

# **MUSICAL ARTS AND COPYRIGHT LAW IN NIGERIA: ETHICAL ISSUES IN THE PROTECTION OF INTELLECTUAL PROPERTIES**

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## **Introduction**

Musical art implies every form of music expression which exists in, and maintains human social structures and values. Musical art as a social factor is part and parcel of human existence. It has maintained dominance in human society at every level and has demonstrated to be one of the fundamental form of human expression and communication of ideas. Musical arts expression is one of the most undermined intellectual properties by the Nigerian government and society. Musical works in Nigeria enjoy little or no protection even when they are documented to have some protections of the government. Even the insurance policy of Nigeria has not been fair on the protection of musical works as a product but, it demonstrates great resource in the protection of other sectors of the economy. Not incorporating the interest of music performers, composers and music industry in the nation's insurance policy, coupled with the detrimental effect of piracy have posed a whole lot of challenges to musicians and their intellectual property. The practices of music piracy in Nigeria is often done without minding that the effect of unethical pirating of musical products (although intangible product) unleashes the same effect felt by other producers whose 'tangible' products are abused. The degree of stealing intellectual possessions especially, musical works; the unlicensed broadcast of musical works, duplication and unethical sharing of these products without any form of loyalty or consent of the artistes or composers has left entire musicianship in the state of dilemma.

From historical account, effort to protect intellectual property in Nigerian started shortly after independent in 1960, with several reforms of legal framework for

protection of intellectual property right. Both government and private initiatives were instituted and were all governed by copyright act. Copyright act is a principle law that governs and protects copyrights in Nigeria. The copyright act makes provisions for the protection, transfer, infringement and remedies for infringement of copyrights in Nigeria. Jegede and Idaru (2020) submit that:

*Copyright is simply the exclusive right granted to an originator of creative work to produce the work for a limited period. The Act seeks to protect the creative works of authors, artistic works, songwriters, music publishers, cinematograph films, photographers and all-round creative.*

The key government agency for protection of intellectual property is the Nigerian Copyright Commission (NCC) which was instituted under Act (cap C28, Laws of the Federation of Nigeria) in 2004. The commission was initially launched as the Nigerian Copyright Council in 1989 and was later upgraded to a commission in April, 1996. This advancement resulted in administrative changes that were completed in the copyright amendment decree of 1999. However, the NCC is saddled with the responsibility of supervising copyright registration, regulating copyright matters, enforcement and prosecution of offenders under the copyright act. They are also responsible for enlightening and informing the public about intellectual property right and its protection by the law. Other private initiatives that support this commission to ensure the protection of intellectual properties includes, Intellectual Property Lawyers Association of Nigeria (IPLAN), Ant-Counterfeiting Collaboration (ACC) of Nigeria and the Performing Musicians of Nigeria (PMAN). (Olubanwo and Oguntuase, 2019).

Despite all these efforts put in place to tackle intellectual property challenges in Nigeria, pirating of literary works, musical works, artistic works, cinematograph films and sound recording remains the common infringement on intellectual properties. The unlicensed reproduction and re-distribution of people's creative works without author's or originator's permission is gradually becoming an accepted trend with the mobile phone device, internet and other digital interface in this internet era. Although, this unethical practice has been but, the internet facilities, personal computers and mobile phone gadgets have intensified the act, making unauthorized sharing of musical products look like an accepted norm. Hence, illegal transfer of

musical products is placed on the impulsive coin of moral decay and ethical behaviour.

