

## COLLECTING SOCIETIES IN MUSICAL WORKS OF COPYRIGHT: AN ANALYSIS\*

### Abstract

*It is trite that copyright is partially the exclusive right of owners of work to control the exploitation of their work and to grant authorization for its use. The increased infringement of copyright works in Nigeria viz- literary, musical and artistic works, have however placed in the front burner the crucial administrative roles of any approved collective management organisation (CMO), in acting as a bridge between the creators/owners and users of musical works in particular. The process of establishment, approval and the inherent duties of CMO are well scripted under the Act, which duties include the negotiation and granting of licenses, the collection and distribution of royalties. The public declaration by the Nigerian Copyright Commission (NCC) that Musical Copyright Society of Nigeria (MCSN) and not Copyright Society of Nigeria (COSON) is the only society legally empowered by the regulatory agency to collect royalties for the Nigerian music industry on behalf of the musical artists substantially put to rest the lingering issue of which of the two societies is legitimate. Although we are not unaware of the innovations streaming platforms present in the collection and payment of royalties, but this article seeks to examine how CMO's facilitates the administration and regulation of musical works of copyright in our contemporary Nigeria, taking into cognizance the overriding administrative supervision of the NCC. The article concludes by appreciating the drafters of the Copyright Act of 2022, which unlike section 39 of the repealed Act, recorded tremendous improvements by stating under its section 88, a more comprehensive, exhaustive and clearer powers donated to the NCC on issues of operational approval or otherwise of any applicant CMO. It is however recommended that the NCC should review its Regulations to ensure effective supervision of CMO's, enthrone transparency in its affairs, to boost the confidence of music artistes and content creators, who ordinarily would rather prefer to go with streaming platforms than depend solely on membership of CMO in earning of royalties.*

**Keyword:** Concept, Collecting Societies, Works, Musical Works, Copyright

### 1. Introduction

Gone are the days' music artists are contented with having their songs only aired on radios and televisions. Given that royalties are now a major source of income for musicians, songwriters, and composers, and the fact that a copyright holder may have to face countless users of his work makes it impossible for individual collection of such royalties, and this propels looking for alternative and assignment of such rights to an approved administrative system today known as Collective Management Organisation (CMO). The CMO initiative is to bridge the gap with the major aim of distributing earned royalties to the concerned members/owners of the copyright. Historically, the Performing Mechanical Rights Society [PMRS] in 1995 led the pack with its approval to operate as a CMO over musical works. With its demise, the Copyright Society of Nigeria (COSON) in May 2010 came onboard, but later got suspended in 2018 till date, over internal management issues coupled with her refusal to comply with NCC directives. MCSN in 2017 got approval of the NCC for similar responsibility vide a letter by the then Attorney-General of the Federation. The dust on whether approval and licensing of CMO for any particular class be limited to just one as the enabling statute suggests, or be more than one, to discourage monopoly in a free market economy is yet to settle. The United States of America (USA) has three (3) main CMO (called BMI, ASCAP, and SESAC), the United Kingdom has more than twenty (20) CMO which are spread over different genres of intellectual property. Switzerland has five approved CMO and one established as clearing center for multimedia and internet (SMCC). Brazil too, has many CMO including those representing newspaper writers and authors, literary artists. Therefore, unlike the USA, Nigeria needs further review on whether the provisions of enabling statute is proper in limiting individual right holder's choice of CMO to identify with, being that, it is accepted that management of rights to collect royalties from users of work in the musical fields can literally, for now, best be achieved through the administration of CMO.

### 2. Overview of the Term Copyright and Copyright Law -Introduction<sup>1</sup>

Copyright is the term used to describe the bundle of rights granted by statute for limited periods of time and subject to certain permitted exceptions, in respect of literary, musical or artistic works, such as novels, plays, poems, musical compositions, paintings, sculptures, as well as of sound recordings, films and broadcasts<sup>2</sup>. These are proprietary rights, giving the owner the right to do and to authorize other persons to do the acts restricted by the copyright law. Copyright can further be described as a category of right in intellectual property vested in the owner of a work to recreate such work. The law of copyright, originally conceived to provide protection against unauthorized reproduction of books,

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<sup>1</sup>Sandra Oyewole 'Collection Societies in Nigeria's Music Industry: The Case for Change', <https://www.dlapiperafrica.com/en/nigeria/insights/2021/collection-societies-article.html>.> Accessed 29/10/2022

<sup>2</sup> It is the eligibility and copyright protection of works in the music industry that really concerns us work by others, it is central to providing right owners with some element of control over the exploitation of their works in the new global networks of the present information age.

faces unprecedented challenges from the accelerating pace of technological innovation. Now, the law of copyright provides the legal framework not only for the protection of traditional beneficiaries of copyright, the individual author, composer or artist but also for the investment required for the creation of works by the major cultural industries, the publishing, film, broadcasting and recording industries, and the computer software industry. Since copyright gives the owner the exclusive right to authorize or prohibit certain uses for his work by others, it is practically central to providing right owners with some element of control over the exploitation of their work in the new global networks of the present information age.

