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The Nigerian Music Industry: Making the Music Pay through Intellectual Property

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Image Source: Tush Magazine

Overview of the Nigerian Music Industry

Perhaps the inspiring history of Nigeria's music industry is best told through Star Mega Jam, a mega music-performance concert which paraded international artistes like Shaggy, Usher, Akon, T-Pain, Ludacris, and other stars from its inception in 2000 to 2010. In the midst of this boisterous mega music concert, a quiet revolution was brewing. Sparks of this revolution came to fore in December 2004 when Eedris Abdulkareem, a Nigerian



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rapper, protested the obvious disparity in the treatment given to foreign artistes over the local artistes at the concert. The protest exposed the lopsidedness in Nigeria's young music industry.

But today, it's a different story.

Since the Star Mega Jam concert, all that has had to be chronicled is the continued rise and rise of the Nigerian music industry which hit an undeniable high point in Wizkid's sold-out performance at the Royal Albert Hall¹. Nigerian artistes now headline shows without big foreign names and command the bulk of endorsements from companies.

This growth has been captured in numbers with PwC reporting that revenue from music sales in Nigeria is estimated to grow to \$86 million in 2019 from its value of \$47 million in 2016, a growth fuelled largely by sales of ringtones and ringback tunes. This revenue growth in the music industry forms a major part of the total growth expected in the entertainment and media industry where revenue is projected to grow from 44.8 million in 2013 to \$86.1 million in 2019²

In a Reuters analysis, the Nigerian Bureau of Statistics estimates that the arts, entertainment, and recreation sector of the Nigerian economy grew by 8.41 percent in the first three months of 2016 against a background of recession.³

¹ 'Singer makes history with sold-out concert at Royal Albert Hall, London', *Pulse*, www.pulse.ng/entertainment/music/wizkid-singer-makes-history-with-sold-out-concert-at-royal-albert-hall-london-photo-id7399980.html

² *Entertainment and Media Outlook 2016-2020 South Africa- Nigeria- Kenya*, PwC, www.pwc.co.za/outlook/ accessed 20 November 2017

³ 'Nigeria's music scene becomes a cultural export', *Reuters*, www.reuters.com/article/us-nigeria-music/nigerias/music-scene-becomes-a-cultural-export-idUSKCN02N120, accessed 20 November 2017



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These numbers might seem fantastic but the Nigerian music industry is hardly a finished piece. Let's take an incisive look at the strengths, weaknesses, opportunities, and threats of the music industry with a brief SWOT (Strength, Weakness, Opportunities, and Threats) analysis.

Strengths

Cross-cultural appeal

Davido, Wizkid, Tiwa Savage, and a number of other artistes have become exports of Nigeria's unique brand of music. This has not gone unnoticed with international collaborations, contracts with global recording giants, and a new fan base overseas. Wizkid for instance has a contract with Sony Music entertainment and RCA Records. Tiwa Savage also has a deal for management and publishing with Sony/ATV Music and Roc Nation, owned by American rapper Jay z. Songbird Asa arguably in a class of her own has a music publishing deal with music conglomerate BMG.⁴

Global Followership

While Nigeria's terrestrial TV and sadly cable TV cannot provide the metrics that will enable us chart the global followership and reach of the Nigerian artistes that constitute the music industry, we can at least turn to content platforms like YouTube for a feel of the consumption and varied sampling of music.

⁴ 'Top Nigerian Artistes Signed to International Record Labels, *Buzz Nigeria*, www.buzznigeria.com/artistes-international-record-deals/, accessed 20 November 2017



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For instance, Yemi Alade's hit single 'Johnny' was rated the most viewed Nigerian music video on YouTube with over 70 million views in a report by the Guardian in November 2017⁵. At the time of writing this article that figure has since crossed the 80 million mark and shows no signs of slowing down.⁶ Apart from YouTube, streaming platforms who provide music on demand services have also drawn attention to the rising worldwide followership. Wizkid for instance set the record this year as the most streamed Afrobeats artiste on Spotify, drawing a total of 136 million streams from a diverse audience all over the globe.⁷

Across Africa and beyond, there is a growing acceptance of Nigerian sound from nightclubs, bars and sold out concerts. A major highlight this year was when major exports, Wizkid and Davido had sold out concerts simultaneously at two different venues in Brussels with both of them sold out⁸. That night was a subtle reminder of how far the Nigerian Music Industry has come to achieve on a global scale.

