



# Copyright Infringement in Nigerian Music Industry:

## Salient Regulatory and Commercial Issues

Thought Leadership | by Yewande Obayomi

October 2017



y.obayomi@lelawlegal.com

*“Michael Collins (aka Don Jazzy) accuses ex record label mate, Oluwatobi Wande Ojosipe (aka Wande Coal) of stealing his song, Baby Face” – November 5 2013*

*“Ahmedu Augustine Obiabo (aka Black Face) make allegations of copyright infringement against his former bandmate, Innocent Ujah Idibia (aka Tuface) of recording his iconic 'African Queen' song without his permission” – 2005*

*“G-Worldwide acts, Umaren Akanimoh Felix (aka Sugarboy) and Anidugbe Oluwatobiloba Daniel (aka Kiss Daniel) to be sued for alleged copyright infringement after the release of their single 'Kalamity" – March 2017*



owner; in other words, copyright infringement is any unauthorized use of copyrighted material. Under the Nigerian law, copyright infringement exposes the party in breach to damages. Music copyright infringement or intellectual property abuse in general, is not a Nigerian phenomenon; it is a crime that is frowned at all over the world.

Copyright law is governed in Nigeria by the **Copyright Act, Act Cap. C28, LFN 2004 (CA)**. CA largely provides the legal framework for administration, regulation, and enforcement of copyright in Nigeria, and established the Nigerian Copyright Commission (**NCC**) as the regulatory agency.

By **section 1(1) CA**, literary works, musical works, artistic works, cinematograph works, sound recording and broadcasts are eligible for copyright in Nigeria. Consequently, as an artiste you have copyright on your original creation as soon as it is created and exists in a fixed form i.e. your work was written or recorded on any medium. There is no requirement to register for copyright. For example, copyright in musical work and/or sound recording enures automatically, once a piece of music is created and recorded (e.g. on video, tape or compact disc (CD) or by simply writing down the notation of a score). Only the artiste can claim copyright unless he grants rights to others in a written agreement (such as to the artiste's publishing or record label). It is imperative to know that the existence of an idea or concept by an artiste does not give rise to a copyright.

**Section 20(2)(a-d) CA** states that “any person who sells ... distributes... has in his possession other than for his private or domestic use... has in his possession, sells, lets for hire or

### Introduction

The common threads in these headlines are accusations and counter-accusations regarding ownership of songs in the music industry in Nigeria. Artistes generally get upset when they find out their work has been used or reproduced without their permission. How can artistes avoid this occurrence; prevent others from using their works without permission? What is required is copyright protection. Copyright is a type of intellectual property right that protects artistes' work (i.e. from unlawful use of their original material). Copyright laws provide artistes with exclusive rights to their works. Copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the express permission of the copyright



distribution for the purposes of trade... would be an infringing copy is unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was an infringing copy... [is] guilty of an offence under this Act and liable on conviction to a fine of **N100** for every copy dealt with in contravention of this section or to a term of imprisonment not exceeding two years or in the case of an individual to both such fine and imprisonment.” **Section 20(3) CA** further states that “any person who, without the consent of the owner, distributes, in public for commercial purposes, copies of a work in which copyright subsists... by way of rental, lease, hire, loan or similar arrangement, is guilty of an offence under this Act and liable upon conviction to a fine of **N100** for every copy dealt with or imprisonment for six months or to both such fine and imprisonment.”

The significant point in **section 20(2) (a-d) CA** is that the onus of proof of innocence is on the accused person which is a deflection from the general legal burden on the prosecution to prove the offence against the accused person beyond reasonable doubt. Whereas **section 20(3) CA**, is akin to a strict liability offence to the extent that the accused does not have the consent of the owner to engage in the specified transactions regarding those works.

In Nigeria, **Copyright Society of Nigeria (COSON)** is the sole **Collective Management Organization (CMO)** for musical works and sound recordings.<sup>1</sup>

**COSON** is a company limited by guarantee under the laws of Nigeria and approved by **NCC** to operate as **CMO** for musical works and sound recordings in Nigeria, pursuant to the **CA** and the **Copyright (Collective Management Organization) Regulations 2007**. These enabling provisions permits **COSON** to license the public and commercial use of musical works and sound recordings. **COSON** in trying to curb the menace of copyright infringement in Nigeria has increased public awareness on music copyright. It has campaigned on the need for

compliance with music copyright regulations. Its campaign has yielded tremendous results in the payment of over **N250 million**<sup>2</sup> as royalties to musicians within a decade of its operations.

Piracy thrives in the music industry as counterfeit works are produced and openly distributed on a daily basis. Often-times, artistes depend on income from road shows/concerts as against the meagre amount of royalty from CD sales. **NCC** through its Enforcement Department (**ED**) has tirelessly tried to clamp down on piracy with its combative measures. Campaigns such as **Strategic Actions against Piracy (STRAP)** and the **Copyright Litigation Alternative Mediation Programme (CLAMP)** were launched in 2005 in ensuring copyright protection and effective anti-piracy measures in Nigeria.<sup>3</sup>



Also, **NCC** has taken actions against person(s) accused of selling or being in possession of pirated sound recordings, sale of illegal CDs and DVDs containing local and foreign music. For example, in **NCC v. Donatus Daniel Madu, Suit No. FHC/L/40C/15**, **NCC v. Innocent Chukwu Suit No FHC/ABJ/CR/122/14** and **NCC v. Eze Igwe Suit No FHC/ABJ/CR/93/12**, the Defendants were all charged with optical disc piracy, DVD piracy and sale and possession of pirated optical discs under **section 20(2) CA**. They were all convicted and

sentenced to terms of imprisonment or an option of fine respectively.

