

# THE NIGERIAN MUSIC INDUSTRY: CONSEQUENCES OF COSON AND MSCN COEXISTENCE

**by Tochukwu Tagbo**

After years of court battle between Nigerian Copyright Commission (NCC) and Musical Copyright Society of Nigeria (MCSN), the Attorney General of the Federation, Abubakar Malami, in April 2017 directed NCC to approve MCSN as a collective society. Unfortunately, the Attorney General failed to indicate which of the exclusive rights under Section 6 of the Nigerian Copyright Act 2004 are to be administered and monitored by MCSN. This has created an overlap as well as conflict between MSCN and Copyright Society of Nigeria (COSON).

Collecting societies in the music industry usually administer reproduction rights and public performance rights in musical works. Whilst mechanical right societies administer reproduction rights, performing rights societies administer public performance rights. However, before the approval of MCSN, COSON was acknowledged as the sole collecting society administering both rights. The reintroduction of MCSN as a collecting society has raised some fundamental questions, including:

- a. Which of the two societies is to administer reproduction rights?
- b. Which of the two societies is to administer public performance rights?
- c. If the two bodies coexist as public performance societies and mechanical societies, who sets the rates for licenses?
- d. What if two songwriters own a song, one is a member of COSON and the other, a member of MCSN, can one of the societies issue license and collect royalties on behalf of the other?
- e. Can a songwriter join the two societies?
- f. Which of the societies can collect royalties for unregistered songs and what is the rule governing black-box monies?

The answers to these questions fall with the Commission as the body responsible for all matters relating to copyright in Nigeria. However, as "collecting society" is a foreign concept adopted by Nigeria, it is expected that the Commission will take into consideration foreign practices in answering these questions.

In relation to reproduction rights, many foreign countries have one society that regulates mechanical royalties and like Nigeria, most of them are government affiliated. For example, Mechanical Copyright Protection Society (MCPS) for England, Composers Authors and Publishers Association

(CAPASSO) for South Africa, Harry Fox Agency (HFA) for United States, and Canadian Musical Reproduction Right Agency (CMRRA) for Canada.

The same structure applies to public performance rights. For example, Performing Right Society (PRS) for United Kingdom, Southern African Music Rights Organisation (SAMRO) for South Africa, GEMA for Germany, and SACEM for France.

However, the United States have four major public performance rights societies; ASCAP (American Society of Composers, Authors and Publishers), SESAC (Society of European Stage Authors and Composers), BMI (Broadcast Music Incorporated) and GMR (Global Music Rights). ASCAP and BMI are non-profit while SESAC and GMR are for profit. These four societies are able to coexist for many reasons:

- a. Established roles governing their practices. For instance, a songwriter can join only one of the societies;
- b. Adequate technology to assist in allocation of license proceeds. For example, although radio stations are required to keep daily records of the songs played, ASCAP and BMI use media monitoring companies to gather data and keep accurate record of airplays; and
- c. A good number of music-users understand the law of public performance and therefore pay royalties. In Nigeria, many music-users refuse to obtain license or pay royalties because the idea of paying to play music is still uncommon. Many consider playing music in public as a promotion for musicians .

In consideration of these practices, it is clear that COSON and MSCN can coexist as collecting societies provided that the Commission specifies which of the exclusive rights each of the societies should administer.

Although it can be argued that the existence of multiple collecting societies is not in the best interest of Nigerian artistes because:

- a. Many artists write and perform their songs, therefore having more than one society means less income for them as the societies will deduct their overhead expenses before pay out;
- b. Many artists have assigned both reproduction and public performance rights to COSON, thus having to sign new and separate agreements with each society is a major setback to the progress of music licensing; and

- c. It is onerous on music-users to get licenses from different societies for use of music.

However, if the Commission concludes that the two societies are to administer both reproduction rights and public performance rights simultaneously, the Commission should review the terms and conditions for approving a society. The Commission should only approve a society if it is satisfied that the applicant:

- a. Has demonstrated a good understanding of copyright law as it applies to the music business; and
- b. Has adequate technology to track and keep accurate data of each song copied/played, how many times it is copied/played and by how many users. This is to ensure that the societies collect royalties for songs in their catalog alone and that copyright owners receive a proportional amount of the royalties collected.

The Commission should also set the price floor and the price ceiling for licenses. This is to ensure that copyrighted works are neither overvalued nor undervalued by any of the societies in bid to secure members and/or music-users.

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This article was published in Trademarks Law Vol. 3 No. 3 Digest on Nigerian Law Intellectual Property Watch (NLIPW), now Nooktoria Legal Resource.