



## COSON V. MCSN: LET THE MUSIC PAY WHO EXACTLY?

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Copyright is an exclusive right given to the creator of original contents. It empowers content owners to determine how their content can be used by third parties and fees to be paid for the usage of such content. Using copyright without authorisation from the copyright owner will amount to copyright infringement: **section 19 Nigerian Copyright Act (NCA), Cap. C28 Laws of the Federation (LFN), 2004**. In the famous case of ***African Songs Ltd v. Sunday Adeniyi Adeyeye (aka King Sunny Ade (KSA)) Suit No: LD/1300/74***, the Defendants were found guilty of the continuing illegal reproduction of KSA's works, with KSA being awarded N500 million compensation for copyright infringement in 2017.

Collective Management Organisations/ Collective Societies (CMO) are agents of copyright owners, involved in licensing and collecting license fees on behalf of authors, for remittance to copyright holders as royalties: **section 39(1) NCA**. They represent the interests of musical artistes, producers, publishers, record-labels, authors and performers by guaranteeing users pay for copyright usage. For example, how many malls, radio stations, hotels etc. will *David* have to visit to enforce his right and demand



royalty for playing his songs? CMOs help administer copyright of people by granting licenses and ensuring payment is made for copyright usage.

Currently, the Musical Copyright Society of Nigeria (MCSN) and Copyright Society of Nigeria (COSON) - COSON's license was recently suspended - are the only CMOs in the Nigerian Music Industry (NMI). Representation by a CMO requires that the artiste is registered with a CMO, thus granting the CMO powers to act on his behalf. They operate using a fee schedule, for instance *blanket licences*, which allows users to make use of the entire contents represented by the CMO for a prescribed period. This article seeks to highlight the rights and duties of persons using music to promote business.

**CMOs in the NMI:  
The Journey So Far**

*Licensing of CMOs*

The **Nigerian Copyright Commission (NCC)** has been empowered by the **NCA** to grant licenses to CMOs to operate and act on behalf of copyright owners. In 2009, MCSN, COSON and Wireless Application Service Providers Association of Nigeria Ltd (WASP) all applied to be CMOs for the NMI. However the NCC approved only COSON's application as being the only entity which complied with statutory requirements.

MCSN continued carrying out other ancillary functions by protecting the copyright of artistes under its repertoire, including filing plethora of cases against infringers. For instance in

**MCSN v. Adeokin Records [2007] 13 NWLR (Pt. 1052), 616**, MCSN instituted an action against the Defendants for copyright infringement of the song "Ojumo Re", which MCSN claimed it was the owner, assignee and exclusive licensee on behalf of its member. However, the case was dismissed on grounds that MCSN was not a CMO and thus lacked the *locus standi*.

*MCSN's Approval as a CMO*

However, in the landmark decision of **MCSN v. Compact Disc Technology Ltd & 2 Ors. 30 (2018) LPELR-46353(SC)**, the Supreme Court (SC) had to decide whether the Appellant had the *locus standi*, and if it required a license to operate as a CMO. The SC in reversing the decision of the Court of Appeal(CA), held that by virtue of the Appellant being the owner, assignee and absolute licensee of the copyright in the works in issue, it had been vested with the requisite *locus standi* to institute the action.

After several petitions by MCSN,

Abubakar Malami, the Attorney General of the Federation issued a directive mandating the approval of MCSN as a CMO, having met all the criteria under **Article 2 Copyright (Collective Management Organisations) Regulations 2007 (CMO Regulation)**. Contending with this development, COSON filed an action **COSON v. MCSN & NCC Suit No: FHC/L/CS/1259/2017** praying the FHC to withdraw the approval. The suit was dismissed and MCSN's appointment was validated.

*COSON's License is Suspended*

Subsequently, COSON's operating license was revoked by NCC, following the lingering factional dispute in the governing board of COSON as to legitimate leadership. According to reports, part of this resulted from allegations of financial mismanagement against COSON by some influential artistes under COSON's repertoire.

As a result NCC issued a directive mandating COSON to, amongst





other things, hold an Annual General Meeting to elect directors. This directive was ignored by COSON which led NCC to revoke its license under **Article 3(i) CMO Regulation**.

### **Current Position on CMOs in Nigeria**

As at the date of this article, it would appear that COSON does not have the right to demand for royalties from any person during its suspension. Incidentally in **NCC v. Tony Okoroji & Ors. Charge No: FHC/L/338C/18**, the NCC also proceeded against key personnel of COSON for demanding royalties with its suspended as a CMO an action punishable under **section 39 NCA**. The crux of the matter is *lis pendens* - thus no action can be taken to disrupt the *status quo*. COSON cannot demand royalties until its suspension is lifted either by the NCC or through the final judgment of court of competent jurisdiction.

COSON's suspension, if lifted, would result in the existence of two CMOs (MCSN and COSON). While Nigeria has always operated a single CMO system (MCSN and COSON at some point operated simultaneously for about fourteen (14) months), the law does not prohibit a multiple CMO system.

The **CMO Regulation** which guides the operations of CMOs in Nigeria arguably contemplates more than a single CMO; the reality is that there is currently no prescriptive provision for only one CMO in Nigeria.

