



SOUNDS AND SONGS:

EVALUATING THE BALANCE OF RIGHTS IN ARTISTES AND RECORD LABEL ARRANGEMENTS



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In recent times, record labels (the major recruiter of music artistes), have shifted from the traditional record deals that they oblige prospective signee artistes, to more expansive types of contracts such as the multiple rights deal - commonly referred to as the “360 deal”. Major record labels seem to fancy these sort of artiste arrangements, because they are lower risk than traditional contracts or artiste’ development deals; so much so that they urge artistes previously signed to traditional arrangements, to consider renegotiating their contracts to, multiple rights contracts.¹

A 360 deal can be expressed in different variations like a 90 deal, a 180 deal or a 270 deal; however, these do not have standard definitions, and are thus in practice, used loosely. Although the content of the 360 deal may vary from artiste to artiste, a basic definition for this arrangement is that it is a kind of artiste-record label agreement that



¹ Kevin Cornell, ‘A Look At 360 Agreements: “Multiple Rights Deals” [Part 1]’ Tunecore, 06.07.2021: <https://www.tunecore.com/blog/2017/07/look-360-agreements-multiple-rights-deals-part-1.html> (accessed 28.09.2021).



entitles such record label to participate largely in the profits realised from artiste's sales, music publishing income, touring income and all other profits due to the artiste. Simply put, it entitles the label to a percentage of all earnings of such artiste.

The enigma to these agreements becomes how balanced they can be between the artiste and their labels.² Several artistes including but not limited to *Taylor Swift*, *The Beatles* and *Prince* have had disputes with their various labels regarding proprietorship of their original work - colloquially referred to as "masters" - after signing elaborate agreements with their labels.

In Nigeria, artistes seeking to protect their positions or advance their interests, have disputed with their labels on the impossibility or otherwise of the deals they sign. These contracts have been seen to

affect the authorship and by extension, the copyright of their songs, which Nigeria's **Copyright Act (CA)**³ protects against infringement.⁴

This article examines the rights and benefits that ownership bestows in music licensing, the rights of artistes signed to these restrictive arrangements with record labels, measures the gains of the record labels *vis a vis* artistes, and discussed alternatives to the currently pervasive traditional agreements. It concludes with the analysis of some failures of certain terms to these 'popular' traditional agreements and proffers possible solutions in remedying the failures, balancing the benefits of artistes and record labels.

The Nature of Copyright Ownership in Musical Records

The **CA** provided for different categories of intellectual property

that can qualify for the protection of a copyright. The categories include literary work, musical works, artistic works, cinematographic works, sound recordings and broadcasts.⁵ It is important to this discuss, to distinguish between sound recordings and musical works, relative to their respective features. Sound recordings peculiarly relate to sound and not especially to the complex nature of music composition that is made up of beats, song lyrics and harmonies. Sound recordings is the fixation of any kind of sound however basic, which may skip the rhythm quality of musical works.

Musical works have constantly remained the most generic of all eligible works because they directly impact people, the ultimate consumers of copyrights.⁶ The originality and fixation in rhythm of the musical works when combined with the song's lyrics makes up for such copyright protection. A musical work therefore has two classifications: the final musical work with lyrics, harmonies and vocals; and the instrumentals without vocals. Both of these qualify for copyright protection. This should not be confused however with song lyrics, because that falls within, and is protected under the grouping for literary works.

Another point of differentiation is between the composer of music and the artiste associated with such (who delivers the song lyrics, harmonies and vocals). Although we are yet to witness Nigerian judicial distinction of these mediums; a Ghanaian court decided, in **CFA v. Archibong**,⁷ that copyright rested in the composer of the music.⁸ However, in the

² Sophie Dodd, '7 Artists Who Have Fought for Ownership of Their Music' *People.com*, 06.07.2019: <https://people.com/music/taylor-swift-beatles-prince-artists-fight-ownership-music/> (last assessed 28:09:2021)

³ Cap. C28, *Laws of the Federation of Nigeria (LFN) 2004*.

⁴ Section 16(1) CA.

⁵ Section 1(1) CA.

⁶ S. Sylvester et al, '*Intellectual Property Law and Practice in Nigeria*', (2016, Jos University Press), p. 55.

⁷ J.O. Asein, '*The Nigerian Copyright Act*', Nigerian Copyright Council, (1984), p. 14.

⁸ *Ibid*.

United Kingdom,⁹ the copyright rests in the artiste who is associated with the song; but there is recognition that those who contributed secondary activities in the making of a musical work qualify as co-authors of the copyright.¹⁰

It is noteworthy that in Nigeria, the ownership of copyright is not automatic. copyright ownership is conferred on every work eligible for copyright of which the author or in a joint authorship, any of the authors is a qualified person; a Nigerian citizen or one domiciled in Nigeria or a body corporate incorporated under the laws of Nigeria.¹¹ In *MCSN Ltd/Gte v. CDT Limited*,¹² Peter-Odili, JSC defined the owner of a copyright as one who held exclusive rights to the copyrighted material. Ownership rights are general, permanent and heritable.

