



TITLE PAGE

**RHYTHM AND RIGHTS: AN ANALYSIS OF THE EFFECTIVENESS OF COPYRIGHT
LAWS IN THE NIGERIAN MUSIC INDUSTRY**

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**BEING A PROJECT SUBMITTED TO THE FACULTY OF LAW, ALEX EKWUEME
FEDERAL UNIVERSITY, NDUFU ALIKE IKWO, IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL. B)**

SEPTEMBER, 2025



DECLARATION

I, **OGBONNA PRECIOUS KAOSISOCHUKWU CHIEMELA**, a Student of the Faculty of Law Alex Ekwueme Federal University, Ebonyi State, do hereby declare on my honour, that this project has not been previously presented, either wholly or in part for the award of any other Degree, Diploma, Certificate or Publication in any University, other Higher Institution or elsewhere

Signed

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(2020/LW/14312)



CERTIFICATION

This is to certify that this long essay titled “Rhythm and Rights: An Analysis of the Effectiveness of Copyright Laws in the Nigerian Music Industry” has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo” as an original work carried out by Ogbonna Precious Kaosisochukwu Chiemela, with registration number: 2020/LW/14312 in the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo, under the guidance and supervision of Barr. Chukwuemeka Chukwudifo.

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DEDICATION

This research work is dedicated to God Almighty for His love, mercies and grace all throughout my undergraduate days and to my family, my lovely parents for their support and encouragement throughout the period of my LL. B journey. To my guys because they are just too much

Finally, I dedicate this work to all researchers who have gone before me and those that will come after me.



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LIST OF ABBREVIATIONS

Cap-	Chapter
Pt-	Part
P-	Page
LFN-	Laws of the Federation of Nigeria
NCLR-	Nigeria Constitutional Law Report
NWLR –	Nigeria Weekly Law Report
SCJN- Judgment	Supreme Court of Nigeria
All FWLR –	All Federation Weekly Law Report
All NLR-	All Nigeria Law Report
CHR-	Chancery Report
SACLR- Report	South Africa Constitutional Law
SC-	Supreme Court
AC-	Appeal Cases



ABSTRACT

Music is an important part of human history that has found its pride of place in every part of the world. There is hardly any day that passes by without songs being listened to. It is important that creators of music enjoy the benefits of their works, else lose the motivation to produce more musical works. These creators cannot be protected if the law does not give its protection, and thus the essence of copyright (laws) in nearly every country. In Nigeria, the copyright laws grant an automatic protection to works that have satisfied the statutory requirements of originality and fixation. Unfortunately, the music industry has been affected by the acts of freeloaders – copyright infringement of musical works. Musical creators in Nigeria would benefit more if there was a way to ensure compliance with the copyright law. The laws in Nigeria, unfortunately, are not accommodating with regards to musical works being infringed on the internet and other public space without authorization or permission of the creator. It is a seemingly impossible task, on the part of the musical creator, to monitor all works being published. The general objective of this study is to examine rhythm and rights: An analysis of the effectiveness of copyright laws in the Nigerian music industry. In the course of carrying out this research, doctrinal research methodology was adopted and the work recommended among others that, there is a need for the government to introduce intellectual property enforcement unit, cross border co-operation and more training for law enforcement agents, and concluded that Artists are entitled to some form of compensation every time their musical work or sound recording is exploited in a public and/or commercial setting, and efforts should be put in place to protect copyright in music industry in Nigeria.



CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Copyright is one aspect of intellectual property law that seeks to protect the works created by authors and creators. It is not subject to registration but enjoys the status of a copyright work the moment it is in a fixed and original form. Copyright works, under the Nigerian Copyright Act 2022 which generally comprises literary works, artistic works, musical works, cinematograph film, sound recordings, and broadcast.¹

With music, it is important to state that it appears in all aspects of copyright works. However, its final form (song produced) is a harmony of literary works, musical works and sound recordings. In Nigeria, there are a vast majority of musicians whose works are being produced for the entertainment of the public. Quite regrettably, is the fact that these musicians do not get to benefit from the result of their creativity because of the ever-increasing acts of infringement of their works.² These musical components are being adapted into other works. There are some songs that share same beats and rhythm with other songs. It is not safe to say that only the lyrics of the song make up the music. Things to be considered would include the musical notes and chords, sound recordings done in the studio as well as the lyrics.

The fact that Nigeria is naturally social and festive means that Nigerian music is heard openly at celebratory social gatherings, stores, barbershops, betting/games centers, radio stations etc. Music constitutes an essential part of many cultural and social activities. It is the expression of thoughts and the imagination of ideas which

¹ Section 1 of the *Copyright Act 2022*.

² Justin Jacobson, *Music Copyright 101: Protect and Copyright Your Music?* available at <<https://www.tunecore.com/guides/copyrights-101>> accessed 12th June, 2025.



may be expressed in words, in form or in sound. The music industry appears to be the most broadly practiced and most accessible of all the arts in the entertainment industry.³

It is a truism that the greatest heritage of a nation remains the creativity of its citizens, and therefore one of the primary functions of law is to protect the ingenuity, resourcefulness and innovation of the citizenry. Thus, the dictum of Belgore J. in *Oladipo Yemitan v. The Daily Times Nigeria Ltd*,⁴ is very apt when he said that: “The right of a man to that which he had originally made is an incorporeal right and must be protected”.

The music industry, much like any other institution of its kind, comprises of individuals through which it operates. Its products are the works of human intelligence and the author of a work exercises the right to control the use of such works to the exclusion of others. Thus, the erudite jurist Ogbuinya, J.C.A. in the case of *Multichoice (Nig.) Ltd. v. M.C.S.N. Ltd*,⁵ had this to say:

“It is unconscionable to deny a musician the fruits of his intellectual efforts. Such kills ingenuity in the music artistic firmament to the detriment of all. This is because music is a money spinner for an artiste, his dependents, and successors. Its gains permeate all segments of the global society.”

Indubitably, a musician is a composer, who, like a spider that spins cobweb from its belly, creates something out of nothing. The product of his ingenuity is music which is the soul, lubricant and elixir of life. He acquires intellectual property over his

³ Hemen Philip Faga, & Ngozi Ole, ‘Limits of Copyright Protection in Contemporary Nigeria’: Re-examining the Relevance of the Nigerian Copyright Act in Today’s Digital and Computer Age’. (2010) 2(1) *Ebonyi State University Law Journal*, 24.

⁴ *Oladipo Yemitan v. The Daily Times Nigeria Ltd* (1980] FHC (Federal High Court Reports) 186 at 19

⁵ *Multichoice (Nig.) Ltd. v. M.C.S.N. Ltd* (2020) 13 NWLR (Pt. 1742) 415 at 535, paras. G-H

musical work, which racks *pari passu* with other proprietary rights.⁶

And the rationale for intellectual property/copyright protection was expounded by Romer, J in *Joseph Rodgers & Sons Ltd. v. W.N. Rodgers & Co.*⁷ where he put it thus that it is the law of this land that no man is entitled to carry on his business in such a way as to represent that it is the business of another, or is in any way connected with the business of another; that is the first proposition. The second proposition is, that no man is entitled so to describe... his [works] as to represent that the [works] are the [works] of another.⁸

Without intellectual property laws, however, the labours of these intellectuals would rapidly be exploited, frustrated and deprived of their rights as a result of the activities of 'pirates' i.e. copyright violators and infringers who rip off their benefits, consequently hampering the industry from experiencing fundamental financial growth and development. On the issue of infringement, the erudite jurist Jinadu J. in *Maurice Ukaoha v. Broad-Based Mortgage Finance Limited &Anor*⁹ held thus:

"All these actions of the Defendants were done without the consent, authorization or license of the Plaintiff, the owner of the Copyright... under the provisions of Section 14(1)(a)(c) and 17(1) of the Copyright Act... the foregoing acts constituted a violent infringement of the Plaintiff's Copyright and are prejudicial to the Plaintiff's honour and reputation as the author."

Copyright violation is not a phenomenon that is only unique to Nigeria, as a matter of fact, its parasitic effect is being felt by the global music industry and the economy at large. This in turn can be blamed on the widespread and uncontrolled use of the

⁶ *Maurice Ukaoha v. Broad-Based Mortgage Finance Limited &Anor* (1997) 4 I.P.L.R. 48, at p. 59 paras. G-H

⁷ *Joseph Rodgers & Sons Ltd. v. W.N. Rodgers & Co* (1942) 41 R.P.C. 277

⁸ *Ibid* (n 3) 30

⁹ *Supra*

internet as a medium for data exchange.¹⁰ Currently the policing of such “rogue websites” on the internet, many of which are foreign-owned and operated, is burdensome: the websites are often maintained by vast global piracy networks, and those piracy networks have been tolerated—and sometimes protected—in China, India, Russia, and even Canada.

Consequently, the music industry has been ravaged by piracy and intellectual property violators who neither respect national borders nor geographical boundaries. Moreover, the advent of the computer age has provided a means to overcome the technical and acoustic limitations of orthodox musical instruments; and the progressively complex technology analogous to it has made it very hard for regulatory agencies to make a substantial effect.¹¹

Even though there is the obvious infringement of musical works, the law in Nigeria has a lot to achieve in preventing the infringement of copyrighted musical works. There is therefore a need to identify the problems faced within this area.

1.2 Statement of the Problem

In Nigeria, thousands of persons infringe on copyrighted musical works without even knowing. Others do so intentionally, thus creating the problem of distinguishing primary infringers from secondary infringers. These continuous infringements create a problem for music creators, despite the current provisions stipulating the acts and punishments. In addition, it seems difficult to protect musical works on the internet because when copies are uploaded on the internet, it spreads so fast that it is

¹⁰Daniel Gumm, *Agencies intensify Efforts to export Nigerian Entertainment Industry*, available at <<https://nigeriansabroadlive.com/agencies>> accessed on 13th June, 2025.

¹¹ *Ibid* (n 10) 16.

difficult to pinpoint the original source.¹²

Also, a lot of musical creators do not deem it necessary to take out an action against infringers who happen to fall in the middle or lower class. To them, it would be time consuming and a huge waste of financial resources. It is very easy to find an action against popular musicians or someone wealthy, bearing in mind that should they succeed in their suit, they would benefit monetarily from it. This thinking, unfortunately, is as a result of ignorance. There is a need to educate the uninformed musical creator of their rights in relation to their works.

1.3 Research Questions

It is a general belief that music is an integral part of the culture of the people. In fact, the curious beauty about African music is that it uplifts even as it tells a sad story. Such is the level in which music is revered in Africa. Over the years, the continent has produced musicians and artists who have gone ahead to influence generations both within and outside the continent, creating genres such as afrobeat which has gone on to contribute immensely to the world.

The economic importance of music industry has been amply documented. The music industry is one of the fastest growing export sectors of the global service economy. Being a creative expression and related intangible assets, copyright law plays a critical role in determining its performance. The export potential of music is already recognized, in addition to its complementary links countries, and its role in the promotion of national culture. The copyright is one of the essential institutional mechanisms, which has helped facilitate the creation and dissemination of musical

¹² Jennifer Kostyu, 'Copyright Infringement on Internet: Determining the Liability of Internet Service Providers', [1999] (48)(4) *Catholic University Law Review*, 13.

works through modern business enterprises, by providing a framework to manage the problems arising from the joint consumption and imperfect excludability of the works. It is part of the institutional framework that helps define a marketable product as well as reliable income flows (through royalties and related income), this research work formulates the following research questions:

1. What are the existing legal frameworks for protection music copyright in Nigeria?
2. How effective are copyright laws in Nigerian Music Industry?
3. What are the criteria for copyrightability of music and rights accruable to the owner?
4. Are there any gaps in the laws regulating copyright in Nigeria especially in the music industry?
5. What are the enforcement mechanisms for copyright violation in Nigerian music industry?

