BANWO & IGHODALO

EXTENDING PUBLIC PERFORMANCE LICENSING ENFORCEMENT TO NIGERIA'S SILENT MUSIC USERS

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The Nigerian Copyright Commission (the "**Commission**") once issued a strong warning to Disc Jockeys (DJs) in the country, advising them against playing music in public without authorization from the lawful owner of the music. As reported by The Nation, a local Nigerian Newspaper, on June 13, 2025, DJs who play music without obtaining license from the Musical Copyright Society of Nigeria ("**MCSN**") are liable to a fine of not less than N1,000,000 (One million Naira) or imprisonment for a term of not less than 5 (five) years or to both. The Commission also noted that the public performance of music by DJs whether at hotels, event centres, clubs, gardens, or recreational facilities qualifies both as public performance and communication to the public under the Copyright Act. Therefore, DJs and venue operators must ensure they have the proper authorization to avoid infringing copyright laws.

The Commission acknowledged that the Deejays Association of Nigeria ("**DJAN"**), the umbrella organization that represents Deejays across the country, has entered into a Memorandum of Understanding ("**MoU**") with the MCSN to work closely with MCSN to facilitate the collection and payment of royalties on behalf of Deejays. The royalties are based on a tariff structure negotiated between DJAN and MCSN, ensuring that Deejays comply with copyright laws. This partnership formalizes their collaboration on management of copyright-related matters while ensuring fair compensation of rights holders.

While the Statement by the Commission is a step in the right direction with regard to enforcement of copyright in music, it invites an obvious question: what protection is afforded copyright owners when their music is played in venues such as Supermarkets, Restaurants, Airports, Gymnasiums, Official lobbies, receptions or elevators, which do not involve a DJ? This

Article advocates the extension of the enforcement of public performance licence beyond DJ performances to the use of music in public venues where DJs may not be involved. This will involve a collaboration between the Commission, the MCSN and other stakeholder groups to ensure easy issuance of blanket licences to those venues, public knowledge of the applicable tariff structure, easy payment and licencing process.

The concept of public performance licensing is built on the principle that Artistes should be compensated when their music is played in venues or contexts where they may neither be present nor be aware of. Sections 9 and 12 of the Copyright Act 2022 ("**Copyright Act**") vest owners of copyright in musical works or sound recordings respectively, with the exclusive rights, among other rights, to perform or communicate the work to the public. Section 15 recognises the right of performers and record producers to fair and equitable remuneration whenever their sound recording is published for commercial purposes. A public performance license secures economic compensation for musical creators whenever their works are published in public or commercial contexts. It prevents the economic dilution of the monopoly granted under copyright, as creators would otherwise lose revenue stream from the related work entirely once a copy was sold or a work was published, undermining the incentive-to-create rationale that anchors copyright law generally. It also ensures that businesses (such as pubs, radio stations, gyms, retailers) that use music to attract customers or enhance their commercial offering compensate the creator rather than extracting value for free.

Any exercise of the rights vested exclusively on a copyright owner under sections 9 and 12 without that owner's explicit authorization is considered an infringement under the law. Under section 36(1)(g), copyright is infringed by any person who, without the owner's authorization, "*performs or causes to be performed for the purposes of trade or business or the promotion of a trade or business, any work in which copyright subsists*." Section 36(1)(e) provides that copyright is infringed by a person who permits a place of public entertainment or of business to be used for a public performance. Such infringement can lead to serious consequences, as outlined in section 44(7). Upon conviction, offenders may face a fine of no less than N1,000,000 (One Million Naira) imprisonment for a minimum of five years, or both penalties combined.

Nothing in this provision conditions liability on the presence of a DJ. A supermarket that plays music in its venue for twelve trading hours a day is exercising the same exclusive right as a nightclub and would most likely be doing so for a considerably longer time. The supermarket deploys music to shape mood, extend dwell time, and increase basket size. It is a promotional instrument and therefore falls within "*the purposes of trade or business or the promotion of a trade or business*" language of section 36(1)(g). Under section 36(1)(e), liability attaches to the venue independently of the performer. This means that event centres and hospitality operators cannot displace responsibility onto the DJs they engage.

When a supermarket plays music during its trading hours, every day of the week; when a gymnasium's sound system runs from its opening to closing; when an airport terminal and a hotel lobby operate around the clock; the aggregated volume of unlicensed public performance in these venues without DJ involvement and across Nigeria's retail, hospitality, aviation, fitness, healthcare, and commercial real estate sectors, they almost certainly exceed that of the nightlife economy by a wide margin.

These venues use music to influence consumer mood, pace of movement and perceived wait times and spending. All of these are commercial usage. A venue that uses music in this manner is extracting measurable commercial value from a copyright work. Where value is extracted, then the first stated objective of the Copyrights Act, which is to "protect the rights of authors to ensure just rewards and recognition for their intellectual efforts" – (Section 1(a) – is triggered and the rights owner is entitled to share in the value so extracted. Further, venues are administratively easier to license than DJs, as venues (unlike most DJs) are fixed, registered with corporate and state authorities and physically inspectable. Thus, licensing the venues will be cheaper to administer and will be easier to verify. Extending the enforcement net to include these venues will result in wider compliance, thus reducing the incidence of unauthorised use of music and ensure higher compensation for the affected right holder. These are all aligned with the stated objectives of the Copyright Act.