### 3. Highlighting the Law and Copyright Works

Copyright in Nigeria is now governed by the Copyright Act of 2022<sup>3</sup> a new piece of legislation. Section 2(1) of the Act provides for works<sup>4</sup> relevant to collectible responsibility, basically the music industry and are listed as being eligible for copyright, it includes (a) literary works (made up of lyrics and compositions for songs); (b) musical works (made up of musical notes/instrumental accompaniment); (c) sound recordings (known as the masters); and (d) Broadcasts (the actual transmission).<sup>5</sup>

### 4. The Copyright Owner/Author

The identity of the author of a work is important for several and obvious reasons: (a) Usually, the author is the first owner of the copyright,<sup>6</sup> if employed, his employer may be<sup>7</sup>; (b) Duration of the copyright is usually measured by reference to author's life<sup>8</sup>; (c) Author is entitled to moral rights<sup>9</sup> in his work; and (d) Author is usually the creator of the works. The author in respect of each work eligible for copyright protection is defined<sup>10</sup> by how the work is actually created. Thus, author in: (a) Literary and musical works: which are lyrics and notes is usually the composer or producer; (b) Broadcast: which in this sense is the transmission is usually the radio or television station; (c) Sound recording: which are the masters on which the song is recorded is usually the record label unless there is an agreement to the contrary with the artist, as expressed by IP expert, Sandra Oyewole.<sup>11</sup>

### 5. The Exclusive Rights of the Owner of Work of Copyright (Musical)<sup>12</sup>

Copyright no doubt is a statutory property or interest which allows exclusivity right of the owner to undertake and authorise others to so undertake a number of activities in relation to his work. The rights of the owner may be described as exclusive rights to authorise others to use the protected works. The right of the copyright owner to exclude others from making copies is a fundamental and most basic right known as the reproduction right, expressly provided for in the Act<sup>13</sup>. However, it does not go without certain exceptions<sup>14</sup> with respect to certain types of works. Ideally, these rights are exercised on individual basis by agreement between the owner and potential user of the work. It should however be noted that it is these individual rights of varying owners of works that are assigned and/or licensed to collection societies. The evolution of technology in the exploitation of music over the years has made it difficult and impracticable, as highlighted earlier, for users and owners of works to contract as required by law, hence the need for collection societies or CMO to come to the expected rescue.

### 6. Collective Management Organisations at a glance

These are organizations established with the approval of the Nigerian Copyright Commission (NCC) to protect intellectual property rights of owners of work, collect royalties on their behalf, and similar other considerations for the use of copyrighted works globally. These organizations are primarily private, and are statutorily non-profit oriented.

### Overview of Collective Management Organisations and its Operations in Nigeria

In Nigeria, a whole lot of CMO's are duly licensed and approved by the Nigerian Copyright Commission (NCC) to operate and collect royalties on behalf of her members. Some of them are the Musical Copyright Society of Nigeria (MCSN), the Reprographic Rights Organization of Nigeria (REPRONIG), the Performing and Mechanical Rights Society (PMRS), the Audio-Visual Rights Society (AVRS). The establishment of CMO is stipulated under the Copyright Act 2022 of Nigeria, and the sole body responsible for the approval of the operations of CMO is the Nigerian

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<sup>3</sup> Cap C28 Laws of the Federation of Nigeria being repealed, enacted 1988. References shall be made in both Acts.

<sup>4</sup> S. 2 (2)-(6) -eligibility for copyright in the listed works. Then, s. 1 (2)-(4) in the repealed Act; S. 108 of the 2022 Act provides for definitions of these works, which was provided for in s.51 of the repealed Act.

