

Copyright policy and the Nigerian music industry in the era of digitalisation

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Abstract: The booming Nigerian music industry is having a tremendous impact on the global music scene, but at the local level it is beset by difficulties brought about by copyright enforcement. The very vibrancy of this industry is attested through numerous kinds of sonic outputs amidst the ongoing process of digitalisation, especially as evidenced by the current mainstream youth-driven hip-hop hybrid music genre known as 'Afrobeats'. However, insufficient attention has been given by scholars to the availability, or lack, of spaces for independent and/or emerging artists to create songs outside the tight control of copyright and intellectual property laws. This is especially true for musicians who produce 'digital mixes'. One issue that comes up rather often in reference to the production and consumption of music in this heavily regulated internet-era context is piracy, which, though ethically problematic, has nevertheless persisted in the absence of meaningful ways to allow independent and emerging artists the freedom to ply their trade.

Keywords: Afrobeats, copyright, digitalisation, hip-hop, music industry, Nigeria, piracy

The Nigerian music scene is having an unprecedented effect on the global music space. Recently, the popularity and acceptance of Afrobeats as the current musical export from the country have been highly instrumental to this sweeping effect. 'Afrobeats' emerged from the Nigerian variant of hip-hop, Afro hip-hop, which emerged during the late 1990s and early 2000s; what makes it distinct is its appropriation of existing popular music styles like *juju* and *fuji* with its performance reliant on codeswitching through the infusion of Nigerian languages and pidgins for popular appeal (Adedeji 2014). However, following the success of D'Banj's 'Oliver Twist', which made it to the UK charts in

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2012, the sobriquet ‘Afrobeats’ became the widely used term to refer to the Nigerian variant of hip-hop music on the world stage.

This reminds that digitalisation has revolutionised the way music is created, distributed and consumed worldwide. Digitalisation is the process of adopting digital technologies to alter a business model and create new opportunities for revenue and value (Kimachia 2022), which in turn is expected to improve efficiency as well as productivity. Alongside obvious advantages like increased access to wider audiences, opportunities for independence from labels, and a better revenue stream for artists (artistes), amongst others, digitisation also portends significant copyright infringement issues bordering on piracy across many countries. In Nigeria, piracy remains a major challenge in the music industry which has accounted for huge losses in both economic and legal terms (Adedeji 2016; Okoroji 2009; Tade and Akinleye 2012). The Nigerian music industry has thus been evolving against the backdrop of the state’s copyright policy and the issue of piracy in the era of digitalisation.

The complexities of digitalisation and its intersection with the issues of piracy and copyright in Nigeria form the crux of this study, which relies on qualitative research methods. I consider data sourced through personal communication with a hip-hop artiste *cum* label co-owner and interviews with DJs and a cross-section of music consumers. These methods are supported with digital ethnography. To a larger extent, this study benefits from my longstanding relationship, immersion in and interactions with the music industry and various artistes. This is as a researcher and observer and as a recording artist with ample opportunities to participate in the various stages of music production, dissemination, and distribution.

This article explores the existing copyright regulations within the context of the pre-digital and digital music distribution models, and it explores implications of piracy. It considers the notion that the process of digitalisation can run counter to stringent copyright laws and regulations (Simmert 2020). It also covers an informal distribution model, namely, that of the Alaba International Market in Lagos, which has been fuelling the boom in the Nigerian music industry and, more specifically, the evolving stages of the Afrobeats movement.

With significant political upheavals, the Nigerian music industry suffered a decline. Major recording labels left the country. This meant that emerging hip-hop artistes of the early 2000s had to look towards the electronics merchants in Alaba for the purpose of marketing and reproducing their music on compact discs (CDs). This use of the market also led to an increase in piracy. Alaba is widely regarded as the hub of



music and video piracy in Nigeria. Most music distributors and marketers have been referred to as pirates, as Tom Simmert (2020) noted. However, Simmert advanced the notion of looking at the Alaba practitioners as entrepreneurs in the creative industry who have succeeded in building their business out of nothing while taking the risk of venturing into new markets as innovators despite the adversities involved in doing so. Examining the process of digitalisation alongside copyright regulation in terms of the pre-digital and digital eras allows us to gain insight into how the latter raises differently issues of piracy and copyright protection. However, while digitalisation has offered new opportunities for stakeholders in the music business, it has so far not solved what is being called 'the piracy crisis'. It does, however, suggest other perspectives on marketing and development according to different models.

The Nigerian music industry: Background

Hip-hop, which transitioned into Afrobeats, is the most recent addition to the Nigerian music scene. The evolution and development of the music industry followed the earliest recordings of Tunde King (credited with having pioneered the Yoruba popular music known as *juju*) by HMV (His Master's Voice) around 1930 in Lagos (Waterman 2000: 176). Lagos is the city that provided the environment that enabled the coalescing of various cultural factors which resulted in the formation of popular music genres like highlife, *juju*, *fuji*, Afrobeats and hip-hop in recent times. These styles are deeply rooted in traditional musical practices. However, the development and modernisation of these styles may also be considered in terms of various interactions – such as those with foreign influences and with religion (Falola and Heaton 2008: 6). They emerged as key Nigerian identity makers while enabling the local music industry to allow spaces for homegrown artists, producers and distributors to be innovative.

With the rise of the music industry, these players came into the spotlight, but they did so with insufficient attention paid to the music creation process, where digitalisation could not simply be defined in terms of piracy. Local artists faced with digitalisation imperatives had – and still have – to contend with differing approaches to copyright enforcement and with concerns about piracy, which has been and remains a major issue. The piracy issue has a lot to do with the history of the Nigerian music industry, which had faced a setback due to political instability.