Section 6 CA sets out the exclusive rights of the owners of a copyright to include the right to reproduce, publish, perform, distribute, make any cinematographic film based on, broadcast, adapt and translate the musical work. It basically confers exclusive rights in that copyright on the holder of the copyright. It is important to note that the author of the copyright is the owner at first instance but may decide to transmit his rights in the work to another individual or body corporate.

Once a musical work becomes permanent in a definite medium, its utility becomes diverse hence there is severe protection for its 'masters'. The master recording of a song is the official recording of the song, sound or performance; it is the source from which



further copies of the work are made. Owning the masters to a song allows you to maximise all the profit and sales accruing from the work, especially when it becomes very popular or 'goes mainstream'. With the masters, the owner can license the recording to be used for TV, film, sampling or advertising, etc.¹³

Although there are numerous advantages to owning one's masters, it is unusual for non-independent artistes (artistes signed to record labels), to automatically own their masters. Considering the principle of 'secondary activities' for joint authorship in *Hadley v. Kemp (supra)* and the **CA** allowance for transmission of copyright in the course of employment to the employer,¹⁴ there are instances where an

artiste may not own their masters. These situations are incredibly unfavourable, causing a great dent to the artiste's earnings incommensurate to the artiste's hard work and skill. In the words of the late pop icon, Prince, "if you don't own your masters, your masters owns you."¹⁵

Categories of Negotiable Artiste's Agreements

The music business is heavily dense with young talents anxious for their (next) big break. Most of these young musicians work, honing their craft 'underground' with the hope of progressing to higher levels of national or global recognition. Major record labels discovering or signing

9 In *Bangboye v. Reed (2004) EMLR (5) 61*, the Claimant and Defendant collectively recorded some musical tracks that were released commercially. The Claimant argued that he had joint ownership in the copyright because he contributed in activities to the creation of the musical work, 'Bouncing Flow' which the Defendant denied. The Court considered the precedent for joint ownership set out in *Hadley v. Kemp (1999) EMLR 389* to hold that the Claimant made a 50% contribution to the drum track and as such, is a one third owner of the copyright.

10 Cornish and Llewelyn, 'Intellectual Property: Patents, Trademarks and Allied Rights' (Sweet and Maxwell, 2007), p. 426.

11 Section 2(1)(i)&(ii) CA.

12 [2019] 4 NWLR (Pt. 1661), 1 at 24A-C.

13 MixButton, 'What is the Master Recording?': <https://mixbutton.com/mastering-articles/what-is-the-master-recording/> (last accessed 21.09.2021).

14 Per section 10(3) CA, authorship in literary, artistic or musical work is vested in the proprietor of the author in the course of an employment and the proprietor in the absence of a contract stating the contrary shall own the copyright at first instance.

15 Prince had an 18 year battle with his record label, Warner Bros Records over the excessive restriction of his contract with them and ownership of the masters to a catalogue of songs performed by him. The dispute ended in 2014 with Prince negotiating a new deal with Warner Bros, after having accused them of treating him like a 'slave' in the 1990s.

these artistes is the most popular indicator of their potential mainstream success. For instance, pop star *Justin Bieber* was discovered on YouTube by *Scott Braun*, who invited the then 13 year old to Atlanta to record a demo, he was later offered a recording contract by *Usher* in 2008.¹⁶ Similarly, popular Nigerian *Afrobeats* artiste *Wizkid* was discovered as a member of the group '*The Glorious Five*' before landing a record deal with *Empire Mates Entertainment* in 2009.¹⁷

These artistes mostly see these signings with record labels as fast tracked tickets to becoming mainstream artistes. While this assertion may have some truth in it, many signees, most likely intoxicated with their stroke of luck do not take the time to thoroughly consider the terms of these flowery contracts. They are mostly unaware of their options and in a desperation for riches and fame, sign agreements that may pay little or scant attention to the protection of their benefits.

There are different types of record

deals available to artistes awaiting their next big break. These deals differ by the obligations the artiste is required to fulfil in each arrangement. On face value, some may seem better than others but it is important for artistes to consider their goals and prospective to commit to a contract best suited for their narrative for success.

Below are some examples of record deals that artistes can negotiate with potential record labels.

1. The Traditional Record Deal

This is a basic agreement where a record label signs artistes, and offers them a large amount of money as advance for ownership of their masters. The record label will frequently be entitled to about 80% of the artiste's royalties, whilst the artiste is left with 20%. Since investing in artistes comes as a business risk to record labels, they defer payment of royalties to artistes, unless they have paid off the advance and all other production and distribution costs

that promoting such artiste could have incurred.¹⁸ These deals were better feasible in an 'analogue' age, where music consumers bought physical copies of albums.¹⁹ Essentially, a traditional record deal protects the record label's interest at the expense of the artiste.