<sup>5</sup> Olajide Oyewole: Collection Societies in Nigeria's Music Industry: The Case for Change, <https://www.mondaq.com/nigeria/music-and-the-arts/1104488/collection-societies-in-nigeria39s-music-industry-the-case-for-change> Accessed on 29/10/2022

<sup>6</sup> S. 28 (1), then s. 10 (1)

<sup>7</sup> S. 28 (2), then s 10 (3)

<sup>8</sup> S. 28 (2), then First Schedule

<sup>9</sup> S. 14, then s. 12, i.e. authorship right of a work is perpetual, inalienable and imprescriptible.

<sup>10</sup> S. 108, then s. 51 for full details of these definitions

<sup>11</sup> S Oyewole <https://www.dlapiperafrica.com/en/nigeria/insights/2021/collection-societies-article.html> accessed 29/10/2022

<sup>12</sup> Ibid

<sup>13</sup> Sections 9, 10, 11, 12 and 13 provide for all the rights, then sections 6, 7 and 8.

<sup>14</sup> Part II (sections 20, 21, 22, 23, 24, 25, 26 and 27) of the Act, then Second Schedule to the repealed Act.

Copyright Commission (NCC). The Copyright Act provides that 'A Collective Management Organization... formed by rights owners may apply to the Commission for approval to operate in respect of any one or more categories of works.'<sup>15</sup> Thus, a CMO is a body formed by the rights owners to manage their copy rights collectively and where such body is formed, they should usually apply to the Nigerian Copyright Commission for approval to operate in respect of specific categories of work. Where no such request and then approval is gotten from the NCC, it goes to the issue of *locus standi*, as seen in *MCSN v Compact Disc Technology Limited & Ors*.<sup>16</sup> For the purpose of showing how important the aforesaid approval is, the Act in section 88(4) further provides that: 'A person or group of persons, however described, shall not perform the duties of a CMO without the approval of the Commission as required under the Act.'<sup>17</sup>

Continuing also 'any person who contravenes the provisions of subsection (4), commits an offence and is liable on conviction in the case of (a) an individual, to a fine of at least N1,000,000 or imprisonment for a term of at least five years or both; and (b) a body corporate, to a fine of at least N5,000,000.'<sup>18</sup>

Furthermore, the Act on limitation of action, descriptively and unequivocally provides that,

- Notwithstanding the provisions of the Act or any other law, no action for infringement of copyright or any right under the Act shall be commenced or maintained by any person or organization, who -
- a. engages in the business of negotiating and granting licence;
  - b. collects and distributes royalties in respect of copyright works; and
  - c. represents more than 50 owners of copyright in any category of works protected under the Act, unless it is approved under section 88 of the Act to operate as a collective management organization or issued with a certificate of exemption by the Commission.<sup>19</sup>

It is important to note that it is trite that the CMOs have the power to license rights in copyright works to users. The revenues generated from these licenses are, in turn, distributed to the members of the CMOs, who unequivocally are the copyright owners. The copyright proprietors typically assign or license their rights in the works to the CMOs, which will administer such rights on their behalf, by granting licences to users. It is difficult to know whenever songs are being played around the country, and at different fora, at the nightclubs, the shopping malls, at restaurants and the rest, it simply shows that exercise of rights in respect of works which are intended for wide scale public use and performance on individual basis is neither feasible nor practicable hence the option of statutory establishment CMO.<sup>20</sup> In the light of the fact that CMOs have control over huge repertoire<sup>21</sup> of copyright works, they nonetheless weigh enormous power in the music industry, and are usually in a good position to negotiate acceptable license terms and fees (on behalf of their members), with record labels and publishing industries.<sup>22</sup> It is a fact that the owners of copyright in any song or sound recording may not be able to know where, by who and when his work is being exploited.

### **Emergence of Copyright Society of Nigeria, Roles and the Battle for Legitimacy**

It is a known fact the Copyright Society of Nigeria Ltd/Gte (COSON) was established sometime in May 2010 pursuant to the enabling statute, to serve as one of the collecting societies established and recognized by the Nigeria Copyright Commission (NCC), to spearhead and grant license to artistic works of music and sound recording for public and commercial uses. Although the Musical Copyright Society of Nigeria (MCSN) owing to administrative exigency later got approval of the NCC on 3 April, 2017 vide a letter from the honourable Attorney General of the Federation, which caused the withdrawal of licence initially granted COSON in 2018. The legitimacy battle is yet to be finally determined by the courts not minding the length of years spent already in the struggle by parties. Who loses after all? The artistes and content creators of course. Meanwhile, the purpose of recognising COSON *ab initio* was to implement the provisions of the Act with respect to establishment of CMO. That is to say, streamlining and ensuring that artistes are duly compensated for their work when their music is performed or used in a public or commercial space by users. The roles of CMO are well defined in the laws establishing them. Their principal objectives are mainly to help ensure that inventors and creators receive fair compensation for the use of their work whilst simplifying the process for third parties to obtain the necessary license required to use these compositions. Their function as enshrined in section 88 (7) of the Copyright Act 2022, includes the following:

- a. **Royalty Collection:** Collection societies collect royalties from various sources, such as radio stations, streaming platforms, venues, and businesses that use music. They then distribute these royalties to the appropriate rights holders, including songwriters, composers, and publishers, on established sharing formula.