This period is known as the ‘Interregnum’ in the music industry when getting music – the finished product – to the end user, the consumer, was extremely difficult. In this period, the once vibrant music industry of the 1970s and 1980s became stagnant. There were many coups and counter-coups, which meant there was violence in the streets. Oil prices also dropped during this period, so economic troubles were also present. The major record labels, which had their accredited distributors disperse recorded music across the country through their markets, suffered significant financial losses.

This well-established infrastructure of music production, distribution, and consumption came to a standstill: the industry suddenly became moribund. This was considered a result of piracy, a hostile political climate, poor government policy, and economic turmoil. Major labels left the music scene, and the few local ones stopped recording artistes’ music due to a lack of funds. Many established artistes immigrated to various countries around the world. In the mid-1990s, things changed in the music industry when hip-hop started to evolve in Lagos.

Political change and the proliferation of hip-hop music

In 1999, a new phase commenced in the Nigerian music industry as the country returned to democracy, a transition that saw the beginning of the Fourth Republic. Hip-hop, which had been around from the early 1990s, gained prominence: hip-hop culture ‘took over’ the music industry, and it was driven by the youth. Two prominent hip-hop groups were amongst the groups that played a major role in resuscitating an all-but-dead music scene with their hit singles. The first was The Remedies: the release of their single ‘Sakomo’ in 1998 was followed by the establishment of Kennis Music, which would sign them and bring them into the limelight. The second was Trybesmen with ‘Shake Bodi’ in that same year: they would eventually release their debut album *L.A.G. Style* under Trybe Records (Fig. 1), a company that was established by ElDee the Don, a leading member of the group. Many other youthful artistes followed this trend and became successful through creating new sounds from hip-hop music while gradually transitioning from the African American style of hip-hop to African hip-hop (Afro hip hop) following the infusion of Nigerian indigenous languages while appropriating existing popular music genres like *juju*, *fuji*, highlife and Fela Anikulapo-Kuti’s Afrobeat.

The sudden surge in popularity of hip-hop music was aided by the introduction of a new music production software known as ‘Fruity Loops’ (FL Studio), which was seen to help the production process by

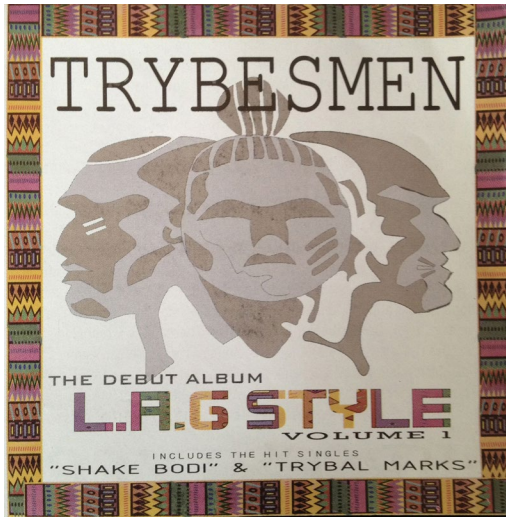


Figure 1. Trybesmen, *L.A.G. Style*: one of hip-hop's pioneering albums; released on CD in 1998 (source: tryberecordsreloaded.wordpress.com)

speeding it up and making it less stressful. A lot of enthusiasts with computer skills started experimenting with the software by engaging in a do-it-yourself (DIY) process of music-making and copying their songs directly onto CDs. I also experimented with this FL studio computer-based recording technique with a producer friend: this culminated in the release of an EP, *Steppin Out*, in 2006. This also added to my knowledge of the process: I gained an understanding of how easy it was to record digitally as compared to the analogue era of the early 1990s, when it was highly stressful just to record a demo tape.

A proliferation of rappers and hip-hop groups/posses, and music enthusiasts began to become bona fide recording artistes without having to go through the major labels and record companies, which had actually gone out of business by that time. This resulted in the creation of independent labels with a new approach to music management, promotions marketing, and distribution. As the new sound grew in popularity and acceptance, enjoying airplay on the radio, in clubs and at concerts, a need for a proper channel through which to send the music to the consumer arose. The need for artistes to sell or rather market their products – the music on CDs – created a new vocation for the electrical and electronics dealers at the famous Alaba International Market. Piracy and a difficult political situation were present during these years and copyright protection was negligible.

The subsequent need for artistes to make use of the Alaba marketing model added to the piracy problem. This model was informal and unregulated. It came with a lot of negative consequences, despite the fact that it was thought to have rescued the music industry in its time of need. The major problem with Alaba was – and still is – its notoriety as the headquarters of pirates and bootleggers. It was reported that the Nigerian Copyright Commission (NCC)'s greatest headache was Alaba! There has always been a question mark regarding the *modus operandi* of the marketers regarding contractual agreements made with artistes which many people believe were unsustainable, crude and always leaving owners of original works short-changed. I explain below how Alaba became part of the music scene despite the prevailing views in Nigerian society against piracy and the regulations, protections and activities of Collective Management Organisations (CMOs) to protect intellectual property rights.

Alaba and 'music marketers' to the rescue

When hip-hop asserted its presence on the entertainment scene, music storage finally moved from cassette tapes to CDs. As part of a global digitalisation process, music proceeded from the physical to the virtual, that is, from the traditional format of the late 1980s to the cloud, whereby music could be accessed and purchased in the form of a compressed audio file by downloading or streaming on platforms via networks powered by internet technology. Aided by the latest technology of that time, the industry was introduced to computer-based applications for production purposes, which was followed by the introduction of the CD as a storage format still in physical form. Music production became less stressful and more user-friendly with the advent of digital recording technology. Youthful rappers began to experiment with DIY home studios, and they recorded and cut CDs right on their computers. Emerging artists and hip-hop posses/groups also started having their imprints like ElDee the Don (Da Trybes) with Trybe Records, Mode 9 with SwatRoots, ID Cabasa with Coded Tunez, and Weird MC with 0907. Subsequently, music enthusiasts and producers came up with independent record labels like Kenny Ogungbe with Kennis Music, Obi Asika with Storm Records, Kelvin Luciano with Question Mark Records, and Nelson Brown with Dove Records.

