

COPYRIGHT ADMINISTRATION IN NIGERIA THROUGH THE PRISM OF COLLECTING SOCIETIES.**

Abstract

The creative industry world over is ceaselessly and strenuously contending with the unlawful predation and exploitation of the property rights embedded in the works of creators flowing from their ingenuities. Copyright, being one of the creative rights protectable under intellectual property law, is also entitled to this overarching protection. The copyright owner is entitled to exclude all others from the use of his work except where he elects to licence or assign his rights to others. To forestall the massive revenue hemorrhage flowing from the proceeds of the copyright works into the coffers of unauthorized third parties, collecting societies were conceptualized. This work therefore examined the scope/roles of collecting societies in the music, artistic and literary industries as well as the challenges thereof. A gap analysis and suggestions going forward that will lead to a better administration of the licences by the creators under this collectivity have also been made.

1. Introduction and Historical Development of Copyrights in Nigeria

Copyright is an arm of the branch of law known as intellectual property law. Intellectual property law essentially covers copyright, trademarks, patents and industrial designs. It is majorly emplaced to ensure that there is no unlawful predation or annexation of the rights of intellectual property holders by those who are not licensed to do so. The importance of the regulation and nay legislation around unlawful annexation of one's proprietary interest in his creative works, finds ample elucidation in the spate of piracy that has ridden the creative industry especially in this jurisdiction. As with many aspects of Nigerian laws, Nigeria's copyright law has its evolution in the English law. The historical evolution of intellectual property law dates back to medieval Europe where the association of artisans in a particular industry were granted authority by the medieval political or religious authorities. The authority given to the artisans and the guilds were untrammled, instead of driving and encouraging innovation and creativity, it became an albatross that did violence by stunting the requisite growth in particular creative industries in those days. It is instructive to note that development in intellectual property law in its early days was driven largely by 'political and religious motivations' other than 'creation and innovation.'¹

Although the stationer's company monopoly expired in 1694, it was not until the 18th century that the sail was taken off the guild system in medieval England². In 1623, the "Statute of monopolies" was passed. The Act gave the first inventor of intellectual property a period of 14 years of exclusivity over his work. The notion that an author should have an exclusive copyright in his works took firm shape from the beginning of the eighteenth century in England.³ Conversely, in

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¹ See Law Shelf at <<https://lawshelf.com/coursewarecontentview/history-and-sources-of-intellectual-property-law>> accessed 20 July 2023.

² *ibid.*

³ F.O Babafemi *Intellectual Property: The law and practice of copyright trademarks patents and industrial designs in Nigeria* (1st Edition, Justinian Books Limited, 2007).

the United States, the intellectual property development could be traced to the independence from England by the thirteen original colonies making up the United States.⁴ The noticeable gap in regulation led to the federalization of Intellectual Property Laws, a departure from the provincialization which was what obtained hitherto.

In Nigeria, copyright was governed before 1970 by the England Copyright Act of 1911 which was made applicable to Nigeria by virtue of an Order-in-Council.⁵ Instructively, Nigeria promulgated its own copyright Act in 1970⁶ and the gaps noticed in the implementation of 1970 Act led to the promulgation of the 1988 Act⁷. The Act was further amended in 1992 and 1999. We will proceed to examine works that are eligible for copyright protection.

2. Eligible Works and Ownership

The copyright Act did define Eligible works but rather outline the categories of works that eligible for copyright protection. However, eligible works can be seen as works that are protectable by copyright law against unauthorized infringement. The Act listed works eligible for copyright protection to wit:(a) Literary works, (b) Musical works, (c) Artistic works, (d) Cinematograph films, (e) Sound recordings and (f) Broadcasts.⁸ The term “work” is defined in the Act to include ‘translations, adaptation, new versions or arrangements of pre-existing works, and anthologies or collection of works which, by reason of the selection and arrangement of their content, present an original character’.⁹

A literary, musical or artistic work shall not be eligible for copyright protection unless, sufficient efforts have been expended in making the work to give it to an original character, or the work has been fixed in any definite medium of expression now known or later to be developed from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.¹⁰ For an artistic work to be eligible for protection, it must not be intended for use as a model or a pattern to be multiplied by an industrial process at the time of creation of the work.¹¹ The implication therefore, is that, if the intention of the creator of the artistic work as of the time of creation is that the work be used as model or pattern to be multiplied by industrial process, then such artistic work is bereft of copyright protection.