⁵ 'Yemi Alade's Johnny is YouTube's most viewed Nigerian music video' *Guardian Nigeria* <https://m.guardian.ng/life/music/yemi=alades-johnny-is-youtubes-most-viewed-nigerian-music-video/>

⁶ Music video by Yemi Alade performing Johnny https://youtu.be/C_XkTKoDI18

⁷ 'Wizkid breaks new record as the most streamed Afrobeats artiste on Spotify' *Information Nigeria* www.infomationng.com/2017/11/wizkid-breaks-new-record-streamed-afrobeatsartiste-spotify.html

⁸ 2 Kings! Wizkid & Davido thrill Fans at Sold Concerts in Brussels *Bella Naija* <https://www.bellanaija.com/2017/07/2-kings-wizkid-davido-brussels/>



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Weakness

Lack of Efficient and Effective Industry Regulation

Despite the growing contribution of the music industry to Nigeria's economy as a vibrant subset of the information communication industry classified as an activity under this sector by the Nigerian Bureau of Statistics⁹, not much has been done by way of regulations to standardize the industry and create modern rules of engagement for the new stakeholders emerging in the digital arena that the industry is set to operate in. One of Nigeria's biggest artistes Asa is of the opinion that this is largely because the government does not understand the potential revenue inherent in the industry. This is a valid point. Speaking to Reuters, Asa said 'Once the government understands that they can make money, they can generate revenues from this, I think they will help to protect (the industry)'¹⁰

Although the proposed amendment of the Copyright Act sponsored by the Nigerian Copyright Commission (NCC) termed the *Copyright Bill 2015* looks promising with Part VII containing provisions relating to online content, the current near-paralytic process it is experiencing, copyright owners are practically using their own imaginations in trying to protect their music and get fair remuneration. On a daily basis, you continue to get artistes crying out against exploitative contracts and agreements hurriedly signed like the case of rising artiste Ycee who took on Sony Music on the streets of social media citing

⁹ The Information Communications sector contributed 10.78% to total nominal GDP in the fourth quarter of 2016. Nigerian Gross Domestic Product Report (Q4 2016)

¹⁰ 'Nigeria's music scene becomes a cultural export', *Reuters*, www.reuters.com/article/us-nigeria-music/nigerias-music-scene-becomes-a-cultural-export-id-USK9N02N120)



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unfavorable terms.¹¹ While the lack of expert advice is often a vital factor in these cases, the lack of legal provisions and regulatory standards is still very much a major issue in the industry.

Unbalanced Revenue-Sharing Formula from Digital Distribution

For an industry that is incredibly weighed down by piracy, any attempt to circumvent these saboteurs is welcome. This is why content creators in the music industry embraced the move by telecom operators to give millions of subscribers access to albums and songs under their value-added services like caller ringback tunes all for a small fee.

Thanks to the power of digital distribution deployed by telecom operators in the country, this new arrangement meant that artistes could finally get paid for the use of their contents without having to bother about what the industry now popularly associates with piracy—*Alaba boyz*—whether rightly or wrongly. But the question now popping up in the media in recent times is whether artistes are getting the fair end of this digital-distribution-enabled deal with telecom operators.

This question has in fact evolved into a constant murmur in the music industry. Most recently, the murmur became an online campaign anchored on the hashtag #AdhochearingNov30. Under this campaign, content creators in the industry clamour for a more equitable revenue-sharing formula to replace the present one which gives up to 70% of income derived from digital contents to Telecom operators.

¹¹ 'Insiders: "Ycee didn't get legal advice before signing with Sony Music or he disregarded it', *YNaija*, www.ynaija.com/insiders-ycee-didnt-get-legal-advice-signing-sony-music-disregarded



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“If you pay 50naira every month to make your favourite song your caller ring back tune (CRBT)”, explains *The Guardian*, tracing the cash flow from subscription until it reaches the artiste, “Your network provider could pocket up to 35 naira and leave 15 naira for the artistes, their label (if any) and the content service providers’.¹² This paints a picture of a long queue to revenue that has the artiste at the end – patiently waiting for so long and for so little. The artistes and other key collaborators—the songwriters and others involved in the production process—are therefore constantly struggling to make profit on a creative process they masterminded, ironically.

