles in the context of design; the legal advisor can be a designer, a client, or even render legal services and must always take into cognizance, the legal and social issues that pertain to visual design and this is especially important in the African context, as there is a struggle to harness the advantages of the digital age without losing the region's individual and communal talents, and culture. This paper will adopt a doctrinal and desktop approach to examine emerging issues in visual design in Africa, vis-à-vis some of the existing legal considerations that pertain to visual design such as intellectual property, visual design rights and ethical considerations. The paper examines visual design and the legal dimensions involved in this practice, in the context of the power of visual design to influence the digital age in Africa.

*Keywords:* African visual design, indigenous design, legal design

## 1.0 INTRODUCTION

Visual design has established itself in every facet of our visual world, its importance to business, communication, technology, social and economic development and creativity cannot be overemphasized. Visual design is gradually being recognised as crucial to any successful enterprise, with the need to communicate thoughts, ideas, products and services in ways that engage prospective clients and retain them. Visual design is recognised as a mixture of graphic design and user interface (UI) design. It focuses on the aesthetics of any type of design with the aim of ensuring the quality of the finished product. In this context, it goes beyond the visual appeal of a product, to the interfaces that a person will interact with in order to optimize user experience. Visual designers typically focuses on the design direction of an app or a website, a product or basically, what we can see. Visual designers are expected to create and deliver content that is consistent, organised in a predictable manner yet is original. This is to ensure that the user is able to appreciate the uniqueness of the designer's product, yet able to use it comfortably.

Africa and African visual designers are entering into a field that has great implications for all because it implies a recognition of the importance of the digital age and the dependence on digital technology for a plethora of things; communication, entertainment, information, business and ideas.

This is particularly important in the present because the Covid-19 pandemic has changed the perception of in-person presence and communication and online communication. Admittedly, the Covid-19 pandemic has had negative effects on industrial and societal relations and economies, it has however, also refined the perceived need for physical interaction and encouraged remote and virtual interactions which have positive implications for visual design and communication, as it allows for more frequent interactions by people from different regions in a virtual mode. More and more, there is a shift towards digital communication to express and communicate ideas in the African sphere.

Visual design, also regarded as visual communication, enables the communication of complex concepts effectively in order to capture attention by making text operational and reinforcing it, making it eye catching, clear and informative by combining pictures and words with user interface (UI) design, focusing on the aesthetics of digital design of applications (apps) or a website, with the aim of guaranteeing the quality of the finished creation. The UI designer may or may not design the complete app as they have to work in tandem with a User experience designer (UX), who tend to focus on the actual experience the user may have with the app or website or product. Unlike the UI designer who tends to focus on the interface; colour palettes, typography, styles, the design and repeatable components in a website or app. Visual design is attached to technological origination, the needs of the society and the ingenuity of visual designers. Visual design is viewed by some in the legal field as legal design (Hagan, 2020), while others view it as a theory of change and a set of methods to craft human centred legal systems (Santuber, Krawietz, Owoyele, and Edelman, 2019). Visual design is in essence, an emerging field for lawyers and in theorizing it, I will adopt an integrative approach to legal design theory (Santuber, Krawietz, Owoyele, and Edelman, 2019) which focuses on the emergence of socio-legal change from the interaction between sociological and creative systems, proposing legal theory as a network to facilitate the structural coupling of systems. Thus, legal design theory is seen as a facilitator of the transition from communication legal

society to the digital legal society.

Visual design is an exciting area for a legal practitioner because it offers so many options; first as a consumer, a legal practitioner can obtain the services of a visual designer to create visual representations for the communication of ideas, to attract retain clients and provide general information. This is particularly important for the legal practitioner in Nigeria because of the non-advertisement policy for legal practitioners as contained in Rule 35 of the Rules of Professional Conduct which prohibits legal practitioners from advertising legal services. The main aim of the rule is to uphold the nobility and sobriety of the profession. Visual design thus offers a veritable means of showcasing, communicating, attracting and retaining the attention of a vast number of people without breaking the rules of professional conduct.

Secondly, as a designer, a legal practitioner can utilize the skills in visual design, either focusing on UI or UX, or combining both to design and improve on their services and communication by not only receiving products and services but also and engaging with providers and customizing their requirements and also generating solutions to their needs and the needs of others (Iba, 2010). It is trite that many who utilize technological devices and even apply design methods and principles may be unaware of visual design, or even the interface between law and design as fields of inquiry. However, there is an established recognition of visual design in law; theorizing about visual law and theory- how design based methods and attitudes might be developed in relation to legal matters. Evincing according to (Brunschwig, 2021) "... commitment to communication, an emphasis on experimentation and an ability to make things tangible and visible."