### **Copyright Protection in Nigeria**

The right of ownership to intellectual property is well recognized in Nigeria. The copyright act in the laws of the federation of Nigeria, 2004 made provision for the definition, protection, transfer and infringement on intellectual property, with specifications on remedy and penalty thereof. Aside the eligibility of these works, the Nigeria Law Intellectual Property Watch (2021) states that consideration is also given to the place of residence by virtue of nationality or domicile before conferring copyright. This implies that copyright can be conferred on eligible works of persons who are citizens or domicile in Nigeria. It can also extend to the eligible works of a cooperate body incorporated by or under the laws of Nigeria. Copyright is conferred to literary works, musical works, artistic works, cinematography, films, sound recordings, broadcast and other matter which demonstrates that sufficient work is done to give the work original character. Such works must be undoubtedly the original work of an author or designer which must have been fixed in a definite means of expression. Hence, originality and expression are key consideration before granting copyright for any work. Consequently, some works may not be granted copyright if it is intended by the author to be used as a model or pattern to be multiplied by any industrial process and if the work is found to involve in any form of infringement of copyright in some other works. (Nigeria Law Intellectual Property Watch, 2021).

Having known that copyright is an intangible personal right of ownership vested on the authorship of literary works, artistic and musical works, it is also important to note that this exclusive legal right is for a fixed number of years. Copyright for artistic and musical works upon registration lasts as long as the owner lives and seventy years after his/her death. But for film, sound recordings, performances, the holder enjoys copyright for fifty years from the time the work is published. In the case of joint authorship, the death of the author shall be taken from the date of the author who died last. And in the situation of anonymous or pseudonymous literary, musical or artistic works, the copyright therein shall subsist until the end of expiration of seventy years from the end of the year in which the work was first published, provided that when the author becomes known the terms of copyright shall be calculated in accordance with the schedules of the Act. There are also cases of

transfer of copyright to a third party. Here the owner under this right can permit another person to use his or her property under legally written agreement. When the copyright is transferred to a third party, that third person automatically becomes the owner of copyright and can exhibit all rights as the author or originator. However, it was clearly stated by NCC that registration of copyright is not a precondition for protection of intellectual property. Hence, once any work categorized under the intellectual property is created, such works enjoy the protection from the moment they are published or created. In all cases, the intellectual property owner has the right to use, duplicate their creative works prior and after registration with NCC. (LawPadi, 2015).

Nonetheless, NCC encourages registration of existing work with the body so as to provide data about the work and the author to the commission and the general public. For this reason, NCC created room for voluntary copyright registration scheme to enable the commission to know and document the existing works and their owners. Proper registration also provides depository for preserving original copies of works notification and gives the copyright owner opportunity to obtain acknowledgement certificate from the commission as evidence owner's copyright. While it is obvious that the Copyright Act has been operative in Nigeria, the question on why do Nigerian musicians still face huge violation of their copyright is still begging for an answer. There is a huge challenge of unauthorized duplication and dissemination of people's intellectual works and musical products and materials appear to be the most affected. Yet, prosecution of offenders is hardly heard.

In the early 1990s, a popular gospel singer in the Eastern Nigeria called Bro Chika Okpala released a popular album which he titled '*Fonfoju Akpa*'. *Fonfoju Akpa* was one of the highest hits of the time in the Nigeria and the market was filled with pirated copies of this work. Bro. Chika Okpala was known for his regular warning to pirates, he often sings his warning towards the end of all his album. In his terms, he always refers to music pirates as '*Ndi awarawa*'. *Awarawa* is an Igbo word which literally translates to mean fake items. Chika Okpala has been captured on many occasions going around music markets in Nigeria by himself and his team, obstructing and with the aid of police, arresting those who are selling pirated copies of his works. This case of pirated musical tapes and videos saturating Nigerian music market was not peculiar to Chika Okpala's album. It was a regular practice by seemingly unregulated and hardly prosecuted pirates who are making so much

money by unauthorized duplication of musical works which they distribute at a very low rate.