1.4 Objectives of the Study

The general aim of this study is to analyse the effectiveness of copyright laws in the Nigerian music industry.

Specifically, this work seeks to extensively examine the following aims and objectives:

1. To evaluate the existing legal frameworks for protection music copyright in

Nigeria

2. To critically analyse the effectiveness of copyright laws in Nigerian Music Industry
3. To discuss the criteria for copyrightability of music and rights accruable to the owner of such music
4. To find out if there are existing gaps in the laws regulating copyright in Nigeria especially in the music industry
5. To examine the enforcement mechanisms for copyright violation in the Nigerian music industry

1.5 Research Methodology

This study relied on both primary and secondary sources of information. The primary source includes judicial decisions (that is, case analysis of notable trademarks disputes and rulings in Nigeria courts).

Another primary source that will be used are laws regulating Trademarks in Nigeria. These laws include the Copyright Act 2022, among other regulations. The secondary source consists information from books, journals, articles, reports, conference proceedings, theses and also internet documents focused on effectiveness of copyright laws in the Nigerian music industry.

1.6 Scope and Limitation of the Study

This study focuses on Nigeria, examining Nigerian laws and regulations on the copyright in the music industry, the rhythm and rights available to the music owner. However, reference will be made, when necessary, with judicial authorities and international best practices.

This study also covers the rights and liabilities in copyright vis-à-vis musical works in

Nigeria. This enables us to understand developments that has occurred and the ones yet to in copyright laws as well as music copyright registration and enforcement. In the course of this work, I will further analyse the past and present enforcement challenges, infringements of copyright and the enforcement mechanisms available to a music owner.¹³ Also the study will examine the relevant laws and authorities governing copyright in music industry and the duties of the court under same.

Limitation of the Study

Every noble cause is usually fought with challenges. Considering the nature of the matter in discourse the ideology varies countrywide, hence making this work a difficult and a herculean task full of difficulties. Among the difficulties encountered in the course of the research are:

1. Reach of sufficient material: The major challenge to the study was that textbooks or journals written by most Nigerian authors who are experts in copyright publish such articles and hence, not within reach. More so intellectual property law and in particular copyright laws in music industry in Nigeria. Nevertheless, the available information and data found by the researcher were made use of judiciously in presenting an informed policy framework that would be of immense benefit to the generality of Nigeria.
2. Lack of funds: A good researcher discourse requires materials, visitations, texts and article. Given the current economic realities in the country at the present time, a typical Nigerian student finds it almost impossible to get these materials for lack of funds and similarly the useful textbooks available online

¹³ Imran Oluwole Smith, *Trademark Law and Practice* (UNILAG Press, 2019), 12.



are with price tags and many are quite expensive to purchase, equally the cost of typing and surfing the internet is not within the reach of an average Nigerian student. Therefore, I found it difficult in this discourse for want of funds to make this research an impeccable one.

3. Time Constraints: Given the very nature of our academic program in Nigeria, a typical student always finds it difficult to handle normal class room lectures and compilation of a research work at same time.

1.7 Significance of the Study

Copyright enforcement and regulation in the Nigerian music industry is crucial for several reasons, particularly in maintaining economic growth, protecting consumers, and fostering innovation.

Without legal protection and adequate enforcement of copyright right, it would be difficult for owners of music industry to enjoy the rights accruable to the copyright. This research will be helpful as it will end with several important lessons about the regulations and enforcements of copyright in musical industry in Nigeria. Thus, this study will be significant to the following persons;

- (1) This study will improve the understanding of the Nigerian copyright laws in music industry and recommendations for effective enforcement.
- (2) Identification of challenges facing copyright enforcement in music industry.
- (3) Recommendations for strengthening trademark regulation and enforcement and contribute to existing literature on copyright enforcement in the music industry.
- (4) Enhanced protection for intellectual property rights
- (5) Contribution to policy reforms and legal frameworks development
- (6) Increased awareness and education on copyright law in music, its importance to

the public to reduce infringement.

Its significance will therefore be of immense benefit to academia, lawyers and legal practitioners, policymakers and lawmakers as well as business owners and entrepreneurs, enforcement agencies and to the general public and extend beyond Nigeria.

1.8 Chapter Analysis

Chapter One sets the stage for the entire study, providing an overview of the background to the research, the problem the study aims to address, and the questions that guide the research. This chapter defines the purpose of the research, the specific objectives it seeks to achieve, and the scope of its analysis. It also highlights the significance of the study in contributing to the broader discourse on the effectiveness of copyright laws in the Nigerian music industry. The limitations faced in conducting the research are acknowledged, along with the methodological approach employed, which is doctrinal in nature.

In Chapter Two, the study explores foundational concepts that are critical to understanding the intellectual property rights. It also evaluated key jurisprudential theories such as unfair competition theory, economic and investment theory, Consumer Protection Theory, among others. Finally, this chapter also reviewed the positions of some scholars on the topic of the study and the likely gap in knowledge that the study tends to fill in.

The focus on Chapter Three provides a detailed examination of the legal and institutional frameworks governing copyright in the Nigerian music industry. It covers national legal frameworks such as the Nigerian Copyright Act 2022 among other regulations. This chapter also reviews the roles some key institutions play in protecting rhythm and rights accruable to owners of intellectual property in the

musical industry.

Chapter Four focuses on rights and liabilities in copyright vis-à-vis musical works in Nigeria. The chapter discusses in details the rights accruable to musical creation in Nigeria and the likely liabilities associated with the violation of copyright.

Chapter Five summarizes the findings from the study, providing an overall assessment of the effectiveness of copyright laws in the Nigerian musical industry. The chapter concludes with recommendations for improving the effectiveness of the existing legal frameworks for the protection of copyrights in the Nigerian musical industry.



CHAPTER TWO

LITERATURE REVIEW

2.1 Conceptual Framework

2.1.1 Intellectual Property

Intellectual Property ("IP") simply refers to creations of the mind, such as inventions, literary and artistic works, designs, and symbols, names and images.

Intellectual Property is protected in law by various Nigerian laws. These laws are classified into Patents Act, Copyright Act and Trademarks Act, which enable people to earn recognition or financial benefit from what they channel their efforts to invent or create. By striking the right balance between the interests of innovators and the wider public interest, the Intellectual Property system aims to foster an environment in which creativity and innovation can flourish, and rights accruable to it are enjoyed by the owners without unlawful violations.¹⁴

It is a category of property that includes intangible creations of the human intellect. There are many types of intellectual property, and some countries recognize more than others. The best-known types are patents, copyrights, trademarks, and trade secrets.¹⁵

2.1.2 Copyright

¹⁴ Ayinoluwa Akinyemi, 'The Impact of Intellectual Property Rights on Economic Growth in Nigeria'. (2018) 45(2) *Journal of Economic Studies*, 309.

¹⁵ Imran Oluwole Smith, *Trademark Law and Practice*. (UNILAG Press, 2019), 10.



Although the Copyright Act defines copyright to mean copyright under the Act,¹⁶ several scholarly and legal definitions have been given on the subject. Copyright has been defined to mean the right to make copies.¹⁷ Due to technological advancements and the modern-day options of creativity and exploitation, the scope has been expanded beyond just the right to make copies. Copyright has also been defined as the property right which exists in various works such as literary works, artistic works, musical works, films, sound recording, and broadcast.¹⁸

Copyright does not protect the ideas behind these works, but the expression of such ideas in a definite form. In other words, one cannot claim copyright to an idea but the expression of such idea in a fixed medium such as a book, tape, and paintings. This means that different creators can create a work on a particular idea and each be entitled to copyright in their own work. If one creator copies the form and arrangement of another creator, then the law will consider this an act of infringement.¹⁹

Under the extant Copyright Act, literary works, musical works, artistic works, cinematograph films, sound recordings, and broadcasts are the recognised works eligible for protection.²⁰ The Act further states that, for literary, musical and artistic works, two conditions must be fulfilled: originality and fixation. It is important to state what these works are before looking at the conditions to be fulfilled.

Irrespective of their literary quality, the following works are deemed literary works, namely: novels, stories, poetic works, plays, stage directions, broadcasting scripts,

¹⁶ Section 51 of the *Copyright Act 2022*

¹⁷ Marshall Leaffer, *Understanding Copyright Law* (3rd edn, Matthew Bender 1999) 2.

¹⁸ David Bainbridge, *Intellectual Property* (6th edn, Pearson Publications, 2007) 5.

¹⁹ Ifeanyi Ufondu, *A Guide to Trademark Registration in Nigeria*, <https://www.mondaq.com/nigeria/trademark/757232/a-guide-to-trademark-registration-in-nigeria> accessed 30th June, 2025.

²⁰ Section 2 of the *Copyright Act 2022*.

choreographic works, computer programmes, textbooks, essays, articles, dictionaries, directories, letters, reports, lectures, addresses, sermons, written tables and all other works mentioned in the Act. Musical works means any musical composition, irrespective of the musical quality and includes works composed for music accompaniment.²¹ Artistic works, irrespective of artistic quality, include paintings, drawings, engravings, maps, photographs, architectural works and all other works mentioned in the Act. For cinematograph films, they include the first fixation of any sequence of images capable of being visually shown as moving pictures, and includes all soundtracks that are associated with that film. The first fixation of a sequence of sound capable of being aurally perceived are deemed sound recordings, but does not include the soundtracks of a cinematograph film. Broadcast are deemed sound or television broadcast by wireless telegraph or wire or both, or by satellite or cable programmes.²²

The condition for originality does not mean that the work must be in a novel form or that it must be an expression of the original idea of the author, but that the work must originate from the author – a work not copied from another author.²³ Within the context of musical works, there must be sufficient skill and labour in the creation of the musical composition.

However, where the author, in creating a musical work, copies a substantial amount of another's work, such an author would still be deemed to have copyright to that musical work. The reason is because a work will not be deemed ineligible for copyright merely because the process of creating it involved an infringement of copyright in some other work.

²¹ Ibid, section 6

²² *University of London Press v University Tutorial Press* [1916] 2 Ch 601.

²³ *Green v Broadcasting Corporation of New Zealand* [1989] 2 All ER 1056.

In other words, this provision relates to two different works. Should a musician, in creating a song, infringe on the literary or sound recording of another, such musician will be deemed to have copyright to that song, irrespective of the infringement on the literary work of another. The same will not be said if an author, in creating a literary work, copies a substantial amount of another literary work.²⁴

The second condition to be fulfilled is that the work must be fixed in a definite medium, whether or not it exists or would exist, capable of being perceived and reproduced. When it comes to ideas, they are not subject to copyright – all that the copyright law recognises is the fixed form in which such idea has been expressed in. Upon the fulfilment of the above two conditions, the works listed in the copyright Act become copyrightable. This reiterates the fact that a work does not need to be registered to enjoy copyright protection.²⁵

In Nigeria, copyright, through the Copyrights Act, seeks to protect the works of creators who have expended sufficient efforts into putting such works in an original and fixed form. Based on this, unauthorised users of these works will be deemed copyright infringers. However, this does not make a work ineligible for copyright protection by reason of it being created by an infringing act of a copyrighted work. In a situation where a gospel artist produces a new song, he will be deemed to have copyright in that song.²⁶

On the other hand, should another artist go on stage to perform this song without an authorisation to do so, he will be deemed an infringer of the work, but he will be entitled to copyright in the performance of the song to the extent to which he has not

²⁴ *Ibid* (n 18) 6.

²⁵ Olusola J Jegede and Winifred Idiaru, *Overview of Copyright Law and Copyright Registration in Nigeria*, available at <https://www.mondaq.com/nigeria/copyright/983450/overview-of-copyright-law-and-copyright-registration-in-nigeria> accessed 15th June, 2025.