Thirdly, as a legal practitioner, the legal practitioner can provide legal services to visual designers and companies involved with visual designers. Legal design, like visual design, has a multifaceted application and includes legal areas such as; contract, employment, tortious claims, criminal action and property rights, data protection, dispute prevention and resolution, legal education, amongst a host of other legal issues that can arise in the course of legal and other interactions.

As such, visual design is very relevant to the legal profession because it is about making complex information and procedures more engaging and thought provoking by utilizing the elements of visual design, which include lines, shapes, negative space/whitespace, volume, value, colour and texture. They also, improve on visual design by applying the principles of visual design which include, unity, gestalt principles, hierarchy, balance, contrast, scale, dominance. There is as such, a great nexus between law and visual design and this is surely the same with visual design and other field and areas of consideration.

## 2.0 METHODOLOGY

This research is doctrinal and desktop in nature. Primary data included the Africa Continental Free Trade Agreement (AfCFTA), the Berne Convention, the United Nations Declaration on the Rights of Indigenous Peoples, the Trade Related Intellectual Property Agreement and the Berne Convention, amongst others. Secondary data included books, articles, reports and international resources. Information obtained from these sources were subjected to contextual analysis. The research involved the observation

and analysis of existing information on law, ethics and visual design and applying them to visual design in the African context. A survey of journals and academic books of the local and international community was conducted to gather information about existing policies and opinions on the various sub-topics and applying them to the considerations of Afrikan visual design in the digital age.

### **3.0 Visual Design and the Law**

Visual design offers a veritable means of creating connections between peoples within and outside Africa, by conveying and communicating feelings, perceptions, memories and goals. There are emerging issues in visual design in Africa, and this paper will highlight some of the legal considerations which are of particular importance to visual design and designers. It is worthy of note that a lot of existing legislations that apply to established fields of law and human interactions such as contract, employment and property rights both in domestic, regional and international spheres can also be applied to the visual design terrain. More so because a lot of interactions can and will cross territorial boundaries.

These laws and policies are even more important in the current dispensation, because of the Africa Continental Free Trade Agreement (AfCFTA) which came into force in 2019 and is embedded in Agenda 2063 of the Africa Union which commended in 2021. AfCFTA is an agreement by 54 African countries and ratified by 31 countries at present, comprising; Angola, Algeria, Burkina Faso, Cameroun, Chad, Republic of Congo, Cote d'Ivoire, Djibouti, Egypt, eSwatini, Equatorial Guinea, Ethiopia, Gabon, Ghana, Kenya, Mali, Mauritania, Mauritius, Namibia, Niger, Rwanda, Saharawi Republic, Sao Tome and Principe, Senegal, Sierra Leone, South Africa, The Gambia, Togo, Uganda and Zimbabwe. The proposed aim of AfCFTA is to "...expand intra-African trade across the continent, in order to enhance competition, economic transfer." Its agreement covers protocols on trade in goods and services, investments, IPRs, competition and dispute settlement, all of which have connections with visual design." This is very important to visual design which falls into ambit of the agreement.

This paper will highlight selected legal and ethical considerations to visual design particularly in the assessment of preparedness for the digital age, because all human interactions tend to have some form of legal considerations, whether one is cognizant of it or not.

#### **3.1. Intellectual property**

Intellectual property rights (IPR) are a form of property; they have some of the features of property and are related to competition, trade, industrial and technological growth and economic development. All of which are essential to the development of Africa. This is further evidenced by the creation of the World Trade Organization in 1995 and the formulation of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which is one of the widest covering instruments on the regulation of all types of intellectual property. The beauty of TRIPS is that it sets out the minimum standards that all countries that are signatory to the World Trade Organization must comply with, necessitating that African countries that are signatory to it are tasked with remodelling their Intellectual Property (IP) laws and policies to its provisions.