With the emergence of the new sound of hip-hop and the proliferation of independent labels, a need arose, as 'the newly found record labels were soon confronted with a lack of distribution channels for



their CDs. Most of the structures had collapsed ten years earlier' (Simmert 2020: 7). However, the new hip-hop generation decided to form an alliance with the Alaba merchants: they stepped up to complete the music value chain, playing a role in terms of music promotion, marketing and distribution. This was seen to be a timely intervention, despite their well-known linkages to piracy. This intervention would complement the burgeoning music industry that was now driven by the hip-hop generation.

The Alaba market, situated in Ojo, Lagos, was hitherto a popular electrical and electronics market with merchants popular for their importation of goods from China and other Asian countries. Practitioners at Alaba in this period saw a business opportunity, grabbed it and capitalised on their existing business model in electronics to now become 'music marketers' and merchants in the creation, duplication and distribution of music CDs and video CDs (VCDs). Over the years, while Alaba enjoyed this advantageous position, many popular marketers emerged. These marketers almost became celebrities and toasts of popular artistes. They included Obaino, TJoe, Ahbu Ventures, Afrobest and CD Warehouse.

At the peak of Alaba's reign, it had become an integral part of getting music to the far reaches of Lagos [and beyond] being the country's entertainment HQ. The Alaba marketers, although largely seen as music pirates and bootleggers, have a system of cooperation between them uncharacteristic of the Nigerian music industry itself, effectively creating an enormous distribution network that cuts deeply and reaches through to the 75% lower and working class consumers. (Ndani.Tv 2016)

Alaba became the music and entertainment business capital of Nigeria during the CD era, allowing for a different understanding of how illegal settings could be utilised to facilitate the music industry and aid its 'revival' and newfound success.

Merits and demerits: Piracy and copyright

It is an open secret that the rights to the majority of hit records marketed at Alaba were bought outright from their owners, who could not make claims thereafter based on sales or otherwise. It was widely reported that Bracket sold their *Yori-Yori (Least Expected)* album in 2009 for ₦15 million, rapper MI reportedly sold rights to his album *MI2* (2010) for ₦20 million, while P-Square did the same for the *Game Over* (2007) and *Danger* (2009) albums for ₦10 million and ₦50 million, respectively. However, this type of deal is possible only with the willingness of the

other party, as it is not the sole option on the table; rather most artistes are actually aiming for this kind of deal in order to cash out once and for all after an album is done and get a return on their investment without worrying about bootleggers, who are usually one step ahead and who often operate out of Alaba.

Another feature of the Alaba model is the lack of documentation: they have no effective or standard procedure to track record sales. In a situation where payments of royalties are irregular and grossly inaccurate, some artistes would rather sell the rights to their music outright to a marketer in order to avoid such bottlenecks. The music storage format in the Alaba distribution channel was and remains the CD, which is still being produced and widely distributed in current times despite the radical migration of music distribution to the cloud as a result of digitalisation. Though music has gone online, Alaba has remained relevant to the artistes and consumers, especially in the context of the Alaba 'Best of Artistes Compilation' and the Alaba 'Mix Tapes' CD releases (Fig. 2), which have been platforms on which most artistes rode to stardom and which are the cheapest avenue for the majority of music consumers for getting their music 'fix'. In short, compilation and mix-tape CDs are bootlegs and unauthorised, and yet they flood the streets daily and are a key point of piracy in the Alaba market.

With respect to copyright and intellectual property protection, the issue of Alaba mix-tape and compilation CD releases is viewed dif-



Figure 2. Alaba mix tape on CD (source: www.arewahitsmusic.com.ng)

ferently by the various stakeholders in the industry. The established artistes or superstars and their management teams regard this piracy as a crime punishable under the law; however upcoming artistes see it differently. To them, it is the best promotional tactic to get their songs to the street. Upcoming artistes actually pay the distributors in Alaba to include their songs in compilations and specifically to sandwich their track in between established acts. In this scenario, a ‘compilation disc featuring up to 30 songs with such heavy hitters as Wizkid, Tekno, [and] Burna Boy will also host a song or two by unknown acts. If the mixtape becomes popular, then the artist might also “blow” [that is] become famous’ (Aigbokhaevbolo 2018).

Aspiring and up-and-coming artistes understand the importance of street promotions, as these Alaba CDs will eventually find their way into the *molue* buses, beer parlours/joints, artisan workshops, and *mama put food bukatarias* (street-corner food joints), where the listeners eventually become their street fan base. According to Obi Asika, a music executive and record label boss,

those mixtape compilations are an evolution of a hip hop model [as] they are all about discovery and allow established artists and unknowns to be in the same space. Everybody is seeking to be heard and music is mostly more about experience in this market. Owners receive almost no revenue but because they are popular almost all artists use it’. (quoted in Aigbokhaevbolo 2018)

Digitalisation, Alaba and the future

While the advent of digitalisation raises issues about relevance of Alaba market and its informal music distribution system given that especially now that music distribution and promotion have shifted online, it is too early to suggest that it is becoming obsolete. In the Nigerian context, most consumers still rely on Alaba CDs as their access to getting latest releases from the Nigerian music scene and that is why the market is still bubbling. Most artistes are actually not releasing any official CD into the market while Alaba bootleggers are feasting fat on the unofficial releases and compilations like the Asake’s Alaba bootleg CD from the artistes successful debut *Mr Money* of 2022 (see Fig 3). Consumers still patronises them because they are cheap. Thus. the copyright body, NCC still has major concerns regarding piracy at Alaba.

