



IN TUNE WITH THE LAW: _____
A REVIEW OF THE LEGAL FRAMEWORK FOR
THE NIGERIAN MUSIC INDUSTRY

Part 1

 LAGOS | ABUJA



The Nigerian music industry is one of the most vibrant sectors in the Nigerian entertainment industry and has witnessed enormous growth over the years. The music and film industry accounted for about NGN154 billion of Nigeria's GDP IN 2023.¹ As the industry evolves, it has become imperative to look at the existing legal framework regulating interactions in the industry. While there are a few specifically applicable laws such as the Copyright Act and the Trademark Act, there is no comprehensive law governing the Nigerian music industry. Legal relations in this sector are mainly governed by contracts executed between players in the industry. Some of these common contracts are generally licensing agreements between the music owners and other parties. These contracts include recording/record label contracts, performance contracts, publishing contracts, distribution contracts, licensing contracts, and Management contracts amongst others.

This article is divided into two parts. The first part of this work aims to analyse the legal framework by identifying the roles of the laws, regulators and other stakeholders in sustaining the growth of the music industry in Nigeria. The second part will deal with the identified contractual arrangements employed in the music industry and will also analyse the rising legal issues in the modern music industry.

LAWS APPLICABLE TO THE MUSIC INDUSTRY IN NIGERIA

As earlier mentioned, there are two substantive laws applicable to the Nigerian music industry: the Copyright Act and the Trademarks Act. These laws protect the intellectual property rights of the creator of the music. Music as a work of art contains several parts which include song title, album art, lyrics, composition, sound recording, sound beats and music video. Interestingly, in some instances, the intellectual property right to all these various parts may be owned by different persons or organisations. It is therefore important to identify who owns the right in a specific part of the creation.

THE COPYRIGHT ACT 2023



The recently enacted Nigerian Copyright Act 2023 (the Copyright Act) remains the most elaborate legislation on music in Nigeria if viewed from an intellectual property rights perspective. As much as it does not particularly control the relationships between parties in the music industry, it is an important legislation in the protection of intellectual property rights in the musical work. The Copyright Act protects creators, composers, and rights holders against unauthorized use, reproduction, and distribution of music to shield their economic and moral rights in the music. The Copyright Act reinforces the importance of the legal regime in maintaining the integrity and value of musical creation, hence, it ensures that originators of the work retain control over it and are duly compensated when it is used.

¹ <[Nigeria: Contribution of Creative Industry to GDP 2023 | Statista](#)> accessed 11th September 2024.



The Copyright Act provides that musical works are eligible for copyright protection.² The essence of this protection is to enable the music owner to exploit his musical work for commercial benefits to the exclusion of third parties. It further lists two criteria necessary to qualify a musical work for copyright protection.³ The first criterion is that the author of the music must have expended effort in its creation to give it some level of originality. The second criterion is that the music must be fixed in a particular form of known or later developed expression which can be perceived, reproduced or communicated to a third party either directly or with the aid of a device or machine. It should be noted that the quality of a musical work does not affect its copyright eligibility if it meets the two criteria above.

Musical work in this sense also covers soundtracks. Copyright in musical works covers the right to produce, reproduce, publish, perform, broadcast, distribute, translate and adapt the work.⁴ In addition to these commercial rights, copyright also covers moral rights which entails the right to claim authorship, object to and seek relief in connection with any distortion, mutilation, modification or any other derogatory action in respect of the musical work which is prejudicial to the author's honour or reputation. A person can also object to a work falsely attributed to him as the author. Moral rights are not transmissible during the music author's lifetime but upon his death by a testamentary

disposition or by operation of law.⁵ Copyright in a musical work generally lasts for the lifetime of the author and lapses 70 years after the end of the year the author dies.

There are however exceptions to copyright in musical works under the Act. Copyright does not entail the right to control the use of the work by way of fair dealing for the purpose of private use or study; non-commercial research; criticism, review or the reporting of current events; parody, satire, pastiche or caricature. Third parties are permitted to sing or recite the lyrics of the musical work or extracts of the work in or to the public provided the title and author of the work are duly acknowledged by the third party.⁶ Third parties are also permitted to make a recording or adaptation of an existing musical work where the work has been previously made, imported into or otherwise made available in Nigeria, for the purpose of retail sale with the consent or licence of the owner of the copyright. The third party is also not liable for infringement where he gives notice in the prescribed manner to the owner of the copyright or the relevant approved Collective Management Organisation of his intention to record the work. There is no liability for infringement where the person pays to the owner of the copyright or the relevant approved Collective Management Organisation, a royalty of an amount equal to a percentage of the ordinary retail selling price of the record calculated in accordance with regulations made by the Nigerian Copyright Commission.⁷