²⁶ Copyright User, *The Recorded Performance*, available at <<https://www.copyrightuser.org/educate/the-game-is-On>> accessed 6 June, 2025

infringed on that song. Seeing as a song comprises the lyrics, melody, and sound recording, any of these components could be infringed upon, thus giving the owner(s) a ground to sue for infringement. The condition of registration is not mandatory like it is for trademarks, patents, and designs.²⁷

Despite the fact that every song contains more than one copyright, the rights provided for under the law will be available to the owner of the copyright. In addition, the owner of the said copyright is free to license or assign these rights to another, and this forms the basis for copyright protection. However, the said work must be eligible for copyright protection and must fulfil the requirement of originality and fixation.²⁸

2.1.3 Trademarks

The term “trademark” means a mark used to distinguish goods (including services or goods related to the provision of services) of one business from those of others. It can be any sign capable of being represented graphically which is used to distinguish goods and services of one undertaking from those of others.

According to section 67 of Trademark Act, trade Mark means a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods, and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under the Act.

²⁷ The Nation, *Examining Copyright Ownership of Christian Songs*, available at <<https://thenationonlineng.net/examining-copyright-ownership-of-christian-songs/amp>> accessed 25 June, 2025.

²⁸ *Ibid* (n 25)



According to Article 15 of the Agreement on Trade Related Aspects of Intellectual Property Rights, any sign or combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting trademarks, such signs in particular words including personal names, letters, numerals, figurative elements, and combination of colours as well as any combination of such signs shall be eligible for registration as trademarks.

The concept of trade marks signifies the materialization of creative minds toward branding of products which is essential in the 21st century business as purchasing decisions are constantly influenced by trademarks which help distinguish products and services from those of competitors and help identify a particular company as a source.²⁹

Trademark cannot be ignored or set aside as it relates to the origin of the product and the ability of consumers to be able to distinguish one good from the other whilst at the same time, guaranteeing quality and a strong instrument of advertisement.³⁰

A trademark is protected not only to avoid consumer confusion, but also to provide firms with an adequate return on investments made to create and maintain strong brands. In *Dyktrade Ltd. v. Omnia Nig. Ltd.*³¹ It was held that when a mark has been registered, it entitles the owner to use the trademark exclusively and also, would have a right to sue for passing off when the defendant uses such goods that are inconsistent with that of the plaintiff.

An essential feature of a trademark therefore, is that it must be distinctive before it can be registered but it must always be when dealing with such goods in the course

²⁹ Babafemi F O, *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patents and Industrial Designs in Nigeria*. (Justinian Books Limited, 2007), 184.

³⁰ W Cornish and D Llewelyn, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*. (6th Edition, Sweet & Maxwell, 2007), 603.

³¹ *Dyktrade Ltd. v. Omnia Nig. Ltd* (2003] 4, I.P.L.R. p.266, 267

of trade.³² trademark protection laws.

For a mark to be registered, it is important that the prerequisite requirements must be followed and must have passed the authenticity test. Under a Trademark, there is register (Part A and Part B Registration), however for a Part A Registration, section 9(1) of Trademark Act provides what a Trademark must consist or contain as an essential particular which are to wit;

- a) The name of the company, individual or firm represented in a special or particular manner
- b) The signature of the applicant for the registration or some predecessor in business
- c) An invented word or words
- d) A word or words having no direct preference to the character or quality of the goods, and not be according to its ordinary signification, a geographical name or a surname.

In *Yorkshire Copper Works Application*,³³ the company deals with solid materials made with copper and wanted to register the name "Yorkshire Copper". It was contended that the name is a geographical name in England, arguing that people who use that product would think the goods is in Yorkshire. The court relying on that assertion held that they can't use that name as it's a geographical name.

However, in *Liggett & Myers Tobacco Ltd v Registrar of Trade Marks*³⁴, the applicant sought to register their Cigarette with the "CHASTERFIED" without any design but they have been using it with design. The application was rejected because it is not

³² Section 9 (2), *Nigerian Trademark Act, Cap. T13, Laws of the Federation 2004*

³³ *Yorkshire Copper Works Application* (1954) 1 ALL England Report at Pg.170

³⁴ *Liggett & Myers Tobacco Ltd v Registrar of Trade Marks* (1969) 1 ALR Comm. 421



distinctive cause it's a name of a town in England but the plaintiff argued that it has no connection with the quality of the product and that Chesterfield has another English meaning (OVERCOAT). The court held that the application should be accepted since in its ordinary significance can't be a geographical name.

In furtherance for a trade mark to be registered, it must be distinctive and able to differentiate between the goods of one undertaking from those of other undertakings in the course of trade so that confusion would be minimized. Examples of such marks are:

1) Deceptive or Scandalous Marks

It is unlawful for a person when registering a trade mark to use a mark which is apt to mislead or to be the basis of misconception or is contrary to law or where it is of any scandalous nature.³⁵ Marks that are likely to hurt or injure religious feelings, or contain immoral matter, or words that are blasphemous or obscene, cannot be registered as trademarks.

In same vein it is unlawful to register as a trademark or part of a trademark any matter, the use of which would by reason of it's been likely to deceive or cause confusion or otherwise be disentitled to protection in a court of justice or be contrary to law or morality in a court of justice or be contrary to morality as earlier mentioned. In *Alban Pharmacy v Sterling Product*³⁶ In this case the marks in conflict where each a mixture of pictorial and word representation. The applicants mark showed the device of a baby in a large picture on the bottle bearing the word "Casorina". Now the respondent opposed the application for the registration of the mark on the ground that they have been using the word "Castoria" with a picture of five little children on

³⁵ Babafemi F O, *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patents and Industrial Designs in Nigeria*. (Justinian Books Limited, 2007), 186.

³⁶ *Alban Pharmacy v Sterling Product* (1968) ALL NWLR (Pt 234) 292.

the bottle and so, that the name is likely to deceive and cause confusion. The court held that the registration will not be allowed for “Casorina” because of the likelihood of deception for the public, the court went further to state that the court must consider the person with imperfect recollection in the conscious and the illiterate as well as those who may place and order by telephone.

In *French Connection Ltd v Sutton*³⁷. The Judge expressed deep distaste for the claimant registered mark “Fcuk”. The court held that the name is scandalous and contrary to law and morality. Same was held in *Phillip Ghazillian Trademark Application*,³⁸ the court affirmed the registrar’s refusal to register the trademark “Tiny Penis” for clothing material and the court said that the mark offends the moral principle of right-thinking members of the public and the mark was therefore refused as likely to offend public decency.

2). Names of Chemical Substance;

Under the NTMA, there is a restriction to registering the names of chemical substances. Hence, an assertion that is usually used to refer to single chemical element or compound or single chemical compound, though distinguished from a mixture will not be registered as a trade mark especially if it is for a chemical substance or preparation.³⁹ Where there is a false entry, or where information is entered in the register without sufficient cause, the Registrar has the right to rectify the register, by deciding whether to expunge the information otherwise from the Register.⁴⁰

3) Identical and Resemblance Trade Marks;

³⁷ *French Connection Ltd v Sutton* [2000] ETMR 341

³⁸ *Phillip Ghazillian Trademark Application* [2001] R.P.C. 33. H1

³⁹ Section 12(1), *NTMA, Cap. T13, Laws of the Federation 2004*

⁴⁰ Section 12(2) *ibid.*

Goods that are identical as to its similarity and description shall not be registered if it is already on the Register and belongs to another proprietor.⁴¹ Hence, a trade mark will not be registered in respect of goods that are (a) similar, or (b) the outer character of the goods are alike, and that they very much look like other products and that such goods would likely mislead or deceive consumers into thinking otherwise.⁴²

Therefore, a trade mark sought to be registered, must not be alike or be akin to the trade mark of another proprietor. In other words, each trade mark that is registered must be distinctive in its own class and any goods which tend to be similar to other goods will not be registered under any trade mark law unless otherwise accepted by the Registrar.⁴³ However, there are exceptional cases where the Registrar would allow certain trade mark registrations that are the same or compactly look like each other but they must be subject to such stipulations as the trade mark official or the Court might think fit to do and that's in the case of honest concurrent use or other special circumstances ,the court may permit the registration of such a mark .⁴⁴

A trade mark could therefore be expunged from the register where there is the evidence that there is in existence an identical trade mark which is likely to deceive consumers. In *Hondret & Company Limited v. Registrar of Trademarks*,⁴⁵ the claimant registered "*Rosefresh Air-Freshner*" in 1974. The Respondent, the Registrar in this case refused to register the trademark on the ground that the mark conflicts with an earlier application by *Murray, Clark & Jones Ltd.*; and a ruling was delivered confirming his refusal. The applicant, being dissatisfied with this decision, filed a

⁴¹ Section 13(1), *NTMA, Laws of the Federation 2004*

⁴² Section 13(1) *NTMA*, *ibid.*

⁴³ Section 13(1) *NTMA*, *ibid.*

⁴⁴ Section 13(2) *NTMA*, *ibid.*

⁴⁵ *Hondret & Company Limited v. Registrar of Trademarks* (1989) 2, I.P.L.R. page 116, 113

Notice of Motion appealing against the refusal of the Registrar and thereafter, sought for an order that the Registrar should proceed with the registration of the mark. It was held in this case that Section 16⁴⁶ is only applicable where the Mark sought to be registered conflicts with an existing registered trade mark and where the application to register both marks are still pending in the courts.

4)Coat of arms

As a fundamental rule in Nigeria, it is a punishable offence where a person uses the Coat of Arms or any symbol nearly resembling it on a trade mark which is apt to mislead the public into assuming that the person using such, has the permission to do so.⁴⁷ The populace is therefore not allowed to use the national flag of Nigeria or any insignia so closely resembling it on a trade mark which will be fraudulently misleading. Also, words, such as, President or Governor or any mark likely to deceive persons to think that the applicant is connected to the President or Governor is an offence and unacceptable.⁴⁸ Hence, any such emblem which resembles the Coat of Arms of Nigeria or the Arms of the State, as the case may be, and used in connection with any trade, business, in any manner, is unlawful, especially if done without the prerequisite permission from the appropriate authorities. Therefore, where this occurs, it leads to a fraudulent misrepresentation of the fact that such persons were not authorized to use the emblem of the Federal Republic of Nigeria or that of a State in the first place and will be guilty of an offense and liable to be punished accordingly.⁴⁹ It shows from the provision under the NTMA, that using what belongs to the Federal or State government is illegal, but the penalty for such a grievous offence is too lenient under the NTMA, to deter fraudulent persons as the fine so

⁴⁶ Section 13(1) *NTMA*

⁴⁷ Section 62, *NTMA*

⁴⁸ Regulation 18, *Trade Mark Regulations 1967*

⁴⁹ Section 62 (2)-(3) *NTMA*, *ibid.*

stipulated is a miserly amount of forty naira.⁵⁰

2.1.4 Patents

A patent is a grant of a monopoly right given to an inventor precluding others from exploiting his invention without his authorisation for a fixed period of time.⁵¹ Section 1 of the Patents and Designs Act provides that an invention is patentable so long as it is new, results from an inventive activity, and is capable of industrial application.

In addition, it must not be against public policy.⁵² The purpose of a patent is to induce creative minds to undertake research and make the results available to the public. During the period of the patent, the inventor benefits financially; afterward, it is free to the public to act upon as though the patent never existed in the first place. Just like trademarks, patents registration is crucial in protecting the invention.

2.1.5 Copyright in the Music Industry

Copyrights in a musical work may be owned by just one author, in which case, the author must have been the lyricist, the instrumentalist as well as the sound recorder. However, this is rarely the case; more often than not, copyright in a musical work would be attributable to different authors based on the nature of their respective contributions to the final product. Therefore, the lyricist/songwriter will own the copyright (Publishing rights) in the lyrics of the song as a literary work, the instrumentalist/producer will own the copyright (Publishing rights) in the melody and chords accompanying the lyrics as a musical work, while an executive producer, the record label or the recording studio would own the copyright (Masters rights) in the

⁵⁰ Section 62, *NTMA, ibid.*

⁵¹ T & A Legal, *Registration of Patent in Nigeria*, available at <<https://www.mondaq.com/nigeria/patent/703362/registration-of-patent-in-nigeria>> accessed 3 June, 2025.