<sup>15</sup> Section 88(1) of the Act

<sup>16</sup> (2018) LLJR -SC

<sup>17</sup> Oyetola Muiwa Atoyebi, SAN, <https://www.google.com/amp/s/lawpavilion.com/blog/the-roles-of-collecting-societies-in-the-administration-of-copyright-in-nigeria/amp/> accessed 29/10/22.

<sup>18</sup> Ibid, Section 88(5)

<sup>19</sup> Ibid, Section 39, limitation to the right of action.

<sup>20</sup> S Oyewole <https://www.dlapiperafrica.com/en/nigeria/insights/2021/collection-societies-article.html> accessed 29/10/2022

<sup>21</sup> Regulation Para 22, Interpretation paragraph, it means catalogue of copyrighted works which is administered by a CMO.

<sup>22</sup> S Oyewole <https://www.dlapiperafrica.com/en/nigeria/insights/2021/collection-societies-article.html> accessed 29/10/2022

- b. Licensing: Collecting societies issue licenses to music users, granting them the legal right to publicly perform, broadcast, or use copyrighted music in exchange for payment of royalties. This process simplifies the licensing procedure for businesses and organizations that require music for their operations.
- c. Monitoring and Enforcement: Collecting societies monitor the use of music in various fora, media and venues to ensure that creators are compensated appropriately. They also enforce copyright laws by pursuing legal action against individuals or businesses that use music without obtaining the necessary licenses.
- d. Advocacy and Support: Collecting societies advocate for the rights of music creators and provide support and resources to their members. This may include legal assistance, educational programs, and initiatives to promote the value of music copyrights.<sup>23</sup>

## 7. True Fundamental Events of the Past by Sandra Oyewole<sup>24</sup>

### France<sup>25</sup>

The year is 1847 and Ernest Bourget, Paul Henrion and Victor Parizot, three of France's most celebrated composers were sitting in the leading café of the day, Café des Ambassadeurs, listening to their compositions being played live. The composers were angry that the live performance of their music in the Café helps to attract customers and patronage and increases its revenue but refused to pay them for the performances of their compositions. The technology available at the time to listen to music was basically live performances. The composers decide not to pay the bill and a trial ensued. This event story marked the beginning of a landmark trial of its day that resulted in: (a) a court judgment declaring the legal rights of owners in the public performance of their music; and (b) the formation of the first collection management organisation for public performance rights in nondramatic works i.e. Société des auteurs, compositeurs et éditeurs de musique (SACEM).

### United Kingdom<sup>26</sup>

Performing Right Society (PRS) formed in 1914 and the Mechanical Copyright Protection Society (MCPS) formed in 1924. PRS takes an assignment from its member publishers and composers of the right to perform their works in public and the right to communicate their works to the public. MCPS also represents writers and publishers and this is in respect of what is known as the mechanical right i.e. the right to make copies of a musical work. This right is exercised when a record company makes a CD or when a TV producer makes a programme including music.

### United States of America<sup>27</sup>

In the USA, there is American Society of Composers Authors & Publishers (ASCAP) which has similar origins to that of SACEM<sup>28</sup> and it represents the interest of its members namely composers, authors and publishers in performing rights. In 1940, in anticipation of a breakdown in negotiations with ASCAP over the rates to be charged for the following year (evidence of monopolistic behaviour) a group of broadcasters including major radio networks and nearly 500 independent radio stations established Broadcast Music Incorporated (BMI) a credible alternative to ASCAP, and an automatic performance royalty earning machine for songwriters and publishers<sup>29</sup>.

### New Technologies<sup>30</sup>

With new technologies, the role of the collection societies only continued to evolve and increase. With the invention of gramophones, radios etc., it became necessary to form more collection societies to represent the owners of sound recordings (record labels) and rights in broadcasts. CMO's like the U.K.s Phonographic Performance Ltd (PPL) was formed in 1934 and represents the interests of record labels. It licenses the performances of music embodying musical compositions i.e. the public performance and broadcasting of the sound recording.