2. The Production Deal

This may feel like a record deal but really it is not. These deals are exclusively between the artiste and the production companies and are likely to confuse artistes. A production deal can be disguised as a record deal and this situation can be bad for the artiste.²⁰ In a product deal, production companies finance the production of some records of an artiste, in order to pitch the artiste to a major record label. The issue with this sort of arrangement is that the template most labels offer is too identical to record label contracts. This



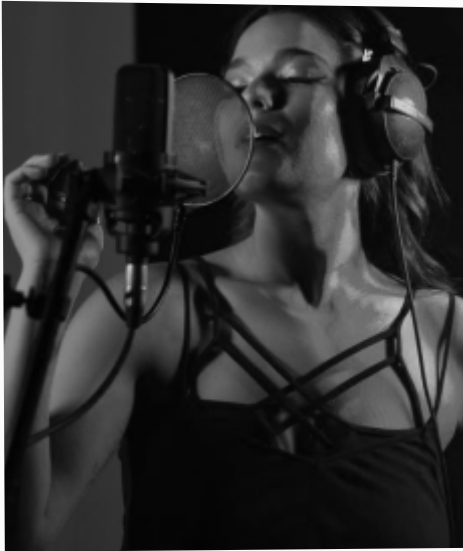
¹⁶ Britannica, '*Biography of Justin Bieber*': <https://www.britannica.com/biography/Justin-Bieber> (accessed 20.09.2021).

¹⁷ Wikipedia, '*Wizkid*': [https://en.wikipedia.org/wiki/Wizkid#:~:text=Wizkid%20signed%20a%20record%20deal,album%2C%20Superstar%20\(2011\)](https://en.wikipedia.org/wiki/Wizkid#:~:text=Wizkid%20signed%20a%20record%20deal,album%2C%20Superstar%20(2011)) (last accessed 20.09.2021).

¹⁸ Most times, artistes are unable to pay back the advance and the production cost that the record label has incurred because investing in an artist can be very expensive. The artiste's best bet to offsetting his debts and negotiating better deals with the labels is by putting their advance to good use and making the best of the promotion support that the label will offer so they actually become mainstream and make enough money from sales to pay back the labels.

¹⁹ Jaron Lewis, '*10 Types of Record Deals Every Musician Needs to know*': <https://www.omarimc.com/10-types-of-record-deals-every-musician-needs-to-know/> (last accessed 20.09.2021).

²⁰ Artistes in production deals are very distant from the record labels themselves and do not enjoy first hand negotiation of their contracts. This can create a difficulty when dispute arises. Equally, production companies acquire the masters in the records of these artistes in addition to getting a percentage; most times 50% of the artiste's distribution returns making for less earnings for the artist compared to other kinds of deals.



creates elaborate deals, with no real incentive for the production company to sell the artiste,²¹ effectively tying down intellectual property and the future of the artiste.²²

3. The Distribution Deal

These sort of deals are growing in popularity and are considered by some to be the least predatory sort of deal for independent artistes. These deals are mostly used for already established artists that can already pay for creating their own songs. The label solely invests in the distribution and sale of the artiste. The distributors focus passing the finished product to Digital Service

Providers (DSPs) and physical CD plates. They handle relationships with representatives at DSPs to help pitch to play listing.²³ Distribution deals importantly allow the artiste to retain the copyright in their works.

Birdman and *Master P* are examples of artistes who made use of distribution deals over normal record label deals but it worked best for them because they had a deep understanding of the business and distributing music in general.²⁴ It is best to opt for a distribution deal without an advance so you do not risk being in debt.

4. Work for Hire Deal

A work for hire agreement is when the artiste gives up all ownership and administration rights for the life of a work's copyright, in exchange for a flat fee. This model is an exception to the prevailing rule that the person who creates a work is its legally recognised author.²⁵ A work for hire deal²⁶ is used mostly when there are distribution of duties on getting to the final destination of the song or record. For example, an artiste who intends to create a song, needs a producer to make beats and also backup singers. If he does not intend to share the ownership in the copyright, he can opt for one off

payments for those services.

5. Profit-Split Deal

This is an alternative to the traditional record deal. They are mostly done with already established artistes. The net profit from record sales are split 50-50 after all expenses incurred from the artiste's promotion, have been paid. Profit split deals are attractive to labels because they don't have to pay anything to the artiste until all the debts have been paid back.²⁷ These sort of deals can be territorial.

6. A Multiple rights deal

This model, also known as the 360 deal, is an alternative to the traditional record deal. This kind of deal was created because piracy, digital sales and multiplicity of artistes had drastically affected the profits that came from record sales. In a multiple rights deal, the label pays the artiste a huge advance but is entitled to revenue that accrues from digital or streaming sales, tours/concerts, song writing/publishing revenue, endorsement and merchandise deals. The label in turn commits to promoting the artiste long term, and actively developing new opportunities for the artiste.²⁸

21 The question may be asked: how is this true when they want the artiste to get major record label contract? However in reality, the incentives favour record labels leaving crumbs for the producers because they erroneously use record label contracts instead of production contracts, the producers then feel they don't have much to gain.

22 Karl Fowlkes, 'Management Deal vs Production Deal', *Medium*, 28.05.2021: <https://medium.com/the-courtroom/management-deal-vs-production-deal-4e909915236c> (last accessed 20.07.2021).

23 Jake Standley, '5 Types of Record Deals', *Steak Worldwide*, 16.09.2021: <https://www.steakworldwide.com/blog/5-types-of-record-deals> (last accessed 20.09.2021).

24 Dan Runcie, 'What Hip-Hop Gets Wrong About Master P and No Limit', *Trapital* 26.03.2019: <https://trapital.co/2019/03/26/what-hip-hop-gets-wrong-about-master-p-and-no-limit/> (last accessed 20.09.2021).