Accordingly, belonging to a CMO is optional and artistes decide who they want representing them; thus MCSN and COSON (if it successfully scales its legal hurdles) can only collectively manage artistes respectively registered under them. It is therefore advisable that before making payments to CMOs for copyright usage, "users" request for the artistes in the repertoire of the collecting society (whether MCSN or COSON). This is to ensure dues are paid to the right organisation, the right fee is charged and double payments are avoided.

### **Comparison with other Jurisdictions**

In other jurisdictions like America, their music industry operates a multiple CMO (also known as Performing Rights Organisations (PRO)) system, with organisations such as BMI, ASCAP, Pro Music Rights (PMR), Global Music Rights (GMR) etc. The CMOs operate by managing the copyright of their

registered artiste members. The major challenge with a multi CMO system is the issues of double payments.

On a positive note, a multiple CMO system would promote accountability on the part of the CMOs. Over the years major drawbacks of CMOs include abuse of powers; non-transparent operations; monopolistic behaviour to create profit for themselves; mismanagement of artiste royalties; selling expensive blanket licenses etc. For instance in 2009 the CEO of an Insight Firm in America, accused ASCAP for allegedly only remitting royalties to artistes whose music are on one of the US top 200 grossing songs of the year.

Also just recently, according to news reports, *TuFace Idibia* petitioned the NCC against COSON leadership over alleged mismanagement of funds and corruption. A CMO, being a company limited by guarantee, is allowed to recover expenses incurred in the recovery of royalties. *Tuface's* allegations related to 'bogus' fee expenses for security agents, legal fees etc. A multiple CMO system would balance the bargaining powers of

both the copyright user and the copyright owner by setting reasonable fees, promote competition among CMOs, etc.

### **Conclusion**

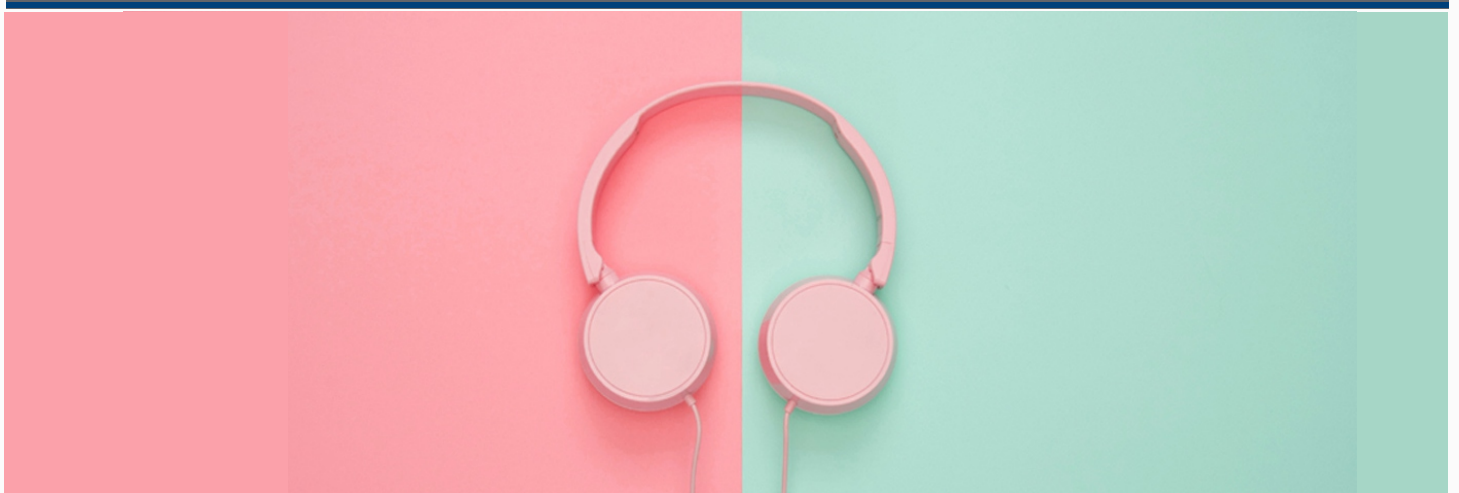
Clearly, the CMO system is not without flaws and it is fraught with many challenges. The concept of royalties payment by CMOs is one that cannot be mathematically ascertained, as it is impossible to determine the exact number of times artiste's songs were played *vis-à-vis* another artiste to determine who gets a higher percentage. The process is based

on fair assumptions.

However, certain mechanisms can be put in place to ensure transparency such as encouraging a comprehensive database of artistes from the combined repertoires of CMOs, display of license fees for the various categories of artiste, public audits, transparent disbursement of funds etc. A recent example in America was the consent decree issued pursuant to agreement between ASCAP, BMI and the US Department of Justice to ensure that PROs were bound by certain rules, control abuse of power and ensuring fair access to PROs'

musical repertoire.

The purpose of CMOs is to ensure artiste's rights are protected and no one exploits their works without proper compensation. Most artistes, despite airplay or other usage of their works, have nothing to show for it while the infringers enjoy the benefit it brings to their businesses. A multiple CMO system may be just what NMI needs to provide competition amongst CMOs and keep them on their toes. In the end, if we say let 'the music play', the music must in turn pay the artistes.



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