Globally, sharing revenue derived from digital distribution is still a very controversial issue. This may partly explain why the spotlight in developed climes has been on streaming services and record labels. Today, streaming services are being hounded for small returns, but a lot depends on the contract between the artiste and his or her record label. This is because contracts typically cover revenue from streaming platforms and the agreed split for each side. If the contract of an artiste is unfavourable, this would invariably mean a lot less income accruing to him or her from streaming services.

Taking a closer look at payment per stream and how much actually gets to the artiste from major streaming services, *Information is Beautiful* has some interesting analysis in its 2017 report.¹³ To help make the artiste’ struggle towards adequate and sustainable revenue

¹² ‘How artistes can make money selling their music in 2018’, *The Guardian*, accessed December 27 2017, <https://guardian.ng/art/how-artistes-can-make-money-selling-their-music-in-2018/>

¹³ ‘What Streaming Music Services Pay—Updated for 2017’ <https://www.digitalmusicnews.com/2017/07/24/what-streaming-music-services-pay-updated-for-2017/>



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relatable, the report pegs the American minimum monthly wage at \$1,472 and estimates how many plays it would take for an artist to meet this threshold.

For Apple music for instance, unsigned artists get \$0.0064 per stream requiring 230,000 plays to meet minimum wage, while signed artists get \$0.0073 per stream requiring 200,000 plays. For market leaders, Spotify, signed artists get \$0.0038 per stream requiring 380,000 plays, while signed artists get \$0.0044 per stream requiring 340,000 plays. YouTube's statistics are perhaps the most underwhelming with unsigned artists getting \$0.006 and signed artists getting \$0.007, requiring an artist to need roughly 2.4 million plays to achieve minimum wage. This is street hustle in *Digital Avenue!*

While the battles to be fought here and abroad are different, one thing that is constant is who should lead the charge.

Artists must take the lead in advocating for record deals that explicitly state revenue split from digital distribution and industry wide reforms that make telecom operators accountable to content creators.

As popular musician Dapo Oyebanjo aka D'banj tweeted recently "Producers, songwriters, singers collaborators, can earn a fortune when the regulations and policies for Nigeria favour them."¹⁴

¹⁴ '#Adhochearingnov30: How D'banj Push War of Standard Royalties Payment for Creative Artists [sic] to National Assembly against Telcos Companies', <http://gyonlineng.com/adhochearingnov30-dbanj-push-war-standard-royalties-payment-creative-artists-national-assembly-telcos-companies/>, accessed 27 December 2017



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COSON v MCSN

Collective management organizations (CMOs) are vital to the music industry. CMOs are predicated on the impracticability of the copyright owner policing every single use of his work in order to extract payment. This is why an artiste needs an organization with the structure and manpower to do this on his behalf. Collective management is the exercise of copyright and related rights by organizations acting in the interest and on behalf of the owners of right.¹⁵

In Nigeria, the battle for supremacy between the Copyright Society of Nigeria (COSON) and the Musical Copyright Society of Nigeria (MCSN) continues to rage on between two players in the CMO business for artistes and other players in the music industry.

After an extended period of uncertainty, MCSN was approved as a valid collecting society by the Nigerian Copyright Commission¹⁶. This move ended COSON's claim that it is the *sole collective management organization* for artistes and other players in the industry. But NCC's decision may have succeeded throwing up more questions than answers. For instance, what happens when two songwriters collaborate on a track but belong to two different collecting societies? In this situation, who collects the accruing royalties? And are both parties not losing through double deductions by two different organizations for overhead expenses?¹⁷

¹⁵ 'Collective Management of Copyright and Related Rights' WIPO www.wipo.int/copyright/en/management/, accessed 12 December 2017

¹⁶ 'Musical Copyright Society of Nigeria approved as collecting body' *Music Africa* www.musicinafrica.net?magazine/musical-copyright-society-nigeria-approved-collecting-body

¹⁷ 'Nigerian Music Industry Consequences of COSON and MCSN Coexistence' *Nigerian Law Intellectual Property Watch Inc* <https://nlipw.com/nigerian-music-industry-consequences-coson-mcsn-coexistence/>



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If Nigerian artistes were warming up to the idea of fully utilizing collecting societies for sustainable revenue, then this development will sorely dampen their spirits. Perhaps NCC would need to intervene again, this time to help bring a certain measure of certainty to the situation by clearly defining who is in charge of what rights under the Act and their attendant powers.