Although, the Act and copyright law generally utterly frown at copyright infringements, which *ab initio* is the reason for copyright protection, the mere fact that an eligible work is wanting for the infringement of an existing copyright shall make it ineligible for copyright protection.¹² It should be noted that the protection is only accorded to “works” not “ideas”. Ideas are within the realm of conception and can only find manifestation when they have been reduced into creative ingenuity.

⁴ Law Shelf (n 1).

⁵ No. 912, 24th of June, 1912. This Order-in-Council owes its footing to Section 25 of the Copyright Act 1911.

⁶ See Decree No. 61 of 1970.

⁷ The 1988 Act apart from extending the duration of the period of exclusivity also established the Nigerian copyright commission. It provides for a governing board for the commission. The 1988 Act also provided for weightier criminal sanction against an infringer and infringement in general term.

⁸ Copyright Act, cap C28, LFN, 2004, section 1.

⁹ *ibid*, section 52. See also *Masterpiece Int. Ltd v worldwide Business Media* (1997) F.H.C.R 496

¹⁰ *ibid*, section 1(2).

¹¹ *ibid*, section 1(3).

¹² See Copyright Act (n 8), section 1(4).

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What amounts to a sufficient expenditure of efforts to give the work a scintilla of originality is a question of fact and degree. In the case of *Offrey v Chief S.O. Ola & Ors*¹³, the court held that copyright would exist in a given product if that product is the result of some substantial or real expenditure of mental and or physical energies of the producer and the labour or skill was not a negligible one. It further held that the amount of labour, skills, judgment or ingenuity required to successfully ground a claim for protection/under copyright was a question of fact and degree.¹⁴ In other words, sufficient efforts in each case will be determined by the peculiar facts and circumstance. Also, in the English case of *Cramp & Sons. v Frank Symphson Ltd.*¹⁵ The court after a careful consideration of the facts, held that there was no evidence that any of these tables were composed specially for the respondent” diary, there was no feature of them which could be pointed out as novel or especially meritorious, or ingenious from the point of view of the judgment or skill of the compiler.¹⁶

What is distillable from the above is that before a court can make a finding of the existence of a copyright, it must have satisfied itself as regards the amount of labour, knowledge or literary skill which the author must have deployed in order to give the work some originality deserving of a copyright. There must be sufficient evidence of knowledge and industry expended.¹⁷ Also, the work is required to be ‘fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device’ for it qualify for copyright under the Act.¹⁸

3. Non-eligible Works

The Act does not list out non eligible works. However, it is clear that any work that lacks any eligibility criteria would be ineligible for copyright protection. For instance, if the work lacks sufficient knowledge and industry and or it is fixated, such work would be ineligible for copyright. Also, if an artistic work is intended to be used as a model or pattern to be multiplied by any industrial process, the work will not be eligible for protection. In his invaluable contribution to copyright, *Babafemi* offers an opinion on the category of works that are ineligible for copyright protection.¹⁹ According to him, they are:

- (a) Words and short phrases such as names, titles and slogans, familiar symbols or designs;
- (b) Ideas, plans, methods, systems, or devices, as distinguished from the particular manner in which they are expressed or described or described in a writing(c); Works designed for recording information such as time – cards, graphs-papers, account books, diaries, bank cheques, score cards, address books, report forms, order forms;
- (d) Works consisting entirely

¹³ Suit No: HOS/23/68 (decided 27th June 1969).

¹⁴ In this case, the Plaintiff designed and put out for sale, a record book. The Plaintiff’s only labour in the works was only in the drawing of several horizontal and vertical lines. The Plaintiff, to his disappointment and chagrin, discovered that the second defendants were selling some record books, not materially different from his. The plaintiff claimed against the second defendants an account of all monies received by them from the production and sale of the record book. He also claimed special and general damages for unlawful infringement of copyright.

¹⁵ (1944) AC 329 at pg. 340.

¹⁶ See *Norozowzian v Arks* (1999) NO. 2 F.S.R 79.

¹⁷ *Babafemi*, (n 3).

¹⁸ See Copyright Act (n 8), section 1(2)(b).

¹⁹ *Babafemi* (n 3).

of information that is common properly containing no original authorship, such as, for example standard calendars, height and weight, charts, tape measures and rulers, schedules of sporting events and lists of tables taken from public documents or other common sources; (e) Illegal, immoral and indecent works.

