

## **THE ROLE OF COLLECTING SOCIETIES IN THE MUSIC INDUSTRY**

Copyright is an intangible property right, essentially it is the author's "right to copy" or give permission to others to copy an artistic work which he has created.

For purposes of copyright a work is a literary, musical or art work, cinematograph film, sound recordings and broadcasts.

A literary, musical, art work is said to be artistic if sufficient effort has been expended in making the work to give it an original character.

The work however has to be fixed in a definite medium of expression e.g. on magnetic tape, compact disc, paper, drawing, two or three-dimensional structure etc.

Hence copyright cannot exist in an idea thus Leonardo de Vinci could not have copyrighted his idea to paint the Mona Lisa, but once painted he can copyright the work and sue a person who superimposes the face of another woman thereon and calls it the Mona Lisa.

Copyright is transmissible by assignment, testamentary disposition or by operation of law, as personal or movable property. No assignment of copyright is valid unless in writing signed by or on behalf of the assignor. Permission to use a copyrighted work may however be oral.

Copyright in a work includes the right of the copyright owner to perform the work/composition in public, by extension he may also grant this performing right to a third party in exchange for a licensing fee.

Historically the concept of performing rights arose out of the need of early songwriters and publishers for a comprehensive way to license public performing rights and charge for widespread performances of their compositions in saloons, night clubs, hotels and fairs.

By reason of the fact that most of the people who copied the compositions were itinerant, the practice developed over time of collecting the licensing fees from the venue of the performance rather than the performer.

Therefore television and radio stations, restaurants, shopping malls, stores, airplanes, bars etc require licenses for the music they play.

However due to the difficulty that would arise from issuing licenses on a song-by-song basis by each songwriter and publisher to every such venue, it became expedient that Performing Rights Societies be formed.

Furthermore the licenses they issued had to be blanket licenses which entitle the licensee for the duration of the license to perform any of the compositions in the society's repertoire.

The major collecting societies in America, ASCAP and BMI collect sums running into hundreds of millions of dollars per annum as licensing fees.

At the formation of the Performing Musicians Association of Nigeria in 1985, an intention was indicated to form a collection society for the licensing fees for the use of member's works.

Unfortunately no provision was made for a collection society in the Copyright Act Cap 68 Laws of the Federation of Nigeria 1990.

Subsequently when the Act was amended in 1992, section 32B was inserted to provide for a collecting society.

Copyright (Collecting Societies) Regulations, 1993 provided the guidelines for the registration/regulation of Collecting Societies.

The Musical Copyright Society of Nigeria was formed in 1990, when section 32B and Copyright (Collecting Societies) Regulations, 1993 came into force it applied for approval by the NCC but approval was denied.

However in November 1994 the NCC approved the Performing & Mechanical Rights Society, which approval was made public in 1995.

The rationale behind approving only one collecting society in Nigeria can be traced to the provisions of the **Copyright Act** (Cap. 68, Laws of the Federation of Nigeria, 1990 as amended by the Copyright Amendment Decree No. 98 of 1992 and the Copyright (Amendment) Decree 1999) and the **Copyright (Collecting Societies) Regulations**, 1993 which essentially is that only one collection society will be established for any class of copyright owners.

Already several cases are pending in court regarding the non-registration of MCSN and its demand for licensing fees from corporate bodies so the matter is sub judice, and for purposes of this article we would not comment on same.

This decision of the NCC however has far reaching consequences, because as a result several bodies which have received demand notices from either the MCSN or PMRS have failed, refused and/or neglected to pay licensing fees due to the fact that they seemingly do not know which body to pay to, as a result the copyright owners lose revenue that would have otherwise accrued to them.

In the best interest of the copyright owners, either both entities MCSN & PMRS merge or the Copyright Act is amended to make provision for more than one collecting society to be established for any class of copyright owners.

In the event that this option is not utilised all concerned would have to await the final determination of the various cases by the Supreme Court.

Furthermore stringent copyright laws have to be enacted to provide for a more comprehensive collection of licensing fees, the means proposed is compulsory licensing for all radio and television stations in Nigeria.

All music played on air is to be logged and returns made monthly to the collecting society, consequently the data is to be processed and copyright owners paid proportionally.

On the other hand all restaurants, fast food outlets, shopping malls, stores, airplanes, bars, saloons, night clubs, hotels, banks, advertising agencies, concert venues and fairs should compulsorily obtain licenses from the collecting societies.

On the part of the copyright owners a more professional approach has to be adopted, a situation where works do not contain any information about the contribution of the various persons whom have made inputs into the joint is not in their best interest as the public does not attribute this work to them hence it is difficult for the collecting society to know whom to pay the fees to, or for on-air personalities to give them credit thus boosting their reputation.

A more effective policing of works is also required, in order for infringements to be effectively sanctioned.

Hence all hands have to be on deck to ensure unity of purpose and direction because music is a valuable resource and a veritable means of diversifying the foreign exchange earnings of the country because all extraneous factors aside the main reason why Jamaica is more popular than Trinidad and Tobago is simply by virtue of Bob Marley and Reggae.

Music can do the same for Nigeria!

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