#### **3.2. Copyright**

There is a general recognition that the creator of a work should enjoy exclusive rights to property in the creation, such as; making copies, derivatives, distributing or even selling the creation. Copyright

protects a creator's work and stops others from annexation-use without the owner's knowledge or permission (Babafemi, 2005). Copyright plays an important role in the protection of the creative process and seeks to ensure that the creator of a work enjoys the benefit of their creation. African countries have individual copyright protection regimes which aid in the registration and validation of copyrighted creations in the event of litigation which can be civil or criminal. Domestic legislation is aided by regional support, such as the Africa Regional Intellectual Property Organization (ARIPO) which seeks to develop and implement strategies through which it can promote and support growth, effectiveness in administration, management and engagement of copyright and related rights. This is effected by national copyright offices and administrative regimes. This is further supported by international legislation like the Berne Convention, the Paris Convention and Trips amongst other instruments.

### **3.3. Design Law**

Design law protects the appearance of designs, to prevent others from copying such designs, 10 years after its sale or 15 years after its creation, whichever is earliest. However, design rights only apply to the shape or configuration of 3D objects; and one must register to protect 2D designs like graphics or textiles. The appearance of an article can be protected to stop people from copying or stealing it. The 'look' of a design is its appearance, physical shape, configuration and decoration. The shapes of objects might already be automatically protected by design right, however, registering it will give further protection. The aim of design law is to protect the theft of a designer's efforts and to encourage investment in better design for the benefit of society in terms of improvement of innovations and designs and investment in the production of innovative designs (Karapapa and McDonagh, 2019). Just like with copyright laws, nation states have legislation to protect designs, however, the level of protection is not at par with most copyright legislation.

### **3.4. Trademark**

Trademark protects businesses or brand names when registered. Registering trademarks in the context of visual design can be beneficial to protect brands. For instance, a person can trademark the name of a product or service. The ® can be used to show that trademark has been obtained and/or institute legal action against anyone using the brand name without permission. Trademarks are ideally not considered when a visual designer is adding old established designs but are more focused on the protection of brands. Most African Nations have at the most, a basic legislation on protection and registration of trademarks as well as regional legislation.

### **3.5. Passing Off**

It is often advised that intellectual property in any of its forms should be registered, in order to secure its protection. However, in the event of non-registration of intellectual property and the misappropriation or conversion by others of same for their use, the tort of passing off can apply as a form of protection for intellectual property, in particular, trademarks in use (Karapapa and McDonagh, 2019). Karapapa and McDonagh inform that trademarks have a plethora of commercial functions which are affected by its use; it enables consumer identification of a brand and enables the ability to differentiate amongst different brands, and is seen as a mark of quality of the good or service being purchased. The tort of passing off came about because at a point in time in the history of Intellectual Property, colour

schemes, appearance of products, trademarks in particular were not registrable, however, there is now protection where it is established that a designer's work has been passed off or copied (Karappa and McDonagh, 2019).

### **3.6. Creative commons (cc)**

Creative commons functions with copyright law and is a type of license attribution that allows creators/authors to indicate how their work can be utilized. It is important because it recognizes that technology and software play a crucial role in the creation, copying, discovery and distribution of works/creations. This is a wonderful addition to the intellectual property regime, and visual design in particular, because it enables a designer draw inspiration under identified conditions; it allows creators who want to grant the public, upfront permission to use their works. The beauty of creative commons is that under it, creators can give users permission to make a wide range of uses, in as much as the user adheres to the conditions in the particular license attributable to the work, such as giving recognition, giving credit to the licensor and other information like, acknowledging the source of the work. It is important to note that creative commons is not an alternative to copyright, but is a kind of intellectual property in and of its self.

### **4.0. Visual Design and Indigenous Design**

In all the above considerations which are, somewhat uniform in the context of legal recognition of the rights and obligations of parties, one strikes out, which I will focus on in this paper, that is indigenous design in visual design. This is discussed here because, the very nature of harnessing the advantages of the digital age does not in any way indicate a parting of ways with African traditional culture, knowledge and indigenous design, because all of these play a crucial role in the establishment of African design. Indigenous design here refers to traditional cultural expressions, cultural heritage and cultural intellectual property or the traditional knowledge of the African people (Mackay 2009). There are discussions on what an indigenous culture is based on the continent in question. Countries like Australia and Canada and United States of America tend to have a different perspective of indigenous population when compared to the African perspective. This is because, more often than not, the indigenous peoples of those countries are in the minority as separate from the settlers who have established dominance in every sphere from the legal to the cultural. Reference here, is all African's who irrespective of their place of domicile in Africa can be regarded as indigenous to Africa.