4. Copyright Ownership

It should be noted that copyright ownership or claim to ownership of a proprietary interest in a work is not automatic. In our jurisdiction, ownership is tied to citizenship or domicile. A claimant to an interest in a work must establish that the work was first published in Nigeria or being sound recording first made in Nigeria.

4.1 Persons Who Can Claim Interest in a Copyright Work

a. Nigerian citizen or those who are domiciled in Nigeria.

The court in the case of *Ifeanyi Okoye and anor v Prompter Quality Services Ltd & Anor*²⁰ rose eminently to the occasion when it held thus:

A preliminary observation is that the Architects (Registration etc) Act and the copyright Act are two separate and distinct Acts of the National Assembly which deals with two different subject matters. It is apparent that there is nothing in section 2(1) of the Copyright Act and indeed any of its provisions to suggest that the section is to be read subject to the provision of section 1 of the Architects (Registrations etc) Act. The only condition under the provisions of section 2(1) of the Copyright Act is that the author must be a qualified person, who of necessity must be an individual who is a citizenship of or domiciled in Nigeria or a body corporate incorporated by or under the laws of Nigeria.

b. Persons, whose works are first published in Nigeria or being sound recording made in Nigeria

Section 3(1) of the Acts²¹ provides to wit:

Copyright shall be conferred by this section on every work, other than a broadcast, which is eligible for copyright and which-

- (a) being a literary, musical or artistic work or a cinematograph film, is first published in Nigeria;
- or (b) being a sound recording, is made in Nigeria, and which has not been the subject of copyright conferred by section 2 of this Act. In the case of cinematograph film, this is the person by whom the arrangement for the making of the film was made. In the case of literary work, artistic or musical work, the creator of the work. In the case of a photographic work, it is the person who took the photograph. In the case of a broadcast transmitted from within any country, it is the person by whom the arrangements for the making or the transmission from within that country were undertaken. While in sound recording²², it is the person by whom the arrangements for the making of the sound recording were made.²³

²⁰ (1996) F.H.C.R. 814

²¹ Copyright Act (n 8).

²² Sound recording is the first fixation of a sequence of sound capable of being perceived aurally. See Copyright Act (n 8), section 52.

²³ In all these, the creator or the person who is "first in time" occupies a place of preeminence in the pedestal. He remains the person under whose name the totality of the rights accruing from the creative ingenuity will be domiciled.

b. Person who are employed to make a work in the course of their employment and person commissioned to make a work.

In these two categories, the copyright in the works is vested, in the first instance, on the author unless given to the employee through an instrument in writing²⁴.

c. Persons to Whom Copyright Works are Assigned

Copyright is transferrable either by assignment *inter vivos*, or transmissible through testamentary disposition or by the operation of law.²⁵ Upon the death of a copyright holder, his interest in the work devolves upon his personal representative where he has died intestate or the beneficiaries of the estate when he has died testate.²⁶ An assignment or testamentary disposition of copyright maybe limited such that it apply only to some of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the period of the copyright, or to a specified country or other geographical area.²⁷ This is eminently within the prerogative of the assignor or the testator to determine.

The assignment of an interest protectable under copyright or the exclusive licence to do an act must be expressed in writing in favour of the assignee or the licensee for it to have legal effect and therefore exercisable by the assignee or licensee.²⁸ However, where the licensee does not suggest exclusivity of use, it will suffice even if it is expressed orally, or in writing or inferred from the conduct of the transactional relationship between the parties.²⁹ In cases of joint ownership of the copyright, an assignment or licence granted by one of the right's owners shall have full legal effect as if granted concurrently by the copyright owners.³⁰

Where an assignment, licence or testamentary disposition is granted or made with respect to a future work or in an existing work for which copyright does not yet subsist, the prospective copyright in such work shall be transmissible by the operation of law.³¹ It should also be noted that a testamentary disposition of a copyright work is presumed to include the disposition of the copyright in such work unless otherwise established.³² This is undoubtedly logical and rational.

5. Protection of Copyright Owners' Interest through Collecting Societies

The Copyright Act provides for the establishment of collecting societies by copyright owners. Section 39(1) the Act provides thus: A Collecting Society (in this section referred to as "a society") may be formed in respect of anyone or more rights of copyrights owners for the benefit of such owners, and the society may apply to the Commission for approval to operate as a collecting society for the purpose of this Act. A collecting society is 'an association of copyright owners which has as its principal objectives the negotiating and granting of licenses, collecting and distributing of royalties in respect of copyright works.'³³ Collecting societies are usually non-governmental

²⁴ See Copyright Act (n 8), section 10 (2B).

