

Copyright of Recorded Musical Works in the 21st Century Nigeria

Onyekwelu, Chidubem C.

University of Nigeria, Nsukka, Nigeria

Abstract

Recorded music is an intellectual property protected by laws in nations around the world. The Nigerian state recognises recorded music as an intellectual property, and has integrated some copyright laws into its legal frameworks. This study addresses the general concerns of copyright of recorded musical works in Nigeria, as it affects the musicians in the 21st century. Interview methodology was effectual in eliciting relevant information from respondents who were purposively selected for the study, including notable recording musicians, a music producer and a music marketer/distributor in the Nigerian music industry. Findings reveal that there is a general apathy and constraints to the enforcement of music copyright in Nigeria, phenomena which has significant implications to the music economy of Nigerian musicians. The study concludes that with the dearth of regular review of copyright laws and adequate sensitization of the Nigerian musician and populace on copyright matters, there will continue to be little guarantee for recorded music copyrights in Nigeria. Recommendations were made that all organised bodies of musicians in Nigeria should collectively propose a workable framework to the National Assembly for consideration and possible enactment as laws, ones that contemplate the modern and future realities of the mainstream and surging modes of recorded music distribution and use in Nigeria.

Keywords: Copyright, recorded musical works, 21st Century Nigeria

Introduction

Music distribution is a systematic process of getting musical products to the consumer. It is the movement of musical products from the point of production, through the marketing or distribution lines to the consumer.

Prior to the arrival of the internet in Nigeria, copies of recorded music were distributed in turntable plates, audio cassettes, video cassettes, audio compact disc, video compact disc, among other physical formats through the mainstream music distributing channel. Mainstream music distribution channel are the traditional marketing lines which includes wholesale distribution, stationary vending and mobile vending. With the arrival of the internet, circulation of soft copies of recorded music has been enhanced in general terms. This modern online channel includes the process of uploading and downloading of recorded music on websites, social media platforms, etc. These activities were, and are supposedly being controlled by provisions of copyright laws, with the aim of protecting the music intellectual properties of owners/creators and ensure good revenue.

Regardless of the effort of copyright agencies and music unions in Nigeria to implement the provisions of copyright in the Nigerian music industry, the persistence of right violations and the befuddled responses by music copyright owners in Nigeria attracts queries on and around the relevance of copyright in protecting the economic, ethical and moral rights of recorded music creators/copyright owners in Nigeria. This study discusses the general concerns of copyright of recorded musical works in Nigeria, as it affects musicians in the 21st century.

Review of Related Literature

Nigeria has been blessed and is still blessed with abundant music personnel and creative talents in the music industry. The structure of the industry consists of personnel working in divers lines towards the production and or commodification of musical products. They include the music writers, music composers, instrumentalist, music producers, music managers, music talent developers, media broadcasters, music promoters, marketers, and distributors to mention but a few. The entire operations of the music industry is supposedly regulated by laws for which the Nigerian state has made, with a view to protecting creative rights and encouraging productivity. According to Section 1(2) of the Copyright Act Cap. C.28 Laws of the Federation 2004 as amended is however unequivocal on the eligibility for such protection and emphasises that:

a musical or artistic work shall be eligible for copyright if sufficient effort has been expended on making the work to give it an original character; The work has been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device; When sufficient effort be deemed to have been expended on the work to give it an original character.

In Nigeria's music history, it is on record that there was strict adherence to copyright provisions within the music structure before the 80s. Adedeji (2016) noted that music copyright violations was birthed in Nigeria by changing government policies which led to the exit of the major labels in the 80's, proliferation of independent record labels, and the collapse of the formative structure of the popular music industry in Nigeria. Since then, the widespread of music copyright violations has been constant and has been worsened by emerging technologies and new tools of music production and distribution. Consequently, the economy of music business in Nigeria has significantly been affected.