Opportunities

The New Distribution Model

For a very long time artistes had to align with the concept of "free" in order to be successful in the industry. An artiste had to get his or her music out to as many people as possible and then hope it goes viral. When and if it goes viral, investments can then be recouped from live shows, sign-on fees from lucrative record deals, and endorsements. Yahaya Maikori, co-founder of Chocolate City, a record label and entertainment giant in Nigeria alludes to this in a recent interview when he observed that “[t]echnology has changed the entire structure, [such that] you cannot have selling records as your business model anymore. If you do, you are bound to fail. Music has become promotional too, [requiring that] you do the music and get it out there with the intention to build a brand and then make money from related sectors like acting, brand endorsements and ambassadorships’¹⁸

¹⁸ ‘How Nigerian music did it: Why Nigeria’s economy needs to follow the ‘music model’, Ventures Africa, www.venturesafrica.com/features/how-nigerian-music-did-it-why-nigeria-needs-to-follow-the-music-model/



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While this is still very much the case, the past few years have seen the rise of new streams of revenue focused on digital distribution of music and social media presence. The rise of streaming platforms and the proliferation of ringback tunes alongside social-media popularity has changed the game. The Entertainment and Media Outlook Report by PwC points in this direction with digital sale of music expected to account for over 90% of Nigeria's recorded-music sales in 2020.¹⁹

The revenue from the physical sale of music is expected to drastically reduce. The IFPI Digital Music Report 2015 points to a global movement with the latest statistics suggesting that digital music revenues are on par with physical revenues globally and are projected to continue growing.²⁰ This is good news for the Nigerian music industry with local ecommerce player Jumia reporting that Nigeria's mobile subscribers have grown to 150 million while Internet users climbed to 97.2 million at penetration rates of 81% and 53% respectively.²¹

As expected, stakeholders in the industry are looking to exploit these numbers to create sustainable revenue for the artiste and other creative people involved in the making of music. This has led to the rise of local streaming platforms as Boomplay, iROKING, and

¹⁹ PwC Entertainment and media outlook:2016-2020(South Africa-Nigeria-Kenya)www.pwc.co.za/outlook

²⁰ 'Global digital music revenues match physical format sales first time', <http://www.ifpi.org/news/Global-digital-music-revenues-match-physical-format-sales-for-first-time>, accessed 22 November 2017

²¹ 'Smartphone adoption on upswing in Nigeria', *Business Insider*, <http://www.businessinsider.com/smartphone-adoption-on-the-upswing-in-nigeria-2017-4?IR=T>, accessed 22 November 2017



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Orin alongside a drive to get Nigerian content on global-music platforms as Deezer, iTunes, Pandora, Spotify, and Tidal.

The Collecting Society Advantage

New revenue streams require a dedicated means of revenue collection and management. The Copyright Society of Nigeria (COSON) has led the way by helping artistes get remuneration for the use of their songs by radio stations, TV outfits, and entertainment and lifestyle companies. MCSN has also contributed to this.

While there has been a noticeable growing indifference by younger artistes towards COSON, it does not take away the huge part the collecting society for musicians has to play towards ensuring sustainable revenue and ensuring fair remuneration.

One of the appeals of a properly functioning collecting-management organization as COSON is that it can enter into reciprocal agreements with other collecting-management organizations which can allow a musician to generate revenue across several countries regardless of the territorial limits of copyright protection. Therefore, COSON can help to widen the revenue net by entering into agreements, for instance, with the Southern African Music Rights Organization and the Ghana Music Rights Organization to ensure that citizens of both countries enjoy cross-border revenues for their works.