Since the Nigerian Copyright Commission has claimed all responsibility of protecting intellectual property by preventing people from illegal copying of works, stop illegal distribution of copies; be it for free or for sale, renting or lending such works, showing or performing unauthorized works in the public, making adaptation of such work and putting it on the internet. Why then are music artistes placed at the mercy of pirates? Both performing musicians and composers are facing similar situation. Low rate sales by pirate make it impossible for the original owners of musical works to cover the cost of their productions. Could it be that the operational principles of this commission are faulty or have failed? Or is the commission functional only in the registration of works while neglect prosecution of offenders? Or like many other policies in Nigeria, is this act just functional on paper? These questions continue to stare because in the actual practice, the presence and impact of this commission is so insignificant considering the level of massive violation of copyright in the Nigerian society. The regular prevalent of pirated works make it look as though it is a normal or ethical behaviour. Although, very few cases have been heard handled by the commission but, the majority of pirates seem untouchable. The level of awareness in the public domain has left the choices of ethical and unethical practices of music piracy at individual judgment.

### **Musical Art as an Intellectual Property**

Intellectual property is perceived as an invention from creative idea of a human mind. It is often an intangible product which is well articulated to provide services for a cost in society. Just an idea cannot be held strongly as an intellectual property. Until a creative idea attains identifiable manifestation as a product such as artistic works, literary works and designs, it may not be considered as an intellectual property. Quinn (2018) argues that, no matter what we hear from television commercials, there is no effective way to protect an idea with any form of intellectual property protection. Even though ideas are critical and valuable piece to the overall innovation equation, an idea is simply the initial step to invention. Hence, when idea is perceived, more work is needed to ensure that the perceived idea is brought beyond innovative boundary to concrete invention stage. It is at the manifestation of such imaginative product that intellectual property protection comes into play. Intellectual property as an intangible product deserves the same quality of

protections as its counterpart; tangible or physical products. Olubanwo and Oguntuase (2019) asserts that, 'intellectual property rights are exclusive proprietary rights granted by copyright act to the owners thereof, over intangible assets which are innovative products of the brain or the mind as opposed to personal or real properties'.

Copyright implies giving exclusive right to the imaginative or creative works of art. In this case, nobody is allowed to copy or use without obtaining permission from the owner, originator or designer of such innovative work. Copyright is one out of four types of intellectual property protection, others include trade secrets, patent and trademarks. However, a copyright is concerned with the protection of original works of authorship. A copyright protection is automatic when once a creative work is established but, copyright registration is necessary to enable the creator enjoy the protection of the law in a lawsuit when infringed on. (Brewer, 2019).

Musical art expression is considered one of the art forms through which the creative human mind expresses element of psychology and socio-cultural tendencies of the society, using independent creation of sonic combinations to penetrate the heart of mankind. Musical art expression has been converted into a career that attracts riches and affluence in popular music scene which is opposed in folk music practices. Jensen (2001) asserts that, musical arts or music making means more than just playing music and listening to it. It encompasses composing music, reading music, analyzing music, arranging music, notating and creating music, singing, rapping and producing musicals. It is an intangible creative product of human mind which belongs to the creator of such art. In Okafor's view, music is a living product of man's idea and activities which has its own raw materials that must be sourced, seasoned and shape before use. He argues that,

*The essential thing is that man consciously sets out to compose music of a certain type, of a certain effect, of a certain use and of a certain shape just as he consciously sets about to combine or assemble certain compounds and elements into a product of a certain type, colour, shape, texture and for specific use targeted consumers or users. (2019. p:40-41)*

This implies that rhythms, melodic lines, harmonic progressions and performance styles are tediously worked on before music product is out for both

promotion and sales. Music production takes same process as other tangible product; commodity or physical product. It goes through pre-production stage, production stage, marketing strategy and dissemination stage. Yet, music maker and producers rarely enjoy the maximum protection their counterparts enjoy. This experience seems peculiar to Nigeria music market and some other Sub-Saharan African countries. Although, one of the informants in the field states that,

*Broadcasting of musical work in the Nigerian media industry now attracts some royalty. There is now the Copyright Act that was passed by an Act of Parliament. The Copyright Commission, Broadcast Organization of Nigeria (BON), Nigerian Broadcasting Commission (NBC) and Advertising Practitioners Council of Nigeria (APCON). They had a round table discussion and all agreed that there is a need to pay copyright on any broadcast of musical material belonging to a Nigerian artiste. (Dagogo, 2018)*

Following the above assertion, the Nigerian music artistes may be enjoying some benefits when their works are played in the media houses and clubs yet, that has not in any way minimized the height of pirated music circulating in the Nigerian music markets.