The problem of bootlegging of physical copies started with the advent of cassette tapes technology, audio record technologies such as eight-track cartridge and tape recorders in 1980s', to the introduction of optical technology such as the CD in the 1990. These technologies created two streams of companies in the music market as classified by Anderton, Dubbie and James (2013). They are the legitimate commercial record companies and the "pirate" record companies. In Nigeria, these technologies have advanced the local and national music market with corrosive interplay between the activities of the legitimate commercial record companies and the "pirate" record companies. The advent of audio record technology enabled the prevalence of home duplication of music recordings, encouraging the activities of pirates. These technologies lack the facility that guards against unauthorized duplication of musical works and audio contents. Okoroji (2009) points to the limitations of the cassette technology in his assertion that:

The cassette tape was quietly taking over the major carrier of music, [but] the music industry in Nigeria was slow to notice this development. There was virtually no established

facility for the production of legitimate music cassettes. Yet there was a huge demand for them. While the industry ultimately reacted, the pirates had moved in long before... [and a] pirate version of every successful release on vinyl appeared in the market sometimes even before the official release of a record. (p. 23)

The pirate record companies enjoy improved revenue, with the aid of audio recording technologies, by crippling the revenue potentials of legitimate record companies. Through the business of duplicating and distributing pre-recorded music of successful musicians without due license, “pirate” record companies averted the expenses of musicians’ royalties, marketing and every other risk involved in music production and distribution. This implies more cost advantage over the legitimate record companies as well as infringement on the copyright of the pre-recorded music. In addition, the possibilities of distributing successful new music records became more flexible and rapid across the country, with the audio record technologies and the sales of blank tapes. These are digital threats on the revenue of Nigerian musicians in the mainstream music distribution channels.

Ojukwu et al. (2015) recognize the existence of copyright law in Nigeria but interrogates the strategies put in places for its proper implementation and the laid down opportunities for musicians to exploit their economic rights. They stated that:

...notwithstanding the fact that the Nigerian constitution dedicates a whole chapter (Chapter 68) to Copyright Act, its enforcement still remains a dream yet to come true. Nigeria is a nation that boasts of world-class artistes. Yet, the Nigerian music industry is plagued with abusers of the copyright law. The industry is now synonymous with piracy and intellectual property infringement. (p. 374)

So far, the strategies deployed by the NCC (Nigerian Copyright Commission), the body tasked with controlling, regulating and implementing copyright in Nigeria have been centered on raiding of piracy markets, arrest of pirates and confiscation of pirated products. Records exist on the achievements of the government agencies and groups towards safeguarding improved revenue for owners of original works, through war against copyright infringement in Nigeria (Adedeji, 2016; Ojukwu, Onyiuke & Esimone, 2015). Part of the achievements of the NCC as presented by the Planning Research and Statistics Department (as cited in Ojukwu, Onyiuke and Esimone, 2015) were:

confiscation of an estimated NGN2.5 million worth of suspected pirated books belonging to different copyright owners and arresting of seven suspected pirates during an enforcement action carried out at Federal Secretariat Complex, Abuja and its environs on September 6, 2013, the raid on the notorious Alaba International Market, Ojo, and the Isashi area of Lagos in a bid to burst a new trend of importation, marketing, and exploitation of high-tech equipment for hacking or piracy of encoded broadcast signals, mostly of Digital Satellite Television (DStv) channels. On August 27, 2013, acting on intelligence and surveillance reports, copyright inspectors led by Mr. Charles Amudipe, Uyo Liaison Officer backed by armed policemen from Zone 6 Calabar, stormed the book stands of the booksellers and arrested five suspects engaged in the sales of suspected pirated copies, books worth NGN100,0.00 were impounded.

The Copyright Society of Nigeria (COSON) is another functional agency that is tasked to protect intellectual property rights in Nigeria. Established in the year 2000, COSON is concerned with the promotion and protection of the copyright owners in the Nigerian music scene. The agency is responsible for the collection of licenses and royalties for artist in the music industry. According to Sadoh (2015), COSON is:

a joint agreement between the owners of musical works, the users of the work and the statutory regulators on the need of the industry to close ranks and have one formidable national collective management organisation to cater for the copyright of music practitioners in the Nigerian music industry. The structure was formed to end the schism and undue rivalry in the collective management of rights in the music industry.