Threats

Piracy, the Two-headed Monster

There seems to almost be an industry-wide acceptance that any music put out in Nigeria would be pirated. This much was expressed by Harrysong in an interview attributed to



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him in Nigerian Tribune. Speaking about piracy in Nigeria, the Nigerian singer, songwriter, and instrumentalist said ‘I don’t know how they do their thing but it works for us’.²² The rather awkward increasing establishment and entrenchment of piracy in Nigerian music industry by artistes, producers, and marketers alike is one of the unhealthy developments that well-meaning stakeholders need to watch. Working with people who pirate your work to enable you achieve popularity in the market may result in short-term gains for the artist but spells long-term doom for the Nigerian music industry. If artistes, marketers, and producers can’t beat piracy, should they join the criminal activity? This is a legal and policy question that needs urgent answer.

Also, while the use of this intricate piracy network as a distribution network might seem ingenious, it shows how ineffective our copyright laws and their enforcement are as well as how ineffective major players like NCC may have become.

And with the rise of digitalization and the world moving towards digital downloads and streaming, it is the second head of piracy. Online piracy stands to pose a more present threat to the growth of the Nigerian music industry. Again, the complicity of Nigerian artistes must be pointed out with several of them not only putting their work on sites for free downloading but also encouraging this by sharing download links all in a bid to drive followership and build a fan base. Babatunde Layode, an entertainment entrepreneur expressed these sentiments in an interview with the Financial Times pointing out that “[s]ome artistes pay pirates to include their songs on mix CD’s [sic] to try to generate the hype needed for corporate sponsorship, which is said to be worth tens of thousands of

²²How Nigerian music did it: Why Nigeria’s economy needs to follow the ‘music model’, Ventures Africa, www.venturesafrica.com/features/how-nigerianmusic-did-it-why-nigeria-needs-to-follow-the-music-model/



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dollars a year.²³ Jason Njoku who runs a digital-music service corroborates this, asserting that “[i]t is not so much the prospect of record sales that fuels the ambition of up and coming artists [sic], however but [sic] corporate sponsorships and appearance fees.”²⁴

Due to these ingrained mindset of players in the music industry, brands that distribute music illegally like www.360nobs.com, www.Naijaloaded.com, and www.Jaguda.com continue to have a field day with the New York Times reporting that such popular music blogs as ‘notjustokay.com and naijaloaded.com collect as much as \$120 from unknown musicians to promote a single song’.²⁵ Perhaps, one cannot completely blame such copyright-infringing music sites since the the digital-music space seems like a free-for-all platform as the NCC has failed to adopt a proactive approach towards statutory responsibilities in copyright enforcement in the digital age. Upon NCC’s notice, one would expect that websites with contents that are infringing in nature are taken down with the ensuing penalties properly administered.

In this regard, one hopes that a promised review of the copyright system appropriate for the digital age will set most of these issues straight. The draft Copyright Bill of 2015 proposes provisions for “issuing and carrying out takedown notices for infringing materials and for suspending the accounts of repeat infringers. It also addresses internet

²³ ‘Piracy and illegal downloads hit Nigeria’s film and music industries’, *Financial Times*, www.ft.com/content/e9cdd214-bb16-11e3-948c-00144feabdc0

²⁴ ‘Piracy and illegal downloads hit Nigeria’s film and music industries’, *Financial Times*, www.ft.com/content/e9cdd214-bb16-11e3-948c-00144feabdc0

²⁵ ‘Nigeria’s Afrobeats Music Scene Is Booming, but Profits Go to Pirates’, *New York Times*, <https://www.nytimes.com/2017/06/03/world/africa/nigeria-lagos-afrobeats-music-piracy-seyi-s-hay.html>



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service provider liability for copyright breaches and permits blocking of access to content in some cases”²⁶

While this legislation continues to face legislative challenges typically associated with Nigeria’s very bureaucracy, we hope that when (or if) the Bill is passed, it would model the effectiveness of the Digital Millennium Copyright Act (DMCA) in force in the United States of America which criminalizes production and dissemination of technology, devices, or services intended to circumvent measures that control access to copyrighted work. It also heightens the penalties for copyright infringement on the Internet.

Intellectual Property and the Music Industry

Intellectual property is primarily the creation of man’s mind. The World Intellectual Property Organization (WIPO) defines intellectual property as creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.²⁷ The law or legal framework that recognizes such creations and accords it rights and protection is intellectual property law.