²⁵ Copyright Act (n 8), section 11(1).

²⁶ *ibid*, section 11(1 & 8).

²⁷ *ibid*, section 11(2).

²⁸ *ibid*, section 11(3).

²⁹ *ibid*, section 11(4).

³⁰ *ibid*, section 11(5).

³¹ *ibid*, section 11(7).

³² *ibid*, section 11(8).

³³ *ibid*, section 39(8).

organizations created under the enabling statute to aggregate the interests of copyright owners in a particular industry. They also engage in sundry rights management for the right owners.

For a society to legally act as a collecting society, it must be registered with and be approved by the Nigerian Copyrights Commission after its registration at the Corporate Affairs Commission.³⁴ Before approving the collecting society, the Copyright Commission shall satisfy itself that the society has been incorporated with the Corporate Affairs Commission as a company limited by guarantee; that the object of the society are to negotiate and grant copyright licences, cum collecting and distributing royalties to copyright owners; that the society represents a considerable number of copyright owners in a particular category of works; and that the society has complied with any regulation(s) made by it.³⁵

Where the commission is satisfied that an existing collecting society adequately protects the interest of a particular class of copyright owners, it shall not approve another society in respect of that class of copyright owners.³⁶ It should be noted that it will be unlawful for any group of persons to carry out the duties of a collecting society without the approval of the copyright commission.³⁷ In *Musical Copyright Society Ltd v Ade Okin Records and anor*³⁸ and *Musical Copyright Society Ltd v Details Nigeria Ltd*,³⁹ the courts declined jurisdiction to entertain the matters because the societies were not registered with or approved by the Copyright Commission.

A collecting society that has not gone through the pristine process emplaced by the commission cannot exercise the duties and powers of a collecting society. The courts have been shrewd by rigidly constructing jurisdictional issues as it concerns collecting societies. In the case of *Musical Copyright Society Nig. Ltd v Copyright society of Nigeria LTD/ GTE & ors.*⁴⁰ The Federal High Court was largely right in our view when it held thus; That the 2nd Defendant herein, the Corporate Affairs Commission acted improperly and illegally in approving an application by the 1st Defendant, the Performing and Mechanical Rights (PRMS) to process the change of its name from Performing and Mechanical Rights Society to Copyright Society of Nigeria Ltd/GTE at a time the same Corporate Affairs Commission has reserved the very same Copyright Society of Nigeria LTD/GTE or use by same members of the plaintiff for themselves and on behalf of the Plaintiff.

The Court further held that –

The Honourable Attorney General of the Federation and the Corporate Affairs Commission acted improperly and illegally by granting approval to the Performing and Musical Rights Society to process the change of its name to Copyright Society of Nigeria Ltd / GTE (COSON), having regard to the pendency of the plaintiff's petition to them dated November 13, 2009. It was also the view of the Court that an organization whose genre of copyright is restricted to musical rights could not legally be permitted to use the name "copyright society of Nigeria" being a term encompassing rights arising from literature, arts, music, drama, cinematography, broadcast, architect, computer programmes and so on.

³⁴ *ibid*, section 39(1) and (2)(a).

³⁵ *ibid*, section 39(2).

³⁶ *ibid*, section 39(3).

³⁷ *ibid*, section 39(4).

³⁸ (1992) FHCLR 313 .

³⁹ (1996) FHCLR 473.

⁴⁰ FHC/L/CS/274/2010 (Federal High Court Lagos, 25th March 2020).

The Federal High Court in the above case, to our mind, resolved the vexed issue of jurisdiction in deserving cases where the collecting societies have achieved registration with the Copyrights Commission. What can be gleaned from above judgment is that the court will assume jurisdiction and effectively and effectually determine or resolve the issues/questions posed before it by the litigants. It also resolved the vexed issue of generalization of works under collecting societies. It held, and rightly in our view, that a collecting society whose genre of copyright is restricted to musical rights could not be permitted to use copyright society of Nigeria, being a generic name covering the entire gaunt of protectable works.