[wrong-about-master-p-and-no-limit/](https://www.gemtracks.com/guides/view.php?title=what-is-a-360-record-deal&id=127) (last accessed 04.10.2021).

25 Songtrust, 'What Does it Mean When a Song is a "Work For Hire"?' <https://help.songtrust.com/knowledge/what-does-it-mean-when-a-song-is-a-work-for-hire> (last accessed 20.09.2021).

26 Section 10(1)(b) NCA provides that copyright shall be vested in the author regardless of such work being commissioned by a person in a contract of service or apprenticeship, this provision aligns with the features of a work for hire agreement.

27 Siccnness, '“Profit Split Deals”: A Recent Alternative to the Traditional Record Deal': (last accessed 20.09.2021).

28 Gemtracks, 'Music 101: 360 Record Deal Explained (2021 UPDATED)' <https://www.gemtracks.com/guides/view.php?title=what-is-a-360-record-deal&id=127> (last accessed 20.09.2021).



A 360 deal is mostly suggested for young, budding non-mainstream artistes. There is no standard way that these deals should be drafted. It is organic and flexible. The most important terms to negotiate in a 360 deal is the amount of advance paid, the time period and obligations of the contract and the exclusive rights in the ownership of records made in that time period.²⁹

7. A Joint Venture (JV) Deal

A JV deal is also an alternative to the traditional record deal. Therein, a major record label can join forces with an independent (indie) artiste/indie label where they share responsibility for making, marketing and promoting the records. The parties to the JV agreements decide the mode in which they function. The major labels are frequently the financiers of the agreement. The record labels will recover costs and expenses incurred and the net profits are then shared between the label and the artiste.³⁰

Navigating Administration of Music Ownership Rights: The Nigerian Reality:

Copyright grants the holder exclusive rights, entitling them to control the access to, and usage of the copyrighted musical work - which in most contracts signed by Nigerian artistes, will be in the record label. As the holders of these copyrights, the labels may grant an exclusive license to a third party, that such party would have sole usage of the song.³¹ They may as well decide to exercise the option of granting licence to multiple third parties for different functions ranging from television, cinematographic films, advertisements, music sampling and translations.

These exclusive rights are however qualified and do not extend to fair dealings, usage by people with disabilities, educational use, compulsory licensing and usage by government, public libraries and archives.

In Nigeria, the Nigerian Copyright

Commission (NCC) has regulatory oversight for matters concerning copyright.³² They are, among other duties, responsible for appointing copyright inspectors.³³ These copyright inspectors have powers to institute criminal proceedings over anyone who has infringed the rights of a copyright holder.³⁴ These inspectors shall have all the powers, rights and privileges of a police officer as defined by the **Police Act**.³⁵

Frequent experience has shown that individual creators and owners of copyrighted works are not equipped with knowledge that aids the proper collection of royalties' or related technology. Furthermore, this digital age has made it an extremely herculean task to directly monitor the usage of their property. These copyright owners lack the expertise and relative funding to account for individual usage of these songs. For instance, Wizkid, being an afrobeats artiste and presumably owning the masters to his song *Essence*, may find it difficult to quantify the global usage of that song, regarding gaining his due royalties from it. Thus, collective administration schemes have developed worldwide as an organised body for licensing and managing copyrighted work.

A copyright collecting society is a private organisation which licences copyrighted works on behalf of the authors and engage in collective



²⁹ The record label most times holds the masters in the songs that are made by the artiste in the time period that such contract will exist and will mostly add a number of album expectations that the artiste is expected to fulfil before effluxion of the time period in the contract.

³⁰ Christopher Knab and Bartley F. Day, 'Deals That Await Successful Independent Music Labels', *Musicbizacademy*, January 2021; <http://www.musicbizacademy.com/knab/articles/deals.htm> (last accessed 20. 09.2021).

³¹ Section 11(1) CA.

³² Section 34(3) CA.

³³ Section 38 (1) CA.

³⁴ Section 38 (3) CA.

³⁵ Section 38 (5) CA.

rights management. Collecting societies tracks all the events and venues where copyrighted works are used, and ensure that the holders with the society are remunerated for such usage.³⁶ They must be registered as companies limited by guarantee based on the peculiarity that they have no profit objectives. Any prospective body seeking to be known as a CS should have the approval of the NCC.³⁷ Such approval is valid for three (3) years, subject to renewal. Would such renewal would be *ad finitum*? The answer should be yes, provided the CS continues to meet the prescribed requirements.

Holders of ownership in copyright also have civil and criminal enforcement options for their exclusive rights, in copyright being tampered with. Both types of action can be filed simultaneously. Civil actions are as of right of the copyright owner, an assignee or exclusive licensee of the musical work; whilst criminal actions are instituted by the state through the NCC.³⁸ Remedies for civil action includes account for profit, damages, injunctions and delivery up. For criminal actions, punishment may range from imposing fines to a term of imprisonment.³⁹

Actions should be brought before the Federal High Court (FHC) for matters whose subject matters hover around copyright and its



infringement,⁴⁰ because the FHC has exclusive jurisdiction to hear matters relating to copyright by **section 251(f) 1999 Constitution of the Federal Republic of Nigeria (as amended)**.