Copyright is initially vested in the creator of the musical work.⁸ Where a person in the absence of a contrary agreement creates a musical work pursuant to a service contract or the course of employment, the copyright to such work shall reside with the employer of the person that commissioned the work. For instance, where an artist is hired directly or engaged via a service contract to write or record a song or soundtrack for the purpose of an event or movie production,

² Section 2

³ Section 2(2)

⁴ Section 9,

⁵ Section 14

⁶ Section 20

⁷ Section 27

⁸ Section 28(1)

Section 28 implies that the song or soundtrack belongs to the person who hired or engaged the artist to produce the song or soundtrack except agreed otherwise. In the case of a collective musical work, the copyright shall be vested in the person who initiated or directed that the work be created. The authors of the musical works incorporated into the creation of the collective work are however entitled to the right to exploit their works independently from the right in the collective work.⁹ Copyright can be transferred by the owner to third parties by way of assignment, testamentary disposition or operation of law.¹⁰

The Copyright Act also makes provisions for the rights of performers of musical works. A performer has the right to control the production, reproduction, sale and distribution, rental, broadcast and public communication of his performance provided it is original and fixed in a particular medium. For instance, where it is fixed in the form of a video recording.¹¹ Performers are also entitled to moral rights which include the right to identify as a performer in connection to a fixation of the performance and the right to object to the distortion, mutilation or other modification of his performance or the fixation of the performance, and any other derogatory action which will prejudice the reputation or honour of the performer.¹² It must be noted that based on the copyright owned by a music creator, the right owners may prevent the sampling¹³ of their works. Hence it is important to obtain a license or permission from the owner of a work before an artist sample a copyright material.

TRADEMARK ACT



While songs and soundtracks are mostly protected under copyright, elements such as the title of a song, and the name or picture of an artist/band can be registered and used as a trademark by the owner.¹⁴ The essence of the trademark in this sense is to provide an avenue for the artist to exploit the commercial benefits of the use of his name, song/album title and picture and to control the use of the same by third parties. These elements may not however be registered as trademarks where they are perceived to be scandalous and deceptive.¹⁵ These elements will also not be registerable when there is an identical or shared resemblance with an existing trademark or brand name to prevent confusion to the public.¹⁶ For instance, the name “Wizkid” is regarded as a popular brand name in the music industry and so cannot be registered as a trademark by another party to prevent confusion and the tort of passing off.

The registration of a trademark is valid for 7 years and subject to renewal for another 14 years.¹⁷ Trademarks are assignable and transmissible by the owner to other parties based on an agreement.¹⁸ The assignee is however required to make an application to the Trademark registry for the registration of his title to the mark.¹⁹ Trademarks can be assigned for the purpose of character merchandizing which is a marketing method that involves the use of the artist’s name, picture or song title to market goods and services in return for royalties. A mark can however be discountenanced by the trademark’s registry

⁹ Section 29

¹⁰ Section 30

¹¹ Section 63

¹² Section 66

¹³ Sampling in music involves taking a section of audio from another source – in this instance, an existing song – and then reworking it into the creation of a new track. < Will Brook-Jones, [What is Sampling in Music?](#)> Assessed 12th September 2024.

¹⁴ <[Are Song Titles Copyrighted? Decoding Copyright Made Easy - Big Time Musicians](#)> accessed 30th August 2024.

¹⁵ Section 11, Trade Mark Act

¹⁶ Section 13

¹⁷ Section 23

¹⁸ Section 26

¹⁹ Section 30

upon an application by a third party to the Court based on the non-use of the mark by the musical artist or company for a continuous period of five years.²⁰

REGULATORS IN THE NIGERIAN MUSIC INDUSTRY

There are a number of regulatory bodies in the Nigerian music industry, and they include the Nigerian Copyright Commission, National Broadcasting Commission and the National Film and Video Censors Board.

NIGERIAN COPYRIGHT COMMISSION



The Nigerian Copyright Commission (“NCC”) was established under Section 77 of the Nigerian Copyright Act 2023 and is the agency responsible for the administration of Copyright in Nigeria. In line with its powers to create and maintain a register and database for copyright works under Section 78 of the Act, NCC introduced the Copyright E-registration system²¹ to serve as a platform for copyright owners to register their musical works online.