⁵² Robert Inoma, *Overview of Patent Right in Nigeria* (Robert Inoma and Co, 2020) 23.

sound recording.⁵³

The concept of exclusivity is at the core of the author's bundle of rights. Exclusivity allows the author to exercise particular rights reserved by the Copyrights Act for the author's sole benefit. However, the author may choose to license the work, thereby permitting a licensee to exercise some of the author's exclusive rights within the precincts of the licence. Alternatively, the author may transfer the proprietary interest in the musical work by assignment, which would effectively terminate the author's exclusive rights in favour of the assignee of the copyright.⁵⁴ *Section 9* of the Copyrights Act 2022 recognises the exclusive right of the author to; reproduce the musical work; publish the musical work; perform the musical work in public; produce, reproduce, perform or publish any translation of the musical work; distribute copies of the musical work by way of rental, lease, hire, loan or similar arrangement; broadcast or communicate the musical work to the public by a loudspeaker or any other similar device; and make any adaptation of the musical work.

As the first owner of the copyright in a musical work, the music artist or author is in a position to determine how the musical work would be initially commercialized. Thus, the author may for instance assign all rights in the work to a commercial music purveyor, or the author may choose to only grant limited licences, thereby retaining control over the musical work. However, where the author grants an exclusive license to a record company, the copyright in the resulting sound recording would belong to the record company and the author may or may not have limited control over the resulting sound recording depending on the terms of the recording contract.

⁵³ Babafemi F O, *Intellectual Property: The Law and Practice of Copyright, Trademarks, Patents and Industrial Designs in Nigeria* (1st Ed., Justinian Books Limited, 2007) 14.

⁵⁴ *Ibid* (n 54).

To retain full control of the musical work, the artist would, in addition to authoring the musical work, also record the same. The artist may then negotiate a distribution deal with an established record label who would take on the responsibility of marketing and promoting the work in return for a share of whatever profit is derived from the work.⁵⁵

2.2 Theoretical Framework

2.2.1 Consumer Protection Theory

Consumer protection theory stipulates that buyers of goods and services and the general public should be protected against unfair practices in the market. The consumer protection theorists believe that consumer protection measures should often be established by law. That is, laid down legal frameworks should outline measures that should be implemented to protect the rights of consumers in the market place.

Such legal frameworks should be intended to avert businesses and individuals from engaging in fraud and fraud related practices or specified unfair practices to gain an advantage over competitors who have channelled their efforts and expertise to the growth and development of the market through their intellectual property, or do things that will mislead consumers.⁵⁶

The theorists postulated that consumer protection theory will provide additional protection for the general public which may be impacted by a product or its production. This theory is linked to the idea of consumer rights which help consumers make better choices in the market place and pursue complaints against

⁵⁵ Ann Harrison, & Tony Rigg, *The Present and Future of Music Law*, (1st Ed., Bloomsbury Academic, 2013) 34.

⁵⁶ S A Fagbemi, 'A Critical Examination of Legal Remedies for the Tort of Passing off and Unfair Competition under Nigeria Law'. (2011) 6, *University of Ibadan Journal of Private and Business Law*, 68.

businesses vigorously.

In line with the postulations of the consumer protection theorists, intellectual property rights give the authors of the music the privilege of protecting their musical productions and innovations, promote their intellectuals and most importantly, protect the rights of buyers of musical products and services against unfair practices especially in the area of selling counterfeit.⁵⁷

2.2.2 Source Identifier Theory

The source identifier theory is of the position that memory for the origin of information. The ability of the measures to assess source identification independently of identification of an item as old or new depends on assumptions made about how inconsistencies between the item and source components of a source-monitoring task may be resolved.⁵⁸

To the theorists, the measure that is used most often when source of identification is measured by collapsing across pairs of sources confounds item identification with source identification. Alternative measures according to the source identifier theorists are identities that do not confound item and source identification in specified circumstances.⁵⁹

The theory is pertinent to the regulation and enforcement of copyright in Nigeria becomes pertinent as it helps to confer exclusive rights on the authors of copyright in musical industry in Nigeria against infringement by others in the industry. Identifying the source is important both to the authors of the musical works and musical industry so as to protect the works against infringement. In so doing,

⁵⁷ Shubha Ghosh, 'Lessons from National Experiences', *The International Journal of Trade and Sustainable Development Implementation of Exhaustion Policies*: (2007) 2(1) t, 17., 68

⁵⁸ Shubha Ghosh, *ibid.*

⁵⁹ Andrew Griffiths, *An Economic Perspective of Trademark Law. New Horizons in Intellectual Property Series*. (Edward Elgar Publishers, 2011) 15.

enforcement of copyright in musical industry will be easier.

In compliance with the source identifier theory, the duties of Nigerian Copyright Commission and Copyright Administration in line with section 78 of the Copyright Act 2022 shall primarily be to identify the originality of the musical work and protect same.

2.2.3 Economic and Investment Theory

Economic and Investment Theory suggested that an increase in the share of investment would raise the level of output provided the investment was done with intent of rapid economic growth, as failure to undergo intentional investment would not produce a sustainable increase in the economic growth rate.⁶⁰

Thus, any given rate of economic growth will be associated with a variety of levels of investment. According to John Keynes,⁶¹ investment is expected to generate a stream of future cash flow that would transform the economy by ensuring economic sanity in all sectors.

In line with the postulation of economic and investment theorists especially John Keynes, regulating and enforcing copyright in the musical industry in Nigeria would contribute to the economic growth of the country as it will give incentives to intellectual property owners and encourage them to invent more musical works that will promote economic advancement in Nigeria.

Regulation of intellectual right in Nigeria is very necessary because of the roles, inventions and creation of the mind play in the advancement of the Nigerian economy. It is necessary because government is duty bound to protect the interests of the public through regulations and policies. In line with the fact that efforts of one

⁶⁰ *Aristoc Ltd. v Rysta Ltd.* (1945). AC 68.

⁶¹ John Keynes, *The General Theory of Employment, Interest and Money* (Macmillan Publishers, 1936), 39.

should be preserved and which also points to the fact that the common interests of the members of the public should be put into consideration and protected in government decisions and policies, Nigeria, laws are enacted to regulate the use, distribution and marketing of new innovative works.⁶²

2.2.4 Unfair Competition Theory

Interests in prospective business relations are sufficiently valuable civil rights to merit judicial protection at law and in equity. Intentional interference with these rights by competition is lawful so long as it is fair according to judicial standards. These standards change as public policy in regard to business competition is modified by social and economic conditions. Under present conditions, public policy favours higher standards of fairness, with consequent greater protection to prospective business relations. The tort theory of action is that the competitor who fails to comply with these standards of fairness has abused the privilege of competition, and is therefore subject to liability by way of damages to an injured competitor.⁶³

The equity theory is that continuing abuse of the privilege of competition by an unfair competitor is an unlawful interference with the property right to conduct a lawful business, or is an unlawful misappropriation of the prospective economic advantage of that business, against which an injunction is the only adequate remedy. Unfair competition theory involves judicially developed morals of the market place founded on the almost biblical precept of “no man shall reap where he has not sown”.⁶⁴

⁶² Babafemi F O, *Intellectual Property: The Law and Practice of Copyright, Trademarks, Patent and Industrial Designs in Nigeria*. (Justinian Books Ltd, 2007) 43.

⁶³ *Ibid*, Babafemi F O (n 63) 44.

⁶⁴ Joseph T Noah, Unfair Competition: ‘Common Law Liability for Interference with Prospective Business Relations’. (1952) 28(1), *North Dakota Law Review*, 4.

Unfair competition theory is an abuse of the privilege of free competition, constituting a tort or an equitable injury against which an injured competitor can obtain legal or equitable relief. Tort liability for unfair competition is imposed on the theory that unfair interference with a competitor's prospective business relations is an abuse of the privilege of competition. This privilege, based on the public policy in favour of free competition, is an exemption from the general principle that intentional interference with the interests of another is a tort. It rests on the economic postulate that free competition is worth more to society than it costs. Interference with the business relations of a competitor is, of course, the very essence of competition, and only where the interference is regarded as unfair is the competition unprivileged.⁶⁵

It is also the postulation of unfair competition that one whose business values are misappropriated by a competitor is entitled to injunctive relief in order to prevent unjust enrichment. The misappropriation by a competitor of the business values of another person is equivalent to taking the competitive equipment of that person and using it to his injury. This theory explains why owners of musical works seek redress in the court of law where their intellectual property rights are infringed upon.

2.2.5 Dilution Theory

This theory is of the view that proactive and higher concentrations should be placed on solutions to a given societal problem by adding more solution-oriented factors or measures that will ensure that the problem is ameliorated to the barest minimum.

The dilution theory preaches the very need to take a higher concentration on problem solving mechanism in ensuring that a specific problem is solved by taking measure that strenuous enough until such problem is stamped out.⁶⁶

⁶⁵ Joseph T Noah (n 65) 6.

⁶⁶ Fagbemi S A, 'A Critical Examination of Legal Remedies for the Tort of Passing off and Unfair

In line with dilution theory, the government owes grave duties to ensure that intellectual property rights of owners of property rights are protected. Government owes the duty to carry out enforcement procedures that will preserve the exclusive rights accruable to him for his inventions, especially in the musical industry in Nigeria.

Just as dilution theorists postulated, enforcement of intellectual property rights as such copyright in musical works, is very necessary because of the roles, music, inventions and creation of the mind play in the advancement of the economy of a given country. In ensuring the growth of the country's economy, government is duty bound to protect the interests of the public through regulations and policies.⁶⁷

This will give incentives to owners of musical works or other intellectual property owners in putting more efforts to those creations of the mind that will aid the growth of the country's economy.

The protection of copyright in musical works and other intellectual properties is of great importance to the growth of music industry in Nigeria. As Nigeria advances industrially, there is indeed a great need for the protection of intellectual property rights in Nigeria, there is high rate of piracy and counterfeits of musical works in the Nigerian markets. These are problems or challenges to copyright that require high concentration in the view of dilution theorists to solve.

2.3 Review of Related Literature

Many scholars have written on intellectual property including copyright in musical works in Nigeria. These scholars have some views on the regulation and enforcement of copyright in musical industry in Nigeria.

Competition under Nigeria Law'. (2011) 6, *University of Ibadan Journal of Private and Business Law*, 68.

⁶⁷ *Beecham Group PLC v Triomed (Pty) Ltd.* (2002) 4, All SA 193 (SCA).

Kelechi Njoku,⁶⁸ is of the view that copyright is one of the essential institutional mechanisms, which has helped facilitate the creation and dissemination of musical works through modern business enterprises, by providing a framework to manage the problems arising from the joint consumption and imperfect excludability of the works. It is part of the institutional framework that helps define a marketable product as well as reliable income flows (through royalties and related income).

Olubanwo,⁶⁹ posits that IP rights are basically exclusive rights granted by statute to the proprietors thereof. These legal rights can be infringed upon when the same rights granted to the proprietors are exploited by a third party without a lawful consent and authorization. There are also protections and enforcement of IP rights under the common law.

Davies,⁷⁰ argues that there is a positive correlation between economic prosperity and protection of IP rights. Unfortunately, Nigeria, over the years, has become a target destination and transit for counterfeit and pirated music and other IP infringement owing largely to weak IP protection regime and enforcement mechanisms.