In Nigeria, particularly in the music industry, piracy has become a sort of permanent cankerworm. This has negatively impacted the growth of the industry and the business of the owners of these copyrighted music.⁴¹ With technological advancement, illegal streaming sites are on the rise, and it seems that copyright operators and CSs lack the expertise to properly control these pirates who have continued to profit from the hard and creative work of others. It is easier and cheaper to download music from a third party website who have illegally placed these songs for download, and these websites make profit from the advertisements on the websites.⁴²

This culture has been cemented into the average Nigerian that they would rather patronise these illegal websites than patronise legitimate streaming platforms like Apple Music, Deezer, Spotify, Boomplay, etc. The issue of piracy prevents independent artistes and record labels who have artistes signed under them, to reap the full bounty of their profits. They rather earn income from endorsement deals, concerts or product branding but do not earn as much as they naturally should, from record and digital sales.

Although it may seem like the **CA** does not adequately provide for the control and abolishment of digital piracy, the **Copyright Act (Repeal and Re-enactment) Bill 2021 (CA Bill)** on the 8th June 2021 passed its second reading in the Nigerian Senate.⁴³ This **CA Bill** contains ample provisions that



³⁶ Wikipedia, 'Copyright Collective': https://en.wikipedia.org/wiki/Copyright_collective (last accessed 22.09.2021).

³⁷ In *MCSN v. Adeokin Records, Unreported Suit No. FHC/L/CS/216/96, judgment of 09.07.1997 (Ukeje J)*, the Court held that the Claimant lacked the locus to bring an action having not being approved as a CS by the NCC.

³⁸ Section 16 CA.

³⁹ Section 20 CA.

⁴⁰ In *Chinua Achebe & Anor v. Drum Publications 4 ECCLR 74*, the Defendant successfully raised a preliminary objection to the commencement of a copyright related suit in the State High Court.

⁴¹ For a detailed discussion, see generally, Yewande Obayomi, 'Copyright Infringement in Nigerian Music Industry: Salient Regulatory and Commercial Issues', LeLaw Thought Leadership, October 2017: https://lelawlegal.com/add11pdfs/COPYRIGHT_INFRINGEMENT_Yewande.pdf (accessed 02.10.2021). See also Sarah Nwakaego Ordia, 'Copyright Infringement: A Comparative Analysis of Nigerian and American Music Industry', unpublished June 2019 LLB Thesis, submitted to Delta State University, Abraka, Nigeria.

⁴² Praise Anyaoha, 'Digital Piracy and Its Effect on the Music Industry', LinkedIn, 17.12.2019: <https://www.linkedin.com/pulse/digital-piracy-its-effect-music-industry-praise-anyaoha> (last accessed 29.09.2021).

⁴³ The **CA Bill** was sponsored by Senator Adetokunbo Abiru (Lagos East).

focus specially on digital piracy, seeking to enforce infringement consequences on internet pirates, to make for a better conducive environment for music businesses. This will in turn, boost the growth of the Nigerian music space.

Who Gets the Lion's Share in These Agreements?

A contract is essentially an agreement which the law will enforce and recognise as affecting the legal rights and duties of the parties.⁴⁴ Such agreement must be of benefit to both parties intending to be bound by its obligations. When an artiste intends to sign with a record label, the agreement will most likely be by written contract, under seal.

Unsurprisingly, in these sort of music contracts, the quantity of benefits differ from one agreement to the other. The contracts for the different kinds of deals are not standard. Those who intend to be obligated by them have the option of properly negotiating their interests before finalising the agreement. The goal of this for both parties is to get a fair deal; commensurate incentives to the responsibilities they are bound by.

The music industry in Nigeria is a fast growing enterprise that local and international investors are eager to invest in, and reap from the pool of talented labour. Business personnel in the music business are steadily establishing record labels to scout talent that could potentially generate profit for them. International record labels like *Atlantic Records*, *Universal Music* and *Warner Music* are actively spreading their tentacles, signing Nigerian talent.⁴⁵ The international record labels will mostly sign artistes that already are mainstream in Nigeria, as against 'artistes in the cradle'.

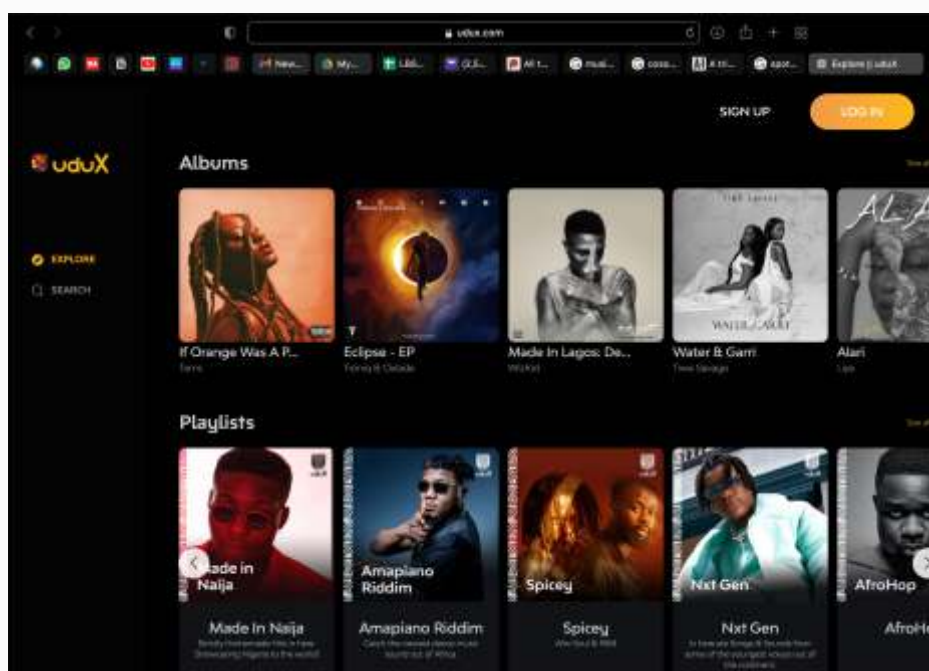
The profit from record label agreement is dependent on the type of deal that the artiste and label mutually agree on, because the different deals come with different levels of investment that both the artiste