## **Music Business and Piracy in Nigeria**

Music business is a branch of entertainment industry through which music performers, producers, composers, analysts and publishers make a living. It entails the application of all forms of musical arts expression into the production of works of music, which are managed and use for economic empowerment. Akani (2011) describes business as an economic activity which is related to the continuous production and distribution of goods and services to satisfy human wants. However, in business production and distribution, goods and services are embarking on and provided with the intention to make profit or acquire wealth. In like manner, music business is often set with the aim to provide musical products and services to satisfy societal musical needs in an exchange for financial gain. Music can be rendered in form of goods, as well as services. When music albums or books, notation or sheet music are sold, they can be classified as products whereas music can be regarded

as services when it is rendered in form of concert or show for immediate audience consumption. Emielu (2014), concur that 'music industry is made up of tangible products such as sound carriers (LPs, cassettes, compact disk CDs, DVDs MP3-5, iPods and so on) and intangible products such as intellectual property right'. (p.285). Musical art expression in Nigeria has over the years metamorphosed into a multimillion dollars' business. Music business has demonstrated great economic potentials for job and wealth creation. Adedeji (2010:245) states that 'the Nigerian music industry in the last ten years has witnessed great impetus and its vibrancy has been widely reported within the African continent and beyond'. The World Bank in year 2000 had estimated the statistics of multi-million sales of 6 billion dollars per year in African music business. Musical art business records in Nigeria has shown clear example of Nigerians consuming their own products with pride.

Technological advancement contributed immensely to the fast growth of music business in Nigeria. The use of internet and digital gadgets, enhanced both music business and piracy in the past decades. Sunday-Kanu (2016) states that musical art has been a form of art that has continually follows the trend of digital / technological advancement, she argues that,

*Music has always been an artistic expression of technological development. From the ancient times, musical expression of every age and era consistently reflects and draws from the prevailing technological trends which form the bases for its expression of human thought and feelings. (46-47).*

The computer, digital and internet interface have made music dealing easier in its production, recording, dissemination, accessibility and consumption of musical products. The advancement in technology robust the overall production, dissemination and consumption culture which in turn attracted multiple incomes to the business. Hence, making music business very attractive to many; both musical and non-music professional alike, a whole team of professionals make extensive use of the music industry such as engineers, software developers, marketers and record companies. Emielu (2014) opines that;

*The music business is experiencing tremendous growth through improved technology, expanding markets and increasing sales in terms of sound carriers; new modes of distribution and royalties*

*collection. There have also been significant improvements in terms of copyright legal framework that fight piracy, thereby guaranteeing that stake holders—musicians, composers, publishers and record companies get the bright returns on their investments’ (,287)*

While the expansion of music business is agreeable, the later part of this submission ‘significant improvement in terms of copyright’ is worrisome considering the rate of sharing musical products via mobile phone applications like Bluetooth, Xender, File share and some many other channels for free downloads of musical products from the net without the consent of the artiste, composer or minding copyright owner. Although, these sharing of musical product are often done with little or no financial benefits by most individual yet, it is still a violation of copyright. Higgins et al., (2006), believes that music piracy involves illegal uploading and downloading of digital sound without the explicit permission of the legal owner. In any case, pirates and their business of reproducing and dissemination of musical product for cheaper sales still abound so much in Nigeria. Forchu, (2009) acknowledges that there is still weak implementation of copyright law in Nigeria. She states that law hardly protects live performances, as a result, bootlegging and piracy abound given an estimation of more than 50% piracy level in Nigeria. Tade and Akinleye (2012) further express this same line of thought as they cite (Business Software Alliance (2011). This report proves that Nigeria is ranked among countries in Africa where piracy is prevalent. It was 82% in 2007, 83% in 2008, 83% in 2009, 82% in 2010 and 82% in 2011. The report also confirms that Nigerians have spent about #90 billion naira (\$60 million) in purchasing imitated compact disc, with #81 billion naira (\$54 million) lost to piracy and counterfeiting.

