

**AN APPRAISAL OF NIGERIAN COPYRIGHT LAWS AS IT RELATES TO  
THE MUSIC INDUSTRY**

**BY**

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### **Certification**

I certify that this work was carried out by Ayepada, Deborah Iyanuoluwa at the Department of Music, Mountain Top University, Ogun State, Nigeria under my supervision.

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## **Dedication**

This project is humbly dedicated to God Almighty God for his divine guidance. Also to my loving parents Mr. Augustine Ayepada. and Mrs. Dupe Ayepada for their financial support and encouragement.

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## **ABSTRACT**

This research scrutinizes the laws that have been put in place to enable the music industry in Nigeria. It examines the effectiveness of the copyright laws of Nigeria as it relates to the music industry. This study focuses on the relevance of the laws to the industry, the inadequacies of the law, and the challenges militating against its effectiveness. Using ethnomusicological approach, and the qualitative research method, the study sources her primary data using both structured and unstructured interview techniques. Secondary data are collated using library sources and existing literature. Special attention is given to the history and development copyright law in Nigeria from precolonial era till date, the several amendments of the law and the trend in the global music industry. Findings reveal inadequacy of the law and gross incompetence in the areas of laws implementation. It recommends a review of the existing law to take cognizance of development in the industry and for it to be in the interest of all the practitioners and stakeholder. It also recommends a more commitment from the government agencies in charge of regulation and implementation of the law.

**Keywords:** Copyright, Structured, Unstructured, Qualitative, Ethnomusicological

## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.1 Background to the Study**

Nigeria is one of the nations of Africa with a rapidly evolving Music industry. It is a developing nation, with a music industry that is constantly setting new standards in the entertainment scene, particularly in the continent of Africa. As a result, new musical idioms are continuously being developed, fusing modernized and traditional styles (Adedeji 2016: 261).

The music space in Nigeria is multifaceted. It can be categorized into various forms; there is Traditional music which is devoid of the colonial masters, missionaries, explorers, and other foreign influences. There is Neo-traditional music, which came into being as result of indigenous contact with foreign elements but still portrays, largely, the traditional elements. The third category is Art music. Art music is a general term often used to describe thoughtfully cultivated music, particularly in Western societies, and as in contrast to pop and folk music. Art music is a term that encompasses music traditions that apply advanced structural and theoretical considerations with a written musical tradition. It is the music composed by the trained musician as contrasted with folk music and often with popular music.

Art music is also the category of music that is primarily of a written musical tradition, preserved in music notations as opposed to oral, note, or recording transmissions as seen in modern and traditional music. Just like the development of both Traditional and Neo traditional music have been aided by several sociological factors, The development of Art music has been greatly influenced by different bodies which include, churches,

mission schools, government colleges, Musical Society of Nigeria(MUSON), Nigeria Broadcasting Cooperation(NBC) and National Council of Art and Culture.

Popular music: It is a brand of music that is entertainment oriented. Popular music is that music with a wide appeal that is typically distributed to large audiences through the music industry. Art music and Traditional music, on the other hand, are typically disseminated academically or orally to a smaller, local or elite audience, and this stands in contrast. Popular music doesn't necessitate much thought. It's unplanned and geared toward the general public. The growth of modern popular music in Nigeria has deep origins in the country's current traditional musical practices and culture, and its growth and modernization have been inspired by a variety of factors including needs, connections, international influence, religion, politics, the economy, and urbanization. Radio broadcasting of music, which began in Nigeria in the early 1920s, helped to spread popular songs to a huge audience, enabling a much larger proportion of the population to hear songs performed by professional singers and music ensembles, including individuals from lower income groups who previously would not have been able to afford concert tickets. Radio broadcasting increased the ability of songwriters, singers and bandleaders to become nationally known. Another factor which helped to disseminate popular music was the introduction of a move towards consolidation in the recording industry, which led several major companies to dominate the record industry.

In the 1950s and 1960s, the new invention of television began to play an increasingly important role in disseminating new popular music. In the 1960s, the development of new technologies in recording, such as multitrack recorders gave sound engineers and record producers an increasingly important role in popular music. By using multitrack recording techniques, sound engineers could create new sounds

and sound effects that were not possible using traditional live recording techniques. the recording studio was used to create even more unusual sounds.

Population growth has contributed in no small ways to the development of entertainment sector in Nigeria. This is in addition to economic boom that was experienced shortly after the civil war in 1970, the music industry in Nigeria has continued to blaze the trail. According to Adedeji (2016: 261-262) “With a population of over 150 million people, the country has a wide enough domestic market to support and ensure the commercial viability of most musical endeavors as a result, most successful artists tailor their music to meet domestic needs in small way.

With hundreds of music recording studios, thousands of entertainment venues of all sizes, and countless musicians and performing groups throughout the world, Nigeria is unrivaled in Africa in terms of cultural production. Under this, the music industry can be seen as the apparatus that works together to manage the duty and facilitation of music output, commercialization, and distribution in a range of ways, including physical, streaming, live, and other multimedia formats.

According to Pricewaterhouse Coopers (PwC, 2016), a global network that coordinates, develops policies and initiatives of firms, this rise is reflected in statistics, which show that revenue from music sales in Nigeria is expected to increase to \$86 million in 2020 from \$47 million in 2016, with ring tones and ring back tones accounting for the majority of the increase. The music industry's sales growth is expected to contribute significantly to the increased growth expected in the film and media industry, which is expected to increase from \$44.8 million in 2013 to \$86.1 million in 2019, with income rising at a 13.4% compound annual growth rate to US\$73 million by 2021. About the fact that this sales figure is limited in comparison to more mature economies outside of Africa, the scope for growth is high. Aside from YouTube, online sites that offer music-

on-demand services have also attracted attention to the increasing global audience (Nzere, 2018). Nigerian music industry, according to local commerce player Jumia, has expanded to 150 million smart phone subscribers and 97.2 million Internet users, with penetration rates of 81 percent and 53 percent, respectively.

Despite the music industry's growing contribution to Nigeria's economy as a vibrant subset of the Information Communication industry, which the Nigerian Bureau of Statistics classifies as an activity in this sector, little has been done in terms of upgrade of issues like regulations and management which are necessary to standardize the industry and create modern rules of engagement for the new stakeholders emerging particularly in the digital arena that the industry is set to operate in. Artists, composers, managers, producers, live music promoters, and music distributors are among the groups and outfits that work together toward a shared purpose in the music business. As observed by Kargbo (2016), People who do not have the professionalism or interest to make good musicians or good music have flooded the music industry. People now own and manage labels even though they have no understanding of music or how it is made. Artists' lack of knowledge of the music industry and the inability of music professionals to grasp the dynamics of the music market is a dangerous trend that could hinder the industry's development and even ruin the framework that stakeholders are attempting to create.

These issues were some of the factors that led to the departure of major labels (Efe Omeregbe, interview, 2009), which eventually signaled the deterioration of the industry's system for artists.

In a nutshell, the industry's main big issues are; lack of proper market structure, government oversight and lack of interest in the copyright industry, inadequate

knowledge of copyright matters on the part of both creators and consumers of musical works, disregard for the value of intellectual property. Management of intellectual property, which formed the basis of the project is perhaps the most rampant of all these challenges. In recent time, these challenge have escalated. Some example of the recent cases are that of Sir Jude Nnam. Nman is a prominent catholic music composer who filed a lawsuit against the record label Five Star Music, it's Chief Executive Officer Emeka Okonkwo and their artist Kingsley Chinweike Okonkwo popularly known as Kcee. Another case of copyright infringement was between Ajibola Olumuyiwa Danladi popularly known as Danny Young also filed the lawsuit against Tiwa Savage. King Sunny Ade (KSA) was also involved in a protracted legal battle with the company African Songs and its subsidiary, Take Your Choice Stores.

The growth experienced in the industry the beginning was stunted by a clear lack of knowledge of copyright issues by both the practitioners and government agencies. In an attempt to remedy this particular infraction in the industry, several legislations and executive initiatives have been applied. There is the Nigerian Copyright Act which has been amended and reviewed over the years to soothe the needs of the people and meet the challenges of a rapidly evolving music industry. During the General Yakubu Gowon regime, the first indigenous copyright law in Nigeria was drafted and later passed as a decree (Decree No. 61 of 1970). It specified the works were liable for copyright, how copyright was conferred, the essence of copyright in specific works, first possession, assignment and licensing, violation, and infringement acts. However, the law did not fulfill its intended purpose as no authority was assigned to enforce the law. The 1988 Copyright Act was concerns about the noticeable lapses in the 1970 act and the law was largely ineffective and this led to the agitation of the 1988 copyright Act. In response

to the widespread clamour, the Federal Military Government promulgated Decree No. 47 in 1988.