To the aspiring artiste, Alaba will still be relevant for a long time, in that there will always be a ‘new kid on the block’ whose only access to being heard on the street is through the Alaba platform, which is cheap.



Figure 3. *The Best of Asake Alaba compilation CD* (Source: The author)

And in that case, as Olukanni Oyinda (2009) advised, artistes should not ‘solely depend . . . on social media to sell your products. We’re not in Korea or America. Each market has its own strategy. For Naija market, Alaba remains a core part of this business. If you really want to blow, I mean blow blow, befriend Alaba’. I will now provide a background on how Alaba came to gain such a large role in the music industry.

The Nigerian music industry, the political setting, and copyright implications

The political climate of the country in the 1990s, characterised by coups and the harsh economic policies of the various military regimes, saw the declining fortunes of the entertainment sector in general and the music industry in particular. Multinational labels closed shop in Lagos. The few homegrown producers like Rogers All Stars (RAS) Records and Phonodisc Label ran their businesses at a loss (Adedeji 2016; Servant 2003). It was against this backdrop that piracy erupted to deeply affect the music industry, as Okoroji pointed out:

[The] copy technology was getting more pervasive and cheaper. The cassette tape was quietly taking over as the major carrier of music [and] the music industry was slow to notice this development. There was virtually



no established facility for the production of legitimate music cassettes [which has huge demand]; the proliferation of manufacturing facilities [for vinyl] also created its own problem [as] pirated versions of every successful release on vinyl appear in the market . . . even before official release of the record. (Okoroji 2009: 23)

The decline of this industry and the related loss of huge investment therein meant also that artistes were not getting remunerated for their efforts. The political tensions meant that live performances came to a virtual standstill. Recording companies started folding, and many musicians relocated abroad.

The departure of recording companies was a significant blow, and only added to the piracy problem, raising a dire need to enforce copyright. Such concerns were to become especially salient a little later on when spaces were being opened up for digitalisation in relation to local music production. However, a brief look at the early years of the recording companies helps to illustrate their significance to the local music industry – and therefore the huge hole their departure left behind. In the early 1970s, the industry

was dominated by three Lagos-based multinational recording companies. These highly influential companies were Philips (which transited to Phonogram, later Polygram then Premier Music), EMI (which later became Ivory Music) and Decca. These three giants complemented their music businesses with state-of-art and up-to-date recording studios befitting the latest technology of their time. For example, the EMI Studio started at Apapa in Lagos and moved to Oregun, Ikeja, in the early 1980s where it set up two studios in studio A – a fully automated 24-track facility driven by MCI Technology – and Studio B with an 8-track console which hosted many recordings like Fela's *Shakara* and Paul McCartney's *Band on the Run*. (Okoroji 2009: 22; see Fig. 4)

These three multinational music giants led the recording business facilitating the emergence of stars in various musical styles. These styles came to define the Nigerian popular music landscape at the time. The company Decca made monumental success of *juju*- and highlife-based sounds of artistes such as IK Dairo and Tunde Nightingale. It also achieved greater success with Chief Ebenezer Obey and his *juju-miliki* sound. Through Decca, the twin sisters with sonorous voices – The Lijadu Sisters – were also able to make their mark on the Nigerian music scene. Philips Records was home to artistes like Cardinal Rex Lawson, Dele Ojo, Victor Uwaifo and Wale Glorious. EMI kick-started the musical careers of artistes like Fela Ransome Kuti (before becoming Fela Anikulapo Kuti), Sonny Okosun and Onyeka Onwenu.



Figure 4. Fela Anikulapo Kuti and Paul McCartney at EMI Studio Lagos (source: www.facebook.com/showtv africa)

The efforts and successes of these three companies encouraged private investment in the music sector, which resulted in the proliferation of homegrown record labels, while most record-distributing agents for the multinationals also turned to investing in recording studios and starting their own labels or imprints. Typical examples included Omo Aje Records, Ibukun Orisun Iye Records, Shanu Olu Records, Tabansi, Roger All Stars and Skylark Records. In this period – that is, between the 1970s and the early 1990s – the popular way of storing and consuming music remained the vinyl record, and the manufacturing of records took place at Philips Vinyl Records and Records Manufacturing Nigeria Ltd (RMNL), both in Lagos, and later by some of the independent investors who set up their own manufacturing outfits, like Tabansi, Phonodisk and Shanu Olu Trading Company, in Ijebu Ode.

The recording industry enjoyed this rollercoaster success, building and discovering formidable superstars with commercially successful records in various genres through artistes like King Sunny Ade, Nico Mbagha, Kris Okotie, Majek Fashek (Fig. 5), The Mandators and Ras



Figure 5. Majek Fashek's *Prisoner of Conscience* on vinyl, Tabansi Records 1989 (source: www.discogs.com)

Kimono. This period can best be described as the golden age of the Nigerian recording industry, which gradually transitioned in the 1990s to a scene characterised by the emergence of reggae as the new mainstream music style and by the systematic decline in the popularity of the vinyl record with the gradual rise of the new music storage format of the cassette tape. This decline, referred to as the 'Nigerian recording industry crisis' by Tom Simmert (2020), would give way to the present-day setting of various different genres, though especially hip-hop and Afrobeats, existing alongside serious piracy concerns.