There is a recognised need to immerse in culture by carrying forward the experience of indigenous roots into every visual design project, keeping traditional connections; the history, knowledge and reflecting them in the designs. Thus bringing culture and visual design into communication and becoming the bridge between industry and society. It is trite that Africa has a rich and expansive knowledge that can be utilized for indigenous design. By combining the strengths of indigenous knowledge with western technology and merging traditional knowledge, oral traditions, customs and beliefs with modern visual design theory to culturally relevant and meaningful elements and placing them in modern contexts, Africa visual designer, barring infringement and unethical use of designs, has a rich vein of knowledge and ideas to tap from.

Indigenous design is provided for in the United Nations Declaration on the Rights of Indigenous

Peoples and each African country, tribe, has products, ideas, knowledge that are unique to them and the visual design offers a ready field to showcase them, however, this must not be done at a loss to cultural appropriation and unattributed use. As Africa takes pride in its indigenous forms of expression it is also necessary to come together to encourage the enactment of national and region specific legislation that will afford greater protection and of indigenous knowledge. (Sikoyo, 2006) avers that whilst countries have invested in establishing intellectual property regimes, the impact on development is not evidenced, as some indigenous/traditional knowledge are exempt from IP protection.

Being signatory to the major international treaties like the Trade Related Intellectual Property Agreement (TRIPS), the Paris Convention, Berne Convention, is a good step in the direction of protecting indigenous knowledge and property, further aided by the African Regional Industrial Property Office (ARIPO) and there is no doubt that some African countries are waking up to legislative compliance with international Intellectual Property Rights Protection norms. However, the question here is, do we have the capacity to effectively implement and harness IPR for a truly African development. This writer believes so; there is also a recognition that for a truly African development in visual design, individual states need to bolster IPR protection.

A case in point, the Africa Regional Intellectual Property Organization (ARIPO) was created in 1976 by the Lusaka Agreement, concluded under the United Nations Economic Commission for Africa (UNECA) and World Intellectual Property Organization (WIPO) in order to facilitate cooperation among member states in intellectual property matters with the aim of pooling financial and human resources and seeking technological advancement for economic, social, technological, scientific and technological development. However, as at January 2022, only 21 countries out of Africa's 54 countries, eight territories and two defacto independent states with limited or no recognition; Botswana, Kingdom of Eswatini, the Gambia, Ghana, Kenya, Kingdom of Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Sierra Leone, Somalia, Sudan, Tanzania, Uganda, Zambia, Zimbabwe and the latest addition, the Republic of Seychelles which acceded to the Harare Protocol on Patents and Industrial Design on 26th August 2021 and was received on 01 October, 2021. The main aim of this to protect intellectual property in Africa. The law has a very huge role in protecting the intellectual property in Africa and has positive implications for visual design.

African visual designers adopt modern designs, but there has been an increase in the indigenous designs, and it is important that each culture and tribe is identified with its own design. The colour and patterns in African designs make them stand out from other regions and even in the different regions in Africa. The visual design community is one that is powerful with the various intra cultural indigenous designs produced by various designers in different states in Africa. The African visual design reflects the way of life in Africa and this makes it unique from other designs. A level of inventiveness that is based on the culture's elements is one that must be taken be with utmost importance, and this is what the visual African design can achieve.

The use of cultural notions, visual symbols, traditional colours, and other characteristics from a country's culture in modern graphic design, using classic art elements to develop new features is a fantastic idea. It enables a proper highlighting of a country's identity (Yeo and Cao, 2021). It is important



that the interactions of indigenous ideas with visual design as indigenous ideas and concepts can differ across cultural contexts so that conceptualizations, which can be different across cultural borders and category systems are comprehensible (Kasper et. Al, 2014).

## 5.0 CONCLUSION

Visual design has greatly improved communication, trade, industrial and technological growth and economic development in Africa and has a very crucial role to play in the advancement of African countries and its people. Visual design is now an important means of communication and transmission of information and ideas and this must be done with the full consideration of the interface between indigenous knowledge, design and visual design. In the context of law, it aims to improve legal systems by making the law more accessible by serving and assisting individuals, law firms, government and government officials, policy makers and corporate professionals. Africa has the population and the resources to fully evolve African design and African visual design in the digital world. There is an obvious shift in engagement and utilization of visual design; the advances of digital technologies and even the Covid-19 pandemic, has led to an even greater shift towards technology as a means of communication online and on social platforms, leading to a greater technological drive and need for visual designers, which will no doubt have a positive impact on visual design application in Africa. The need for appropriate legal and ethical expansion of information, knowledge and preparation becomes even more imminent in order to truly enable Africa take its place in the digital world.

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