and the label have to commit to, ensuring the full actualisation of the artiste's success. For the sake of analysis, only the frequently used kind of deals will be assessed in determining the larger beneficiary among the parties to the deal i.e. the traditional, multiple rights and distribution deals.

The traditional record deal asides owning the masters of the artiste, are entitled to a larger amount of royalties, mostly on 80%; but that does not go for nothing, because advancing and promoting an artiste can be a very expensive route to follow. Record labels, to protect their investments, stall from paying royalties until the artiste pays back the advance and investment the label has put into them. The label although is entitled to a percentage of what the artiste earns solely from records sales.

This sort of compact seems to favor the artiste better, because there is a limit to the amount of profit that the record label can enjoy. Asides the record sales in which the label has a percentage, the artiste can earn fully from touring incomes, brand deals, digital sales and merchandising profit. This type of deal seems to be outdated in this digital age, because it prioritises physical records sales, when digital streaming now overshadows physical records sales.

As earlier discussed, distribution deals entails the label exclusively investing in the distribution and sale prospects of the artiste. Distribution deals are good for the artiste and the records label as well



44 Prof. Itse Sagay, 'Law of Contract', (Sweet and Maxwell, 2007), 1.

45 See for example, Tim Ingham, 'Universal Music Group Strikes Partnership With Nigeria-Based Aristokrat Group', MNRK, 11.05.2020: <https://www.musicbusinessworldwide.com/universal-music-group-strikes-partnership-with-nigeria-based-aristokrat-group/> (last accessed 05.10.2021).

because with this arrangement, the control that the record label has over the artiste and his affairs are minimal. It is friendly for the record because it cuts by a large percentage, the amount of funding that the label has to provide for the artiste to become as mainstream.

The downside to this though, is that for the effort of marketing the artiste's song, the profit which the labels will gain is largely dependent on the performance of the song - if the sales are poor, the label will run at a loss. There can be a tussle of control of the releases of songs between the label and the distributors. Given all the glitches, distribution deals can be a good way to keep cash flow healthy for the label, and reduce the standard restrictions and obligations expected of artists in music contracts. Distribution deals although, favor already established artistes over new or emerging artistes, hoping to have their own breakthroughs into the industry.

If one was to sign a deal with a record label in this day and age, they will most likely be signing a 360 deal. In this 360 deal, the record label will act as the manager to the artiste. This is a modern version of developmental deals that were previously utilised by parties to a music deal. The 360 deal has numerous advantages to the artiste, especially if the artiste is a 'newbie' to the music business. This is so because there are certain levels of experience that can be applied to the artiste at no cost to him.⁴⁶

For instance, where an artiste signs with a record label like Warner Music Group, they would surely have relationships with other media houses that can

facilitate the expansion of the artiste's range. Artistes will have access to other parts of the music business that is not promoting the artiste's music but advancing their brand. There are categories like endorsement deals, touring and merchandising; things that the artiste may not have easily accessed if they chose to be independent artistes or opted for a different kind of deal.

The catch to this is that the record label would in addition to owning the masters of songs made during the duration of such contract, they would also have a percentage of the artiste's earnings. If the record label is then earning from all of the artiste's earnings, they may want to insert control over it, if the artiste is not cautious when accepting the contract. Thus, a 360 deal can be very restrictive for the artiste because they will be burdened with multiple obligations to fulfil, to the label and they will not have the ability to get out of the arrangement whenever they like.

The 360 deal provides wonderful opportunities for the artiste but this type of deal seems to protect the label at the detriment of the artiste because it is more focused on recouping the investments that the label has expended on the artiste, considering the heavy investments that labels have to put in to ensure the artiste's success.

Nonetheless, it is never a linear process and not all artistes signed by a label will achieve global success. The profits that a label will get out of an artiste is dependent on how successful the artiste becomes. A record label may sign ten artistes under a 360 deal, providing them with all the opportunities they need to succeed. It is possible that only two out of the 10 artistes will be successful. Thus, the label will hope to

recoup the estimated profits from all the artistes, from the two mainstream artistes.