These agencies provide avenues that accommodate the interest of every copyright owner who is duly registered in the agencies' platform. Furthermore, the agencies are tasked to offer sensitization programs to their members and the general public on the issues of copyright infringement. Regrettably, these efforts have mostly been unsuccessful as a result of several factors militating against the effective enforcement of copyright law in Nigeria for them. They include inadequate funding, poor technical know-how for intellectual property right enforcement by designated officials, lack of human capacity, ignorance of copyright owners and uncontrollable piracy which is at the fulcrum of music intellectual property violation in the Nigerian music industry (Adeleye 2013; Sylvie, 2008). In all, Ojukwu et al. recommend as the most essential strategy, massive morality education which will be geared towards promoting change of attitude in the citizens from childhood to adulthood, using schools, organised workshops and other forms by which citizens can be reached and educated.

Methodology

Information were sourced from personal interviews of two notable recording musicians, a music producer and a music marketer. They include Onyeka Onwenu (who resides in Lagos, Nigeria), Teemac Iseli (who resides in Port Harcourt, Nigeria), Robinson Chinweuba Odo (who operates in Abuja, Nigeria) and Kingsley Oko-Jaja (who operates in Port Harcourt, Nigeria) respectively.

The interview questions were open-ended in nature structured to allow respondents to express themselves exhaustively. These respondents were purposively selected based on their pedigree in music business in Nigeria. The interviews were carried out through physical meetings and telephone communication. The information obtained from these respondents offered credible insight for the appraisal of music copyright in the 21st century Nigeria.

Brief Profile of Respondents

The brief profile of respondents is as follows:

Onyeka Onwenu

Onyeka Onwenu is notable as a Nigerian singer, songwriter, composer and recording musician. As a woman of multiple capabilities, she is also a reputable actress, human right activist, journalist, politician, and former X-Factor series adjudicator. Born in 1952 in Obosi, Anambra State, she was among the foremost Nigerian recording musicians that was signed, trained and produced by the major record labels in Nigeria in the 1980s. Onyeka Onwenu still stands out as the only Nigerian

musician to fuse Pop with Juju music and Highlife generating musical creations with sonic make-ups that are revered till today as classics.

Tee Mac Iseli

Tee Mac Iseli is a Nigerian flautist, composer and recording musician with cross-cultural Itsekiri and Swizz root. Tee Mac combined his first degree in Economics from the University of St. Gallen Switzerland, with a career in classical music concert performances and philharmonic compositions of the University of Lausanne. In his extensive career in more than 40 years, he has formed numerous bands including Tee Mac and Afro Collection in the 1970s and has recorded with several labels across the globe such as Soul Jazz Records, Rebellious Soul Ent, Tee Mac Production, Hot Casa Records, and SKJ Records among others. Despite his engaging and extensive tours across the globe, Tee Mac widely invested in local Nigerian initiatives and is credited among the pioneers of the classical Music Society of Nigeria, MUSON the Nigeria's leading music conservatory. He was the president of the Performing Musician Association of Nigeria PMAN in 2007 and have made significant contribution towards the advancement of the Nigeria's Music industries. It was a great privilege to work with him during his musical instrument master class at Department of Music, University of Nigeria, Nsukka in 2021.

Robinson Chinweuba Odo

Robinson Chinweuba Odo popularly known as Robitones is the founder and CEO of Robitonzz Entertainment Enugu. He is a music producer and DJ with almost two decades of experience in his music career. He studied music education and performance in the Department of music, University of Nigeria, Nsukka and has contributed extensively to the music creations, promotion, marketing and distribution of most Nigerian musicians.

Kingsley Oko-Jaja

Kingsley Oko-Jaja is an afro-cellist, sound engineer and the CEO of SkizzyRecords, Port Harcourt, Rivers State. In almost two decades of operation, SkizzyRecords is specialized in audio and audiovisual content creation, jingles, indoor and outdoor sound management, recording and music production.