The different means of protection include copyright, industrial design, patent, and trademark which enable creators to not only gain credit for their work but also generate revenue from such work. According to the World Intellectual Property Organization (WIPO, by striking the right balance between the interests of innovators and the wider

²⁶ ‘Nigeria prepares to revamp its copyright system for the digital age’, *IP Watch*, <https://www.ipwatch.org/2015/11/22/nigeria-prepares-to-revamp-its-copyright-system-for-the-digital-age/>

²⁷ ‘What is Intellectual Property?’, WIPO, www.wipo.int/about-ip/en/



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public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.²⁸

We explore copyright and trademarks, two major types of intellectual property that are primarily relevant to artistes, record labels, and other players in the music industry:

Copyright

Copyright loosely translated as copying right relates to conditions under which another person may access or use protected works without infringing on the rights of the creator who is regarded as the author. It is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films to computer programs, databases, advertisements, maps, and technical drawings.²⁹

Copyright is the most important tool for right owners in the music industry. This is as a result of the exclusive control it gives them over their work and the opportunity to derive financial benefit as a result of such exclusivity.

Under Nigerian law, copyright protection is provided by the Copyright Act³⁰ which lists musical works as eligible for protection.³¹ For musical works and indeed other works offered protection under this section, there is a caveat under section 2 which states as follows:

²⁸ 'What is Intellectual Property?', WIPO, www.wipo.int/about-ip/en/

²⁹ 'What is Intellectual Property?', WIPO, www.wipo.int/about-ip/en/

³⁰ Cap C28 Laws of the Federation of Nigeria (LFN) 2004

³¹ Section 1(b), Nigerian Copyright Act Cap C28 LFN 2004



“A literary, musical or artistic work shall not be eligible for copyright unless-

- (a) Sufficient effort has been expended on making that work to give it an original character
- (b) 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.”³²

Essentially, copyright grants record labels and artistes exclusive rights to do certain things in relation to protected works. This is provided for in section 6 of the Act which provides in relation to musical works the exclusive right to:

- (i) Reproduce the work in any material form
- (ii) Publish the work
- (iii) Perform the work in public
- (iv) Produce, reproduce, perform or publish any translation of the work
- (v) Make any cinematograph film or record in respect of the work
- (vi) Distribute to the public, for commercial purposes, copies of the work by way of rental, lease, hire, loan or similar arrangement.
- (vii) Broadcast or communicate the work to the public by a loudspeaker or any other similar devices
- (viii) Make any adaptation of the work...³³

³² Section 2 (a)(b), Nigerian Copyright Act Cap C28 LFN 2004

³³ Section 6, Nigerian Copyright Act Cap C28 LFN 2004



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Perhaps the most interesting thing about copyright protection is that it is automatic. This means that you do not have to register your work to access copyright protection. However to cover all your bases and for the sake of documentation and enforcement of copyright through the courts, you may register your work on www.eregistration.copyright.gov.ng, NCC's electronic portal for copyright-registration.

Trademark

Trademarks are another form of protection that is vital for artistes and record labels. A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises³⁴. A trademark can be a word, letter, label, numeral, color, signature, device, or any combination of words, letters, labels and, signatures that identify and distinguish the source of the goods of one party from those of others in the course of trade.³⁵

Trademarks can easily be registered in Nigeria through accredited agents at the Trademarks, Patent and Design Registry, Commerclaw Law Department, Ministry of Industry, Trade and Investment, FCT Abuja. The Registry maintains an e-portal as well at www.iponigeria.com. Once registered, the registration subsists for a period of seven years from the date of application, subject to renewal for a fourteen-year period.

Trademark registration protects the income that record labels and artistes stand to gain from branding and merchandizing. The artiste's stage name can be trademarked across several classes giving exclusive right to use the trademark for production and

³⁴ 'What is Intellectual Property?', WIPO, www.wipo.int/about-ip/en/

³⁵ 'Trademarks in Nigeria: Two Minutes Lesson', NIPLW, <https://nlipw.com/trademarks-in-nigeria-two-minute-lesson/>



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merchandising in that class. For instance, the record label can register the name of the record label, the logo, and their tagline under the Trademark Act in Nigeria.

By virtue of this trademark registration, artistes can then lease, license, or sell the trademark to other parties to undertake merchandizing and other ventures using their trademarks or undertake to exploit the commercial value inherent in trademarks through other ways.