According to Oyelude,⁷¹ copyright as a branch of intellectual property contributes immensely to the economic growth and development of many nations around the world and Nigeria is not an exception and that the legal implication of having a copyrighted musical work is to have exclusive right to use of it and revenue accruable to it, and if need be, assign the musical work to another person for use.

Onyiuke,⁷² posits that intellectual properties, as a consequence of their intangible

⁶⁸ Kelechi Njoku, *Copyright Protection & Music Industry in Nigeria* (UNN Press, 2020) 20.

⁶⁹ Femi Olubanwo, *Strengthening Intellectual Rights and Protection in Nigeria*, (PTY Publishers, 2007) 17.

⁷⁰ Angela Abge-Davies, *Intellectual Property Law in Nigeria* (Tonia Publication, 2010) 11.

⁷¹ Samuel Oyelude, *Non-Traditional Trademarks—A Jurisdictional Assessment*. (ECTA Publishers, 2020) 32.

⁷² Young Sook Onyiuke, & et al, *International Property Rights Enforcement in Nigeria: A Prop for Music*

nature, are more susceptible to theft and illegal acquisition. Essentially, creators of musical works need some form of right and protection to prevent unauthorized persons from illegally acquiring their intellectual assets and this is frequently referred to as Intellectual Property Rights.

H P Faga & N Ole,⁷³ are of the view that it is a truism that the greatest heritage of a nation remains the creativity of its citizens, and therefore one of the primary functions of law is to protect the ingenuity, resourcefulness and innovation of the citizenry.

Anuwa,⁷⁴ Creativity remains a major vehicle of economic development in today's knowledge driven economy. Fortunately, Nigeria is well endowed with creative talents and it has distinguished itself in the film, music, literary works and the arts... unless the delicate balance between the rights of the copyright owners and the need for access is well managed, the fortunes of the practitioners in the creative industry and the sustainability of the creative industry would be in jeopardy.

The above-mentioned scholars have worked extensively on the prospects and protection of copyright in music industry in Nigeria and intellectual property in general in Nigeria.

However, the above-mentioned scholars failed to discuss in details the regulation and enforcement procedures in protecting copyright in music industry in Nigeria and the position of Nigerian laws. This is the lacuna/gap in knowledge that this long essay sees to fill in

Industry (Accendo Law Press, 2015) 14.

⁷³ Hemen Philip Faga & Ngozi Ole, Limits of Copyright Protection in Contemporary Nigeria, (2010) 2(1), *EBSU Law Journal*, 23.

⁷⁴ Yaya Anuwa, *Copyright in Music Industry in Nigeria* (OAU Press, 2019) 13.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK ON COPYRIGHT IN THE MUSICAL INDUSTRY IN NIGERIA

3.1 Legal Framework

3.1.1 Nigerian Copyright Act 2022

The Copyright Act 2022 is the primary legislation on copyright in Nigeria. The Act



covers the general nature of copyrighted works, the rights available to authors/owners; the infringing acts and the measures taken against these acts.⁷⁵ The Act also provides for neighboring rights or performer's right in copyrighted works.⁷⁶ The Act provides a structure for copyright administration in Nigeria,⁷⁷ as well as exceptions to copyright in music industry in Nigeria.⁷⁸

The main objectives of the Act are to do the following:

- (a) Protect the rights of authors to ensure just rewards and recognition for their intellectual efforts
- (b) Provide appropriate limitations and exceptions to guarantee access to creative works
- (c) Facilitate Nigeria's compliance with obligations arising from relevant international copyright treaties and conventions
- (d) Enhance the capacity of the Nigerian copyright commission for effective regulation, administrations and enforcement of the provisions of the Act.⁷⁹

By section 2(1&2) of the Act, copyright includes musical works and such works shall only be eligible for copyright if; (a) some efforts have been expended on making the work, to give it an original character and (b) the work has been fixed in any medium of expression known or later to be developed. Eligibility under the Act for any musical work to be copyrighted shall not require any formality.⁸⁰

The author of every eligible musical work has exclusive rights to do and authorize the doing of any of the following: (a) reproduce the work, (b) publish the work, (c)

⁷⁵ Part iv of the *Copyright Act 2022*

⁷⁶ *Ibid*, part viii

⁷⁷ *Ibid*, part x.

⁷⁸ *Ibid*, part ii

⁷⁹ *Ibid*, section 1.

⁸⁰ *Ibid*, section 4.

perform the work in public, among others.⁸¹ However, the Act admits some exceptions such as using the musical works on fair dealing basis. Fair dealing under the Act refers to the use of the musical works for purposes such as (i) private use, (ii) parody, satire, caricature (iii) non-commercial research and private study (iv) criticism, review or the reporting of current events with acknowledgment of the title of the work and its author.⁸²

The Copyright Act 2022 in section 26 gives special exceptions of copyright infringement to blind, visually impaired persons in making or procuring an accessible format/copy of a work without the permission of the owner of copyright.

Additionally, copyright in a musical work is not infringed by a person who makes a recording of the work or of an adaptation in Nigeria if;

(a) recording of the work or adaptation has previously been made, imported into or otherwise made available in Nigeria, for the purpose of retail sale with the consent of the owner

(b) Before making the recording, the person gives notice in the prescribed manner of his intention to recover to the owner of the copyright.

(c) The person pays to the owner of the copyright or the relevant approved collective management organization a royalty of an amount equal to a percentage of the ordinary retail selling price of the record.⁸³

The Act also provides against infringement of copyright without the authorization of the owner of the copyright which constitutes a violation of the exclusive rights,⁸⁴ and provides for criminal liability for copyright violations.⁸⁵ The Act in part viii provides

⁸¹ *Ibid*, section 9.

⁸² *Ibid*, section 20.

⁸³ *Ibid*, section 27.

⁸⁴ *Ibid*, section 36.

⁸⁵ *Ibid*, section 44.

for rights accruable to a performer ranging from right of reproduction, publication to right of adaptation.

To ensure compliance with the provisions of the Act as regards copyright in general, the Act in section 77 established the Nigerian Copyright Commission with its powers and functions clearly spelt out in the Act.

3.1.2 Copyright (Security Devices) Regulations 1999

The Copyright (Security Devices) Regulation 1999, made in pursuance of the Copyright Act, provides that the Nigerian Copyright Commission shall prescribe the use of hologram stamps in relation to sound recordings and films intended to be offered for sale, and such hologram shall be a tamper proof sticker.⁸⁶ To some extent, this Regulation has helped in fighting piracy cases in the music and movie industry.⁸⁷

For works produced in Nigeria, the hologram stamps shall be affixed at the point of production, while works imported shall be stamped before they are released into commercial channels. This hologram shall be affixed in such a way that it is visible to prospective purchasers of cassette, disc or other medium in which sound recording or film is embodied.⁸⁸

In other words, since songs made by musicians contain sound recordings, a hologram shall be affixed to every disc proposed to be sold. It would seem that the purpose of a hologram is to distinguish original discs from counterfeits. Those involved in the reproduction of sound recordings, as well as those importing sound recordings into Nigeria for the purpose of sale, must apply to the Nigerian Copyright

⁸⁶ Paragraph 1 of the *Copyright (Security Devices) Regulations 1999*

⁸⁷ Adewole A Adedeji, *The Strategic Action Against the Piracy (STRAP) Policy in Nigeria*, available at <www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2010/chapter_9_2010_e/> accessed 7th July, 2025.

⁸⁸ *Ibid*, paragraph 2

Commission for accreditation when trying to apply for hologram stamps.⁸⁹ Unfortunately, the use of hologram stamps is not fool proof, as it is possible for the stamp to be faked.

3.1.3 Copyright (Optical Discs Plants) Regulations 2006

This Regulation addresses the issues surrounding optical discs piracy in Nigeria and focuses on the operations of all local optical disc's manufacturers and replicating plants in Nigeria as well as the importation of such products in order to prevent any illegal distribution. Under the Regulation, persons intending to operate such a plant must obtain a certificate from the Nigerian Copyright Commission.⁹⁰ Subsequently, a Special Personal Identification Number is assigned to the registered plant, and that number is required to be attached to the works produced by that plant, as it helps in determining the source of discs in circulation. This regulation helps combat unauthorized reproduction of optical discs thus addressing the source of this infringing act with ease.⁹¹

In the Nigerian music industry today, songs are not only stored in optical discs and reproduced with optical discs plants, but are shared on the internet. The Regulation fails to address the digital means of reproducing songs.⁹²

3.1.4 Copyright (Collective Management Organ) Regulations 2007

This Regulation provides for the application for license to operate as a Collective Management Organization (CMO).⁹³ A CMO is a body which manages the rights of copyright owners for their benefits, upon the approval of the Nigerian Copyright

⁸⁹ *Ibid*, paragraphs 3 & 4.

⁹⁰ Paragraph 1(4) of the *Copyright (Optical Discs Plants) Regulations 2006*

⁹¹ Olugbenga Ajani Olatunji, *Copyright Regulations under the Nigerian Copyright Act: A Critical Analysis*, available at <<https://www.researchgate.net/publication/301602448>> accessed 5th July 2025.

⁹² John C Onyido, *Nigeria: Copyright in the Digital Age*, available at <<https://www.mondaq.com/nigeria/copyright/818860/copyright>> accessed on 5th July, 2025.

⁹³ Paragraph 2 of *Copyright (Collective Management Organizations) Regulations 2007*

Commission.

The Regulation also provides that such license given to a CMO can be revoked.⁹⁴ The Regulation also provides the membership structure of a CMO which shall include an open access to all copyright owners of the category of works to which the CMO is licensed to operate. The Regulation provides for licensing and distribution of royalties based on the works of its members.⁹⁵

A collecting society in Nigeria is formed for the benefit of copyright owners, and such a society may apply to the Nigerian Copyright Commission (NCC) for authorization to operate as such. It represents the interest of publishers, record-labels, authors, and performers.⁹⁶

The following are preconditions to be fulfilled before the NCC can approve a collective society:

1. It must be incorporated as a company limited by guarantee under the Companies and Allied Matters Act.
2. Its objects must be to carry out the duty of negotiating and granting copyright licenses and collecting royalties on behalf of copyright owners and distributing same to them.
3. It must represent a substantial number of copyright owners in any category of copyrighted works.
4. It must comply with the terms and conditions prescribed by regulations made by the NCC like the Copyright (Collective Management Organizations) Regulations 2007.

It is important to state that a collecting society can exist without the approval of the NCC, but this would mean that it will not be able commence an action for the

⁹⁴ *Ibid*, para. 3.

⁹⁵ *Ibid*, para 5.

⁹⁶ *Ibid* (n 96).

infringement of copyright on behalf of those it represents. It can merely carry on the business of negotiating, granting of licenses; collecting and distributing royalties in respect of copyright works or represent more than fifty owners of copyright in any category of works.⁹⁷

3.2 Institutional Framework

3.2.1 Nigerian Copyright Commission

Section 77(1) of the Copyright Act 2022 established the Nigerian Copyright Commission and conferred on it the ability to sue and be sued in its corporate name and the power to acquire, hold or dispose any interest in property among others.⁹⁸

To ensure that copyright in Nigeria is proactively protected, section 78 of the Act confers on the commission the following functions:

- (a) The commission shall be responsible for all matters relating to copyright, including administration, regulation and enforcement in Nigeria
- (b) Monitor and advise the Nigerian government on the country's position in relation to bilateral and multilateral agreements between the country and other countries
- (c) Carry out investigation and redress cases of copyright violation and settle copyright disputes where those disputes have not been specifically reserved for settlement under the Act
- (d) Carry out enlightenment and inform the public on matters involving copyright
- (e) Create and as well, maintain a register and database relating to copyright works

⁹⁷ WIPO, '*Collective Management of Copyright and Related Rights*'

⁹⁸ Section 77(2) of *Copyright Act 2023*

- (f) Provide access to documents and information relating to any copyright kept or maintained by the commission
- (g) Be responsible for such other matters as relate to copyright in Nigeria
- (h) Exercise any other functions and duties as may be necessary for the attainment of the object of the Act

To encourage innovations and reward immensely creative minds, the Act went further to confer some powers to the commission. These powers by virtue of *section 78(2)* of the Act include the following:

- (a) Power to prosecute, conduct or defend before a court any charge, information, complaint or other proceedings arising under the Act
- (b) Power to levy such charges or fees as may be reasonable for services and facilities provided by the commission
- (c) Regulate and implement measures to promote protection of copyright
- (d) Regulate the conduct of collective management of rights, and
- (e) Power to exercise such other powers as are incidental to any of its objects under the Act.