5.1 The Scope/Role of Collecting Societies

Collecting societies, the world over, act as intermediaries between the right owners/holders and potential exploiters of the rights in the works. To engender a smooth and seamless exercise of the rights, a collecting society is usually floated to advance and protect the interest of its members. There are several collecting societies around the world. It is beyond contestation that it will be cumbersome, untidy and unworthy for those who want to exploit the rights to directly liaise with the right holders whenever they want to embark on the exploitation of the rights. This makes the formation of collecting societies almost indispensable.

The utilitarian purpose for the formation of collecting societies lies in the formation of platforms for their members to enforce and administer their copyrights economically and practically. It also makes it easy for potential users to be able to be licenced before they can use the rights ensconced in the works. Collective management organizations exercise and enforce as well as protect on behalf of the composers of any musical works, or the authors of literary or dramatic works, or the creators of other works possessing an original character or the others or publishers or persons otherwise entitled to the benefit of or interested in the copyrights in such works and in all other countries or territories throughout the world. They also on behalf of the creators manage, administer and grant licences for the reproduction of such works in any material form.

Collecting societies have been aggressive and proactive in the defence of the rights of its members against unlawful predation of the rights in their works. In a recent matter filed by the *Copyright Society of Nigeria (COSON) v MTN Nigerian communication Ltd*,⁴¹ the Claimant, COSON brought a copyright infringement action against MTN Nigeria Ltd for the unlawful use and reproduction, performance, communication, broadcast sales, and downloads of certain musical woks and sound recordings belonging to a certain section of its members without the requisite authorization. COSON sought some declaratory injunctions and monetary reliefs. MTN's defence was that it obtained relevant user rights directly from the artistes and duly paid for them. They further raised the following questions for the resolution of the Court:

- (a) The determination of the nature of rights conferred upon COSON as a collecting society by the copyrights commission.
- (b) Whether the appointment of COSON as sole collecting society takes away the rights of the artistes to transfer or license their musical works and sound recordings directly to licensees.
- (c) Whether COSON has the right to collect royalties and other monies on behalf of non-member and lastly,

⁴¹ FHC/L/CS/619/2016 (Federal High Court, Lagos).

(d) Whether COSON can rightfully institute this action on behalf of its members, without the need to join such members as parties to the suit?

The beautiful opportunity presented by this case that would have led to the resolution of this nagging and contemporary question that has blighted the activities of collecting societies was lost by a combination of judicial and extra-judicial factors. Though it is worthy of note that the parties eventually resorted to out of court settlement. It is therefore in this wise that the concerns and apprehension expressed by *John Onyido*⁴² in his Article has been largely resolved in the case of *Adeokin v MCSN*.⁴³ In this case MCSN in its capacity as the owner, administrator and licensee of the works of “Ojumo Re”, composed and originally owned by Fatai Olowonyo, brought an action at the Federal High Court Lagos for infringement of copyright embedded in the said work. Judgment was entered in favour of the defendant because the Court made a finding that the plaintiff lacked the requisite locus standi to maintain the action.

The Plaintiff, now Appellant appealed to the Court of Appeal. The Court in its considered judgment, held that ‘from a glean of the processes filed by the Appellant at the Lower Court, it was clear that the Appellant sued as owner, assignee and exclusive licensee of the rights embedded in the works’. This was further upheld by the Supreme Court.⁴⁴ Also, in *MCSN v Compact Disc Technology Limited [CDT]*,⁴⁵ the Plaintiff at the lower court, sued the then defendant for infringement of its copyright in its repertoire. The court dismissed the preliminary objection filed by the defendant. On further Appeal to Court of Appeal and the Supreme Court, the two appellate courts held that MCSN had the requisite locus standi to bring the action being the beneficiary of an assignment and exclusive licence granted to it by the original owners of the works. This decision has been criticized as having the propensity of threatening the regulatory remit of the Nigerian Copyright Commission over collecting societies in Nigeria.⁴⁶ It has been opined that the implication of an unregulated collective management space in Nigeria is better imagined than experienced.⁴⁷

We cannot agree less with this position. If one is tempted to rationalize the decision in *Adeokin*, that of *Compact Disc* will lead to an avoidable and unintended absurdity. The *MCSN* by its Articles of Association has put itself out as a collecting society. An Articles of Association of a company prescribes regulation for the company.⁴⁸ The Articles of association of the company should be regarded as a business document and should be construed to give them reasonable business efficacy. A construction tending to that result, is admissible on the language of the Articles, in preference to a result which would or might more unworkable. The court will give the words used in the articles their ordinary meaning derived from the context in which they appear.⁴⁹

⁴² John Onyido, ‘Copyright Collective Rights Management in Nigeria’ (14 August 2017), <<https://www.mondaq.com/nigeria/copyright/619512/copyright-collective-rights-management-in-nigeria>> accessed 20 July 2023.