I turn now to copyright issues in order to show that the extensive attention paid to copyright laws and protections by the state has not deterred pirates and has not decreased incidents of piracy. Below, I offer a review of Nigerian copyright legislation, starting with colonial approaches and then moving to present-day regulations and efforts by stakeholders to self-regulate. I will show how such copyright regulations exist alongside creative practices that are difficult to regulate in the era of digitalisation, and stress that the digitalisation process itself brings into question how copyright regulation in and of itself is to maintain its relevance.

Copyright and music practices

The issue of copyright has always been a major factor in the creative industry and the protection of creative output, as well as a key issue for governments in general. As aptly put by Justice S. B. Belgore: ‘The right of a man to that which he had originally made is an incorporeal right and must be protected’ (cf. Faga and Ngozi 2011). This relates to protections for music as a creative output (for more recent discussions, see Ofochebe 2020).

In Nigeria, music is regarded as a way of life. The music industry presently contributes to the economic growth and global recognition of the country; it is an extension of how Africa is known globally for its endowment in immaterial culture projected by its original music, oral text, and performances (see Röschenthaler and Diawara 2016). While it is well accepted that music creators have rights for their works to be protected and guided within the ambit of law and the ensuing regulations, digitalisation processes have also raised other issues. This is so even as the government endeavours to introduce new copyright protections, as I will discuss below. The political context has also impacted the music industry. And the political climate is also related to the increased in piracy and the eventual turn by artistes themselves to the Alaba market for music distribution, a place where there is a thin line between legality and piracy.

Music copyright in Nigeria goes back to the British system due to the country’s status as a British colony for around sixty years. The first tangible introduction of copyright regulation was the extension order of the English Copyright Act of 1911, which became applicable in the Southern Protectorate of Nigeria (Ola 2014). This had little or no effect due to a lot of disparities having to do with cultural limitations as succinctly observed by Kunle Ola:

The introduction of the English Copyright Act of 1911 (hereinafter referred to as CA 1911), in Nigeria made very little impact on the ordinary Nigerian’s day to day life and this was probably due to cultural differences between the people that originated the CA of 1911 and those to whom it was now being applied in Nigeria. (Ola 2014)

For a long period of time, there was very limited legal protections for musicians when it came to their music recordings or manuscripts. There was no cohesive legislation which provided protection against piracy or the unauthorised copying of songs, which left many Nigerian artists vulnerable and at risk of exploitation. However, things changed with

the Copyright Act (Decree) of 1970 followed by the Copyright Decree No 48 of 1988 and subsequent legislation (especially the landmark Copyright Act Cap 38, 2004) focussing more on protecting creative works, thus bringing about an increase in awareness towards safeguarding intellectual property rights amongst Nigerian artistes.

Music regulation encompasses the protection of artistes and their work, where the issue of copyright takes the lead; the other aspect is to ensure the appropriateness of the music content being put out into the public space: according to Augustina Clark, this is 'the ability of musicians to incorporate appropriate content in[to] their music' (2015: 304). Her research stipulates that appropriate content comes in three forms – social, economic and legal appropriateness – and that these kinds of appropriateness are to 'ensure that all forms of music produced in Nigeria comply with applicable laws and regulations that govern the music industry' (2015: 305).

There have been two main attempts to regulate and ensure music appropriateness: first through legislative means and second through promoting self-regulation for disseminating quality musical work. The former included multiple bills which sought to protect copyright laws and deter intellectual property violations. At the same time, self-regulatory policies such as those set out by Nigerian organisations are important tools in regulating artistes' creative freedom without overreach from governmental bodies or other entrenched interests within Nigerian society. Amongst government agencies and parastatals established towards this end are the National Broadcasting Corporation (NBC), the National Film and Video Censors Board (NFVCB), and the NCC. The NCC covers the area of intellectual property protection. The commission has the mission and vision to

harvest the potentials of creativity for national development . . . and to advance the growth of the creative industry in Nigeria through dissemination of copyright knowledge, efficient administration and protection rights [as well as] safeguard the intellectual property of musicians and their producers and ensure credit is given to [the] right owners. (Clark 2015: 308)

Mary Gani (2020) noted the long-standing relationship between copyright and popular music and explores this interplay between the two concepts. According to her work, early traditional cultural practices restricted the authorship of songs when they were used commercially or broadcasted across various networks like radio stations. However, subsequent reformations have seen extensive progress with regard to

copyright protection over existing works as well modern ones created by practitioners.

In the current environment, the legal provision for the management of copyright in Nigeria is enshrined in the Copyright Act Cap 38 (2004) of the Law of the Federal Republic of Nigeria (LFN), which states that the following works are eligible for copyright: (a) literary works; (b) musical works; (c) artistic works; (d) cinematographic works; (e) sound recordings; and (f) broadcasts. This also stipulates that the work should be original and in a fixed, definite medium of expression known presently or envisaged to be developed in the future from which that artistic work can be perceived, reproduced or communicated directly or with the aid of a machine. The main thrust of this line or provision denotes that copyright does not protect an idea that is abstract but rather an output that is fixed in a tangible medium of expression with the emphasis on it being original and not copied or rehashed.

Under this act, the creation of a work is defined with two types of rights in alignment with the dictates of the World Intellectual Property Organization (WIPO), namely, economic rights and moral rights. Economic rights allow creators to benefit financially from the use of their work with control over the revenue and profit accrued from the use of the work, which translates to being able to authorise or prohibit the reproduction or distribution of their work, as well as the performance or broadcast of it, as the case may be. The moral rights aspect is not economic but rather protects the author's connection to their work and protects its integrity. This provision protects the personal relationship between creators and their work, usually for the same duration as the copyright. In Nigeria, this has not always been a bone of contention for artistes.