3.2.2 Copyright Inspectors

As part of the system set in place to curb copyright infringement, the Nigerian Copyright Commission may appoint Copyright Inspectors. The Copyright Inspectors

are like the police with the power to search any premises for stolen property and seize such stolen property.⁹⁹

Under the Copyright Act, the Copyright Inspector is empowered to enter and examine any premises that he reasonably suspects is being used for infringing activities. A musician who has put skill and money into creating a song can reach out to the NCC. Upon discovery of any premises where infringing activities of his works and similar works are being done, the NCC, through the Copyright Inspector, will examine the premises he Copyright Inspector also has the power to arrest any person who he reasonably believes to have committed a copyright offence.

Under the Act, publishers, printers, and producers of copyrighted works are required to keep a register of all works produced; and this register shall contain the name of the author, the title, year of production and the quantity of the work produced.¹⁰⁰ The Copyright Inspectors, as part of their powers, may inspect and examine this register. This is a compulsory requirement on the part of the producers of these works, as this will help in dealing swiftly with copyright infringers.

A Copyright Inspector may prosecute and defend before a court any charge, complaint or proceedings arising under the Act. This is similar to the provisions of the Nigerian Police Act where a police officer, who is a legal practitioner, may prosecute in person before any court.¹⁰¹ As an icing on the cake, a Copyright Inspector is bestowed with all the powers, rights and privileges of a police officer as defined under the Nigerian Police Act and other enactments pertaining to investigation and prosecution of civil and criminal cases as it relates to

⁹⁹ Section 38 of the *Copyright Act 20s22*

¹⁰⁰ See section 14 of *Copyright Act 2022*.

¹⁰¹ *Ibid*, section 66

copyright.¹⁰² This means that a Copyright Inspector's privileges and powers are limited to copyright.

It is important to state that as at the time the extant Copyright Act provided for the power of an inspector to prosecute, reference was still made to the Police Act 2004, which provided that any police officer could prosecute before any court in Nigeria.¹⁰³ However, with the recent repeal of the Police Act in 2020, a police officer must be a legal practitioner before they can prosecute before any court in Nigeria. In other words, it becomes an issue for amendment as a Copyright Inspector ought to be a legal practitioner before they can prosecute before any court in Nigeria on matters affecting copyright.

3.2.3 National Broadcasting Commission

The Copyright Act defines broadcast to mean the transmission by wireless means of sounds or images or both, in such a manner as to cause such images or sounds to be received by the public.¹⁰⁴ This entails any sound or television broadcast by wireless telegraph or wire or both, or by satellite or cable programs, and includes a simultaneous or subsequent broadcast by one broadcasting authority of the broadcast of another broadcasting authority.

One of the exclusive rights to a musical work is the broadcast or communication of the work to the public by a loudspeaker or any device that amplifies the work to the public. In a bid to protect the broadcast rights of copyright owners, the NCC has stated that any broadcaster, without rights or authorization, found transmitting

¹⁰² Ibid, section 38(3)

¹⁰³ Section 23 Police Act 2020.

¹⁰⁴ Section 108 of *Copyright Act 2022*

signals will be prosecuted as a broadcast pirate.¹⁰⁵

The NBC is vested with the power of regulating and controlling the broadcast industry in Nigeria. The NBC's function is to receive, process, and consider applications for the establishment, ownership or operation of radio and television stations including cable television services. There is also a code set out by the NBC, and this contain the universal standard of broadcasting in Nigeria. Currently, there is an amendment to this code which provides that a broadcaster shall be mandated to ensure payment of royalties for all artistic and musical works.¹⁰⁶ Upon the use of songs, the broadcaster shall remit the royalties to the collective management organization. In other words, music owners should be entitled to the economic benefits of their work used on all platforms.

3.2.4 Musical Copyright Society of Nigeria

Like a standard collecting society in Nigeria, the Musical Copyright Society Nigeria (MCSN) is an incorporated association limited by guarantee which consist of authors, composers, arrangers and music publishers. Prior to its establishment in 1984, the Performing Rights Society (PRS) and the Mechanical Copyright Protection Society (MCPS) of the United Kingdom were responsible for the collection and distribution of performing and mechanical rights in musical works belonging to composers and authors in Nigeria.¹⁰⁷

Upon its establishment, a lot of music creators transferred membership to them. To represent its members, MCSN requires members to assign or stipulate in a contract

¹⁰⁵ Ransome Ngbeahuru, *Copyright Commission Warns Cable Operators against Broadcast Piracy*, available at: <<https://guardian.ng/art/copyright-commission-warns-cable-operators-against-broadcast-piracy/>> accessed 20 July, 2025.

¹⁰⁶ Section 33 of *Copyright Act 2022*.

¹⁰⁷ Franklin Okeke and Titilade Adelekun Illesanmi, *COSON v MCSN: Let the Music Pay Who Exactly*, available at <<https://www.mondaq.com/nigeria/copyright/945920/coson-v-mcsn-let-the-music-pay-who-exactly>> accessed 20th July, 2025.

the extent to the rights that need representation. It is solely on this assigned or licensed right that MCSN represents the copyrighted works. As it stands, the MCSN is the only approved collecting society for the Nigerian music industry.¹⁰⁸

3.2.5 Court

By section 72(1) of the Copyright Act 2023, a violation of copyright shall be actionable as a breach of statutory obligation under the Act and the person having the right shall be entitled to damages, injunction and account of profits or conversion. In Nigeria, the court system plays a vital role in copyright protection by adjudicating disputes and providing remedies for infringement. The Federal High Court has exclusive jurisdiction over copyright matters, including both civil and criminal actions. The courts are empowered to grant various reliefs, including injunctions, damages, accounts, and seizure of infringing materials.

In Nigeria, Section 17(2) (e) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) makes provision for the independence, impartiality and integrity of the Courts of law and easy accessibility thereto, while Section 6(1) of the same Constitution provides for the establishment of Courts for the Federation as well as for the Federating units.

The Nigerian Court has as its role to uphold the principles of rule of law and equality before the law. Equal opportunities are available to litigants for the presentation of their cases. Nigeria practices an adversarial system, where two advocates present the litigants' case or position before an impartial judge or judges, based on applicable laws, the rules of evidence and court procedural laws. The judges determine the truth by placing the evidence on imaginary scales. Nigerian laws

¹⁰⁸ Ivory Ukonu, *Nigerian Music Industry in Limbo as COSON, MCSN Battle Over CMO Rights*, available at <<https://thewillnigeria.com/news/nigerian-music-industry-in-limbo-as-coson-mcsn-battle-over-cmo-rights/>> accessed 20th July, 2025

ensure free and easy access to courts. A person is empowered by law to approach the courts for the determination of his civil rights and obligations, including any question or determination by or against any government or authority. Such persons are entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.¹⁰⁹ A party who elects to approach the court must observe all the rules of commencement of legal proceedings.

¹⁰⁹ Section 36 of the *Constitution of the Federal Republic of Nigeria, 1999* (as amended).



CHAPTER FOUR

AN ANALYSIS OF THE CHALLENGES TO THE EFFECTIVENESS OF COPYRIGHT LAWS IN THE NIGERIAN MUSIC INDUSTRY

4.1 The Challenges to the Effectiveness of Copyright Laws

The law on paper and the law in practice often diverge, particularly in creative industries where enforcement requires continuous adaptation to dynamic social and technological realities. In Nigeria's music industry, this gap is stark. While the enactment of the new Copyright Act, 2022 represents an important milestone in aligning Nigerian law with international best practices, musicians, producers, collective management organisations (CMOs), and even audiences continue to experience limitations in the protection of musical works. Despite a long-standing legislative framework, Nigeria's enforcement record remains mixed, raising questions about the true effectiveness of copyright law in achieving its objectives.

Effectiveness, in this context, refers to the degree to which copyright law achieves its intended objectives namely, the protection of creators' rights, the provision of fair economic rewards for creative labour, the deterrence of infringement, and the promotion of innovation and cultural development. An effective copyright regime must therefore not only exist in statutory form but also be operational in practice, supported by efficient institutions, widespread compliance, and consistent



enforcement. It should bridge the gap between legal frameworks and lived realities, thereby contributing meaningfully to the sustainable growth of Nigeria’s creative economy.

This chapter critically examines the challenges undermining the effectiveness of copyright protection in the Nigerian music industry. It does so under distinct themes: weaknesses in the legal and institutional framework, piracy and digital infringement, socio-economic and cultural factors, corruption and political will, the adequacy of remedies and sanctions, as well as comparative lessons from other jurisdictions. Together, these highlight the multidimensional nature of the obstacles facing Nigeria’s copyright regime.

4.1.1 Legal and Institutional Framework Weaknesses

A first set of challenges arises from the structure and enforcement of Nigeria’s legal and institutional framework. The Copyright Act of 1988 (as amended, Cap. C28 LFN 2004) provided a foundational framework for intellectual property law but was quickly outpaced by technological advances. It did not anticipate streaming platforms, digital uploads and downloads, or the complexities of online music distribution. Importantly, it lacked a clear articulation of the “making available” right, robust protection for technological protection measures (TPMs), or provisions addressing online infringement. This gap meant that for years, Nigerian musicians were exposed to unregulated exploitation in the global digital economy.

Although the 2022 Copyright Act updates these provisions and aligns Nigeria with WIPO Internet Treaties, law alone cannot ensure compliance. Copyright protection demands strong institutional capacity—well-staffed agencies, technologically equipped regulators, trained judges, and sufficient funding. The Nigerian Copyright

Commission (NCC), Customs, the judiciary, and the police share overlapping enforcement responsibilities. However, studies and stakeholder interviews indicate that institutional fragmentation and underfunding persist as barriers. Customs officers often lack the training to detect pirated materials at ports; the police rarely prioritise copyright complaints; and the judiciary struggles with expertise in digital IP cases.

Judicial delays further undermine enforcement. Copyright litigation in Nigeria is often protracted, with cases lasting several years. In *Nigerian Copyright Commission & Others v Musical Copyright Society of Nigeria Ltd/GTE*¹¹⁰, disputes over licensing authority dragged on for years before partial resolution. Similarly, COSON's victory in its copyright case against the organisers of the Calabar Carnival required more than a decade of litigation before enforcement of a ₦500 million award¹¹¹. These examples illustrate that even where rights are recognised, their vindication through courts remains uncertain, costly, and slow.

4.1.2 Piracy, Digital Infringement, and Technological Complexity

Piracy remains one of the most visible and intractable obstacles to effective copyright protection. Physical piracy persists in Nigerian markets. In Lagos, Onitsha, and Port Harcourt, pirated CDs and counterfeit merchandise remain widely available. Imported pirated materials, often produced cheaply in Asia, worsen the problem. Customs is legally responsible for border enforcement, but weak detection mechanisms and allegations of corruption mean that large volumes of pirated goods

¹¹⁰ *Nigerian Copyright Commission v Musical Copyright Society of Nigeria (2017) Ltd/GTE CA/L/692/12/NGCA 1.*

¹¹¹ Gabriel Myres, *COSON wins protracted copyright case against Calabar Carnival and Festival*, available at: <<https://www.musicinafrica.net/fr/node/279123>> accessed on 19 September, 2025.



enter Nigerian markets unimpeded¹¹².

