

## **Why App Developers Need to Protect their Software Programs—Odion got it wrong and paid for it.**

by [Senator Iyere Ihenyen](#)

Lead Partner, [Infusion Lawyers](#)  
[senator@infusionlawyers.com.ng](mailto:senator@infusionlawyers.com.ng)

### **Odion, an App Developer builds a mobile app—Butterfly—to enable users browse the Internet and download files without any internet connection.**

After months in that tech-startup hub and incubator, you have finally finished developing your mobile app. You can't wait to get your mobile app out there. You close your eyes, imagining millions of users installing your app on their iPhones, iPads, smartphones, and tablets. Your new app is going to be the next big thing in tech. Venture capitalists will come from every corner to fund your mobile-app-built tech startup.

So you go to Google to lead you to your first lucky angel investor. The search results make you smile—big smiles. You click the link to App Angels, surf the investor's website, and download the investor's application form. Smiling, you complete the application form, open your email, attach your application, and click the send button. In a second, your proposal reaches App Angels, "a leading app-development and venture company for tech startups with international network".

### **Odion gets a venture company's interest and shares his software program's codes with it to enable him get funding.**

14 days later, App Angels' Rex replies you. App Angels says your app is great. But to make a final venture decision, App Angels needs you to share the codes you used to build your software to confirm that you didn't just use open source or infringe on any copyrights. *This is it!* You were too happy to receive App Angels' response. You can see yourself pitching at one of Rex's desk, winning his heart. You can see Rex nodding impressively and applauding your innovation. You open your email, upload your codes as an attached document, and email it along with a cover letter.

In one second, App Angel's automated-response email drops in your inbox, "Thank you for your application for funding. As soon as we review your app, we will get back to you." Great! You can't wait to jump off your chair, flying off with imaginative wings like you just had Red Bull.

**Things begin to get fishy when Angel Apps suddenly became mute online.**

But after 3 weeks, App Angels is silent. After another 3 weeks, you call, email, and text App Angels. Except for the annoying email messages saying "Thank you for your application for funding. As soon as we review your app, we will get back to you", App Angels seems to have practically installed a deaf-and-dumb app.

You finally decide to pay App Angels a visit. You meet Rex, looking like an app installed in his office, unable to load. When you introduced yourself as Odion, Rex struggles to hide his shock—the way apps suddenly hang when device memory is low, only this time Rex's memory space still has terabytes left.

**When App Angels finally talked, it talked Odion out of the idea of going forward with his Butterfly app, but turns around to fly with Odion's app.**

Without any explanation and against Odion's least expectations, Rex responds, "Mr Odion, we have been trying to reach you. Your app, Butterfly, is nice—very nice. But it's light years ahead of the market. Your targeted local market is not ready for it. Perhaps in another 10-15 years, the market will be ready for Butterfly. Because we only fund startups with scalable products or services for today's market, we don't have any budget for your mobile app at this time."

You know the language too well. You perfectly understand Rex. App Angels is practically saying, *We are not interested. Best wishes!*

Your Red Bull wings are now broken. You are disappointed. You sighed and let it go. Someday, your Butterfly app will rise in the sun.

Close to 7 months later, you stumble on a new app in iTunes, Play Store, and Windows. The app, Browserfly, does exactly what your Butterfly app does—allows

users browse web pages and download files from the Internet without any internet connection. You scream “That’s my app, BUTTERFLY! That’s my app!”

**Since copyright registration is not required for Odion to sue App Angel for copyright infringement, Odion can still get damages for App Angel’s criminal action.**

All hope is not lost for Odion. Copyright law does not require Odion to register his software program before he can sue for any damages. Apps are software programs. In Nigeria and most countries, software programs are categorized as literary works under the Nigerian Copyright Act. Literary works are eligible for copyright protection.

Under the Berne Convention for the Protection of Literary and Artistic Works, Odion’s enjoyment and the exercise of his rights as author of the Butterfly app is *not subject to any formality*. In other words, formal copyright-registration is not required of Odion. The Nigerian Copyright Act—the governing regime for copyright in Nigeria—does not also require any formal copyright-registration for Odion to enjoy or exercise rights in his Butterfly app.