Controversies: Restrictive Contracts Negotiated by Record Labels and Artistes

Contracts require the willingness of the parties to be in agreement before such can be valid. Once the parties have consented to be bound by the terms of the contract; a party who has benefited from the performance of the contract by the other party cannot attempt to repudiate the contractual relationship unless there is a breach of such contract, or the contract is voidable or illegal. In *Adedeji v. Obajimi*,⁴⁷ the court held that a party should not be able to benefit from his own wrong. A party who had consented to be bound by an agreement and has benefitted from the other parties' obligation should not be allowed to repudiate the contract after breaching it. There should be some form of compensation that the party who has already performed his obligation be entitled to.

Most Nigerian labels in 2021 are likely to present their artistes with multiple rights record contracts. It has been shown that these kinds of contracts require heavy monetary investments from the record label to ensure the success of the artiste. The label will pay a huge advance to the artistes and also foot incidental bills for the artistes that facilitates their branding. The truth is that many an artiste

⁴⁶ Louise Gaille, '16 Pros and Cons of a 360 Record Deal/Music Contract', Vittana, 14.10.2019: <https://vittana.org/16-pros-and-cons-of-a-360-record-deal-music-contract> (last accessed 28.10.2021).

⁴⁷ [2018] 16 NWLR (Pt. 1644), 146 at 169A-C and 176-177F-D.

may squander the advance paid to them and when the time comes for the label to recoup their advance and promotional investments, the artiste will feel 'imprisoned' or 'tied', and may ultimately breach the contract.

These signed artistes seem to forget that *the expenses of the label is an advance, rather than a payout*. They would feud with their labels to get out of paying back what is owed to the label; claiming that they are held by 'unfair' contracts, agreements they have willingly consented to and benefitted from.

This is when the media will become awash with details of such kinds of feuds, with the consumers of the music disagreeing on whether the record label should hold the artistes to such standards.

In *G Worldwide Entertainment v. Anidugbe*,⁴⁸ an action was commenced in the FHC by the record label against the Defendant popularly known as '*Kiss Daniel*' for breaching their contract by appointing a new manager, soliciting for bookings, negotiating and entering performance agreements without the knowledge of the label, using the trademarked name, '*Kiss Daniel*' without the label's permission.

The contract was terminated after four years, instead of the seven years it was to run for. The label also claimed the masters of the songs '*4 Dayz*' and '*For You*' (a collaboration with Wizkid) off his yet to be released '*Evolution*' album. In addition, the record label claimed the trademark rights to the name '*Kiss Daniel*'. The artiste proceeded to exit the label,

established his own '*Flyboy Inc.*' label and changed his stage name to '*Kizz Daniel*'.⁴⁹

Also, in *Chocolate City Group Limited v. Ibrahim*,⁵⁰ the record label claimed against the Defendant who is popular by the stage name '*Brymo*' ₦100 million in damages for breach of contract by the Defendant for deserting the label in 2013 before the end of his contract, releasing an album titled '*Merchants, Dealers and Slaves*'. The Claimant also sought specific performance. The Claimant in the interim, allegedly to prevent further losses, filed an application for interim injunction to prevent the Defendant from releasing music pending hearing. This was granted in October 2013 and subsequently vacated in March 2014.⁵¹

More recently, the internet was agog with the news of musician, Cynthia Morgan, falling out with her record label and her management, Northside Records. She claimed that she lost her stage name, VEVO account and royalties because of the sort of contract she had signed. The CEO of Northside Records denied the allegations. Although, skimming through their contract, particularly **Articles 1, 9 and 10**,⁵² arguably Cynthia speaks the truth.

The contract she signed exemplifies the poor negotiation skills that artistes possess in getting signed contracts, forgetting the binding nature of documents that they have appended their signatures to. Record labels are not blame free in these

disputes, because some of them do not create conducive spaces for their artistes. As soon as these artistes signed the dotted lines on the agreement, some labels become so controlling, restricting their artiste's creativity and creating unrealistic performance based obligations on these artistes.

These issues are mostly as a result of poor commercial awareness and negotiation skills of the artiste, probably in the 'hurry' to be famous. Often, they sign the dotted lines, without legal representation. These conflict scenarios exposes the lack of structure in the industry, with one man record labels, and feuding CSs, etc. that the enforcement of copyright related rights seem impracticable.⁵³

Conclusion

Conflict is a constant in human behavioral patterns, and the

48 Unreported Suit No: FHC/L/CS/1758/2017, Judgment of 30.11.2017 (Kuewumi, J).

49 Rotimi Agbana, 'Exclusive: Kiss Daniel's FLYBOI INC is Illegal - G-Worldwide Entertainment', Vanguard, 05.12.2017: <https://www.google.com/amp/s/www.vanguardngr.com/2017/12/exclusive-kiss-daniels-flyboi-inc-is-illegal-g-worldwide-entertainment/amp/> (last accessed 28.09.2021).

50 Unreported Suit No. FHC/L/1422/2013, Judgement of 21.10.2013 (Buba, J).

51 Olumide K. Obayemi and Olukayode O. Adegbola, 'Legal Rights: Chocolate City vs Brymo Suit No: FHC/L/1422/2013 Revisited', Proshare, 30.06.2014: <https://www.proshareng.com/articles/Opinion%20o8%20Analysis%20Legal-Rights:-Chocolate-City-vs-Brymo-Suit-No:-FHC-L-1422-2013-Revisited-/2694> last accessed on 28.09.2021.