### Principle of Reciprocity<sup>31</sup>

From the early 19th to early 20th century, different countries began to form Collecting Management Organisations (CMOs). Reciprocal agreements were signed by these national CMO to enable them represent each other's repertoires. Administratively, most established CMO belong to international networks, consisting of federations of societies representing the same categories of rights owners and which enter into reciprocal representation agreements for the

<sup>23</sup> Somadina Eugene Okorie, <https://www.google.com/amp/s/www.vanguardngr.com/2024/07/royalties-in-musical-works-the-collecting-societies-and-the-new-trend/amp/> Accessed 28/10/2024

<sup>24</sup> Para. 7 culled from Sandra Oyewole's work, 'Collection Societies in Nigeria's Music Industry: The Case for Change', <https://www.dlapiperafrica.com/en/nigeria/insights/2021/collection-societies-article.html>.> Accessed 30/08/2022, 29/10/2024

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Famous songwriters of the day sitting in a famous club discussing the use of their songs in public venues and no means of collecting a royalty

<sup>29</sup> Unlike the U.K. the US allows for more than one CMO to represent the same class of owner, Nigeria is undecided. <sup>19</sup> Phonographic Performance Ltd

<sup>30</sup> S Oyewole <https://www.dlapiperafrica.com/en/nigeria/insights/2021/collection-societies-article.html> accessed 29/10/2024

<sup>31</sup> Ibid

exercise of such rights. Thus, one CMO in any given country is able to represent both foreign and national rights owners within its territory and to license practically the entire world repertoire of the rights owners it represents; at the same time a rights owner will be able to exercise his rights and receive royalties when his work is used abroad<sup>32</sup>. For instance, PRS works in close association with similar bodies outside the UK both in licensing those bodies to collect royalties in respect of the works administered by the PRS when they are performed outside the UK, and also in collecting performing right royalties in respect of works performed in the UK, but which are owned by the foreign societies<sup>33</sup>.

#### 8. Does COSON cease to exist as CMO when her Operating Licence lapsed?

In a substantive matter, in Suit No FHC/I/CS/425/2020, filed by Copyright Society of Nigeria (COSON) in the Federal High Court, Lagos in March 2020 against the Nigerian Copyright Commission (NCC), presided over by Hon. Justice A. M. Liman, on whether indeed the COSON approval by the Commission ceased to exist effective 19th May 2019, where the company sought a declaration among other things:

... a perpetual injunction to restrain the Commission from taking any steps purporting to revoke the operating licence/approval of COSON or in any way or manner disturbing/continuing to disturb or prevent /continuing to prevent COSON from lawfully enforcing the constitutional rights of its members, affiliates, assignees and reciprocal representation partners or interfering/continuing to interfere with the internal management, operations, funds, audits or bank accounts of COSON or preventing/continuing to prevent COSON, its members, affiliates, assignees and reciprocal representation partners from earning income and sustaining themselves with their Intellectual Property, pending the determination of the suit.<sup>34</sup>

Consequent upon an application for interlocutory injunction restraining NCC from revoking its operating licence pending the hearing and determination of the suit brought by COSON, and in line with the Act and Regulations 2007, the court on 1st December 2021, held, among others, that for failure to satisfy the necessary conditions that would have enabled the Court exercise its discretionary powers in its favour, COSON was not entitled to such relief because the said licence that it sought to preserve had lapsed.