In 1988, after a number of meetings, a new copyright law was enacted as a decree (Decree No. 47 of 1988). The Nigerian copyright industry frustrated and agitated identified legislative reform as one of the cardinal issues in fighting the challenges posed by piracy. After series of meetings and lobbying, the 1988 Copyright legislation was passed and became a part of the Nigerian legal system. It was revised two more in the following years, in 1992 (Decree No. 98) and 1999 (Decree No. 99). The amendment became part of the codification of Nigerian Law done in 2004 as (Decree No. 42). Cap C28 of the Laws of the Federation of Nigeria (LFN 2004). All these laws have been found inadequate. These form the basis for this research project. With the use of ethnographic methods laced with necessary research tools, the project dissects the challenges facing the industry particular those that are related to copyright enforcement and adjudications.

## **1.2 Statement of the Research Problem**

The Nigerian government is yet to have any efficient official policy or proper way of enforcing policies to protect the intellectual rights of artists. General lack of awareness of the problem of piracy on the part of both the copyright owners and users in the music industry will in turn lead to copyright owners losing income if there is no successful copyright compliance according to the Nigeria copyright commission's regulations, and will therefore be discouraged from continuing to develop. The lack of professional guidance is also a critical factor in understanding the music business industry, which is why an artist needs a company with the structure and manpower to handle this for him.

## **1.3 Aim and Objectives of the study**

The aim of this study is to examine how effective the existing copyright laws in Nigeria has been in providing cover for musicians and other professionals who are involved in the music copyright administration and the specific objectives are:

1. To examine the usefulness of the current copyright act to practitioners in the industry as its relate to the music industry.
2. To examine the copyright related challenges in the music industry as it affects the entire music industry.
3. To elucidate the limitations of the existing copyright laws in Nigeria as it relates to the music industry.
4. To determine the outcome of copyright law in tandem with the evolution of the music industry.

#### **1.4 Research Questions**

In order to carry out and accomplish the sole purpose of this research, there is need for the following questions to be asked.

1. How effective has the current copyright law been in providing covers for musicians and other practitioners in the music industry.
2. What are the factors responsible for the challenges of copyright act in the music industry.
3. What are the limitations of the existing copyright laws in Nigeria music industry
4. What are the possible outcome of reviewing the copyright laws in tandem to the music industry

#### **1.5 Significance of the Study**



The outcome of this research would be significance to the various professionals who are involved in the music copyright administration which include Music practitioners, Regulatory organization, music managers, Artists, and legal personalities in the intellectual property industry to create and ensure the security of national intellectual treasures and economic profits. musicians and professionals in the music industry will benefit from the role and importance of copyright laws in the business aspect of music and enlighten the industry more on the piracy of intellectual property being a great challenge to the creative industry and the negative effects on income of musicians.it will also give an insight on why the copyright act needs to be reviewed on the music industry. it will serve as good reference point or starting point to researchers and student who might want to take the study into consideration. The research will also help the public to create awareness of the copyright law and its effectiveness, and also add to the current understanding of copyright.

### **1.6 Scope of the Study**

The copyright act cap c28 laws of federation of Nigerian 2004 is the main legislation on copyright law in Nigeria. The study is confined to copyright laws and restricted to the music industry. Section 6(a) deals with musical work and section 7 focused on copyright in sound recording. This will assist in getting a true perspective of how the copyright laws have been effective in the Nigeria music industry. The research is limited to the music industry.

### **1.7 Limitation of the Study**

The Copyright Society of Nigeria (COSON) was not consulted due to their license to operate as a Collective Management Organization being withdrawn by the, Nigerian

Copyright Commission NCC, almost two years ago. Following a persistent disagreement between The Musical Copyright Society Nigeria and Copyright Society of Nigeria over the collection of royalties in Nigeria. The MCSN testified that COSON's name was illegally approved as they were the one entitled to the name and their plaintiff. It was the judgement of the court that the Attorney General of the federation and Corporate Affairs Commission (CAC) acted improperly and illegally to granting approval to COSON and because of this their musical rights were restricted.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.0 Introduction

In this chapter, a review of related literature on the study will be done. In doing this, the following issues will be discussed: Meaning of copyright, Historical development of copyright, copyright development in Nigeria, copyright in traditional folklore, nature of copyright in music, rights available for owners of work in Nigeria, rights available to owners of works in Nigeria, infringement and remedies, cases of copyright in Nigeria.

#### 2.1 Meaning of Copyright

According to Black's Law Dictionary(9th edition), Copyright is the right granted to the author or creator of certain literary or artistic productions, whereby the creator is granted the sole and exclusive privilege of multiplying copies of the literary or artistic works and publishing or selling them for a limited period of time.

According to Nwogu, (2014: 22), Copyright is an intangible, incorporeal property, which guarantees the owner the exclusive right to deal with his/her work within a stipulated time as provided under the law. Copyright is a type of intellectual property that grants the owner the exclusive right to reproduce a creative work, typically for a limited period of time. It is designed to preserve the creative work that is the original expression of an idea, but not the idea itself. The creative work may take the shape of literature, art, education, or music. Copyright is a concept based on the preservation and promotion of the rights of creators. Copyright law is a subset of law that deals with the rights to creative and literary creativity, as well as the degree of protection afforded to such intellectual property. Additionally, this section is designed to raise awareness and add to knowledge in order to educate ourselves about the need of protecting our creative

works, as outlined in the 1999 Nigerian Constitution. According to WIPO (1998), copyright law applies to specific types of creativity, most notably mass communication. It encompasses nearly all types and means of public communication, not just printed publications, but also sound and television broadcasting, public showing of films in cinemas, and even computerized information storage and retrieval systems. Under section (1) of the Copyright Act, literary works, musical works, creative works, cinematography films, sound recordings, and broadcasts are all eligible for copyright protection. As stated in section 2-5 of the Copyright Act (Cap C28, Laws of the Federal Republic of Nigeria, 2004), the following factors can confer legal protection on works: nationality or domicile; reference to the country of origin; works of government, state authorities, and international bodies; and reference to international agreements.

## **2.2 Historical Development of Copyright**

The Anne legislation, passed in England in 1710, was the world's first copyright law. However, there are empirical evidence that it predated the statute of Anne and can be dated back to the 6th century.

A disagreement between Finnanin and Columcille in Ireland in the sixth century launched copyright into the world, and King Diarmund decided the case. Finnanin accused Columcille of copying his bible without his permission and demanded that Columcille return the copied work to him, which resulted to the declaration. Columcille argued in his defense that the copy made from the original copy did not detract from the original copy, and hence no wrong could have been committed. "To every cow her calf; and to every book its copy," King Diarmund stated upon making his selection. This statement established the principles that safeguard creative works, especially in

this case, books, and established that they have the right to be protected from unlawful exploitation.

This statute of Anne established the concept of a work's author as the owner of its copyright and set forth certain terms of protection. An Act for the Encouragement of Learning by Vesting the Copies of Print Books in the Authors or Purchasers of Such Copies was the full title of the bill. Copyright law applies exclusively to the copying of books at first. Other countries gradually adopted legislation based on the Statute of Anne, such as the United States' Copyright Act of 1790, although copyright policy remained uncoordinated on an international basis until the 19th century. The World Intellectual Property Organization (WIPO), a United Nations body based in Geneva, Switzerland, took over the Berne Convention in 1886 to guarantee mutual recognition of copyright between nation states and to foster the establishment of international standards for copyright protection. The Berne Convention, according to (Anjali, 2020. ), introduced the concept of "originality" as the defining bar for the protected subject matter for the first time, hence widening the scope of exclusivity. The "originality" barrier entailed protection from acts of reproduction such as appropriating sections of the work or making adaptations such as translations, for which duplicate protection was no longer sufficient. The Berne Convention has two basic elements of protection: first, "national treatment," which means that works created in one of the Member States must be protected in all Member States in the same way that works created by their citizens are protected; and second, "minimum rights," which means that Member States' laws must provide the bare minimum of protection. One of the most significant developments brought about by the Berne Convention was the extension of copyright protection to unpublished works and the elimination of the registration requirement. This means that in Berne Convention countries, an individual (or the organization for

which they work) owns the copyright to any work they make as soon as it is written down, drawn, or filmed in some fashion. The Berne Convention eliminates the necessity for each country to register work independently. The Berne Convention is still in effect today, and it serves as the foundation for international copyright law. Other copyright legislation, such as the English Copyright Act of 1842 and the Copyright Act of 1911, followed, according to Isochukwu. In 1912, the 1911 Act was extended to Nigeria. By order No. 12 of June 1912, the English copyright act was applied to Nigeria. Copyright has expanded to include maps, performances, paintings, photographs, sound recordings, motion pictures, and computer programs over time. This similar idea has guided the evolution of copyright throughout history, and it continues to do so now.