52 Michael Bamidele, 'Jude Okoye Releases Cynthia Morgan's Contract with Northside Music', Guardian Life, 26. 05.2020: <https://guardian.ng/life/jude-okoye-releases-cynthia-morgans-contract-with-northside-music/> (last accessed 28.09.2021).

53 Aso Etea, 'Artiste's Rights Management in Nigeria - Putting a Label on Competing Claims' (2019) 10 GRBPL No. 4, p.106.



courts have always been called in to intervene, rendering decisions that have become precedents. It would be nothing but wishful thinking to expect that conflicts between record labels and their contracted artistes will disappear; rather they are likely to be more frequent than previously. Although there is no way to permanently end the conflict between labels and their artistes; the recurring conflict between the parties as to ownership of masters, trademark usage and breach of contract by artistes who have previously benefitted from the record label's performance of their obligations, can be drastically reduced by better negotiation skills.

The easiest (and safest) way to prevent conflicts is for the artiste to mandatorily engage an entertainment lawyer to review the contract presented to him by the label and to provide negotiation support against terms that could exploit, rather than protect, the artiste. Conflict cases that arise from record contract terms could have been avoided if the record contract was properly understood and rightly negotiated.⁵⁴

An entertainment lawyer is in the best position to sensitise the artiste on the binding nature of a signed contract, and thus

negotiate terms that the artiste can reasonably meet. The lawyer and the artiste should *pay close attention to clauses that create time frames, rights that are transferred and relinquished (copyright ownership of songs made in the duration of the contract) and trade mark usages*. This could potentially cause the artiste to lose their musical identity if the label facilitated the process of registering the trademark. For new artistes, this will most likely be the situation.

It is important to note that the lawyer - from the vantage position of understanding the artiste's peculiarities and the journey they would most likely embark on, in search of musical success - will be able to efficiently protect the artiste's rights and potential privileges. The lawyer is well positioned to internalise the specific needs of the artiste, to suggest from numerous kinds of record deals, the best fit for the artiste *vis a vis* his future plans.

Some record labels may want to act arbitrarily in the course of the contract, and because regulating these agencies is not a priority of copyright enforcement; it may be easy to get away with making unfair deals, and mistreating their artistes. There is indeed room for conversations backed up with requisite reforms towards the best regulatory strategy to keep

powerful labels from being oppressive to their signed artistes.

Generally, Nigerian intellectual property framework needs to be recipient of a better structure. The feud of the CSs should be addressed by the courts.⁵⁵ New copyright legislation like the **CA Bill** should consider concerns that this digital age and a larger music market/audience could raise.⁵⁶ There is no certainty that the **CA Bill** will scale through the National Assembly and if it did, nor in what form it will be eventually enacted.

Copyright regulators (primarily the NCC), should intensify their efforts in tackling piracy in Nigeria because this ill reduces by a large percentage, the profit that labels realise from the commercialisation of an artiste's creative output. It becomes incredibly hard and time consuming for a signed artiste to offset the advance paid and promotional expenses that the label has expended on them.

The exponential growth of the Nigerian music industry should ultimately be the priority of these labels and artistes. The huge potential is reflected in 2021 seeing two Nigerian artistes win two *Grammy awards*.⁵⁷ The Government and entertainment companies should take advantage of the export of Afrobeat internationally to further grow the industry which will as a result, be a booster for the Nigerian economy.

⁵⁴ Titilade Adelekan Ilesanmi, 'Imperatives: Contract Drafting and Negotiation Support in the Creative Industry', LeLaw Thought Leadership, November 2017, p. 2: https://lelawlegal.com/add111pdfs/TL_THE_IMPERATIVES_OF_CONTRACT_DRAFTING_Titilade.pdf (last accessed 04.10.2021).

⁵⁵ *Unreported Suit No. FHC/L/CS/1259/2017, Judgment of 13.02.2018 (Buba, J.)*. COSON filed an action intending to withdraw MSCN's approval as a CS. The suit was dismissed and the MSCN's status validated. The NCC had revoked COSON's license as a CS because COSON allegedly refused to comply with NCC's directives, after NCC observed recurring dispute in the governing board of COSON. NCC has subsequently recognised MSCN as its collective management organisation (CMO). In *COSON v. NCC Suit No FHC/L/CS/425/2020* COSON sought redress and claimed damages totalling N8 billion (against the NCC) for their unlawful suspension. This matter is still pending before the FHC.

⁵⁶ The recent **CA Bill** comes with adjustments that provides specific adjustments for enforcement of Copyright in digital spaces; this is expressed in detail in **sections 25-37**. It allows the owner of a copyright to send a notice to service providers asking to disable access to infringing content hosted by the service providers' network. In addition, it identifies and suspend the social media accounts of repeat infringers. Furthermore, it prescribes a special offence for service providers that refuse to acknowledge the notice of infringing content from the copyright holder.

⁵⁷ During the Grammy Music Awards in 2021, Nigerian Afrobeats star, *Wizkid* won a joint award for the category "Best Music Video" for his song with Beyoncé, "Brown Skin Girl" from "Lion King, The Gift Album". His compatriot, *Burna Boy* also won the "Best World Music Album" for his "Twice As Tall".

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