Trademarks give the artiste a unique opportunity to leverage on his or her goodwill, media popularity, and brand. Rihanna is a notable case study. The international singer from Barbados took steps as far back as 2004 to trademark her surname, 'Fenty' for use for an array of products across cosmetics, clothing, lingerie, swimwear, and skincare & computer skincare.³⁶ Fast forward to 2017 and the rewards of her timely decision to trademark her surname are becoming visible with Quartz reporting that Rihanna's new Fenty Beauty line valued for its diverse color range has become a hit particularly among women of colour.³⁷

Registering a trademark also gives the owner the opportunity to institute an action for infringements. But without trademark registration, an artiste or record label is still qualified to institute a legal action for alleged trademark infringement since trademark by nature is borne out of use. Therefore, an unregistered trademark owner institute an action for passing off under the common law of tort.

³⁶ Rihanna trademarks her name', *Independent*, www.independent.co.uk/life-style/fashion/news/rihanna-trademarks-her-name-9656814.html

³⁷ 'Rihanna's Makeup is a wild success because it was actually made for dark-skinned women', *QZ*, <https://qz.com/1077781/rihannas-makeup-is-a-wild-success-because-it-was-actually-made-for-dark-skinned-women/>



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Leveraging on Intellectual Property to Make the Music Pay

Leveraging on intellectual property must essentially begin with protection. Having shown the relevant IP laws that apply in the music industry, , let's look at steps that can be taken to ensure continuous exploitation of intellectual property for growth and expansion of the Nigerian music industry.

Document everything.

To properly take advantage of IP, you must ensure that there are no gray areas. Ensure that everything is documented. From recording, performances, work-for-hire agreements, to license agreements, distribution agreements, and confidentiality agreements, put everything in black and white. Consult with your lawyer at every point. If you don't have any, get a competent one before you sign or agree to anything, not after the damage has been done. By documenting everything, you and your team know what rights you are giving the other party at every point and there is always a paper trail to follow.

Do an IP valuation.

Established artistes and record labels often lose out on a lot of revenue because they do not understand the value of the body of work they are sitting on. This is often so because many record labels and artistes go into the negotiation table without numbers and statistics that point to the value of the intellectual property they have.



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And this is why IP valuation is critical for players in the music industry. The WIPO study module defines IP valuation as a process to determine the monetary value of subject IP. Before valuation is done, it is essential to note some key requirements:

1. The IP asset must be subject to specific identification and a recognizable description;
2. There should be some tangible evidence or manifestation of the existence of the IP asset; (e.g. a contract, a license, a registration document, and set of procedural documents etc);
3. It should be capable of being legally enforced and legally transferred; and
4. It should be subject to being destroyed or to termination at an identifiable time (or time period) or as the result of an identifiable event.³⁸

The above are just a few of the factors and underlying issues that are considered for a successful valuation of IP assets.

The artiste's catalogue can be assessed to determine its present market value, revenue generated in the past, and income likely to be generated in the future. With proper IP valuation, the next time you walk into a negotiation, you know what cards you hold and their estimated value.

Use IP to get financing.

When most people look at their financing options, they take stock of only tangible assets like real estates and equipment. Things are gradually evolving with intangible assets

³⁸ 'The Value of Intellectual Property, Intangible Assets and Goodwill', wipo, http://www.wipo.int/sme/en/documents/value_ip_intangible_assets_fulltext.html



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under which intellectual-property works fall. The WIPO Magazine in analyzing the rising trend of IP financing in its June 2008 issue reports that “[t]he collateralization of IP can also increase the amount of available credit in cases where borrowers pledge their patents, trademarks or copyrighted works, the collateral pool increases in value and the potential for a successful loan is increased”³⁹ Nigerian financial-services providers should start looking at IP as a collateral as well. Though not a Nigerian story, the WIPO magazine noted key examples of IP financing such as David Bowie’s story who in 1997 issued 10-year, asset-backed bonds on the basis of future royalties on publishing rights and master recordings from 25 pre-recorded albums and raised 55 million dollars. The purchaser of the bonds gained the right to receive future royalties from Bowie’s albums until the principal plus 8% annual interest was repaid. It also references Nickolas Ashford and Valerie Simpson songwriters and producers of hit songs including ‘Ain’t NO Mountain High Enough’ used the copyright on 247 of their songs as assets to back bonds, raising 25 million dollars⁴⁰