### **2.3 Copyright Development in Nigeria**

According to Adewopo (2012), the development of copyright law in Nigeria has been slowly progressive, albeit far more remarkable than its industrial property counterpart.

The industrial counterpart of Intellectual property are Trade mark and patent According to the English Copyright Act of 1911, the first proper copyright legislation in England was passed in 1710. It was also known as the Anne statute, because it was the first time that authors, rather than publishers, had exclusive distribution rights to their works. This statute eventually evolved into the Copyright Act of 1911, which was finally implemented by colonial authorities in the south-western part of Nigeria.

The body of laws relating to copyright in Nigeria has developed over time and is still developing. There are two views on how this body of law developed in Nigeria. The first view traces it to the influence of foreign political and economic forces. By this, reference is made to the extension of the English Copyright Act 1911 to Nigeria under the colonial government. The other view has it that copyright is part of our traditional

concept and has been in existence for as long as the culture of the people (Olukunle, 2013). Proponents of this viewpoint cite the practice of dancers and singers paying respect to their forefathers in the industry before beginning to perform. This is the traditional notion that if current performers want to succeed, they must pay homage to their forefathers and mothers in order to receive the necessary blessings. They also mention the habit of rewarding performers with money, presents, refreshments, and other types of recompense in exchange for their efforts. The first viewpoint, on the other hand, has more backing, as the authorities emphasize the fact that Nigerian copyright law has its origins in England.

However, at the time, Nigerians had little necessity for such an act because entertainment was still mostly supplied communally and individuals did it more for joy than for work. However, during the civil war, Nigeria continued to use the 1911 Act until 1970, when it was replaced by the Copyright Act of 1970 (Babafemi, 2007).

The first indigenous copyright legislation in Nigeria was drafted and then passed on the 24th of December, 1970 as a decree (Decree No. 61 of 1970) under the General Yakubu Gowon administration.

It specified which works were eligible for copyright, how copyright was conferred, the nature of copyright in some works, first ownership, assignment, and licensing, as well as infringement and infringement actions. It didn't take long for them to identify the statute's flaws because it was an indigenous statute. Some of the criticism was that the infringement consequences did not reflect the realities of the time, and there was no provision for administrative and enforcement facilities, according to Professor (Adebambo, 2012: 5). Following a series of meetings, another copyright law was established in 1988 as a decree (Decree No. 47 of 1988), which became the Copyright

Act, chapter 68, laws of the federation of Nigeria, which regulated copyright law in Nigeria. It was changed twice more in the following years, in 1992 (Decree No. 98) and 1999 (Decree No. 99). (Decree No. 42). It was finally codified and established in the Laws of the Federation of Nigeria (LFN 2004) as Cap C28 in 2004.

### **2.3.1 Copyright Act of 1970**

This was the first copyright legislation enacted in the United States. The degree was conferred on December 24, 1970, during Nigeria's military administration led by General Gowon. The Act is divided into twenty sections and three schedules. This covers works eligible for copyright, copyright conferment, the nature of copyright in particular works, first ownership, assignment, and licensing, as well as infringement and infringement-related actions (Timothy, 2019). It includes powers to appoint a competent authority to handle copyright licensing problems, which were not activated while the legislation was in effect. The remaining three sections were the repeals, transitions, and saving provisions portions, as well as the interpretations and reference sections. It was, however, viewed as ineffective, particularly because it did not appoint any specific authority to oversee the law's execution. It was deemed to be out of date and ineffective in dealing with the growing problem of piracy and other copyright violations.

The copyright act, according to Oriakhogba & Fenemigho (2014), was determined to be severely flawed in several areas. Copyright for literary, musical, and creative works, as well as cinematograph films and photographs, lasted only 25 years after the author died, according to the Decree. There was no effective framework in place under the Decree in terms of administration, and there was also no Copyright Licensing Panel. The Decree only provided for civil enforcement at the request of the copyright owner,



and the criminal penalty was minor, with a maximum penalty of N0.05K (five kobo) per item seized up to a maximum of N10 (ten naira) and a possible prison sentence of two months for a second offense. In essence, enforcement was primarily delegated to rights holders. Under the 1970 Act, the police did not take any action against the offender. The 1970 Act, according to Umaru (2002), was insufficient in combating the rising prevalence of piracy and other copyright infringements, as well as the necessity to strengthen punitive sanctions and provide effective remedial procedures. The Copyright Decree No. 47 of 1988 was enacted in response to these and other failures.

The 1970 Act, as the first indigenous act, was expected to protect Nigerian interests and be reflective of the peculiarities of her people as well as their culture and traditions. This gives the reason that it cut the term of copyright to 25 years from 50 years. At that time, the local copyright-based industry in Nigeria had just started growing and required a firm policy structure to support this local industry from a local and international perspective. Okoroji, 2008, according to (Ola 2015: 10), summed up the displeasure concisely when he said,

The very weak provisions of Decree No 61 Of 1970, the copyright law then in force, was identified as the major obstacle to effective confrontation of the copyright problem. The civil provisions were cumbersome and had many loop holes... The criminal sanctions...were laughable. There was no provision for any imprisonment. There was therefore very little legal deterrent against piracy... It became very clear that the most important and urgent task ... was to get an effective copyright law promulgated in Nigeria.

However, following the civil war, it has been stated that the entertainment business grew in popularity as a way for Nigerians to "cool off" from the war's bad impacts.

Another noteworthy event was the discovery of oil, which provided many Nigerians with some additional cash to spend on luxuries such as entertainment industry products. Because of the industry's expansion and popularity, entertainers are becoming increasingly concerned about the protection of their works, and a need has emerged to revisit the legal framework for copyright and promulgate one that will really serve the requirements of the people.

Concerns about the vacancy in the 1970 act contributed to the agitation for the 1988 copyright act. The 1970 act was mostly ineffective, and this led to the agitation for the 1988 copyright act. In response to the widespread clamour, the Federal Military Government promulgated Decree No. 47 in 1988.

### **2.3.2 The 1988 Copyright Act**

The copyright Decree No. 47 of 1988 was issued by the Federal Military Government in 1988. According to Ola (2015), the Nigerian civil war in 1970 brought great wealth and a lot of money to the country, as well as a lot of money to spend. People needed to return to their daily routines. Entertainment provided comfort and grew into a significant industry in Nigeria. The need for entertainment has increased dramatically. The entertainment sector needed to change, according to the duos of local and foreign musicians. The advent of the cassette player and cassettes was made possible by technological advancements, which made copying cheaper and easier. In the entertainment sector, the development of equipment to mass generate works on cassettes created piracy issues. Producers, authors, and performers, for example, were all concerned about the high level of piracy. In the publishing industry, as well, which led to the formation of an Anti-Piracy Vanguard made up of representatives from the music and publishing industries. Despite multiple anti-piracy operations and

collaborations with the police, piracy was on the rise, and the recently established copyright law had had no effect on reducing piracy. The 1988 Copyright legislation was passed and became part of the Nigerian legal system after a series of discussions and lobbying. The Decree (now Act) included provisions for the development of a system in Nigeria for the administration of copyright and related rights.

According to Babafemi (2016), as regards sound recording and broadcast, copying lasted only 25 years after the end of the year in which the recording was made or the broadcast took place. These periods were ridiculously low, but the 1988 copyright Act extended the statutory periods. Under the 1988 copyright Act, the copyright licensing panel was enforced. The Nigerian copyright industry, frustrated and agitated, identified legislative reform as one of the cardinal issues in fighting the challenges posed by piracy.

In 1990, the Decree was renamed the Copyright Act. This Act not only created favorable conditions for an author's potential to be realized through the protection of creative work, but it also included, for the first time in Nigeria, machinery for the administration of copyright, known as the Nigerian Copyright Council. In 1989, the Nigerian Copyright Council was founded and formally inaugurated with a Governing Board, having primarily administrative responsibilities. It had no legislative enforcement powers or the authority to apprehend violators of the Act's provisions, and most of the Council's operations, according to the Commission's website, were focused on raising awareness through seminars and workshops. The Council was founded, among other things, to appropriately address the copyright industry's growing national and international duties, as well as increasing issues in the worldwide copyright arena. In 1996, the council's status was converted to a commission in order to better match it with the rising trend in global copyright administration and enforcement, its status was

changed to a commission in 1996. It was passed as a decree because it was promulgated under a military administration. The amended Act re-designates the Council as the 'Nigerian Copyright Commission' (the Commission) in 1996 and confers on it wider mandates which include regulation and enforcement of copyright. It became part of the codification of Nigerian law done in 2004.