Copyright of Recorded Musical Works in the 21st Century Nigeria

The general concerns of copyright of recorded musical works in the 21st century Nigeria are as discussed:

Institutionalisation of Piracy

Piracy describes the unauthorized duplication and sales of recorded music. It is the major form of music copyright infringement in Nigeria and has grown from bad to worst over the years. Some music marketers and other distributors in Nigeria are basically into the practice of duplication of recorded music without the copyright owner's or musician's consent. This bootlegging happens whether or not such music is copyrighted, and has become an integral part of music business in Nigeria for many years now. In Nigeria, piracy has become part of music business among most music marketers, who indulge in the practice with impunity on a daily bases. Relevant institutions of government and musicians have developed significant shades of insensibility on the issues of piracy, leading to untold instability to the music economy of Nigerian for many years. Decrying the condition, Onyeka Owenu noted that the music distribution business has long been infiltrated

by pirates who introduced unwholesome competition into the industry, leading to the exit of genuine world-class recording and marketing brands such as Polygram, CBS, EMI from Nigeria. She noted that as a result of piracy, she did not make money from her *One Love* musical tract which she described as a monster hit, whilst pirates became rich and built houses through unlawful distribution of that musical tract.

Piracy has been institutionalized in the music systems of Nigeria to the extent that, musicians now see piracy from the “positive stance” as a form of blessing. In Robinson Odo’s enlightening statement:

the dynamics have changed from what musicians can get from the sales of a musical CD to what fortune one stands to gain from the CD if it becomes popular through pirating. Piracy has been instrumental to answering the prayer of musicians for fame and fortune, through effective distribution network which exist around the country.

In other words, the dynamics have changed from relying on lawful sales of recorded musical products as means of income to Nigerian musicians, to relying on unlawful sales of recorded musical products by pirates as means of promoting oneself.

Unlawful Re-recording and Distribution

Unlawful re-recording and distribution of music is one of the forms of copyright infringement in the Nigerian music industry, perpetuated among musicians. Musicians re-record and distribute the whole or parts of an existing music without the consent of the copyright owner or musician who recorded it originally. All respondents cited few cases where legal actions were taken against offenders, but however noted that Nigerian musicians generally show little interest in enforcing their copyrights in this respect.

Ignorance of Copyright

Ignorance seem to be one of the factors that lead to music copyright infringement in Nigeria. Robinson Chinweuba Odo noted that most operators of clubs, hotels and music users at social gatherings are completely ignorant of the fact that they are infringing on people’s copyrights. Therefore, they ignorantly play pirated and original music CDs publicly without due authorization from the copyright owners. He also noted that the Nigerian populace is largely ignorant of the seriousness of copyright infringements. Hence, they freely share and use music on social media, patronize pirated CDs especially as such copies are generally cheaper in cost, patronize pirated copies of CDs brandished before them by hawkers at bus stations, traffic hold-ups, open markets, etc. Owing to the high degree of ignorance, he charged stakeholders in the Nigerian music industry to embark on serious enlightenment campaigns with a view to educating the populace on the need to patronize only the original CDs and other formats of recorded musical works.

Challenges of Litigation

Copyright issues are federal questions that are heard by Federal Courts. All the respondents decry the befuddling attitudes of the Nigerian court in handling music copyright issues, which has led to apathy among musicians to enforce their rights in court. For instance, a review of suits handled in the Federal High Court in Port Harcourt City and Enugu, Nigeria reveals the negligibility of music copyright suits for the past two decades. This obviously questions the functionality of the court system in a country where there are copious music transactions on daily bases, and the high

possibility of transactional disputes and infringements. Tee Mac Iseli was unequivocal by stating that the Nigerian courts are too slow to enforce copyright infringements and added that lawyers are too expensive to hire for most copyright infringements. Corroborating this, Onyeka Onwenu stated that pursuing copyright matters in Nigerian courts is like a wild goose chase to most Nigerian musicians, as such cases could last for a very long period of time, leading to the lost of interest by the complainant. Also, Robinson Chinweuba Odo added that it is better to manage the little profit made by the musician, than to spend same unnecessarily in the Nigerian court. He added that prosecuting music copyright matters in the Nigerian court can only be a good option if one has the money, time and the right connection to follow it up to a logical end within a short time span.