With such precedents, it is very clear that there is great potential for financing backed by IP assets. But a vital caution. The uncertainty and volatility that surrounds the music business and the general lack of understanding of its inner workings are challenges that the financial sector would have to prepare for if this IP-financing practice is going to become widespread and appreciated, particularly in the Nigerian music industry which is largely unregulated with little or no clear-cut industry standards. It is hoped that the Nigerian music industry and financial industry would evolve to a point where established

³⁹ ‘Intellectual Property Financing – An introduction’, WIPO Magazine, September 2008, http://www.wipo.int/wipo_magazine/en/2008/05/article_0001.html

⁴⁰ ‘Intellectual Property Financing – An introduction’, WIPO Magazine, September 2008, http://www.wipo.int/wipo_magazine/en/2008/05/article_0001.html



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artistes can leverage on their IP to access financing opportunities for growth and expansion within and outside the music industry.

Brand everything.

As an artiste or record label, protecting your works under the enabling intellectual-property legal framework is only the first step in ensuring that it is successfully exploited. Artistes and record labels that want to fully get the attendant benefits of their intellectual property must actively put what they have protected to use and start building their brands.

A brand has been described as “a combination of tangible and intangible elements such as a trademark, design, logo and trade dress and the concept, image and reputation which those elements transmit with respect to specified products and services”⁴¹

This is why intellectual property is a powerful tool for creating value for businesses, including music business as artistes and record labels grow and expand their businesses. Helen Lom, Director-Advisor (Brand Development), Sector of Trademarks, Industrial Designs and Geographical Indications, WIPO emphasized this point when she noted that “[t]rademarks, industrial designs and other objects of intellectual property protection can be powerful tools for creating value for your business. However, they will not live up to those expectations if they sit passively on some register. They must be used and used creatively, pro-actively and with imagination. They must be transformed from mere legal concepts and enforceable rights into commercially valuable assets, and that can be

⁴¹ ‘Branding: How to Use Intellectual Property to Create Value for Your Business?’, www.wipo.int/sme/en/documents/branding_fulltext.html



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achieved primarily by putting them to work as tools for creating and developing a brand value for your business⁴²

This means that any artiste or record label that wants to successfully transit from mere IP protection to commercial exploitation must learn to profit from the name, popularity, and goodwill accrued in the entertainment business.

Monetizing IP

The end goal of every player in the music industry is profit—well, most players in the industry. Before we end this piece, we *briefly* look at three IP monetization strategies that can transform random light-bulb moments to dollar signs for artistes and record labels—licensing, merchandizing, and outright sale.

Licensing

Licensing is often the path more travelled when it comes to monetizing intellectual property. It allows the rights owner (licensor) to grant another (licensee) the right to use the intellectual property for a determined financial consideration (royalty) and period of time. Licensing is very broad with record labels and artistes having the opportunity to license music for use in adverts, games, TV shows, and other ventures.

The terms of a licensing agreement must be clear. It must state whether the licensing is exclusive or nonexclusive, the time frame for the license, geographical limitations, and any

⁴² 'Branding: How to Use Intellectual Property to Create Value for Your Business?'
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due-diligence provisions such as what expected of the licensee within the duration of the license.

Merchandizing

This refers to leveraging on established goodwill and popularity to produce goods and services that consumers can relate with and patronize.

Outright Sale

This is a complete transfer of all your rights to another individual or corporate entity. To be valid, sale must be in writing with all the terms specifically drawn out.

Conclusion

Today, it's no longer headline news that the Nigerian music industry has immense potentials. But if players in the music industry and stakeholders work together to transform the industry to a world-class music industry in every respect, this will make frontpage global news. Intellectual property is critical here.

When rightly deployed, intellectual property can indeed make the music not only play across the world but also pay across board—from the artistes to the songwriters; the producers to the directors; the marketers to the sellers, whether conventional or digital distribution model.

If Nigerian music must play, we all have a role to play to *make the music pay*.⁴³

⁴³ *Make the Music Play* is COSON's slogan.



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