However, it should also be noted that the copyright granted to artistic creators under the Nigerian Copyright Act, 2004 is not absolute, as there are exceptions and limitations where copyrighted material can be used without obtaining licensing or authorisation. These instances include purposes of fair use/dealing whereby a work can be used without authorisation for research, private use, criticism or review, a public interest broadcast, or for educational purposes. Exemption from copyright also applies to the use by the visually and hearing impaired, where the reproduction of work can be done in braille for the exclusive use of the former by institutions or other government-approved agencies. As established above, copyright has a limited duration within a stipulated time frame. In Nigeria, copyright for sound recordings will

stay in force for fifty years after the end of the year in which the recording was made.

The copyright amendment of 2022

In the year 2022, the National Assembly passed the Copyright Amendment Bill, which aimed at improving the effective administration, regulation and enforcement of copyright in the digital environment and which also addressed the looming threats posed by technological advancement (Jdspura.com 2022). This seems to be a timely review and expected response to the global trend of digitalisation where copyrighted works of creatives are all over cyberspace in an unprecedented manner – if only the government invests in cybersecurity.

According to the NCC in a signed statement issued to the press, the highlighted four cardinal objectives of this reform were to (a) strengthen the copyright regime in Nigeria to enhance the competitiveness of its creative industries in a digital and knowledge-based global economy; (b) effectively protect the rights of authors to ensure just rewards and recognition for their intellectual efforts while also providing appropriate limitations and exceptions to guarantee access to creative works; (c) encourage cultural interchange and advance public welfare; (d) facilitate Nigeria's compliance with obligations arising from relevant international copyright treaties; and (e) enhance the capacity of the Nigerian Copyright Commission for effective administration and enforcement of the provisions of the Copyright Act (Oyefeso 2022).

Copyright administration and enforcement

Piracy in a basic sense is the unauthorised and illegal production or distribution of materials protected by copyright and intellectual property law and deemed almost impossible to eradicate piracy in its totality (Okoroji, 2009). With digitalization processes, things have become complicated. However, proper copyright framework and enforcement may reduce some forms of piracy, but not others.

In Nigeria, the administration and enforcement of copyright in terms of music is a tripartite arrangement between the government, the industry (in terms of the artistes, producers, labels and CMOs) and the consumers themselves. The NCC is vested with statutory power to administer and ensure the enforcement of copyright issues in the country with the assistance of other government parastatals like the Ministry

of Culture and the Nigerian Police Force. Amongst other functions, the NCC is vested with the power to:

- ◆ Register qualified work as a copyrighted piece by taking the details of author, title of work, year of production and quantity. Provision here also includes a penalty for giving false information or claims.
- ◆ Place restrictions on the importation of published copyrighted work as so determined and also impose levies on copyrighted materials as appropriate.
- ◆ Provide anti-piracy devices like banderole stamps and security holograms used in identifying original works.
- ◆ Appoint copyright inspectors who are empowered to prosecute, conduct enquiries and defend before the court any charge, information, complaint or order regarding copyright infringement.
- ◆ Regulate the CMOs.
- ◆ Organise campaigns and sensitisation drives for members of the public on copyright education (e.g. STRAP; Strategic Action Against Piracy).

The industry's role can best be defined through the activities of the CMOs, which exist under the provision of the Copyright Act and are regulated by the NCC. The collective administration of copyright and other related rights plays an important role in the development of the music industry, and these CMOs assist in the collection and distribution of royalties on behalf of their members, as this might be a difficult task for the artistes to undertake themselves (Ofochebe 2020).

Given the difficulties for artistes to track down all the users of their musical piece, 'the CMO's [*sic*] exist to negotiate on behalf of copyright owners and grant licences to users as well as to collect payments from users and distribute royalties on an agreed rate to copyright owners. CMO's [*sic*] could therefore be considered as a one stop shop for clearing copyright contents in the interest of both copyright owners and the user publics' (Ike 2021: 67). The overall concept of the CMO is to alleviate bottlenecks and stress for creative outputs: 'Its benefits include lower management costs and the opportunity to leave rights management in the hands of professionals so that right holders can concentrate more on creative activities' (Adeyemi 2020: 840).

The CMOs perform these tasks through the framework of documentation, negotiation, licensing and distribution. They build databases of the catalogues being administered. However, the main challenges for these rights organisations are negotiation and licensing, which are



about determining what the user(s) of a song should pay and actually getting them to pay. They also have to calculate what royalties have accrued to each copyright owner of a given work, and in this respect such work is categorised into various classes of use. The total is then tabulated (WIPO 2006). This is done according to the set rules of the collecting society. Two major CMOs presently operate within the industry: the Music Copyright Society of Nigeria (MCSN) and the Copyright Society of Nigeria (COSON). COSON as a collection society is approved by the Nigerian Copyright Act to officially act on behalf of artistes, musicians and rights owners to watch over licensing and the collection of royalties. It protects the following classes of neighbouring rights: live performance, reproduction, broadcasting and communication. The body has also been active in alerting the public to dangers of piracy while also pressing for a more active policy on copyright enforcement and penalties for violations (Adedeji 2016).

However, the digitalisation process has posed challenges which run counter to these efforts made by rights organisations. Furthermore, trying to put the onus on consumers to help address forms of piracy is a rather optimistic move. This is where consumers are expected to have a sense of obligation as law-abiding citizens not to patronise peddlers of pirated music copies and to be willing to pay for music online by avoiding illegal streaming sites offering free music and by visiting official online providers. They are expected to acquire a better understanding of the negative impact of piracy for the creative industry and the effect of piracy on the owners of original works, thereby contributing towards the effective administration of copyright law. This is a large onus to put on consumers, which would also need to consider other factors driving the issue of piracy, such as the erosion of rights and the changes brought about by the process of digitalisation. Digital innovation in practice is highly visible in the Nigerian music industry, which has become fully digitalised and, like other industries around the world, has taken advantage of internet technologies to enhance the business of music. There appears to have been a seamless migration to online distribution platforms, a move which has leveraged the success and advantages of the dynamic Afro hip-hop form known as 'Afrobeats'. I turn now to look at music digitalisation more closely to consider issues that concern artistes, consumers and the industry as a whole, including piracy, copyrights and music consumption.