Digital piracy on the other hand presents even greater challenges. With the rise of online streaming, social media, and user-generated platforms, music can be copied and distributed instantly, often across borders. The Copyright Act, 2022 includes provisions for notice-and-takedown, site-blocking, and link deactivation, aligning with WIPO Internet Treaties¹¹³. Yet, enforcement remains constrained. Tracing infringers is difficult, especially when they use anonymous accounts or operate servers outside Nigeria. Internet service providers (ISPs) often resist proactive monitoring obligations, citing costs and privacy concerns.

Emerging technologies such as artificial intelligence and machine learning add further complexity. For example, AI models trained on copyrighted works may generate outputs that resemble existing songs. Nigerian law has yet to clarify whether such outputs constitute derivative works or are protected independently. Likewise, sampling and remixing practices—common in Afrobeats and hip-hop—raise difficult questions about the boundary between infringement and fair dealing. Unlike in the UK and US, where case law has developed clearer principles, Nigerian courts remain relatively silent, leaving artists and producers in legal uncertainty.

4.1.3 Socio-Economic, Cultural, and Awareness Barriers

Beyond law and technology, socio-economic and cultural factors play an equally powerful role in shaping the effectiveness of copyright law. Awareness deficits are significant. Many musicians, particularly independent or upcoming artists, are

¹¹² IOLA Legal Services, *Key Innovative Provisions of the Copyright Act 2022*, available at <<https://iolalaw.com/index.php/en/publications/articles/33-highlights-of-the-key-innovative-provisions-of-the-copyright-act-2022>>, accessed on 19 September, 2025.

¹¹³ Adams & Adams, *Nigeria Enacts New Copyright Act, 2022 to Repeal the Copyright Act, 2004*, *Adams & Adams Legal Insight* 23 3, available at <<https://www.adams.africa/nigeria/nigeria-enacts-new-copyright-act/>> accessed on 19 September, 2025.

unaware of their rights, the process of registration, or mechanisms for royalty collection. Enforcement officers and even some judicial actors may misinterpret digital rights or confuse exceptions under the Act. Consumers themselves often view piracy as normal, perceiving it as a practical adaptation to economic constraints rather than as theft. Studies have found that enforcement failures are often a product of low public awareness rather than deliberate defiance¹¹⁴.

Economic barriers further constrain enforcement. Litigation is costly and time-consuming. Court fees, legal representation, and expert testimony place copyright claims beyond the reach of many artists. Even CMOs, designed to reduce transaction costs, face significant overheads and delays in royalty distribution, leaving many rightsholders frustrated¹¹⁵. The high costs of licensing, monitoring, and enforcement reduce the likelihood of artists pursuing remedies.

Cultural norms exacerbate the problem. In many communities, copying and sharing music is viewed as communal practice rather than illegality. The circulation of pirated CDs in informal markets or the sharing of files through Bluetooth and WhatsApp are seen as part of everyday life. This “compliance gap” between legal norms and social practices weakens deterrence and reinforces piracy as a cultural norm. Changing these perceptions requires more than legislation—it demands sustained education campaigns, community outreach, and incentives to consume licensed content.

4.1.4 Corruption, Political Will, and Regulatory Oversight

Corruption undermines enforcement at multiple levels. Pirated goods are often

¹¹⁴ World Intellectual Property Organization (WIPO) Nigeria Office, *Intellectual Property Financing and the Nigerian Music Industry*, available at <<https://www.wipo.int/en/web/office-nigeria/w/news/2025/intellectual-property-financing-and-the-nigerian-music-industry>> accessed on 19 September, 2025.

¹¹⁵ Section 7 *Copyright Act 2022*

allowed to pass checkpoints through bribery. Infringements by powerful actors are sometimes ignored or resolved quietly due to political influence. Such practices weaken public trust and reinforce the perception that copyright enforcement is selective.¹¹⁶

Political will and funding are equally crucial. The 2022 Act significantly expands the NCC's mandate, granting powers for digital enforcement and oversight of CMOs. However, whether the government will provide sufficient funding and independence for the NCC to implement these powers effectively remains uncertain. Without consistent financial and political support, enforcement agencies are limited to reactive rather than proactive measures.¹¹⁷

Regulatory oversight gaps persist in collective management. Disputes between COSON and MCSN illustrate longstanding mistrust over transparency, governance, and royalty distribution. The Supreme Court in *MCSN v Compact Disc Technology Ltd* (2018) clarified locus standi for CMOs but did not resolve broader concerns over accountability.¹¹⁸ Comparative experience from South Africa shows how state certification and regular audits of CMOs can improve trust and efficiency—an approach Nigeria has yet to fully adopt.

4.1.5 Remedies, Sanctions, and Collective Management Deficits

¹¹⁶ IOLA Legal Services, *Key Innovative Provisions of the Copyright Act 2022*, available at <<https://iolalaw.com/index.php/en/publications/articles/33-highlights-of-the-key-innovative-provisions-of-the-copyright-act-2022>> accessed on 19 September, 2025.

¹¹⁷ Christain Aniwku & ors, *A Peep Into The Challenges Barring The Growth Of Digital Music In Nigeria*, available at <<https://strenandblan.com/wp-content/uploads/2024/10/A-PEEP-INTO-THE-CHALLENGES-BARRING-THE-GROWTH-OF-DIGITAL-MUSIC-IN-.pdf>> accessed on 19 September, 2025.

¹¹⁸ *Musical Copyright Society of Nigeria (MCSN) v Compact Disc Technology Ltd & 2 Ors* (2018) LPELR-46353.

The Copyright Act provides for civil damages, injunctions, criminal sanctions, and procedural tools such as site-blocking. In theory, these remedies are broad and robust. In practice, however, they are weakened by procedural hurdles. Many cases are dismissed for lack of evidence, inability to prove ownership, or jurisdictional complications. The case of *Sir Jude Nnam v KCEE and Five Star Music* illustrates this challenge, where a ₦500 million claim was dismissed because the plaintiff could not establish ownership.¹¹⁹

Sanctions must also deter infringement effectively. Although the Act prescribes fines for corporate infringers (up to ₦2,000,000) and imprisonment of not less than five years, these penalties are meaningful only if consistently applied. In practice, fines are often too small relative to the profits from piracy, and imprisonment is rarely enforced.¹²⁰ This undermines deterrence.

Collective management organisations (CMOs) are designed to provide scalable solutions by pooling rights and licensing users collectively. However, Nigeria's CMOs suffer from internal disputes, leadership struggles, lack of transparency, and delays in royalty distribution. The COSON victory against Calabar Carnival demonstrates the potential of CMOs but also highlights systemic challenges, given the protracted timeline and limited benefits for smaller artists.¹²¹ Comparative lessons from jurisdictions such as South Africa suggest that regular audits, strong governance structures, and transparent royalty distribution are essential to restore trust.

4.1.6 Emerging Challenges and Comparative Lessons

¹¹⁹ Frontier News, *Court dismisses N500m copyright infringement suit against KCEE, E-Money, others*, available at <<https://frontiernewsng.com/court-dismisses-n500m-copyright-infringement-suit-against-kcee-e-money-others/>> accessed on 19 September, 2025.

¹²⁰ Section 20 *Copyright Act* 2022.

¹²¹ Gabriel Myres, *COSON wins protracted copyright case against Calabar Carnival and Festival*, available at, <<https://www.musicinafrica.net/fr/node/27912>>, accessed on 19 September, 2025

The Nigerian music industry has, over the past two decades, transformed into a truly global force. The rise of Afrobeats, the international success of Nigerian artists, and the growing penetration of digital platforms have positioned Nigeria as a leading cultural exporter in Africa and beyond. Yet, with this global recognition comes heightened exposure to the challenges of intellectual property enforcement in a borderless digital economy. The industry is no longer confined to local radio stations, compact discs, or physical concerts; it now thrives in a world where music can be instantly reproduced, streamed, or even artificially generated by machines. This global embeddedness underscores a pressing reality: Nigeria cannot afford to treat copyright enforcement as a purely domestic affair. The threats facing the industry are increasingly transnational, and the solutions must reflect that scope.

Emerging threats highlight this complexity. The proliferation of AI-generated content, for example, raises new questions about originality, authorship, and ownership. Artificial intelligence can now replicate voices, styles, and beats with remarkable accuracy, blurring the lines between inspiration and infringement. Similarly, cross-border streaming platforms such as Spotify, Apple Music, and Boomplay have become the primary avenues for music distribution, yet the monitoring and enforcement of rights across jurisdictions remain weak and fragmented. Digital sampling, which has long been a contentious issue in music production, has taken on new forms in the age of advanced editing tools, often occurring in ways that elude traditional enforcement mechanisms. These challenges require legal innovation that is anticipatory rather than reactive, supported by governance systems capable of addressing both domestic and international dimensions of infringement.

Comparative experiences from other jurisdictions offer important lessons for Nigeria. In the United Kingdom, the introduction of site-blocking orders and the imposition of

obligations on internet service providers have significantly reduced large-scale online piracy. These measures represent a recognition that intermediaries play a central role in either enabling or preventing infringement, and that holding them accountable can have a deterrent effect. The United States presents another instructive model with its Digital Millennium Copyright Act (DMCA). While the DMCA's notice-and-takedown regime has attracted criticism for being susceptible to abuse and for sometimes undermining fair use, it nonetheless provides a structured and predictable enforcement pathway that is absent in Nigeria's current framework. The DMCA has also fostered a culture of compliance among digital platforms, compelling them to adopt policies that prioritize copyright protection.

Closer to home, South Africa has taken deliberate steps to reform its collective management organization (CMO) regime, long plagued by inefficiency and lack of accountability. By enhancing regulatory oversight and insisting on transparency in royalty distribution, South Africa has sought to rebuild trust between artists and the institutions responsible for safeguarding their rights. These reforms have had measurable impact, ensuring that musicians receive more reliable compensation for the exploitation of their works. Nigeria, where disputes around CMOs and allegations of mismanagement are common, could draw from South Africa's example in strengthening its own institutions.

International treaties further illuminate Nigeria's obligations and opportunities. As a member of the World Intellectual Property Organization (WIPO), Nigeria is bound by key agreements such as the WIPO Copyright Treaty and the Beijing Treaty on Audiovisual Performances. These instruments establish minimum standards for the protection of works in the digital environment, addressing issues such as technological protection measures, rights management information, and the rights



of performers in the digital age. By aligning its domestic laws with these standards, Nigeria can both enhance local enforcement and position itself as a credible partner in global copyright cooperation. This alignment is not merely about compliance; it also creates pathways for Nigeria to benefit from international assistance, knowledge sharing, and technical support in strengthening its enforcement architecture.

The Nigerian context, however, presents unique challenges. Enforcement agencies often lack the technical expertise and resources necessary to monitor digital infringement effectively. Legal processes are sometimes slow and cumbersome, discouraging rightsholders from pursuing remedies. Moreover, there is limited public awareness about copyright obligations, leading to widespread but unintentional infringement among consumers and small businesses. Addressing these realities requires a multifaceted approach. First, Nigeria must invest in capacity building for its enforcement agencies, equipping them with the tools to track and respond to digital violations. Second, reforms must prioritize institutional transparency, particularly within CMOs, to ensure that artists trust the very systems meant to protect them. Third, there must be sustained efforts in public education, fostering a culture where respect for intellectual property is seen as integral to sustaining the creative economy.