In 1992 and 1999, the Decree, which is now an Act, was revised twice. The current Copyright Act has been described by observers as the most progressive in our legislative effort, and this is due in part to the fact that it was modeled after the World Intellectual Property Organization (WIPO) and is now referred to as Cap 28 Laws of the Federation of Nigeria, 2004. In the subsequent modification of the Copyright Act in 2004, the Nigerian Copyright Commission was retained powers to make regulations subject to the approval of the Minister, and powers to appoint copyright inspectors, inclusive of all police powers. The combined effect of these provisions upgraded the status of the Commission from an administrative agency to an enforcement agency.

### **2.3.3 Amendments in 1992 and 1999**

Due to the Council's original limited scope of powers and other growing trends in copyright protection and enforcement around the world, Decree No.47 of 1988 (the Act) witnessed two important amendments in 1992 (Decree No. 98) and 1999 (Decree No. 42).

According to Kunle (2015), the 1999 amendment to the Act established the Nigerian Copyright Commission, which is responsible for all matters relating to copyright in Nigeria. Despite the fact that the Nigerian Copyright Act was passed in 1988, it was not until August 1989 that the Nigerian Copyright Council was constituted by Decree No.47 of 1988, and it was not until 1996 that the Nigerian Copyright Commission was

recognized by the government. The government's earlier consent was given legislative effect by the 1999 Amendment to the Act. The Nigerian Copyright Council had only administrative responsibilities at the time, but after the Act was amended, its mandate was expanded to include enforcement, and it became a full-fledged enforcement organization with perpetual succession. The Commission was given various powers, including the ability to issue compulsory licenses, approve organizations seeking to operate as collecting societies, powers to make regulations subject to the approval of the Minister, and powers to appoint copyright inspectors, inclusive of all police powers. The combined effect of these provisions upgraded the status of the Commission from an administrative agency to an enforcement agency.

#### **2.3.4 Copyright Act (2004)**

Observers have described the current copyright Act as the most progressive in our legislative efforts, according to (Adewopo, 2012, pg. 5), and the reason is unrelated to the fact that the Act was modeled after the World Intellectual Property Organization (WIPO) Tunis model, which incorporates standard provisions reflecting current trends in global copyright legislation.

In 2004, the laws were re-codified under the laws of the federation of Nigeria. The re-codification changed the numbering of the sections, but their contents are still the same. The Act, when passed in 1988, had 41 sections, but the combined effect of the re-codification and the amendments to the Act has moved the number of sections to 53 sections while retaining the original number of parts and schedules, that is, 4 parts and 5 schedules.

#### **2.4 Copyright in Traditional Folklore**

Folklore is a concept which embraces aspects of tradition, the belief system, philosophy, customs, superstitions, and the arts and crafts of a group of people. According to the definition of folk music as adopted by the International Folk Music Council, it is the product of a musical tradition that has evolved through the process of oral transmission, and the factors that shape that tradition are:

- a. The present is linked to the past by a sense of continuity.
- b. This variability stems from the individual's and group's creative impulses.
- c. The community's selection decides the form(s) in which the music remains.

The exploitation of folklore is extensive and diverse. Many musical works have their roots in folklore.

Many musicians from traditional cultures are benefiting from a developing music industry that perceives traditional types of music as marketable commodities on the "World Music" scene, according to (Antony McCann), inadvertently acting within two profoundly opposing, if not paradoxical, worldviews. The hegemonic nature of capitalism, its fundamental capacity to dominate and infiltrate at all levels of society, and the natural beauty of a full-time job in the music industry for musicians who enjoy what they do, all combine to commodify traditional cultural musical expressions, making them financially exploitable.

Adewopo (2012) stated that intellectual property rights are not suitable for the protection of folklore because folklore will not meet its prescribed prerequisites. Protection of intellectual property rights is usually for a period of time, while folklore is timeless. Also, fixation is required in protection of intellectual property, which is not available in folklore because it is an oral tradition.

Furthermore, Adewopo claimed that the WIPO fact-finding mission on traditional knowledge, which took place in 1998 and 1999, agreed that intellectual property rights are unsuited for protecting traditional knowledge since they only protect individual rights and do not recognize communal rights. Traditional music's collectivity poses a challenge to the intellectual property system. This isn't to say that folklore can't be properly protected; it only means that the substance and nature of the protection will be different than what is currently accessible under the intellectual property system.

The Nigerian copyright Act, 28 of the laws of federation, section 31, protects the expression of folklore against reproduction, communication to the public by performance, broadcasting, distribution by cables or other means, adaptations, translations, and other transformations when such expressions are made for commercial purposes or outside their traditional or customary context.

It further states that the source of any identifiable expression of folklore must be indicated in a proper and fair manner in all printed publications and in connection with any identifiable expression of folklore by noting the community or place from whence the expression was formed.

## **2.5 Nature of Copyright in Music**

Not all works can be copyrighted; the Act seeks to protect the creative works of authors, artistic works, songwriters, music publishers, cinematography films, photographers, and all rounds creative.

Copyright law is an integral part of any organization in the Nigerian music industry. Federal law recognizes two distinct subject matter categories: "musical works" and

"sound recordings." Musical works are considered for protection because the authors are expected to reap at least some portion of their reward from the public performance of their works.

Each of these copyrights grants a unique collection of rights, some of which are only available to one of the two music copyright holders. A copyright holder for a musical work is either the author of the work or a music publisher who purchases copyrights from composers and exercises those composers' rights. Musical works will not be eligible to be copyrighted except the following occurs:

- Sufficient effort was expended in making the work to give it its original character.
- The work has been fixed in a definite medium of expression that is now known or to be developed later from which it can be perceived either directly or with the aid of any machine.
- At the time the work was done, it was intended by the author to be used as a model or pattern to be multiplied by an industrial process.

Moreover, work will not also be eligible to be copyrighted by reason that the making of the work or the doing of any act about the work involved an infringement of copyright in some other work.

According to Section 6 of the Act, Copyright in work shall be the exclusive right to control the doing in Nigeria, in the case of a musical work, to do and authorize the doing of any of the following acts:

- Reproduce the work in any material form,
- Publish the work,
- Perform the work in public,
- Produce, reproduce, perform or publish any translation of the work,



- Make any cinematography film or a record in respect of the work,
- Distribute to the general public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan, or similar arrangement,
- Broadcast or communicate the work to the public by a loudspeaker or any other similar device.
- Make any adaptation of the work,
- Do about a translation or an adaptation of the work.

A copyright owner in a sound recording has an exclusive right over acts stated in Section 7 (1) of the Nigeria copyright Act. These include direct or indirect reproduction of the work, control of broadcasting or communication, recording of the whole or substantial part of the recording either in its original form or in any other form recognizably derived from the original, commercial distribution to the public for commercial purposes copies of the work by way of rental, lease, hire, loan or similar arrangement. It is pertinent to state that copyright owners of sound recordings do not enjoy as much control as copyright owners of musical works do. This is because originality is not a requirement for the protection of sound recordings as is required for musical works. The primary function of Copyright under the law is to protect from annexation the fruits of a person's work (Babafemi, 2007). Copyright law protects expression of ideas and not the ideas themselves. It protect the creative expression already in tangible form.

## **2.6 Rights Available for Owners of Work in Nigeria**

According to the Nigerian Copyright Act cap C28, LFN, 2004 an author of a work has two major rights granted to him over his work. These are economic rights as stated in Section 9 and moral rights as stated in Section 5. Economic rights enable owners of

intellectual property to profit financially from others' usage of their work. Authors and artists can use moral rights to preserve and safeguard their connection to their work by taking specific steps.

## **2.6.1 Economic Rights**

### **2.6.1.1 Reproduction, Distribution, Rental and Importation.**

The most basic right protected by copyright legislation is the right of copyright owners to prevent others from making copies of their works without their consent. The legal underpinning for various types of exploitation of protected works is the right to regulate the act of reproduction – whether it is the replication of books by a publisher or the manufacture of compact discs containing recorded performances of musical compositions by a record producer. Section 5(1)(a)(i) grants a creator of a work the right to reproduction of the work.