⁴³ LER [2018]SC.336/2008.

⁴⁴ *ibid.*

⁴⁵ (2018) LCN/4568(SC).

⁴⁶ Demola Adediji, and others, ‘Locus Standi in Copyright Infringement matters; the Supreme Court in the Adeokin & Compact Disc cases’ (Olaniwunajayi, Newsletter, February 2019), <<https://www.olaniwunajayi.net/blog/wp-content/uploads/2019/02/Locus-Standi-in-Copyright-Infringement-Matters-the-Supreme-Court-in-The-Adeokin-Compact-Disc-Cases.pdf>> accessed 20 July 2023.

⁴⁷ *ibid.*

⁴⁸ Companies and Allied Matters Act, 2020, section 32(1).

⁴⁹ *Towcaster Racecourse Ltd v The Racecourse Association Ltd* (2007). EWHC 2141 CH.

If the Supreme Court had painstakingly and prudently looked at the Articles of Association of the MCSN in the two cases under review, perhaps it would have arrived at a different verdict. It is suggested, with utmost humility, that the apex court ought to have given prominence and priority to the object of the company, which is to exercise, enforce and protect on behalf of the composers of any musical work, or the authors of literary or dramatic works, or the creators of other works possessing an original character or the owners or publishers of or being otherwise entitled to the benefit of or interested in the copyright in such works.

It is clear from the above, that the primary object of Musical Copyright Society of Nigeria Ltd is the advancement of the financial interest of creators of works possessing original character from the predation of those not licensed to use the works. It can best achieve this by registration with the Nigerian Copyright Commission. Baying to eagerly draw a distinction between six and half a dozen like the Apex Court did in the above cases is rather unhelpful.

It should be noted that the designation of collecting societies as owners/assignees of the totality of the rights of its members is simply a mercantile and rational way of illustrating the relationship between the society and its members and not an assignment of the rights in a work in the strict sense of the word since the reversionary interests is still with the members and not the society. This aphorism has found ample expression in the Regulations made in 2007. The Regulations prevent the collecting societies from the annexation or coercion of members from a legal surrender of their interests in the works as managed on their behalf by the collecting societies. However, members are at liberty to surrender the unexhausted duration of their exclusivity in their works to the collecting societies.

*John Onyido*⁵⁰ also argued and rightly in our view that the transfer of rights to *COSON* cannot be regarded as traditional assignment in strict sense and neither can these rights be deemed exclusive, if follows therefore that the artists retain the rights to extend licenses to the users directly or through agents and intermediaries.

6. Examination of the 2007 Regulation

Pursuant to the powers conferred on Nigerian Copyright Commission by the Act,⁵¹ the Commission issued the Copyright (Collective Management Organizations) Regulations 2007. Under the Regulation, ‘a company may apply to the Commission in the prescribed form and upon payment of the prescribed fees, for grant of licence to operate as a Collective Management Organization’.⁵²

Collective management organizations (CMOs) are required to make provisions in their articles of association for the attendance of a representative of the Copyright Commission as an observer in their Governing Board and General meetings.⁵³ The Commission has the regulatory powers to revoke a licence of a collecting society either *suo motu* or upon the application of an interested party.⁵⁴ The Commission can also administer a written caution to the collecting society to rectify

⁵⁰ John (n 42).

⁵¹ Copyright Act (n 8), section 39(7).

⁵² Copyright (Collective Management Organizations) Regulations 2007, regulation 2(1).

⁵³ *ibid*, regulation 2(3)(vi).

⁵⁴ *ibid*, regulation 3(1).

any non-compliance, with the Act or the Regulations.⁵⁵ It can suspend the collecting society's licence pending the society's full compliance with the Act or the Regulation.⁵⁶ It can also disqualify the collective society's principal officers who are found complicit in the non-compliance of the Regulation from holding any management position in any collecting society.⁵⁷

The Regulations highlighted unethical conducts and practices.⁵⁸ It therefore means that the set out unethical conducts and practices must be avoided by the collection societies and their members. Carrying out any unethical conduct or practice would obviously be a violation of the Regulations and may result in the withdrawal or suspension of licence.⁵⁹ Also, the notification embedded in Regulation 8(1) must be seen as a "creed" by the CMO operators. These notifications go to the very heart of the Commercial arrangement between the CMOs and the right owners. The overarching role of the collecting management organization is the collection and distribution of royalties to the right owners. It is a criminal offence for an unregistered entity to embark on collecting management duties without first, obtaining the requisite licence from the Nigerian Copyright Commission. Any contravention or violation could attract penal sanctions.