Copyright infringement was exemplified in **African Songs Ltd (ASL) v. Sunny Adeniyi (Unreported Suit No. LD/1300/74)** a matter filed in 1975 before **Dosunmu, J.** of the Lagos High Court. The facts were that in 1970, King Sunny Ade (KSA) entered into a harsh and onerous contract with the Plaintiff. According to Professor Sagay, some of the clauses in the contract assigned to the Plaintiff “full copyright of all the compositions and recordings of the Defendant” and “sole right of production, reproduction, and use and performance of the Defendant’s works throughout the world.”<sup>4</sup> A dispute arose between parties; the Court ordered ASL to return KSA’s master tapes. However before the master tape could be returned, the Chairman of ASL, Chief Bolarinwa Abioro died.

In a bid to retrieve his master tapes, KSA in 1997 dragged the company before the FHC in Lagos. KSA claimed **N1 billion** damages jointly and severally against the Defendants and prayed the Court to order a return of his master tapes as well as restrain the Defendants from infringing on his musical works. ASL contended that the contract KSA signed does not include returning the master tapes to him. This defence was dismissed as unmeritorious and the Court ordered ASL to pay KSA the sum of **N500 million**.

### Challenges of NCC

**NCC** has been beset by a myriad of challenges in its fight against piracy in Nigeria. Such include repeated mobility/transfer of officials, corruption, poor financing and resourcing, harassment from pirates and Information and Communication Technology (ICT).

The **ED** of **NCC** need mobile vehicles that officers will use to go out on raids, otherwise carrying out effective raids in different locations will be difficult. Sadly, many officials of **NCC** who carry out raids on infringed works are corrupt; they are often tempted and in many cases, collect bribes from the infringers (pirates) and deliberately refuse to fish them out during their regular raids. Also, the **NCC** needs sufficient funds to operate

<sup>1</sup> In Suit No. FHC/L/CS/377/2013 Musical Copyright Society of Nigeria (MCSN) v. COSON, the Plaintiff sought to restrain COSON from parading itself as Nigeria’s sole CMO for musical works and sound recording. The case was however struck out by Abang, J due to MCSN’s failure to fulfil the conditions under Order 34, Rules 3&4, Federal High Court Rules 2009 - which requires that leave of Court be obtained in any application for judicial review.

<sup>2</sup> <http://www.cosonng.com/crusade-against-music-copyright-infringement-in-nigeria-a-legitimate-holy-war-that-must-be-won-victor-nwokocho/>

<sup>3</sup> STRAP activities has resulted in arrest of about 370 pirates, seizures of 8,346,815 pirated works, public destruction of seized counterfeit products worth **N1,263,000,000** billion etc. between May 2005 and May 2007. [http://www.wipo.int/wipo\\_magazine/en/2008/05/article\\_0009.html](http://www.wipo.int/wipo_magazine/en/2008/05/article_0009.html).

<sup>4</sup> I.E. Sagay, Nigerian Law of Contract, page 294 (1985, Sweet & Maxwell)





and carry out its responsibilities effectively. Lack of funds hinders **NCC's** optimum performance. There have been reports of harassment from pirates when officials of **NCC** embark on their regular raids.<sup>5</sup> These pirates are sometimes aggressive and heavily armed; as such officials could fear for their lives and refuse to go on raid operations.

ICT including the internet presents its own set of challenges. The internet is a global market; cross border piracy take place on the internet every day. Copyrighted works are uploaded on the internet regularly; millions download and even sell the works. Apart from resourcing **NCC** with requisite equipment, it is imperative that **NCC** officials are periodically trained for effective monitoring and enforcement actions using advanced ICT tools.

#### Some Frequently Asked Questions (FAQs)

**What is the duration of a Copyright?:** Paragraph 1 of First Schedule **CA** provides that literary, musical or artistic works other than photographs expires seventy (70) years after the end of the year in which the author dies; in the case of government or a body corporate, seventy (70) years after the end of the year in which the work was first published. In sound recordings, it lasts for fifty (50) years after the end of the year in which the recording was made.

**What are the benefits of Copyright protection?:** It ensures that the owner of a

piece of work has the sole right to reproduce, publish, record, broadcast, sell or rent copies of the copyrighted work in any material form to the public. Moral rights ensures that the work of the artiste is recognized and not derogatory when used or reproduced. Economic right allows for exploitation of the work for commercial benefits. These can be distribution rights, production rights, performing rights, recording rights and broadcast and communication rights.