A right to allow the distribution of copies of works is included in the Copyright Act Section 5(1)(a)(vi). Copyright owners would have little commercial value if they couldn't control the dissemination of copies of their works created with their permission. In Section 5(1)(a)(vi), the Copyright Act also includes the authority to permit the rental of copies of certain types of works, such as musical works on sound recordings. Because technological developments have made it simple for rental shop owners and customers to duplicate such works, this is required to avoid abuse of the copyright owner's right of reproduction.

The Act also grants the owner of a work the right to control importation of the work. The right is founded on the idea that copyright owners' legitimate economic interests would be jeopardized if they couldn't exercise their reproduction and distribution rights on a geographical basis.

### **2.6.1.2 Public Performance, Broadcasting, Communicating to the Public, and**

### **Making Available to the Public**

The author or other copyright owner has the right to permit live performances of a work, such as a concert or a symphony orchestra performance in a concert hall, under the right of public performance. According to the World Intellectual Property Organization in 2016, public performance also includes performance by means of a recording. Thus a musical work is considered publicly performed when a sound recording of that work, or phonogram, is played over amplification equipment, for example in a discotheque, airplane or shopping mall.

Authors of a work are granted the right of broadcasting which encompasses the transmission of the work, a musical work in this case, for public reception by wireless methods, such as radio, television, or satellite. When a work is made available to the public via broadcasting, a signal is transmitted by wire or wireless to members of the public who have the appropriate equipment to decode the signal.

#### **2.6.1.3 Translation and Adaptation Rights**

The expression of a work in a language different than that of the original form is known as translation. The term "adaptation" refers to the process of changing one work into another. Section 5(1)(a)(viii) of the Nigerian Copyright Act grants a creator of a copyrighted work the right to translate and adapt the work.

### **2.6.2 Moral Rights**

#### **2.6.2.1 The Paternity Right/Right to Attribution.**

In copyright law, attribution is credit given to the copyright holder or creator of a work. If a work is protected by copyright, the author has a right to demand credit when explicitly citing parts of that author's work. The right to be identified as the author of a literary, dramatic, musical or artistic work does not apply to other types of works such which copyright does not exist. The work must be a copyright work. The paternity right

also refers to the author's right to be identified as the creator of the work from which the adaptations were created in the case of adaptations.

### **2.6.2.2 The Right to Integrity**

Section 11(1)(b) provides that the author of a work, has a 'integrity right,' which gives them the right to protest to any alteration or modification of a work, as well as any other disparaging action taken in regard to a work, that would be harmful to the author's honor or reputation.

## **2.7 Copyright Infringement and Remedies**

In general, copyright infringement refers to the use of an author's work without his or her permission. It might also refer to the unlawful or banned use of copyrighted works, infringing on the copyright holder's exclusive rights, such as the right to reproduce, perform, or create derivative works. The exclusive rights to interact with a copyright owner's work are granted. The Act confers rights on the owner and prohibits the work's unauthorized usage. It's worth noting that the copyright holder is responsible for preventing others from engaging in so-called "restricted actions."

Section 14 of the Copyright Act, 2004 states that Copyright is infringed by any person who without the license or authorization of the owner of the copyright—

a) does, or causes any other person to do an act, the doing of which is controlled by copyright;

(b) imports or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy under this section of this Act;

(c) exhibits in public any article in respect of which copyright is infringed under

paragraph (a) of this subsection;

(d) distributes by way of trade, offers for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a) of this subsection;

(e) makes or has in his possession, plates, master tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work;

(f) permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;

(g) performs or causes to be performed for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

## **2.8 Copyright Infringement Types**

### **2.8.1 Copying**

Copying can take the form of an exact replica, copying only a portion of the work, or producing a work that looks to be similar. Direct copying isn't required. It may also be a covert act. In *Ajibola Olumuyiwa Danladi vs Tiwa Savage (2019) FHC/L/CS/230/2019*, the defendant infringed the copyright by copying from the plaintiff's musical work "ONE" without his permission.

### **2.8.2 Issuing Copies to the Public/Communication to the Public**

A copyright owner can take legal action against anybody who distributes a copy of his work to the general public without his permission. Infringement by issuing of copies has recently being popularized through digital means. Advances in technology has made illegal distribution of musical works accessible to anyone with a smartphone and internet access. Piracy no longer requires large machines for duplicating CDs, works can be easily shared through bluetooth and any platform on the internet capable of holding information. Placing a work on a website or enabling its download from a website will infringe if the work can be and has been downloaded by any member of the public, regardless of the actual location of the computer on which the website is housed.

### **2.8.3 Public Performances**

Unless done with the consent of the copyright owner, public performances and every other artistic work exhibited in public infringe copyright. In literary, theatrical, and musical works, the public performance of a work is a copyright-restricted act. However, public performances are not frowned upon in Nigeria. This is as a result of lack of awareness of the rights conferred to a creator by the virtue of copyright.

### **2.9 Remedies for Copyright Infringement**

In this case, the remedies available to a copyright owner are primarily civil in nature, and they are mostly pre-trial remedies including interim injunctions, search and seizure orders, and freezing orders, as well as discovery. Damages, injunctions and account of earnings are all options available after the trial.

However, infringement of a copyright is also a criminal offense, punishable by a fine and a sentence to jail. In such cases, the NCC is typically the prosecutor. The fact that

a criminal action has been brought against the infringer, on the other hand, does not preclude the copyright owner from pursuing a civil case against the infringer.

### **2.9.1 Pre-Trial Remedies**

Naturally, if a copyright owner feels his rights are being violated and there is a genuine risk that the person responsible would dispose of the evidence before the trial, the copyright owner can seek an order from the court. In this case, the order can take several forms, including a search order (Anton Piller Order), an interim injunction, and a freezing order. This is expanded below,

#### **2.9.1.1 Anton Piller Order**

An Anton piller order can be issued for the examination, photography, and delivery of infringing materials in an infringer's custody or control. The following are the steps involved: First, the court might issue a preliminary injunction banning the infringement from distributing the work. Second, authorization is given to the plaintiff's lawyer to search the defendant's house and confiscate any objects or commodities. Third, a court order may be issued forcing the defendant to provide the identity of distributors and customers.

#### **2.9.1.2 Interim Injunctions or Interlocutory**

It is a court order directing that certain activities take place, or continue to take place, pending the court's ultimate decision of the parties' rights. The goal is to maintain the status quo in order to avoid irreversible harm.

#### **2.9.1.3 Freezing Order or Mareva Injunction**

This is an order that was obtained without the defendant's knowledge or consent. Its purpose is to prohibit the defendant from transferring assets out of the jurisdiction,

dissipating or hiding them in order to deny the claimant any monetary recompense if the trial is successful. The defendant must be left with enough money to live on and carry on his day-to-day business as a safeguard for this ruling. King Sunny Ade was a beneficiary of this safeguard in the 70s during his legal battle with African Songs Limited. After being given an injunction order to no longer record any music until the expiration of the contract, His Lordship Justice Dosunmu who presided over the trial limited the injunction to recording and allowed Sunny Ade give live performances for a fee.

## **2.9.2 Post Trial Remedies.**

### **2.9.2.1 Damages**

Damages for intellectual property infringement are inherently tortuous. The copyright owner will typically seek damages from the court, which will be calculated, as with other torts, by putting the claimant in the position he would have been in if the wrong had not been committed, i.e., compensating him for the actual loss suffered to the extent that it is not too remote. Musicians typically request for huge sums of money in damages but may later opt to settle out of court.

### **2.9.2.2 Account of profit**

This is an order for the infringing materials to be produced and earnings to be reported.

### **2.9.2.3 Perpetual Injunction (Final)**

The permanent injunction, also known as a permanent restraining order, is a final relief that assures the infringement never interferes with or infringes on the subject matter again.

## **2.10 Cases of Copyright Infringement in the Nigerian music industry**



In recent times, Nigerian musicians have been involved in legal battles as a result of copyright infringement. One of such cases is that of Sir Jude Nnam, a prominent catholic music composer who filed a lawsuit No: FHC/L/CS/304/202 against the record label Five Star Music, it's Chief Executive Officer Emeka Okonkwo and their artist Kingsley Chinweike Okonkwo popularly known as Kcee. Nnam claimed that KCee's Cultural Praise Vol. 1 album featured his 2001 tune Som Too Chukwu without his permission. Nnam sought a declaration that the defendants jointly and severally infringed on his copyright by adapting, creating, distributing, marketing, advertising, and performing the music in public without his knowledge or authorization in a case filed in the Federal High Court. He further requested a perpetual injunction restraining, preventing, and banning the defendants from infringing on his copyright to the music, whether operating alone or through servants, agents, privies, legal representatives, or any other person. In addition, Nnam also requested that the court order the defendants to account for the earnings, revenue, and advantages produced by the song's adaptation, production, distribution, sale, advertisement, promotion, and performance from December 2020 until the date of judgment, as well as N150,000,000 in general damages. However, upon writing to his defendants through his lawyer on January 28, 2021, the Defendants have failed, refused and/or neglected to take required actions to mitigate or curb the infringement of his copyright. This is clearly a disregard for the law and Sir Jude's intellectual effort by the defendants.