Non-remittance of Royalty by Media Organisations

Another major form of copyright infringement in Nigeria is the non-payment of synchronization fee or royalty remittance to musicians who are credited with the ownership of such musical works by media organisations. Synchronization fee is the levy paid by media outlets for the utilization of a musical work in the public to add value to their ventures and attract audience.

Onyeka Onwenu decries non-payment in contemporary times and recalls how hit songs constantly gained air waves and how artists whose works were copyrighted were paid royalties for the use of their music in broadcasting in the 1970s and 1980s. She blames the current phenomenon on the musicians for not copyrighting their works, and for not insisting on royalties from media organisations.

Tee Mac blames the collapse of the payment of synchronization fee in the broadcasting sector on the inadequacy of music copyright laws. He noted that music copyright laws have become so weak in present day realities. Broadcast houses constantly evolve new business strategies to deal with musicians and their music. Today, the payment of synchronization fee is almost gone as musicians now pay to get the patronage of the broadcasting sector instead. These developments demand some adjustments in music copyright laws in the light of the functional use of music in today's mainstream broadcasting media. In other mainstream channels such as telecommunication and film, synchronization fee is now displaced by pay-off, a negative situation which Tee Mac described as "a new normal in the reverse direction".

Failure to Copyright Recorded Musical Works

Most Nigerian musicians (especially the budding ones) fail to copyright their recorded musical works. Kingsley Oko-Jaja opines that in his two decades of experience as a producer, musicians no longer copyright their music, giving room for free copyright infringements by music marketers, media houses, etc. He also added that the phenomenon was the direct result of lack of proper musical mentorship to young musicians.

The Internet and Copyright Infringement

Internet offers the 21st century human limitless online opportunities. On the internet, musicians can easily upload and distribute their recorded works around the world by themselves. Whilst internet is a welcome development in the distribution of music by musicians, the Nigerian state is yet to adequately moderate online music activities through the provision of relevant laws. Music marketers freely produce mix-tapes and extended plays of uploaded recorded works on the

internet, and also create alternative websites where they distribute people's recorded musical works without owner's consent.

Tee Mac Iseli opines that musicians in Nigeria are in an almost helpless situation with the rising state of online copyright infringement in the Nigerian music industry. Existing copyright laws doesn't seem functional enough, relative to internet musical activities. Clearly, copyright laws in Nigeria have not evolved from the mainstream marketing trends, to surging online trends.

Synopsis of Findings

Findings reveal that there is a general apathy and constraints to the enforcement of recorded music copyright in Nigeria, phenomena which has significant implications to the music economy of Nigerian musicians. Copyright owners and creators of recorded musical works have become increasingly disinterested in enforcing their rights due to constraints occasionable in the process of such enforcement. Accusing fingers are also pointed at the slow pace of dispensing justice in the courts, high cost of litigation, and irrelevancy of copyright laws vis-à-vis modern and future realities of recorded music distribution and usage. Citing the Norwegian example, Yngvar (2019) addresses the imperative of relevancy of music copyright laws, highlighting the need for continuous review of copyright laws as an essential step to ensure music copyright in the 21st century.

Having seemingly forgone the copyrights to their recorded musical works, Nigerian musicians generally rely on shows and similar forms of music contracts as means of generating income. This is deemed unacceptable in the 21st century when economies of developed climes are driven and enhanced by knowledge, inventiveness and originality.

Conclusion

This study notes that the 21st century musician in Nigeria do not particularly see prospects in enforcing their recorded music copyrights, and points out lingering factors which include the slow pace of dispensing justice in the courts, high cost of litigation, and irrelevancy of copyright laws vis-à-vis modern and future realities of recorded music distribution and usage. As a result of copyright apathy on the path of the owners, infringement of copyright has become a normal practice in the mainstream and on all surging channels of music distribution, and by music users in Nigeria.