#### 9. A very Grave *Status Quo*<sup>35</sup>

The job of the collection society is not just to represent local rights but to provide the reciprocal protection and collection of everyone's rights when they are activated in their territory. There is an integrated network where being a member of one society provides a common set of principles around the world for the protection of and collection of royalty/ies<sup>36</sup>. It is a fact that MCSN once had a reciprocal agreement with PRS but this was eventually terminated on 31st December 2010. There was no new agreement of this nature and MCSN is therefore actually unable to perform a basic function of a collection society and administer and manage the works of its foreign sister organisations. In reverse, these sister organisations cannot and will not perform a similar service to the members of MCSN. The income being lost is incalculable. COSON on the other hand does have a valid and existing reciprocal agreement with PRS and other international societies. The fact is that, COSON's reciprocal agreement with PRS means that PRS collects royalties from other performing rights societies on behalf of members of COSON. The value of such contracts cannot be underscored in the copyright ecosystem. As highlighted, on 30 April 2018, NCC having suspended the license of COSON<sup>37</sup>, and its license suspended<sup>38</sup>, COSON should not be able to act as a CMO. Royalties on behalf of its members and those of the foreign CMO's that it has agreements with would not be collected and even be payable. Most regrettably, in flagrant disregard for the suspension of its license, and just like MCSN did before it was issued its approval, COSON has continued to act as a collection society in Nigeria.<sup>39</sup> The validity of licenses issued by COSON and the renewal therefore are questioned. Demands for royalties by COSON are questioned and payment by users is being disputed. MCSN with limited membership is strictly speaking significantly handicapped. Who suffers in all of this? It is the owners of copyright works that are members of these two organisations but are not receiving their dues for the exercise of exclusive rights by users which they as owners cannot practically administer. Faith in the system has been damaged and the powers of NCC undermined, a new normal hence is urgently needed.<sup>40</sup>

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<sup>32</sup> Kevin Garnett, Gillian Davies & Gwilym Harbottle, *Copinger and Skone James on Copyright* (Vol 1, 15th edn, Sweet & Maxwell 2005) 1544

<sup>33</sup> Michael Flint, Nick Fitzpatrick & Clive Thorne, *A User's Guide to Copyright* (6th ed, Tottel Publishing 2006) 234

<sup>34</sup> <https://thenigerialawyer.com/copyright-society-of-nigeria-is-no-longer-a-collective-management-organization-court-rules/> Accessed on 28/10/2024

<sup>35</sup> S Oyewole <https://www.dlapiperafrica.com/en/nigeria/insights/2021/collection-societies-article.html> accessed 29/10/2024

<sup>36</sup> Helen Gammons, *The Art of Music Publishing* (1st edn, Focal Press 2011)

<sup>37</sup> Reasons for this are documented in the NCC letter to COSON dated 30th April 2018

<sup>38</sup> COSON has challenged the suspension in court but the matter appears yet to be finally determined

<sup>39</sup> Examples of its activities include having an Extra ordinary General Meeting (EGM) in May 2018, barely a month after the issuance of the suspension of the license AND continuing to issue demand letters for payment of royalties. <sup>54</sup>

<sup>40</sup> Ibid

Using United Kingdom and Nigeria<sup>41</sup> as case study, in 2016, the U.K. PRS for Music raked in a total revenue of GBP625.8 million<sup>42</sup> and distributed GBP527.6 million royalties to owners<sup>43</sup> of the works; whereas in 2017, total revenue stood at GBP716.8 million<sup>44</sup> and royalties paid to owners was GBP605 million. In Nigeria<sup>45</sup>, in 1994, before the new amendment to the Act gave distinct status to collective societies, Musical Copyright Society of Nigeria (MCSN) collected USD88,00019 (USD36,397 from broadcasts and USD38,517 from performances), whereas, Between 2018<sup>46</sup> and May 2019, COSON approved a meager sum of NGN40,000,000.00 and disbursed NGN8,520,000.00.<sup>47</sup> The significant disparity between the revenue of both jurisdictions is obviously quite huge, however, the figures reflect the viability and potential of collection societies in the copyright ecosystem.

## 10. Conclusion

It is not in doubt that where applications for a licence are made, approval shall be given to the CMO who, after due investigation, will protect the interests of that class of right owners more adequately', meaning that one CMO may be appropriate for any particular class of right. However, the letter of the Hon. A.G, Federation, Abubakar Malami which directed the NCC to '*issue with immediate effect, an approval by way of licence to the MCSN to operate as a CMO for the purposes of the Act*', honoured and acted upon by the Commission without resistance, when technically there is a subsisting CMO, COSON, needs an urgent reexamination of section 39(3) by the court. Pursuant to Section 88 (6) (c) of the Act,<sup>48</sup> the NCC makes the under-listed Regulations<sup>49</sup>

*Regulations on Application and Grant of CMO's Operating Licence:*<sup>50</sup> Chpt 1-Para. 2 -Application for Licence