NATIONAL BROADCASTING COMMISSION

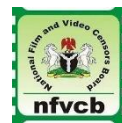


The National Broadcasting Commission (“NBC”) was established under Section 1 of the NBC Act.²² to regulate the Nigerian Broadcasting Industry. In line with its regulatory powers, NBC released the Nigeria Broadcasting Code (“the Code”).²³ The Code amongst other things require broadcasters to maintain of record of music broadcasted on their platforms on a daily basis.²⁴ Broadcasters are prohibited from broadcasting musical content classified as “**Not to be Broadcast**”.²⁵ They are also required to promote local musical content developed and

performed by Nigerians in a bid to promote Nigeria’s diverse culture and community life.²⁶

Broadcasters are prohibited from broadcasting musical contents which contain indecent, profane and vulgar expressions.²⁷ In light of this provision, NBC has in the recent past specifically banned a number of musical content from being broadcast in Nigeria such as “*Alingo*” by Psquare, “*Shake*” by Favour, “*Take Banana*” by D’Prince, “*Shake your Bum-bum*” by Timaya amongst others due to what it has determined as the use of indecent, profane and vulgar expressions in their musical content.²⁸

NATIONAL FILM AND VIDEO CENSORS BOARD



The National Film and Video Censors Board (“NFVCB”) was established under Section 1 of the NFVCB Act, to regulate the film and video industry in Nigeria. Musical videos are required to be censored and classified by NFVCB before they are released by virtue of the provisions of Section 33 of the NFVCB Act. NFVCB has several classification ratings to guide viewers on the suitability of musical video content. For instance, a musical video rated “PG” implies that the video may not be suitable for children of all ages, hence parental guidance is advised.

COLLECTIVE MANAGEMENT ORGANISATIONS

Collective Management Organizations (“CMOs”) are associations formed by copyright owners in a particular category of eligible works, to negotiate and grant copyright licences collect royalties on behalf of copyright owners and distribute the same to them.²⁹ CMOs play a huge role in stabilizing the music licensing market by acting as middlemen between copyright owners and users of eligible work by providing a single general platform for the issuance of music licences and the collection of royalties due to copyright

²⁰ Section 31

²¹ <https://www.eregistration.copyright.gov.ng/>

²² NBC Act 2004

²³ Section 2

²⁴ Section 1.6.2, Nigeria Broadcasting Code.

²⁵ Section 3.0.2.7

²⁶ Section 3.13

²⁷ Section 3.13.2

²⁸ Stanislaus Iyorza, ‘Quality Issues and the Ban on Selected Musical Video Broadcasting in Nigeria: A Defence for National Broadcasting Commission’ (2014) Nigerian Theatre Journal, 13.2, 173.

²⁹ <[Collective Management Organisations – NCC \(copyright.gov.ng\)](https://www.copyright.gov.ng/)> accessed 4th September 2024

owners. CMOs require the approval of the NCC to operate in Nigeria by virtue of the provisions of Section 88 of the Copyright Act.

The NCC-approved CMO for the Nigerian music industry is the Musical Copyright Society of Nigeria (“MCSN”) which was approved on the 3rd of April 2017. It is also the approved Performing Rights Organization (“PRO”) in Nigeria. The MCSN serves as an intermediary between the owners of musical works (songwriters, composers, publishers, performers, rights-owners) and users of such works (businesses, venues, mobile applications, streaming platforms, broadcasters).³⁰ On the question of whether or not the MSCN as a Collective Management Organisation has the locus standi to bring legal actions for copyright infringement on behalf of copyright owners, the Supreme Court in *MSCN v. Compact Disc Technology Limited & Ors* held that MSCN had the locus standi to institute actions for copyright infringement.

CONCLUSION

The legal framework for the Nigerian music industry remains a work in progress. While the existing legal framework is largely IP-related, the industry is also regulated by agencies in the communication sector as highlighted above. There is a need to create more awareness of copyright in the Nigerian music industry to minimize infringements and reduce conflict between stakeholders.

CONTACTS



ROTIMI AKAPO
rotimi.akapo@advocaat-law.com



ADEYEMI OWOADE
adeyemi.owoade@advocaat-law.com



TEMITUOPE KEKEMA
temituo.kekema@advocaat-law.com



OLUWATIMILEHIN ILORI
oluwatimilehin.ilori@advocaat-law.com

³⁰ <[Musical Copyright Society Nigeria \(MCSN\) \(mcsnnigeria.org\)](https://mcsnnigeria.org)> accessed 4th September 2024