Music digitalisation: Opportunity, availability and bottlenecks

An immediate issue to consider is the change in the form of music storage, going from the familiar CD to the non-physical mp3 file. Digital distribution in the music business is an offshoot of the technological innovation brought about by the mp3 file and other related compression standards that allow huge digital audio information to be compressed into manageable and easily transferable sizes. As one scholar has observed, this change consisted of “the introduction of multimedia computers with large storage capacity, CD players, sound cards and speakers, [and] the development of easy to use software that can convert CD’s [*sic*] into mp3 files [with] capacity to download mp3 files from distant network” (Hesmondhalgh 2013).

This change and the attendant application of digital technologies have greatly affected the music industry, altering the way music is consumed, marketed and stored. It has eliminated physical music storage materials such as the vinyl record, the cassette and the CD, with music now being compressed into an mp3 file with the introduction of various types of devices to play such music files. This also shifted the distribution of music from physical spaces like Alaba to online spaces through downloading and streaming. In short, ‘with digital music, we saw the decline of physical mediums on which music was recorded [or stored] and an increase in types of devices on which music could be played’ (Hviid et al. 2018: 246).

Through various platforms offered by the new internet technology, artistes have the opportunity to monitor their progress through ‘numbers’ and through how many times their work has been downloaded or streamed. Now, any given artist, no matter how obscure, can have the opportunity for success if one of their works should trend online and ‘go viral’. In this regard, social media in general and TikTok in particular comes to mind. The latter has had a tremendous impact on the fortunes of many artistes in recent times. And this makes sense, as customers are now able to access music more easily thanks to the technologies brought about by the internet and social media.

At present, music is no longer fashionable in physical form (i.e. CD): it is presented as a file, with the mp3 being the most popular format and marketed as such. It allows the consumer to have access to music on the go and download it on their PC, mobile phone or other storage device like an SD card or flash drive. The music can be played through multiple devices as well. The implication for distribution and marketing



in Nigeria is that the informal distribution set up at Alaba that rescued the industry in the late 1990s has now given way to the digital music distribution system, which is technologically driven with the creation of a new set of digital marketing executives.

Asta Salmi and colleagues, while discussing the onset of digital tools within the graphics industry, opined that 'due to new technology and new products, entire industries are transforming and their very business ideas are being redefined. New communication technologies and new media are examples of innovations that create new or reformed industries' (1996: 1234). While digitalisation has provided opportunities for artistes and ease of access to music for consumers, it has most definitely disrupted the structure of the music industry with the concomitant downplaying of the role of recording labels in the value chain. The new system now encourages less dependence on recording labels and the contracts they offer; instead, they boost independence as artistes can now distribute their works through online platforms digitally. This disruption has created a whole new avenue for the digital content vendors and music business executives who have mastered the art of linking artistes with digital platforms. They are the new digital entrepreneurs.

Music distribution and marketing in the era of digital innovation

The internet now offers an array of platforms where music can be purchased, which are complemented by social media apps which offer an array of music-friendly services and avenues for artistes to relate directly to and connect with their fans. Platforms like TikTok, Instagram, Facebook and YouTube are readily available for this purpose.

The process and the players

In this digital era, the main goal of artistes is getting their music to the streaming platforms, where it can be purchased. Through the internet, artistes and the industry have access to various platforms globally such as Spotify, Audiomack, iTunes, Amazon, YouTube Music, CD Baby and, of course, Boomplay, which prides itself on being the biggest music-streaming platform in Africa with the hub of its operations in Lagos. The biggest advantage of the new digital system is the removal of bottlenecks, as artistes can upload their music directly online or go

through digital marketers who make sure their clients' music gets to all the leading platforms while monitoring the progress on their behalf.

With the advent of digital music distribution, from the mid-2000s, there have been several attempts to establish locally created streaming platforms with the sole intention of developing an emerging Nigerian music-streaming sector. Such platforms include Spinlet, Udux, Iroking MTN Music Plus, Mino Music, Orin, Music Genie, Gidilounge, Vuga, and Music-Plus, but the majority of them have unfortunately ceased to exist, as they were unable to compete with their global counterparts, which are universal in their orientation.

In Nigeria, the digital music distribution space offers a lot of options with many home-grown outfits offering premium services to artistes directly (as independent artistes) or in partnership with labels or management companies. One such outfit is DAPPER Music, which was founded in 2017 in Lagos. It has partnered with artistes and record labels for the marketing and distribution of their work across streaming platforms. They now boast such clients as Teni, Blaqbonez, Sound Sultan, Lyta, and Naira Marley, with a number of their songs charting on iTunes such as Teni's 'Billionaire' single.

Boomplay, a download and media-streaming service founded by Transnet Music Limited, is another platform which operates on a subscription model in Nigeria. It was launched by TECNO Mobile in Nigeria in 2015, offering a lot of user-friendly features with readily available music, most of which being of Nigerian and African origin. It has a subscription- and a freemium-based service; the essential features are free with limitations or advertisements. Additional features, like download for ad-free and offline listening, are also available through paid subscriptions. Through Boomplay, subscribers have access to more than 37 million songs, with well over 1 million of them being from Africa. The company supports many Nigerian artistes and producers within the entertainment industry, as is shown by their partnership with Tiwa Savage on the release of her '49-99' single in Lagos and that of Ayo Sonaiya on the production and release of the documentary series *Afrobeats Backstory* in 2022.