- (1.) Subject to the conditions specified under Section 39 of the Act, 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 Organisation.
- (2.) Every Company applying for licence to operate as a CMO shall furnish the Commission with the following documents:
  - i. Certificate of registration in respect of the company issued under the Companies & Allied Matters Act;
  - ii. the Memorandum of Association of the Company;
  - iii. the Articles of Association of the Company
  - iv. a Statement indicating the class of right or category of right owners in which the society owns rights, or intends to represent or act for;
  - v. membership list of not less than 100 right owners representing the class(es) of right to which the company is seeking a licence to operate as a CMO, which list shall indicate the signed consent of such persons to belong to the Organisation, or where the Organisation has been in existence, that they are members of the society;
  - vi. Undertakings by at least 5 (five) Directors including the Chairman of the Company that the Company shall comply with provisions of the Copyright Act and these Regulations in respect of the operations of the Organisation;
  - vii. membership agreement used by the organisation;
  - viii. evidence of payment of the prescribed fee(s); and
  - ix. such other documents as may be required by the Commission.
- (3.) The Commission may accept an application of a Company if it is satisfied that:
  - i. all the requirements stipulated in both the Act and the Regulations for grant of a licence have been met;
  - ii. the organs of the Company comprise at least a General Assembly of all its members and a Governing Board;
  - iii. the Chief Executive Officer of the Company who shall not be a member of the Company, is knowledgeable in copyright matters and approved by the Commission as competent to run the affairs of a CMO;
  - iv. the Management of the organization have been approved as competent to run affairs of a CMO;
  - v. the memorandum of Association of the organisation provides the main function of the organization to be the administration of collective management of copyright.
  - vi. the Articles of Association of the Organisation makes provision for attendance of representative of the Commission at the Governing Board and other general meetings of the organization of the Organisation as an observer;
  - vii. no person shall be qualified to be appointed as Chairman of the Governing Board of the CMO unless he is a member of the Organisation; and

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<sup>41</sup> MCSN and COSON

<sup>42</sup> <https://www.prsformusic.com/about-us/track-record/2016> accessed on 27/10/2022

<sup>43</sup> <https://www.statista.com/statistics/281286/music-royalty-collected-and-distributed-by-prs-for-music-in-the-uk/> accessed on 27/10/2022

<sup>44</sup> <https://www.prsformusic.com/about-us/track-record/2017> accessed on 27/10/2022

<sup>45</sup> Relying on a smattering of information

<sup>46</sup> Polarin Shyllon, *Intellectual Property Law in Nigeria* (vol 21, Verlag C.H. Beck Munchen 2003)

<sup>47</sup> <http://www.cosonng.com/coson-agm-approves-40-million-naira-as-specific-distribution-to-members/> accessed on 28/10/2022

<sup>48</sup> Nigeria Copyright Act 2022, then under 39 (7) of the repealed Copyright Act, C28, LFN, 2004.

<sup>49</sup> The Short Title may be cited as the Copyright (Collective Management Organisations) Regulations 2007, highlighting salient paragraphs important to discussions in this work.

<sup>50</sup> Important provisions

- viii. the Governing Board and Management of the CMO consist of persons who are citizens of Nigeria and ordinarily resident in Nigeria.
- (4.) The Commission may communicate acceptance of an application to the applicant and where it deems necessary may require the applicant to take such additional steps including the advertisement of its application for grant of licence to operate as a CMO in designated national newspaper(s).
- (5.) Upon the approval of an application, the Commission shall issue the applicant a Certificate as evidence of its licence to operate as a CMO.
- (6.) Without prejudice to sub-paragraph (7), the Commission may refuse to grant a licence if it is not satisfied with the application of a company.
- (7.) If an applicant for a licence has not been able to satisfy the Commission as to any matter required of it under it under these Regulations or the Act, but the Commission considers that the applicant will be able to do so before a final decision is made on the application, the Commission may accept the application subject to such modifications, conditions or limitations as may be appropriate.
- (8.) At the request of an applicant for a licence under these Regulations, whose application has been refused or accepted subject to modifications, conditions or limitation, and on payment of the prescribed fee, the Commission shall provide the applicant, in writing, the grounds for its decision.
- (9.) Subject to the provisions of these Regulations a licence shall be valid for 3 (three) years and may be renewed every 2 years in accordance with procedure herein stipulated.

*Regulations on Revocation of Licence, see Chpt 2 Para 3<sup>51</sup>*

- (1.) The Commission may, on its own motion or on application by any interested person revoke the licence of a CMO where:
  - i. in the opinion of the NCC, the CMO contravenes or fails to comply with any provision of the Act, these Regulations, direction or order made or given to it under these Regulation;
  - ii. the CMO no longer acts for or represents the copyright owners of any class(es) of works in respect of which licence was granted to it;
  - iii. the CMO failed to disclose material facts that, if known at the time of considering its application for a licence, would have constituted cause for refusal of the said application; and
  - iv. The Commission becomes aware of facts unknown at the time of considering the application for grant of licence, or of subsequent occurrences which, if placed before the Commission, would have constituted a ground for refusal of the application for grant of licence.
  - v. On such other ground or grounds that it would be reasonably justifiable to refuse application for grant of licence to operate as a Collective Management.