Again, in 2019, Ajibola Olumuyiwa Danladi popularly known as Danny Young also filed the lawsuit labelled FHC/L/CS/230/2019 against Tiwa Savage, a fellow artist. The suit was filed on February 13, 2019, according to Premium Times, at the Federal High Court in Igbosere, Lagos. Young demanded N205,000,000 in damages from Savage for allegedly utilizing his musical work "ONE" without his permission.

However, the case was settled out of court at the request of Savage's legal counsel. Proper knowledge of copyright infringement and what constitutes intellectual property would have saved Tiwa Savage the settlement money paid even if she was able to easily afford it.

In 2015, the music veteran King Sunny Ade (KSA) was also involved in a legal battle with the company African Songs and its subsidiary, Take Your Choice Stores. KSA claimed that the companies had been producing inferior copies of his master tapes that are supposed to have been returned in 1975, after a court order almost 30 years ago. He sought N1 billion in damages jointly and severally, as well as an order from the court ordering the two firms to restore his master recordings and barring the defendants from infringing on his musical works. While dismissing the two firms' counterclaim for lack of merit, Justice James Tsoho ordered the two corporations to pay Sunny Ade and his band N500 million in his ruling. The judge further ordered that the master tapes be delivered to Sunny Ade because his ownership of the copyright has been shown beyond a reasonable doubt. Clearly, 30 years is too long a time to resolve to resolve copyright related lawsuits but due to the lack of government interest in the copyright administration and poor enforcement of sanctions by regulators, legal cases regarding copyright infringement are taken with levity.

## **CHAPTER THREE**

### **METHODOLOGY**

#### **3.0 Introduction**

This chapter gives an insight to the procedures used for conducting the study. It presents the research methodology that includes research design, population of the study, study area, data collection instruments, data processing tools, data sources and data analysis. It also provides the sources of the data which is primary and secondary data and how it is derived.

#### **3.1 Research Design**

The research design is ethnographic, providing details of the research stating the methods engaged in analyzing the data gathered during the research. The research approach is qualitative.

### **3.2 Population of the Study**

The population of the research consist of the various professionals who are involved in the music copyright administration which include Music practitioners, Regulatory organization, music managers, Artists, and legal personalities.

### **3.3 Method of Data Collection**

The method for data collections will be primary and secondary method. The primary data collection will be the use of interviews and face to face interaction with the music practitioners, music managers, Artists, legal personalities and regulatory organization while the secondary data collection includes magazines, journals and books either published or unpublished. Two sets of questions will be prepared, one for the regulators and the other for the music practitioners. The questions for the music regulators were basically the research questions as they are the custodians of the copyright law and commissioned to enforce the copyright law while the questions for the practitioners were intentionally altered so as to accommodate their position as beneficiaries of the copyright law.

### **3.4 Instrument for Data Collection**

This research would requires current and historical data. Interviews will be conducted at the Nigerian copyright commission(NCC) and the collective management organization (CMO) which include the copyright society of Nigeria(COSON) and the (MCSN) since they are bodies who oversees and fight for the interest of Authors, creators and musicians and assist the artistes in obtaining proper remuneration for their

creative works and facilitate easy access to these works by potential users. Also a face to face interaction with some artists and managers to give their view on how copyright laws has affected their music so far and what they think should be reviewed in the laws.

### **3.5 Method of Data Analysis**

The collected data is presented and explained in a meaningful way and qualitative data analysis will be used.

## **CHAPTER FOUR**

### **DISCUSSION OF FINDINGS**

#### **4.0 Introduction**

This chapter presents findings of the study and its analysis. Based on my pre-filled analysis, I was able to segment the entire research landscape into 5 namely.

- i. Music practitioners
- ii. Regulatory organizations
- iii. Legal practitioners.
- iv. Music enthusiasts
- v. Collecting agents

#### **4.1 Findings from Music Practitioners**

Mr. Seun Owoaje is a music scholar, pianist, composer and music entrepreneur by profession and has been in the music industry for over 25 years. According to him, copyright laws exist but in a country like Nigeria, they are less enforced, not effectively administered and are not respected. In his opinion, the systematic corruption and lack of willpower to administer rules and regulations could be said to be largely responsible for this. He also provided an example of how the process of copying CDs carelessly and without consequence is done by anyone. Other challenges he believes are present include the officials are corrupt and indifferent about enforcing it and also the inability to provide transparency. In order for musicians to benefit from new copyright laws, there has to be updated legislation, informed musicians, and proper enforcement and administration.

Mr Gbenga Akinfewa is a song writer, music producer, gospel singer and multi instrumentalist who has been in the music industry for over five years. Akinfenwa stated that the laws have not been effective enough for musicians while stressing the fact that the system is not accountable to provide protection for musicians work. The system to monitor and administer their work is not in place. Also, credibility from the regulatory bodies has been a major challenge, many musicians find it hard to entrust their works to the regulatory bodies because the system itself is not regulated. As an extra challenge, he described the copyright law to be Limited and ineffective control of the Nigeria Copyright Commission industry. He noted that if copyright laws are not properly enforced, violations like piracy will bring about a decrease in authors' income, making it difficult and less encouraging for them to continue creating.

Due to a lack of expert advice, people often have trouble understanding the music industry. For artists and their copyright commissions, lack of funds has been a persistent problem. The Collective Management Organization showed no interest in transparency. This refers to the process for collecting and distributing royalties. It is impossible to tell how much money each author has been paid. Artists who engage in unprofessionalism put themselves in a position where their copyright can be infringed, because they use pirates as a form of marketing. He says that artists need an organization with the structure and manpower to support them in providing solutions to these challenges. The government should ensure that the Commission is properly funded to perform its duties, especially as a deterrent to copyright violations by musicians, and that regulatory bodies are responsible for musicians' works. To ensure that musicians receive the compensation they deserve, a reliable system for collecting royalties must be created, as it is in countries that are developed.

According to Mr Busayo Oninla, an up-and-coming artist, improper monitoring of copyrighted works has been one of the main issues faced by copyright regulators. The government has not done more work in regulating and enforcing the laws for protection on musical works. Music practitioners not understanding the intricacies of the music business is also a dangerous trend that might hinder the growth of the industry and even destroy any structure that the stake holders are trying to build. He mentioned few challenges he had encountered regarding the administration of the copyright law. The system is riddled with inefficiencies, and the laws are out of date in comparison to other countries.

The failure of artists to fully grasp copyright laws in the music industry has led many artists to make mistakes due to a lack of awareness about copyright and intellectual property rights. The Governmental policy on copyrights and strict enforcement to stymie pirates. The law enforcement sector must be properly trained to understand the nuances of copyright law, especially how it relates to intellectual property.

Oninla further proffered that it is pertinent to create awareness and ensure public education about copyrights issue. Enlightenment in any society is crucial because it provides requisite information and empowers ordinary citizens with the knowledge required to interact in the society.

According to Mr Segun Adigun, another up-and-coming artist, there is a law that protects the intellectual property of the citizens of a country. In Nigeria, that would be the copyright act. However, in spite of having the Act, it is of little or no impact in the music industry. Nigerians generally do not consider the value that intellectual properties such as songs carry and would infringe without batting an eye.



An example is in the illegal distribution of albums, even with the numerous streaming platforms available now and the low data cost required to access these platforms, it is sad to note that even Nigerians who can afford these streaming platforms would rather download songs and albums from illegal sources. Many are not even aware that the administrators of these websites illegally hosting these albums generate revenue from the number of visitors who frequent their site in search of pirated copies of music. Unfortunately, this is revenue that will never reach the author/creator of the intellectual property.

Another area of concern is lack of materials educating the masses on copyright infringement. Nigerians are not properly educated on the value of intellectual property and when these individuals get into positions of power, the protection of intellectual property isn't a matter of concern for them.

Again, it is no secret that the Nigerian administration is wrought with greed and mismanagement and this has seeped into all sectors including the copyright administration. Government officials have to be bribed and compensated for doing their civil duty. In the case of infringement, the one whose right has been infringed would have to "settle" someone just to have them track down and prosecute the violator.