**Is COSON licence important?:** It is required by law to seek the permission from the owner of the music and get a music copyright license before you can use or perform his/her music in a public or commercial environment. Artistes are entitled to compensations when their music are performed or used in a public or commercial space. With the **COSON** licence, music users in public or commercial space do not need to negotiate with every individual song writer, composer, performer and publisher across the country for every piece of music they intend to use.

Licence fees paid by the various music users are distributed as royalties to the right owners (songwriters, composers, publishers, performers and owners of sound recordings). **COSON** license can be obtained by filling the **Get License** form on their website and upon payment of prescribed fees.

**What are the civil remedies available?:** Any person who has a copyright in any of the

specified items under the **CA** reserves the right to seek redress at the **FHC** for copyright infringement. **Section 46 CA** confers exclusive jurisdiction on **FHC** for trial of offences listed under the Act. The artist can seek damages; or seek for an injunction restraining the person from infringing or continuing his acts of infringement.

The owner of an infringed copyright has the right if the Court orders, under an *ex-parte* application order to go into the premises where the infringement has taken place to take possession of the infringing copy with the assistance of a police officer not below the rank of an Assistant Superintendent of Police.<sup>6</sup>

#### Conclusion

Copyright infringement is rampant in Nigeria today because artistes work hard to create the works but are confronted with the challenges of fully reaping and enjoy maximum reward for copyrights over their works. Artistes are enjoined to register their works with **NCC**, seek adequate remuneration for use of their works and compensation for infringement of their copyrights. The causative effect of this is that artistes will get more economic value for their work as well as increase confidence in the Nigerian's intellectual property market.

More importantly, the financial penalties on copyright infringement provided under **sections 20(2) (a-c) and 20(3) CA** are not punitive enough to have maximum deterrent effect against prospective pirates. These laws need to be reviewed, including the financial penalty provisions. For artistes whose copyrights have been infringed upon, they may demand that the person(s) infringing their copyright stop the infringement, deliver all original and copies of the infringed work to them and pay adequate compensation for unauthorized use of their work. They may also enter into an agreement with them for use of their work in future.

For example, it was reported that some Nigerian artistes entered into agreement with 'erstwhile' music pirates in Alaba International Market Ojo (a market that deals

<sup>5</sup> <https://www.vanguardngr.com/2016/09/ncc-officials-attacked-onitsha-dismantling-n20m-illegal-cable/>

<sup>6</sup> Section 25 CA

<sup>7</sup> See Henry Ojelu, 'Big Piracy Business In Alaba Market', *PM News*, 2013/03/11: <https://www.pmnewsnigeria.com/2013/03/11/big-piracy-business-in-alaba-market/>

largely in the sale, creation, duplication and distribution of music CDs and DVDs) to sell their album rights.<sup>7</sup> The arrangement is such that the artistes are paid a reasonable amount of money which then allows the music former pirates to market, duplicate and distribute their work.<sup>8</sup>

With increasing awareness in the music industry and the general public at large about copyright infringement, all hands should be on deck to support the war against copyright breaches. The Nigerian music industry is growing significantly everyday; this is evident in works being produced regularly by our talented musicians and enjoyed all over the world. The only way to sustain this creativity is to ensure that their works are well-protected, and that they enjoy the fruit of their labour even when they retire from active musical engagements. Renewed regulatory and industry collaborative initiatives are called for in this regard.

---

<sup>8</sup> According to Ojelu's article: "at the movie and music sections of the market, thousands of movies and music CDs are usually already on sale even before their official release. ... the constant raiding and campaigns in the market against pirated home videos have had very little effect as piracy still thrives in the market. The situation has got so bad that even record label owners now come to the market to make distribution deals. Top music stars ... were recently reported to have made bargains with some known music pirates in the market to sell off outright the right to some of their albums. The move is believed to be a clever attempt to put the responsibility of marketing their album on the pirates since they determine which CD and DVD sell in the market. A businessman in this sort of business in the market told our reporter that every reasonable artist who wants to succeed must come to negotiate with them. ...: 'if an artist has a recorded album and wants it marketed, all he needs do is come to us, because we are the market. What we offer to pay depends on [the] artist...' A new dimension was recently added to the piracy business as two persons were arrested in the market for allegedly pirating DSTV signals. The suspects were arrested for importing, selling, and distributing devices capable of illegally accessing DSTV's broadcast signals to members of the public... The suspects are believed to have made huge sums of money selling the decoders which transmits all DSTV channel at no cost to the user. As the piracy business continues to thrive in Alaba market, many have called for the closure of the market. Recently, the chairman of [COSON] Mr. Tony Okoroji added his voice when he advised government to seal the market. Okoroji opined that since Alaba market has become a haven for piracy, it makes sense to close the market. The traders in the market however disagree with the idea, saying that other genuine businesses go on in the market and that it will be injustice to close a market because of a few individuals."

#### LeLaw Disclaimer:

Thank you for reading this article. Although we hope you find it informative, please note that same is not legal advice and must not be construed as such. However, if you have any enquiries, please contact the author, Yewande Obayomi at [y.obayomi@lelawlegal.com](mailto:y.obayomi@lelawlegal.com). OR [info@lelawlegal.com](mailto:info@lelawlegal.com)