*Regulations on Membership and Management of CMO's, see Chapt 2 Para 5<sup>52</sup>*

- (1.) Membership of a CMO shall be made open to all copyright owners of the category of works or class(es) of rights to which the Organisations seeks licence or is licensed to operate under these Regulations.
- (2.) A CMO shall not impose condition(s) requiring a member to constitute the Organisation as his sole collecting agent or as agent for any other purpose otherwise than for the purpose of managing the rights of the member within the scope of the Organisation's licence under these Regulations.
- (3.) A CMO shall not make a mandatory requirement for a member to assign to it the right to collect royalties from equivalent foreign collective administration schemes.
- (4.) A CMO may make provision for collective membership through an association of right owners or for admission of members through their agents, provided that in such a case, the agent or the association shall undertake to indemnify the Organisation against claims from the actual right holder in respect of any royalty distributed to the agent or the association.
- (5.) Where the Commission is satisfied that an organisation is in breach of subparagraphs 1, 2 and 3 above, the Organisation and/or its officers may be liable to a written caution and may be required to rectify the breach within a specified time, failing which the Organisation shall be liable to a fine of N50,000.00

*Regulations on Accounts, Annual Report and Audit, see Chapt 2 Para 10<sup>53</sup>*

- (1.) Every CMO shall keep proper accounts consistent with ordinary accounting/commercial standard.
- (2.) The Commission may, if it considers it necessary, at any time appoint an auditor to audit the accounts of a CMO and the cost of such auditing shall be borne by the Organisation.
- (3.) Where as a result of an examination of any account or audit of any account it appears to the Commission that any offence under any enactment has been committed by the society or by any of its officers, the Commission may initiate a criminal proceeding against the CMO or Officers of the Organisation identified with the Commission of the offence.

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<sup>51</sup> Ibid, Chapter 2, para 3

<sup>52</sup> Ibid, Chapter 2, para 5

<sup>53</sup> Ibid, Chapter 2, para 10

- (4.) Where an Officer has been indicted for the Commission of an offence as provided in subparagraph (3) above, the Organisation Shall forthwith suspend such officer from further performing the functions of the office he held immediately preceding such indictment.

*An Addendum*, much as Collective Management Organizations (CMOs) steps in to negotiate on behalf of copyright owners, issue licenses to users, collect payments, and distribute royalties based on agreed terms.<sup>54</sup> CMOs *no doubt is a* convenient one-stop shop for streamlining copyright content usage in the interests of both creators and users.<sup>55</sup> In 1993, its first regulation, *the Copyright (Collecting Societies) Regulation 1993* was introduced. In 2007, the Copyright Management Regulations of 2007 was birthed replacing that of 1993, and was indeed used in discussing this work. The said 2007 regulations comprised of 23 paragraphs, covering various aspects such as application, license revocation and renewal for CMOs,<sup>56</sup> CMO membership and management;<sup>57</sup> licensing and royalty distribution;<sup>58</sup> among other miscellaneous matters.<sup>59</sup> Presently, and in the interest of a proactive copyright regime, and in the exercise of the powers conferred on the Commission under sections 78(2)(d), 88(6)(c), 97(1)(5) and 97(1)(c) of the Copyright Act, 2022, the NCC now make Collective Management Regulations, 2025, cited as No. 22, Vol. 112 (B95-123), in the gazette, with commencement date of 28th day of January, 2025. The 36 paragraphs regulations among others, covers areas such as information to right owners, scope of mandate, fair and equitable treatment of any right owner, withdrawal of membership, extended licensing, and distribution policies. Future research on the topic will have more to chew than this present work.

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<sup>54</sup> Nigerian Copyright Act, 2022 section 88 (7)

<sup>55</sup> K Ola, 'Copyright Collective Administration in Nigeria: Lessons for Africa' (2013) *Springer Briefs in Law*, <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2382559](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2382559)> accessed 19 September 2022

<sup>56</sup> CMO Regulation 2007, Regulations 1-3

<sup>57</sup> *Ibid*, Regulations 4-12

<sup>58</sup> *Ibid*, Regulations 13-15

<sup>59</sup> *Ibid*, Regulations 16-23