Music as a profession and business is faced with challenges and setback from piracy and undermining of copyrights law. Thus, the boom of musical art business in Nigeria came with associate good and bad practices. There have been huge concerns on illegal activities on intellectual property in the society; unethical use and distribution of musical work, unlicensed broadcast and sharing of musical works online without permission. Although, there are legal bodies, agencies and laws saddled with the responsibility to checkmate this disturbing unethical practices that frustrates general musicianship. But on the contrary, these illegal activities are increasing on daily basis having piracy as the key issue that has left music artistes and professionals in the state of dilemma in Nigeria today. Higgins & Makin (2004)

affirm that piracy is capable of halting creativity, as well as stunting the growth of the music industry. The most difficult challenge in recent time is how to control digital piracy. The key issue with digital piracy is that it has been on the increase in recent years (Tade and Akinleye, 2012)

There is no doubt that advancement of technology came with dramatic changes in the scene of musical art expressions. While it made every facet of music production, dissemination and consumption much easier and enjoyable than ever it as well, posed much more threat to the musical arts and its business aspect than ever. Technology advancement aid pirate's activities by given room for massive reproduction, redistribution and re-cycling of musical works illegally for more sales. These gadgets do not only enable copying of some ones works but also aid in re-cycling of musical works. This implies cutting of several musical works and then combining them to form a new composition or new musical brand. Such gadgets gave room for altering tempo of a musical work and its rhythmic progressions to form comparable tunes. With aid of synthesizer, a sound engineer is capable of achieving these within a short time. These are often done by isolating components of musical works and alter their elements such as pitch, volume, tempo and dynamics. Adding some reverberations or filter some tones aid in creating alteration to a musical works. Even some editing applications in Android mobile phones are capable of cutting and joining components of creative works to form a new trending remix.

Consequently, massive theft of musical work in various ways abounds. Aside copying and alteration of original works, it is frequent practices to see works of music artistes and composers online for free download, just to create a jam on a persons or cooperate website or page. Most of these are done without minding its cost on the original owners of these works. Thus, it may not be wrong to believe that the economic boost of music business attracted more pirates and their unethical practices. Hence, issues of theft, recycling and illegal sharing of musical works have eating deep into the Nigerian system to the extent that it appears as though the protection of intellectual property is barely a decoration on paper. The violation of copyright and theft of intellectual property is now left to the conscience of individuals to discern the ethical and unethical judgment on the act.

## **Ethical and Unethical Tendencies in Theft of Intellectual Property**

Ethics is a system of moral principles or rules of behaviour. It has to do with moral principles that guide an individual or a given society. Ethical concerns are raised when people violate the laid down code or principles that regulates a society; profession, institution, business or even an individual on certain issues. When it comes to violation of copyright and theft of intellectual property, it ranges from individual involvement and their personal view of the issues of right and wrong. Ethical issues are often clouded with individual judgment, societal norms and concept. Hence, while some understand piracy and theft of intellectual property to be unethical and unacceptable, others encourage themselves in the act with the thought that they are actually genuine supporter copyright owner in their business. These pirates who believe that they are making artiste's works more popular in the society even without charging them encourages themselves with the thought that 'we assist in projecting Nigerian talents to the world faster and cheaper so, it will not be wrong to make a living out of'. These are done without minding the copyright law in Nigeria and the implications of their actions. Tade and Akinleye(2012) remarks that,

*Owing to the cost of production, pirates provide upcoming artistes with publicity and reduce the cost of production. As a result, pirates see themselves as legitimate marketers and promoters. However, music idols perceive pirates as criminals, although they agree to have enjoyed their 'support' and assistance early in their career. Pirates and upcoming artistes enjoy symbiotic relationship. They use their network, which includes disc jockeys (DJs), and radio and television presenters to promote budding and high profile artistes. Pirates, as self-styled promoters have made themselves vital in the music industry. Despite the negative effects of theft of intellectual properties and drain on finances, both upcoming and popular artistes admitted that music pirates provide fame for a large number of artistes.*

