

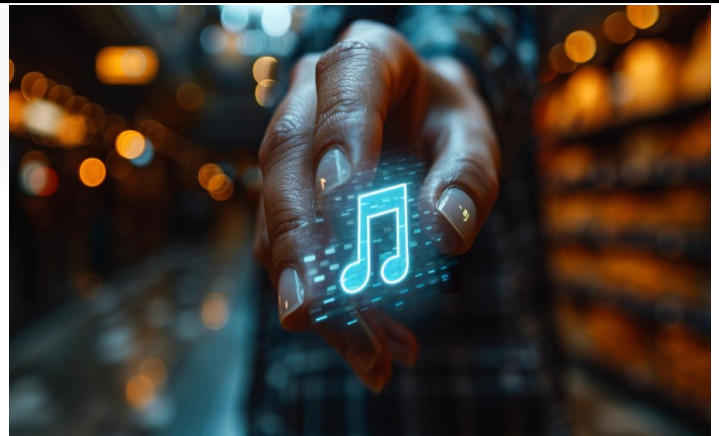
COPYRIGHT INFRINGEMENT IN MUSIC AND RELATED MATTERS

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The Nigerian music industry has witnessed remarkable growth in recent years, fuelled by the global rise of Afrobeats, innovative new sounds, the proliferation of digital streaming platforms and an increasing awareness of the music business within the country. These developments have positioned Nigeria as a major player on the international music stage. This success, however, has come with considerable challenges, particularly in relation to music infringement.

Music infringement is in essence, copyright infringement. The intellectual property right affected when music is misused is copyright and the infringement consists of the unauthorized use of a musical composition or sound recording, both of which are copyright protected works. The unauthorized exploitation of musical works has generated numerous legal disputes and caused financial losses for artists and producers, creating a pressing need for stronger enforcement of intellectual property rights. Addressing these issues is critical to sustaining the growth and protecting the creative output of Nigeria's vibrant music scene

A piece of music comprises two copyright protected works - the sound recording and the musical composition. In Nigeria, copy-



right in both works is governed by the Copyright Act 2022 (the "**Copyright Act**" or the "**Act**"). Section 9 of the Copyright Act grants the creator of a musical works the exclusive right to, among other things, reproduce the work, publish it, perform it in public, communicate it to the public, and make it available to the public by wire or wireless means, in each case for a specified period. The duration of protection differs between the two works. Copyright in a musical work subsists for seventy years after the end of the year in which the author dies, while copyright in a sound recording subsists for fifty years after the end of the year in which the recording was first made available to the public with the author's consent, or where the recording is not made availa-

ble to the public within that time, fifty years after the work was created. The Copyright Act describes copyright infringement as doing or causing another person to do, an act the doing of which constitutes a violation of the exclusive rights conferred under the Act. Thus, any use, such as reproduction, publication, public performance or public distribution of copies the work, i.e. of a piece of music during the exclusivity period without the consent of the owner of the music constitutes an infringement of copyright in that music.

Copyright infringement in music takes various forms in Nigeria, reflecting the challenges faced by the industry. Common examples include the unauthorized sampling of beats or melodies, the copying of song lyrics and the reproduction or distribution of musical works without permission. Infringement also extends to the unauthorised use of music in audiovisual works or the unauthorized public performance of songs. Digital piracy is particularly a significant challenge; the illegal downloading, uploading, and sharing of music files on the internet is widespread, often through music blogs and unauthorized streaming platforms. In addition, there are recurrent cases of artistes using parts of other artistes' songs without clearance, leading to disputes and lawsuits.

Although the Copyright Act grants creators exclusivity in exploiting their musical works, it also creates exceptions under which copyright protected works may validly be used without the consent of the owner of such work. These exceptions are set out in Part II of the Copyright Act. The most important of the exceptions is Fair Dealing which is covered under section 20 (1)(a) to



(r), which permits fair dealing with copyright protected work for purposes such as private use, parody, satire, pastiche, caricature, criticism, review or reporting of current events. Because the listed purposes are introduced by the words "such as", the list is illustrative rather than exhaustive. In determining whether a particular use of a work qualifies as fair dealing, the following factors must be considered, *to wit*, the purpose and character of the usage of the work, the nature of the work, the amount and substantiality of the portion used in relation to the work as a whole and the effect of the use on the potential market value of the work.

In addition to fair dealing, Section 27 of the Copyright Act creates an exception in respect of sound recordings of musical work. Under that provision, it is not an infringement of copyright in a musical work to make a recording of the work, or of an adaptation of it, in Nigeria where three conditions are satisfied. Firstly, an authorized recording of the work or adaptation has already been made in, or imported into Nigeria for retail sale with the permission or license of the copyright owner; secondly, notice of the intention to make the recording is provided, in the prescribed manner, to the copyright owner or the relevant approved collective management organisation prior to making the recording; and thirdly, royalty in an amount equal to a percentage of the ordinary retail selling price of the record calculated in accordance with regulations made by the Commission is paid to the copyright owner or the relevant approved collective management organisation. These exceptions exemplifies the twin role of intellectual property law – safeguarding the product of human creativity for benefit of the creator, while preserving the public's





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right of access to those creative works, provided that the rules governing such access are complied with.

To ensure effective administration and enforcement of copyright in Nigeria, it is recommended that the Nigerian Copyright Commission (NCC) should enforce stricter penalties for copyright infringement while also fostering awareness of the permitted uses of copyright-protected works under the Copyright Act and of the reliefs available rights owners, including the notice-and-takedown procedures for online infringements established under Sections 54 and 55 of the Copyright Act. Strengthening enforcement mechanisms will deter potential infringers and help protect the rights of creators. In addition, artists, producers, and other stakeholders should be educated on their rights and obligations in relation to exploitation of musical works, so that they may negotiate effective and efficient agreements governing the exploitation of musical works. Such clarity will reduce disputes and ensure fair compensation for all involved.

Furthermore, consumers of music must be educated to respect licensing requirements and to understand the exceptions to copyright, so as to foster a culture of respect for intellectual property rights. This awareness will encourage lawful consumption of music and reduce inadvertent violations. Ultimately, a combined effort involving regulatory bodies, industry players and the public is essential to safeguard the integrity of Nigeria's music industry. By promoting legal compliance, enhancing enforcement and encouraging responsible consumption, Nigeria can continue to nurture its vibrant music scene while ensuring that artists and creators receive the recognition and rewards they deserve.

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