So if you have ever been robbed off your software program and you let it go because you had not registered your copyright with the Nigerian Copyright Commission (NCC) or copyright house in the country you are based, you were not properly advised. Since copyright automatically arises upon expression of an idea, the source code in Odion’s Butterfly app is the basis on which Odion can sue. Odion—as well as you—can sue the bastards! Just ensure you really have copyright in the work. If you developed the app with open source, you can’t simply make it yours without following the rules. (This is for another day.)

But because NCC’s practice of maintaining a register of copyrighted work is now being increasingly seen by both copyright owners and the public (including our courts) as providing an “extra layer of protection”, the principle that a formal copyright registration is not required for copyright protection is being rubbished—surprisingly by the NCC who should be the sentinel of both the Nigerian Copyright

Act and the Berne Convention. This is also the rather strange practice in the United States.

**Odion's Butterfly app and App Angel's Browserfly app story happens to most software developers every day, but you can do something about it.**

If you have ever experienced something similar to Odion's story above or you are developing an app, don't make the same mistake Odion made. Always protect your app. You can either decide to *register your software program as a literary work so your copyrights in the software program is registered* with NCC or have a Nondisclosure Agreement (NDA) for your software program so you keep it confidential.

**Before you get copyright protection for your software programs or computer programs twisted with designs, patents, or trademarks, understand how it works.**

Copyright protects source code only. This covers your *expression* of the idea you have written in the program as author or creator, not the ideas behind it. Any methods of operation or mathematical concepts in your software program is not protected under copyright. In other words, the algorithm you may have developed in the software program is not eligible for copyright protection since algorithms are not literary or written expression but mathematical concepts or methodical procedures. Copyright law does not concern itself with what your software program does but how it is expressed. This is what is referred to as *the idea-expression dichotomy* in copyright jurisprudence.

As I pointed out before, Odion is still entitled to sue App Angels without having registered his copyright in Butterfly with NCC, Nigeria's copyright house. Though some lawyers still advise copyright owners to get their names on NCC's register since NCC, the courts, and the public are increasingly seeing formal registration as creating a "superior title", this practice has its own problems.

**We need to advance a no-registration policy for copyrightable works as provided in both the Berne Convention and the Nigerian Copyright Act and discourage NCC's formal-registration practice which practically create what many now see as granting "superior titles" to registered copyright holders.**

In Intellectual Property (IP), there is nothing as an inferior or superior copyright protection. That's why there is no such thing as "extra layer of protection", even in legal fiction. IP rights are neither onions nor bullet proofs. IP rights are intangible rights that either exist in a work or doesn't exist. IP rights, in this context, are and should be equal and protected equally—nothing more; less.

We cannot afford to create special IP rights that will unavoidably end up breeding conflicts in the IP rights order. By practically encouraging inferior titles and superior titles as land registries do, are we not unwittingly bringing into the IP system the hair-splitting conflict of titles that have plagued real property law for over centuries? This discussion is for another day. Odion needs our attention now.

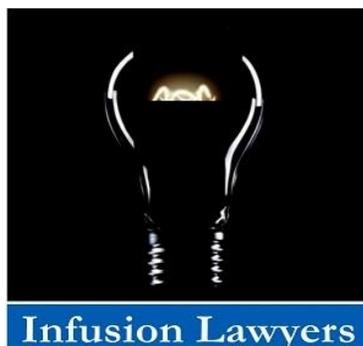
### **Before we wrap up Odion's Butterfly-app story ....**

When next you are developing a smart app, take steps to have smarter protection for your dream app. Don't let dishonest angel investors, partners, or venture capitalists like the *Dark Angels—sorry, App Angels*—play a fast one on you as we have seen in Odion's Butterfly app story.

Before you share the source code for that software program you have worked so hard to build, get advice—sound legal advice. At Infusion Lawyers, we always say *with IP, the earlier; the better.*

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We are IP & IT Lawyers

Contact:

[info@infusionlawyers.com.ng](mailto:info@infusionlawyers.com.ng)

[www.infusionlawyers.com.ng](http://www.infusionlawyers.com.ng)