Not only do the music artistes patronize pirates, even consumers who prefer to buy cheaper musical product or get it free via mobile phone sharing are all contributors to this unethical decadence. Majority of Nigerians buy their CDs on the road from vendors who are actually selling counterfeit musical products. Hence, this

has become a societal issue which needs government intervention. The agents of the government who are on paper fighting against piracy actually see these illegal vendors on the road, knows where their shops and operational sites are. Yet, prosecution of offenders is at its barest minimal level. Then, whose conscience should be questioned; the pirates, the consumers or the government? We are all guilty of this unethical behaviour.

What is accepted as moral and immoral has been greatly influence by several factor such as, social-cultural, religious and economic forces. Over the years, the personal view of right and wrong as it applies to piracy and illegal sharing of copyright musical works have adversely affected and shape the music industry in Nigeria. Individual thoughts about musical art as intellectual property and its copyright has become a huge challenge facing the government's weak copyright law. Some people have come to believe that pirating musical work is a normal life style which no one needs to frown at. Consequently, the issue of loyalty and copyright are not thought of when such individual are engaging in pirate activities or illegal sharing of musical works. Another informant submitted this,

*How can I be promoting someone's work and still pay the person for promoting him? When I play their music in clubs, I simply make their works popular. when I reproduction at cheaper rate, I think I am correcting record labels who out of selfish desire hijacks people's work for their sole benefits.*

In the same vein, downloading musical product or sharing music with friend via mobile phone is not perceived as unethical among mobile phone users. Mostly, young people's thought depict it as a normal trend. Informant C argued that,

*If I download a musical work that inspires me, I see nothing wrong in sharing it with a friend who is depressed or something like that to cheer him/her up. If my friends are celebrating, may be their birthday and I have a tune to spice up their day, should I be thinking of ethical and unethical whatever? Obviously not, I will share the music without any atom of guilt.*

Ethical issues when it comes to sharing of musical works via mobile phones is placed on the state of the conflicting individual mind to discern the moral and immoral implication of the act. The mobile phone companies are increasingly creating applications that make it almost impossible for people to resist illegal downloads and sharing of musical art works without any second thought. These are individual acts that need awareness and personal discipline. This is because, the issues of anonymity or different identity in the virtual world makes it difficult for even the government to enforce laws that may contribute strongly to social changes.

## **Conclusion**

Several government and private initiatives instituted and governed by copyright act over the years appear handicapped in checking the activities of copyright violators. Government decrees and strategies to ensure eradication of intellectual property theft have not been able to curb challenges emanating from this ugly practice. Hence, no significant result has been achieved so far especially, in this age of digital and internet technology. Rather, the practice is on the increase and gradually becoming an accepted norm.

Infringement on intellectual properties particularly, pirating and illegal dissemination of musical materials are now done without much frowns from the society. Besides, rare legal actions are heard taken against the known conventional pirates. Some marketers known for big time pirating are still in business, to the extent that some vulnerable music artistes are falling for their cheap inducement. However, all young artistes who patronize these pirates for cheap productions and to establish their names as well as, their musical works in the Nigerian music market for firm, are blameworthy of this ugly situation. Likewise, the majority of music lovers in the society who struggle for cheaper counterfeit musical products are all culprits in the promotion of piracy and intellectual property theft in Nigeria.

Lack of proper implementation of government policies by various agencies may have also contributed to the undermining of this copyright act in country. Since prosecution of offenders is hardly heard, a good number of Nigerians have come to terms that after all, it is not a punishable offense. Hence, there is urgent need for massive campaign to facilitate social change and individual awareness of the consequence on the copyright owners, music business, the annual tax payable to the government and the reputation of Nigeria as a country.

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