Ultimately, the future of Nigeria's music industry lies in its ability to integrate lessons from comparative jurisdictions with a clear understanding of local realities. The industry is a vital source of national identity, cultural influence, and economic potential. Protecting it from emerging threats requires more than piecemeal reforms; it calls for a deliberate and forward-looking strategy that harmonizes domestic laws with international best practices, strengthens regulatory and enforcement

institutions, and builds a culture of compliance across all stakeholders. By doing so, Nigeria can safeguard the rights of its creators, ensure fair compensation for their work, and secure its rightful place as a global powerhouse in the music economy.

CHAPTER FIVE

CONCLUSION



5.1 Summary of Findings

Music has always been more than just entertainment. Across cultures, it has served as a mirror of identity, a keeper of memory, and a way for communities to express shared values and emotions. In Africa, music holds a particularly powerful place. It is woven into everyday life, accompanying rituals, celebrations, and even struggles. Beyond performance, it has been a language through which people pass down history, resist oppression, and build solidarity. One striking quality of African music is its ability to turn stories of hardship into rhythms that uplift, heal, and unify. This resilience is one reason it continues to shape and inspire audiences well beyond the continent. From traditional sounds rooted in drumming and chants to modern genres like Afrobeat and Afropop, African artists have used music to tell their stories while at the same time reshaping global music culture. The success of Nigerian music, in particular, demonstrates how much creativity and potential the continent holds for even greater global influence.

The growing global recognition of African music coincides with the rise of the music industry as one of the most dynamic sectors of the modern economy. Thanks to streaming platforms, digital distribution, and the sheer demand for fresh content, the music business has become a key driver of the global service economy. Unlike industries that depend on physical resources, music thrives on talent, creativity, and innovation – qualities that can renew themselves across generations. This makes the protection of intellectual property not just desirable, but essential. Copyright is the legal and economic foundation that makes this protection possible. It ensures that the creators who pour their skill and imagination into their work are fairly rewarded, and it provides a framework that allows music to circulate widely while still respecting the rights of its makers. Without it, piracy and free-riding would erode

the very incentives that allow the industry to grow.

In Nigeria, the importance of copyright is hard to overstate. The country has a young, energetic population, a booming entertainment culture, and one of the most vibrant music scenes in the world. Nigerian artists have carved out a strong global presence, bringing Afrobeats and other local sounds into the international mainstream. Yet, this success story is often undercut by a familiar problem: widespread copyright infringement. Piracy, illegal downloads, and unauthorized distribution continue to drain revenue from artists, producers, and investors. For many musicians, this means their creativity does not translate into the financial security or recognition they deserve. For the industry as a whole, it undermines trust and discourages the kind of long-term investment that is necessary for sustained growth.

It is against this background that the Copyright Act of 2022 becomes so important. The Act marks a deliberate attempt to update Nigeria's copyright regime to reflect the realities of the digital age. By expanding protections, strengthening enforcement mechanisms, and recognizing new forms of creativity and distribution, the law offers a stronger safety net for artists. Its aim is not only to curb infringement but also to create an environment where originality is rewarded and where the music industry can thrive as a serious contributor to the national economy. In other words, copyright is positioned as a tool of empowerment, giving artists more control over their work while boosting Nigeria's place in the global creative economy.

At its heart, music in Nigeria is both cultural heritage and economic opportunity. Protecting it through an effective legal system is therefore about more than just enforcing rules – it is about valuing the stories, talents, and creativity that define the nation. With the right balance of cultural appreciation, economic foresight, and legal protection, Nigeria's music industry can continue to flourish, inspiring the world while



securing a better future for its creators.

5.2 Recommendations

In the order to solve the stated problems in the course of carrying out this study, the following recommendations are expedient in order to protect copyright in musical industry in Nigeria:

1. Strengthen and Enforce Anti-Piracy Laws

Although Nigeria has taken steps to modernize its copyright laws through the Copyright Act 2022, there remains a pressing need for more robust and enforceable anti-piracy legislation. Laws should clearly define digital piracy offenses and provide for heavier penalties against offenders, including financial penalties, imprisonment, and forfeiture of pirated materials and related equipment. Provisions should also be made to fast-track copyright-related cases in courts to ensure timely justice.

2. Institutional Strengthening of the Nigerian Copyright Commission (NCC)

The NCC must be adequately funded and staffed to fulfill its regulatory and enforcement roles effectively. The establishment of fully functional offices in all 36 states and the Federal Capital Territory is imperative. Each office should be equipped with trained personnel such as the Copyright Inspectors, surveillance tools, and a clear mandate to monitor, investigate, and prosecute copyright violations at local and regional levels. Regular audits and performance reviews should be conducted to assess the effectiveness of these offices.

3. Digital Rights Management and Technological Monitoring

With the rise of digital streaming and online music distribution, it is essential to adopt modern technological tools for rights management. Artists and record labels should be encouraged and supported to use Digital Rights Management (DRM) systems and content ID technologies to monitor the usage of their works online. Government support, perhaps in the form of subsidies or public-private partnerships, can help local platforms integrate these technologies.

4. Public Education and Awareness Campaigns

A major barrier to copyright protection in Nigeria is the general lack of public awareness regarding intellectual property rights. The government, in collaboration with industry stakeholders and NGOs, should launch widespread campaigns to educate the public about the importance of respecting copyright. These campaigns can be carried out through television, radio, schools, social media, and community outreach programs.

5. Copyright Education in Schools and Universities

The inclusion of intellectual property education in school curricula, especially at tertiary levels in creative arts, law, and business faculties, will help cultivate a generation that understands the value of creative rights. Students should be exposed to the legal, economic, and ethical dimensions of copyright law, as well as practical skills on how to manage and monetize intellectual property.

6. Support for Collective Management Organizations (CMOs)

Collective Management Organizations such as MCSN (Musical Copyright Society of Nigeria) play a vital role in collecting and distributing royalties to artists. The government should put in place a regulatory framework that enhances transparency, accountability, and efficiency in the operation of CMOs. This includes periodic audits, fair royalty distribution mechanisms, and an appeals system for members who feel short-changed.

7. Facilitation of International Cooperation and Treaties

Nigeria should intensify its participation in international copyright agreements and treaties such as the Berne Convention and WIPO Internet Treaties. These partnerships will improve cross-border enforcement and enable Nigerian artists to claim royalties and protection for their works abroad. Bilateral agreements can also be signed with countries that are major consumers of Nigerian music to ensure enforcement of Nigerian copyrights in foreign jurisdictions.

8. Incentives and Funding for Musicians and Creative Startups

To promote a thriving music industry, the government and financial institutions should create funding opportunities for artists and startups in the music and entertainment sector. Grants, low-interest loans, and tax incentives should be made available to creative enterprises that comply with copyright registration and

protection norms. Such measures will not only encourage compliance but also help formalize the industry.

9. Promotion of Local Streaming Platforms and Distribution Channels

Foreign streaming services like Spotify, Apple Music and Audiomack etc. dominate the Nigerian music scene, often with limited royalties reaching local artists. The government should support the development of homegrown music platforms that are better tailored to the needs of Nigerian musicians. These platforms should be incentivized to use transparent royalty calculation systems and integrate strong copyright protection features.

10. Capacity Building for Legal Practitioners and Judiciary

Specialized training should be provided for lawyers and judges in the field of copyright and entertainment law. This will ensure that intellectual property cases are handled with the necessary expertise and that justice is served in a timely and informed manner. Annual workshops, seminars, and collaboration with international IP institutions could enhance the knowledge base of legal professionals in this area.

11. Monitoring of Digital Platforms and Social Media

A growing volume of music piracy occurs on platforms like YouTube, Facebook, TikTok, and unauthorized streaming websites. The NCC should establish a dedicated unit for monitoring these platforms in collaboration with tech companies. Quick-response mechanisms, such as takedown notices and copyright flags, should be effectively utilized to protect artists' content online.

12. Encourage Community-Based Anti-Piracy Initiatives

Piracy often thrives at the grassroots level through street vendors and local distribution channels. Community leaders, local governments, and market associations should be engaged in anti-piracy efforts. Incentive-based programs could be designed to reward communities that actively report or discourage piracy activities.

13. Centralized Copyright Registration and Database System

A streamlined, digitized, and user-friendly copyright registration process should be implemented to encourage more artists to formally register their works. A centralized database would make it easier for users, broadcasters, and businesses to identify rights holders and obtain proper licenses, reducing the likelihood of unintentional infringement.

14. Periodic Review and Adaptation of Laws

Given the rapid pace of technological advancement, copyright laws should not remain static. There should be a standing committee tasked with periodically reviewing copyright legislation and recommending updates that reflect current realities—especially with regard to digital content, streaming royalties, NFTs, AI-generated music, and other emerging technologies.

5.3 Conclusion

At its core, copyright is a question of fairness. It is built on the principle that those who invest their creativity, time, and resources into making music deserve recognition and compensation whenever their work is enjoyed, whether in private or public spaces. This includes hotels, restaurants, nightclubs, broadcast stations, and the ever-expanding universe of digital streaming platforms. Each act of use

generates value, and fairness demands that the creator shares in that value. Yet, the Nigerian experience reveals a troubling gap between this principle and reality. Many artists, despite their talent and popularity, lack adequate knowledge about how to manage or exploit their copyright. This knowledge gap often leaves them exposed to exploitation, financial insecurity, and an inability to benefit sustainably from their art.

The implications of this go beyond individual hardship. When creators are unable to enjoy the economic fruits of their labour, the industry itself is weakened. Innovation slows, professionalism declines, and investors become wary of committing resources. In this sense, copyright is not merely a private right but also a public good – it sustains the creative ecosystem on which society relies for cultural enrichment and economic opportunity.

Addressing this challenge requires more than the enactment of stronger laws. While legislation like the Copyright Act of 2022 provides a much-needed framework, enforcement on its own is insufficient. There must also be a cultural and moral shift in how society understands and respects intellectual property. Copyright infringement in Nigeria is often treated casually, even by consumers who might not view piracy as harmful. Changing this perception requires education, advocacy, and deliberate campaigns to show that copyright is not an abstract legal concept but a matter of justice – one that affects livelihoods, families, and national development. To pirate an artist's work is to deprive them of their rightful earnings, and to undervalue the creative process itself.

At the same time, copyright must strike a careful balance. Intellectual property law cannot simply lock up creative works behind barriers. If it is too rigid, it risks stifling the very creativity it is meant to encourage. For centuries, culture has thrived on

borrowing, adaptation, and reinvention – practices that ensure the continuous evolution of music. Sampling, remixing, and cross-genre innovation are integral to the dynamism of modern music. Thus, the law must both protect and permit: it must safeguard the rights of creators while leaving space for others to build upon existing works in ways that foster cultural growth. This delicate balance between exclusivity and openness lies at the heart of a healthy creative economy.

For Nigeria, finding and maintaining this equilibrium is particularly urgent. The country's music is not only a cultural treasure but also a growing export commodity that contributes to its global image and economic diversification. An overly permissive environment that tolerates infringement will continue to exploit artists and weaken the industry. On the other hand, overly restrictive rules could isolate creators from global collaboration and limit cultural innovation. A nuanced approach is therefore essential – one that combines strong protections with flexibility, guided by the understanding that creativity flourishes in spaces where rights are respected but not suffocated.

The way forward requires collaboration across multiple fronts. Government must provide robust legislation, efficient enforcement structures, and policies that promote intellectual property literacy. Collective management organizations must operate transparently and be trusted by artists to deliver royalties faithfully. Artists themselves need to become more aware of their rights, seeking legal and professional guidance to manage their careers effectively. Finally, the public must be engaged as active participants in protecting creativity, by rejecting piracy and valuing music as a product of human effort worthy of reward.

If these elements are brought together, Nigeria's music industry can fulfill its vast

potential – not only as a source of entertainment and cultural expression but also as a powerful driver of economic growth, social development, and national pride. Copyright, properly understood and applied, is not a hindrance to creativity; it is the foundation upon which a thriving, innovative, and globally respected music industry can be built.

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