It should be noted that every application must, in addition to other requirements, be accompanied by proof of a membership of not less than one hundred. Also there will be consent letters, and membership agreement. Members of the collecting society also have a right to receive the copies of the collecting society's annual audited accounts, employees' remunerations, and governing board's annual reports. The members have the right to vote at every Annual General Meeting of the collecting society, this is indeed a safe anchor for corporate democracy and will lead to the achievement of sound corporate governance.

There are also some ancillary and allied things required by the Act for emplacement by the Collecting Societies. One of which is a fair assessment and Distribution mechanism which will among other things, place premium on the purpose, value, the manner of use with the monetary advantages obtained by the user from copyrights works(s). Every collecting society must have a provision for payment of compensation and indemnity to any licenced user who by reason of misrepresentation, negligence or any other defaults attributable to the collecting society is unable to use or utilize the licence.

Dispute arising from the operation of the Copyright Collective Management is to be referred to the Director General of the Nigeria Copyright commission who may decide to constitute a panel. The findings or determination of the panel is final until set aside by a competent court of law. A very important provision of the CMO Regulation is the imposition of a maximum of 30 percent of the total collectible Royalties as administrative charges subject to an excess made conditional to a prior application to NCC for consent. This will undoubtedly check the possible errant and manipulative attitude of CMOs.

⁵⁵ *ibid*, regulation 20(1).

⁵⁶ *ibid*, regulation 20(2).

⁵⁷ *ibid*, regulation 20(3)

⁵⁸ *ibid*, regulation 18.

⁵⁹ *ibid*, regulation 3(1).

7. Conclusion

In a properly structured economy, artistes rely heavily on the royalties paid for the use of their copyright works. The proliferation, polarization and lack of transparency regarding the tariffs charged for the use of copyright works may continue to stifle the professional administration of copyright royalties collected in Nigeria. These concerns are especially prevalent in the music industry. The refusal of various contending copyright collecting societies to at least collaborate and transparently publish their respective licensing requirements with tariff rates for each copyrighted work will also continue to blight the expected growth of the industry. There must be noticeable improvements in governance, efficiency, and transparency in the operations of the CMO if the desired objectives will be realized.⁶⁰ Developments in other countries should be a source to be readily drawn from. For instance, in Kenya, the Kenya Copyright Board (KECOBO) refused to renew the licence of the Music Copyright Society of Kenya for noncompliance with reporting and other obligation required by law.

8. Recommendations

There is no doubt that we need to rethink the legislation around CMO's roles and operations especially as it concerns custodial and monetary sentences upon indictment. It is therefore strongly recommended that all CMOs, including the ones for musical royalties' collections, be compelled by the copyright Regulating Agency to maintain a photo compliance with the provisions of the Act and Regulation.

To strengthen the legislation and enforcement of CMOs in this Nigeria, the National Assembly is hereby enjoined to accelerate work on the draft bill, pass it and have it ready for the assent of the president. The amendment of the Copyright Act to give collecting societies powers to issue licenses on other works belonging to non-members is hereby advocated.

The draft copyright bill which is yet to be passed into law recommends in section 35 that the penalty for the offence of performing the duties of a CMO without approval of the NCC should be three 3 years in jail or fine of five hundred thousand naira. This is a departure from the past which provided for a paltry jail term and or a fine component of six months and two thousand naira respectively. In the interim, this paper advocates vigorous enforcement of the existing regime of legislation to hand down adequate punishment that meets the justice of each case. The polarization of CMOs be avoided and CMOs must be transparent in all their dealing regarding the tariffs charged for the use of copyright works and the distribution of royalt

⁶⁰ Glynn S. Lunney Jr, 'Copyright Collectives and Collecting Societies: The United States Experiences, in Collective Management of Copyright and Related Rights' (2015) (Daniel Gervais eds., 3d ed), <<https://scholarship.law.tamu.edu/facscholar/896> > accessed 20 July 2023.