The Statement by the NCC is laudable in that it emphasizes the importance of protection of copyright in music by obtaining the license for the use of the music. It is also commendable that the Commission not only creates awareness of the penalties but also directs the public to the lawfully authorized body in charge of issuing blanket licenses and remitting public performance royalties to the owners of the music sought to be utilized or already in use.

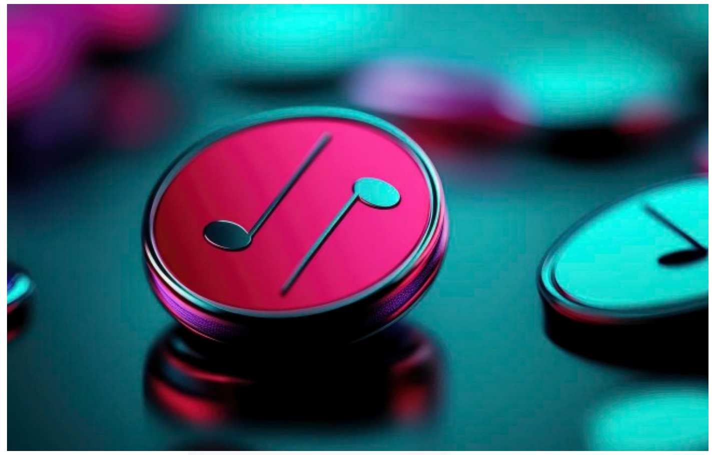
While the Statement directs DJs and venue operators to ensure that they have the proper authorization to avoid infringing copyright laws, its emphasis on DJs provides a lopsided message on enforcement of public performance licences. It is recommended that the Commission should also issue another statement directed at commercial premises, expressly naming the categories covered: supermarkets and retail chains, restaurants and quick-service outlets, hotels and serviced apartments, gymnasiums and fitness centres, airports and transport terminals, and shopping malls. This will discharge the Commission's duty under section 78(1)(d) and materially narrow the "reasonable ground to suspect" defence provided venue operators under section 36(1)(e). A well-publicised awareness campaign directed at venue operators in the form of a public notice educating them on the statutory provisions on the public use of music and drawing attention to MCSN's role and its tariffs would substantially erode that defence.

In addition to the foregoing, the MCSN, being the authorised Collective Management Organisation ("**CMO**") in Nigeria, must significantly improve the performance its role in public performance licencing beyond current level of merely issuing blanket licenses to venues which by the nature of their businesses, regularly play Artist's music within their vicinity. MSCN should design a simple blanket licence that covers the entire repertoire for a defined premises, priced against objective and independently verifiable criteria such as floor area, seating capacity, number of guest rooms, registered membership, trading hours, or staff headcount. This will remove discretion, and thereby negotiation cost and the suspicion of arbitrariness.

In addition, MCSN should make publicly available, in a single accessible location, the full terms of its blanket licence: the repertoire covered and any exclusions, the banding criteria on which fees are assessed, the fee payable in each band, the licence period and renewal terms, the treatment of temporary or seasonal use, and the consequences of late payment. MCSN's current practice of throwing figures at applicant without providing any information about how the figures were obtained must stop. It does not portray the organisation in any favourable light.

Also, MCSN should further simplify the licensing process by adopting a self-service digital licensing platform. A prospective licensee should be able to obtain an instant quotation online, pay by bank transfer or USSD, and receive an automatically generated certificate. Furthermore, it should introduce a visible compliance mark, which when displayed in a visible place on the venue, makes compliance socially legible, allows inspection to be easily conducted, and creates peer pressure among neighbouring businesses. This will convert an invisible obligation into a visible norm.

Industry stakeholder organisations should also take steps to replicate the DJAN model. The DJAN–MCSN Memorandum of Understanding demonstrates that sector-level negotiation produces workable tariffs at low transaction cost. It is suggested that similar agreements should be pursued with associations representing owners and operators in the hotel and hospitality, restaurant and quick-service chains, retail and shopping mall, fitness industries and sectors involved in the public use of music. Associations negotiating collectively secure better terms than members negotiating individually, and give the CMO a scalable distribution channel. The Commission should take step to facilitate the necessary engagements. Also, in view of the envisaged increase in enforcement and attendant liability, mall operators and landlords should start including music licence warranties in tenancy agreements. Event centres should require proof of licence from engaged DJs and performers, or preferably hold a venue licence covering all performances on the premises.



The enforcement of copyright protections in music, as emphasized by the Commission and supported by the collaboration between DJAN and MCSN, represents a crucial step toward ensuring artists receive fair compensation for the public use of their work. However, to fully safeguard Artists' rights, it is essential that public performance licensing extends beyond DJs to include all venues that regularly play music. While the Commission's Statement is a laudable step in the right direction, it only addressed the most visible users of music rather than the most numerous, and the least well-resourced rather than the best able to pay.

The Copyright Act already provides the framework for a fair, effective system that respects and protects artists' copyrights across all public spaces where their music is enjoyed. It is now left to relevant stakeholders, led by the Commission, to take steps to implement the framework evenly, and adopt an administrative design to make compliance easier than evasion. The measure of a functioning public performance regime is not the number of prosecutions it secures. It is the number of venues that were never needed to be prosecuted, because obtaining a licence was straightforward, the tariff was published and fair, and the artist whose work is used was paid a fair compensation for the use of his work.

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