Copyright infringement within the mainstream channel of music distribution is quite alarming as copies of recorded music in various formats are duplicated and freely distributed and sold in the streets. Copies of recorded music are freely played and used at clubs and at social gatherings without due permission. Infringement of recorded music copyrights within internet space is gross as existing websites and social media platforms are freely used to distribute recorded music unlawfully. The media are also guilty of infringing on the rights of musicians and have shifted from using music for media promotion to becoming service providers for music promotions. Musicians now pay huge cost of money to gain airplay, and there are no more revenues for musicians through broadcasting. Against this awful disposition, Anderton, Dubbie & James (2013) reiterate the need for broadcast media to respect the copyrights of musicians, stating the use of music adds value to broadcast experience and helps attract audience and revenue to the media outlet. After charging money for advertising, it is no longer an act of generosity to pay the

musicians whose works are used to attract audience members to the advertisement, it is a right, one that should be respected.

By the foregoing, it becomes crucial to state that with the dearth of regular review of copyright laws and sensitization of the Nigerian musician and populace, there will continue to be little guarantee for copyright of recorded music in Nigeria.

Recommendations

The research recommendations are as follows:

1. Organised music associations in Nigeria should collectively propose a workable framework as laws to the National Assembly for possible enactment. Such proposition should contemplate modern and future realities of the mainstream and surging modes of recorded music distribution and use in Nigeria.
2. Organised music associations and copyright agencies in Nigeria should form an alliance towards achieving common copyright objectives.
3. Organised music associations should carry out strategic and regular education and conscientization of the Nigerian populace, against patronizing pirated copies of recorded music and unlawful use of recorded music.
4. Organised music associations should organise regular training sessions where members of their organisation and indeed, Nigerian musicians are educated on their copyrights and how to enforce same.

References

- Adedeji, W. (2016). The Nigerian music industry: Challenges, prospects and possibilities. *International Journal of Recent Research in Social Sciences and Humanities*, 3(1), 261-271. www.paperpublications.org
- Adeleye, A. I. (2013). *Intellectual Property Rights Enforcement in Nigeria: Regulatory Agencies to the Rescue*. Retrieved June 28, 2020 from <http://www.nlipw.com>
- Anderton C., Dubber A., & James M. (2013b). *Music Distribution. Understanding the Music Industries* 161-182. SAGE Publications
- Copyright Act Cap. C28 Laws of the Federation 2004.
- Ojukwu E. V., Onyiuke Y. S. & Esimone C. C. (2015). Intellectual property rights enforcement in Nigeria: A prop for music industry. *US-China Education, Review B, June 2015*, 5(6), 373 - 381. <https://doi.org/10.17265/2161-6248/2015.06.003>
- Okoroji, T. (2009). *Copyright, Neighborhood Rights and the New Millionaires*. Tops Publishers.
- Sadoh, G. (2015). *Five Decades of Music Transmutation in Nigeria and the Diaspora*. GSS Publications.
- Sylvie, C. (2008). STRAP and CLAMP—Nigeria Copyright Commission in action. *World Intellectual Property Organisation (WIPO) Magazine*. Retrieved September 14, 2020 from http://www.wipo.int/wipo_magazine/en/2008/05/article_0009.html
- Yngvar, K. (2019). The Use of Copyright in Digital Times: A Study of How Artists Exercise their Rights in Norway. *Popular Music and Society*. <https://doi.org/10.1080/03007766.2019.1698206>

Personal Interview

- Kingsley Oko-Jaja. (2022). Information on Copyright of Recorded Musical Works in the 21st Century Nigeria.
- Onyeka Onwenu. (2018). Information on Copyright of Recorded Musical Works in the 21st Century Nigeria.
- Robinson Chinweuba Odo. (2018). Information on Copyright of Recorded Musical Works in the 21st Century Nigeria.
- Tee Mac Iseli. (2018). Information on Copyright of Recorded Musical Works in the 21st Century Nigeria.