Mr. Kehinde Fashipe is a record producer and member of the Broadcast Music Inc. in the United States. The BMI is an equivalent of the MCSN in Nigeria as they collect royalties on behalf of songwriters, composers and publishers. On copyright laws in Nigeria, Fashipe believes the Nigerian government is trying but the efforts are not enough. This, he believes is a result of lawlessness rampant in almost every sector of the nation of which the music industry is not excluded. He also added that, among artists and musicians there is a general lack of awareness about copyright, how it can

be protected from infringement and effectively utilized to generate a sustained stream of income. Furthermore, the complicated face of uncertainties in some of the copyright act's wordings hasn't helped matters. Section 8 of the copyright legislation, for example, defines public communication as excluding broadcast and re-broadcast. This means that any broadcasting or rebroadcasting that constitutes an infringement of copyright in a satellite or cable broadcast will not be considered an infringement if it is disseminated to the general public. Another intriguing difficulty is the conjunctive use of the term "recording and re-broadcasting." The inference is that if a person or a broadcasting business records a broadcast without permission and another purchases it and rebroadcasts it, it is not considered infringement because the broadcasting and recording were done by two separate people or legal entities. Fashipe believes the following actions could be explored on how to make the laws more active and effective.

#### **A. Technological solutions**

In the field of digital broadcasting via cable and satellite transmission, cable operators around the country should take steps to prevent unlawful use of their transmission.

#### **B. Legislative actions**

To address the ever-increasing variety of digital developments, separate legislative measures should be established. Wide consultations, particularly with experts in the fields of information technology, copyright, and computer technology, should be held during the enactment of these new legislative measures in order to effectively acquire the technical knowledge that would expose the intricacies involved in copyright violations of digital technology.

### **C. Administrative actions**

A good law that isn't backed up by an effective administrative enforcement mechanism is a waste of time. As a result, the Nigerian Copyright Commission should establish suitable administrative measures for the protection of copyright in digital works, given that copyright enforcement remains the foundation of protection for the various hybrids of digital and computer technologies.

The Nigerian government should work closely with various international organizations concerned with digital works, such as the Business Software Alliance, as well as market authorities and trade unions, to ensure that any infringing copies of computer software and other digital innovations are confiscated, and that those who contributed to the infringement face appropriate repercussions.

### **D. Social indicators**

All initiatives involving the general public are included in this category. Enlightenment and awareness initiatives at the grassroots level are the most important of these approaches. This can be accomplished by using various commercial ringlets and adverts in radio and television broadcasts that are understandable to the average person. The dangers of using pirated software and digital works should be emphasized just as much as the benefits that come with using genuine software and digital works.

The Nigerian Copyright Commission should also set up a social helpline where regular Nigerians can report apparent examples of copyright infringement, with monetary compensation attached if the infringement is proven.

### **E. Judicial ramifications**

Because of the complexities of copyright, the federal government should establish an administrative tribunal, arbitration panel, or even a separate court to handle urgent situations involving copyright infringement. An administrative panel would be more appropriate for dealing with copyright concerns, as it would allow specialists to be invited to adjudicate in certain areas of copyright that require expert knowledge.

#### **4.2. Findings From the Regulatory Body**

The Nigerian Copyright Commission (NCC) was established under Section 34 (1) of the Copyright Act, (Cap C28, Laws of the Federation of Nigeria, 2004). On August 19, 1989, the Nigerian Copyright Commission was first formed as the Nigerian Copyright Council. This administrative change was affirmed by the Copyright (Amendment) Decree 1999 as a body corporate with perpetual succession and a common seal. To administer copyright concerns more locally, the NCC has regional offices in some states of the Federation. A board of directors has been put in place to ensure proper administration of NCC. The commission has a number of responsibilities and roles within the copyright act, including:

Being responsible for everything that this law covers, supervising and monitoring Nigeria's status, advising the government on copyright matters and also responsible for advising and regulating bilateral and multilateral agreements between Nigeria and other countries. They also inform the public about copyright issues so as to maintain a current catalog of authors and their publications.

According to Mrs Lynda Alpheus the Deputy Director of the council and a legal practitioner who has been in service for over 10 years, the copyright law has been very effective in providing covers for musicians and other practitioners in the music

industry in the following ways: The copyright law informs musicians of the bundle of rights the law offers them, and it also ensures the owners of the rights are aware of their rights. Because of copyright law, musicians can benefit from and manage their creative work's use by others. Through their inclusion in the law, collecting societies now have the capacity to act as a sort of umbrella body to help users obtain licenses, negotiate and collect and distribute royalties. This gives them access to areas in which they would not have been able to go without help. The law has also served to curb piracy and infringement.

In addition, she noted the main reasons for the difficulty of music copyright administration. The owners and users of copyrighted works are equally at fault for illiteracy. While Copyright law is still young in our region, most of the people around here don't know what it is and why it's important to safeguard creative ideas. A lack of financial support for the governmental agency tasked with Copyright administration. It was discovered that the NCC's ability to carry out its responsibilities was hampered by its need for money. Unfortunately, the NCC has still not been sufficiently funded. To make ends meet, copyright owners had to accept substandard royalties or no compensation at all. Some musicians even resorted to begging radio stations to play their music for free, hoping that the exposure would lead to fame. The widespread lack of knowledge about the copyright system and the protections it affords. Long processing times for copyright infringement cases of Copyright holders and artists get worn out while they wait for a decision to be made. Legal proceedings could be brought against anyone who violates another person's intellectual property.

She described the flaws in the current copyright laws that Penalties are inadequate in our current copyright law. The copyright law predates the development of the internet, so it lacks any language pertaining to online infringement.

Alpheus shared her view on the likely results of conducting a comprehensive examination of existing copyright laws in conjunction with the music industry. She believes that reviewing the laws could yield a host of benefits, including protections for copyright works in the digital space, a reevaluation of the penalty section, the incorporation of the world's best practices, and an increase in copyright literacy for both users and owners.

According Mrs Durogo Linda Chika an assistant director of the NCC and also a legal practitioner who has been in service for 16years, the copyright law has been effective to a large extent as there have been arrests made against copyright offenders and some of these offenders were also charged to court and consequently convicted for music piracy. Durogo also stated the factors responsible for the challenges of copyright administration in the music industry which are: Lack of sufficient awareness of copyright law, Inadequate knowledge of copyright laws, Lack of management skills on the part of copyright owners, Exploitation of copyright works beyond National boundaries and impact of technology.

Durogo additionally claimed that the existing copyright laws are limited, which include fair use and dealing, Parody, imitation, and satire, a special exception enables a record producer to record or adapt the work if the work was previously produced or imported into Nigeria for retail sale by copyright owner after being licensed by the copyright owner in compulsory licensing. Durogo also suggests that the outcomes that may arise from revising the copyright laws are: Less online music piracy, online offenders are arrested and prosecuted and the shutting down of infringers' websites.

### **4.3 Findings from Legal Practitioner**

According to Barrister Valentine Utulu, a legal practitioner who specializes in copyright matters from the practical and theoretical perspective, copyright laws and administration has not been effective in providing covers for musicians. He explained that the challenges that faces the copyright enforcement in Nigeria is from both the law and the practical perspective. Regarding the law, the fine for copyright infringement is too lenient and as a result of this artists are not creative and innovative in their creation. Regarding the actions, NCC are not prosecuting as often as they should, he further said they might be overwhelmed at the avalanche of infringement and understaffed. They are not very visible in prosecuting copyright infringement in Nigeria. He gave an example of how copyright infringement is handled by the FBI in the United states. Any possible legal copyright infringement, the person risks being jailed. He issued a series of directives relating to copyright enforcement which are the general mistrust of government and its inability to protect the rights of copyright holders. The sluggish progression of the law, the legal system is both drawn out and expensive so musicians are thus uninspired to pursue court cases. No copyright enforcement and Corruption. He also shared some ideas on how to improve the laws, which are: The government should create a way to strengthen the NCC and another to expedite lawsuits involving copyright infringement. Establish a specialized judicial department within the NCC to handle all legal rulings. We need to dramatically raise the fine. Defendants who commit copyright infringement must pay dearly financially to compensate the victims. Adjust the legal framework. People who violate intellectual property rights should be awarded substantial damages by the judges. The agencies must be supported, and their funding needs to be regularly reviewed. The legislators must consult the stakeholders and listen to musicians to craft laws that take into account the music community's concerns.

Artists have an expanded audience thanks to technological progress, which is allowing their songs to be heard online. Because of this, CMOs should offer assurance that they will enforce the collection of royalties on their behalf, and pay them if their rights are infringed. Encouraging commerce and creativity at the same time is key.

#### **4.4 Findings from Collecting Management Organization**

The Musical Copyright Society of Nigeria (MCSN) is an incorporated collective association of authors, composers, arrangers, and publishers of music. The MSCN was established in 1984 to serve as the successor to both the Performing Rights Society (PRS) and Mechanical Copyright Performing Society (MCPS) in Nigeria. MCSN was the new home for many Nigerian creators, but others chose to stay with PRS and MCPS. Under the terms of the PRS and MCPS reciprocal representation contracts, MCSN acquired the rights to virtually all of the Nigerian music industry's copyright repertoire.

According to Mayowa Ayilaran, Chief Executive Officer of Musical Copyright Society Nigeria (MCSN), regarding the judgments variously obtained from the lower courts to the Supreme Court, it is seen that the law is effective in providing a legal cover for musicians and other practitioners who are identified as authors and creators.

The effectiveness of any law is determined by the interpretations given to the law by the courts and how such interpretations are enforced. It is therefore up to the musicians and other practitioners to take advantage of the law in getting themselves covered and protected. Plethora of cases abound to prove the effectiveness of the law based on the actions taken by the parties involved. For instance, MCSN has successfully deployed the law in safeguarding its existence and operations. It has also deployed the provisions of the Copyright (Collective Management



Organizations) Regulations 2007 to strengthen the management of copyright collectively for the benefits of individual owners of copyright who are affiliated to it. It is however sad that not many musicians and other practitioners in the music industry have taken active step in exploring the law to their advantage.

Ayilaran added that any review of the copyright law may result in either of two outcomes of either to improving the level of copyright protection and benefits derivable from such protections or erasing the gains already made and reversing the progress being made. Any law worth its salt should be left open for judicial interpretations out of which a good practice and progress would emerge, but rushing to review or amend the law due to every challenge met in the way of implementation cannot guarantee a desirable outcome. Copyright law and administration would most certainly become a major hub of economic activity in the nation in the next five to ten years, as intellectual property rights are being seen as major subject and issue of trade across the globe.

#### **4.5 Findings from Music Enthusiasts**

According to Mr Afotanju David, copyright should serve as a protection over intellectual property of an individual. They also claim that so far copyright laws of Nigeria have been effective to a large extent. And many cases of copyright infringement have not been brought to limelight and due to this many users of intellectual property of creators without authorization have not been dealt with.

According to Mr Alabede Daniel, copyright refers to legal right an artist should have over his or her work but unfortunately, there seem to be a general lack of awareness among artist as to how their copyright can be effectively exploited in order to generate a sustained stream to revenue. He further suggested that artist should be compensated

every time their musical works or recordings are exploited in public or commercial settings.

According to Mr Ogeleka Emmanuel, copyright is the act of putting a patent on a product or a service. He also spoke about piracy and how it has been a stumbling block that has affected the careers of every Nigerian artiste. He sighted the example of the local artiste who struggles to make his name and music known, but eventually never profits from the spread of the music as he should. He spoke about how this lack of profit comes from piracy, which he calls the illegal duplication and distribution of that artiste's music. In his opinion, piracy can't truly be stopped in a developing community such as Nigeria. He went on to explain how it has been reduced by the rise of companies like Audiomack, Spotify and Apple music, that offer artistes a way to make money from their music by uploading it to their platforms. He went on to talk about how these platforms keep track of the amount of listens, downloads and shares for the artiste's songs and how that has really helped in the reduction of piracy in a developing country like Nigeria.

According to Miss Faith Akhigbe, copyrighting is a way of making sure that your music as musician cannot be stolen by anyone. She spoke about how it is a very effective way for musicians to make money in the music industry. She also spoke about how she doesn't see it as effective in Nigeria especially for the upcoming artiste who has to do a lot of street performances to get his music out there and is at the risk of getting his music stolen by other musicians.

#### **4.6 Analysis of findings**

According to the regulatory bodies, the copyright laws have been useful and effective in carrying out operations in the music industry. However, contrary to that the

practitioners who are the musicians stated that the current laws have not been effective enough. Although the practitioners agreed that the laws are in existence but for some reasons it has been of no value and use to them.

Copyright laws have been partially effective, but they have not provided adequate protection for musicians because the system is not accountable. There is no framework in place to monitor and administer their work. The copyright law explains the rights musicians have under the law, and it also makes sure that the owners of the rights are aware of their rights, but it's important to prosecute infringers and enforce the law to make sure that only authors or people who have the authorization of the author can profit from using a copyrighted musical work. The administration of copyright has faced numerous challenges. With problems like lack of funding, bribery, lax enforcement, insecurity, slow and ineffective legislation, and weak law enforcement, it is nearly impossible to conduct business.

Moreover, other matters, such as the neglect of the specific nuances of intellectual property law and the poor recognition of international treaty obligations, must be addressed, as well as the inadequacy of judicial and review authorities' training and the inadequacy of the piracy regulation.

## **CHAPTER FIVE**

### **SUMMARY, CONCLUSION AND RECOMMENDATION**

#### **5.1 summary**

In order to stimulate innovation, creativity, and development, copyright protection has to become one of the most critical tasks of states today. The music sector has the potential to generate substantial money for the country if it is properly managed and

regulated, with government backing through financial involvement, investment, and enforcement of copyright rules. The increased number of copyright infringement convictions should serve as a deterrent to others who believe that flagrant disdain for copyright is acceptable. Nigeria's ability to proactively interact with the international community in domesticating legal tools and negotiating topics of relevance for the development of Nigeria's creative industries will determine the future of copyright in Nigeria.

## **5.2 Conclusion and Recommendation**

In my opinion, the copyright laws should be amended to provide stiffer penalties (punishment) for copyright infringement.

To end copyright infringement, additional legal, administrative, social, judicial, and technological measures are needed. To combat piracy successfully and efficiently, NCC officers should be appropriately and properly taught on ICT as digital technology is the current avenue for various forms of copyright infringement. The NCC should make decisions on who should carry out a certain raid based on skill rather than fear or favor. The commission's officers should be men of integrity and disciplined Nigerian nationals. They should also be sufficiently compensated so that they are not tricked or seduced by any gratification offered to them by pirates, since if they are, they would fail in their work and, as a result, find it difficult to call the pirates to order. The government should provide appropriate financing for the Commission to enable it to carry out its statutory tasks, including enforcement as a deterrence mechanism for copyright protection, as proper finance is the backbone of any effective enforcement operation.

There is also the need to raise the level of awareness of people about copyright law in order to discourage flippant and ignorant violations of the copyright law. Authors and consumers alike should be sensitized on the value of intellectual property. This will be a step forward in the fight against copyright infringement in the Nigerian music industry.

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## APPENDIX I



The Researcher's visit to the Nigerian Copyright Commission., NCC Aug, 2021



Mrs Lynda Alpheus, the Deputy Director      Mr Emeka from NCC and the researcher  
of NCC and the Researcher





Mr Charles Omudipe from NCC  
researcher



Director of NCC, Mr Omudipe and the  
Researcher



Interview with Mr Gbenga Akinfewa and the Researcher,



The Researcher on the field at, Copyright Society of Nigeria, COSON, Head office,  
Ikeja Lagos,



Zoom meeting with Barrister Valentine Utulu and the researcher

## APPENDIX II

### List of Interviewees

Name	Status
Mr. Seun Owoaje	Music scholar, pianist, composer and music entrepreneur by profession and has been in the music industry for over 25 years.
Mr. Gbenga Akinfewa	Songwriter, music producer, gospel singer and multi instrumentalist who has been in the music industry for over five years.
Mr. Kehinde Fashipe	Record producer and member of the Broadcast Music Inc. In the United States.
Mrs Lynda Alpheus	Deputy Director of NCC and a legal practitioner who has been in service for over 10 years.
Mrs. Durogo Linda Chika	Assistant director of the NCC and also a legal practitioner who has been in service for 16 years.
Barrister Valentine Utulu	Legal practitioner who was called to bar

	in 1989 and specializes in copyright matters from the practical and theoretical perspective.
Mr. Mayowa Ayilaran	Chief Executive Officer of Musical Copyright Society Nigeria (MCSN).
Mr. Busayo Oninla	Up-and-coming artist.
Mr. Oluwasegun Adigun	Up-and-coming artist.
Mr. Afotanju David	Music enthusiast.
Mr Ogeleka Emmanuel	Music enthusiast.
Mr Alabede Daniel	Music enthusiast.
Miss Akhigbe Faith	Music enthusiast