With the popularity of Afrobeats music and its presence on the global music scene, it is not unexpected that it will attract foreign players to the Nigerian music business space again. Empire Music and Universal Music Group are two global music brands that have recently made inroads into the digital distribution scene. The latter, which features artistes like Lady Gaga, Taylor Swift and Nikki Minaj, opened its Nigerian subsidiary in 2017 with its headquarters in Lagos, and has

signed deals with artistes like Tekno, Larry Gaaga and Vector. Empire Music opened a branch in Lagos and then signed a partnership deal with Olamide's YBNL outfit in 2020, kicking things off with the distribution of his *Carpe Diem* album. It also enjoyed recording success with other YBNL artistes, such as Fireboy DML and the latest sensation Asake with his *Mr Money* album in 2022.

The new system

Digital music distribution has *come to stay*, given its wide appeal. As an innovation, it offers a lot of opportunities for artists, industry players and music consumers. It is not a perfect system, as it has its own downside depending on the perspective from which it is viewed. To the artists, digital distribution is an opportunity to be free from record label complications in terms of contracts and obligations. This enables creators to take control of their work directly by becoming the new centre of gravity for contracts, which strengthens their bargaining position during negotiations (Hviid et al. 2018). There is also opportunity to decide how their creative energy will be directed without hindrances of the preference or policies of a record label because, as it is, artists can decide on any creative issue without the encumbrance of record-label stipulations. All artists need to do is to upload their work on the internet or employ a digital distributor if they so desire.

Digital distribution now also offers the artist the chance to go global in terms of how many people can be reached via the internet: if a song gets online today through the streaming platforms, we can call it a 'world release', as it will be available everywhere in real time. The only difference will be the time zone in which a consumer hears the work. This alone is an unprecedented advantage, as it places artists on the same pedestal worldwide. Linked to this is the creation of music charts on these platforms based on region and genre. This has actually become very popular and a way of determining the artist's progress, as this is based on sales statistics. This opportunity has greatly contributed to the popularity and acceptance of Afrobeats music.

Artists also have the opportunity to monitor their sales in terms of streams or downloads: they can easily keep track of the royalties they accrue in real time. Digital technology allows them to be remunerated rather easily based on agreed-upon framework. This contrasts with the Alaba model, which lacks the means to monitor sales. While there have been numerous legal cases between artists and labels in the past, such issues have become increasingly rare. Digital music distribution

has also created opportunities for new roles in the music industry. The near collapse of recording labels was followed by the rise of new entrepreneurs, the digital marketers, gatekeepers and music brokers who possess internet and communication technology skills and who offer various services to artists from music distribution to promotion to social media consultation.

Consumers will be interested in the new availability of music. Digital technology offers this to them in abundance, that is, online through streaming platforms, social media platforms and music blogs, where music can be streamed and downloaded in the mp3 format and played on many portable devices including mobile phones and smart watches. However, it remains questionable whether consumers actually pay for all the music they download online.

If the Alaba music market had the notoriety of music piracy in the CD era, it now has a rival with forms of digital piracy, which remains the biggest threat to the music industry in the digital distribution era, despite that fact that some artists are enabled through it in that their work gets widely distributed. Thus, alongside creating new opportunities for artists, technology has actually aided piracy because of the wide availability of music online and the provision of ample opportunity for its illegal reproduction. This has resulted in huge losses for the industry. Copyright infringement and online piracy are multifaceted in the Nigerian music industry. I will now discuss a few examples.

As indicated above, not all consumers actually pay for music online. There is an abundance of music online. Most of this music is available without cost to the consumer and without payment to the artists: this availability is being provided from illegal music blogs that operate with impunity in cyberspace. They upload artists' music on their sites and attract traffic with music releases, which consumers download without the need to pay; instead, they are required to watch adverts on these sites. The uploaders who operate the blogs make money on adverts from the sites due to the traffic they attract. The consumers do not have any reservations about downloading the music for free while being required to watch adverts from these sites. My interactions with many of consumers, including DJs, who patronise these blogs have shown me that many of them do not think they are getting the music for free, because they have to pay internet providers for access to the sites and for the data required to do so! There is also the issue of being required to watch adverts, which could be seen as 'payment in kind'. Further, in Nigeria the cost of internet data is not cheap.



Figure 6. Online DJ mix album art (source: www.tapoutmusic.com)

Another dimension to copyright infringement online comes from within the industry itself. It involves the particular infringement of DJs, but it relates to creative innovations and mixes, and this is why it has been difficult to enforce the law. The issue is the creation by DJs of mixes and mix tapes from various hit songs which is promoted on various sites for consumers to download for free (Fig. 6). These mixes are very popular amongst music consumers and are constantly played at home, offices, inside vehicles and at parties. There also exists illegal profiteering on music by computer technicians and information technology item sellers in most computer villages (also called ‘slots’) across the country. These sets of people operate their own digital music shops with their repertoire of illegally downloaded music in their hard drives, which they sell to consumers who bring various devices like flash drives and mini-SD cards to collect the music for their personal use.

Conclusion

The Nigerian music industry has come a long way and has witnessed some dynamism in recent times through the popularity of Afrobeats music. It has shown a positive response to the global trends being driven by digital innovation and has drawn a significant amount of

foreign investment. Artists, producers and consumers are capitalising on the vast array of possibilities presented by digitalisation, which has positively impacted how music is produced, promoted, distributed and consumed. However, despite the positive effects of digital innovations, the study still finds disadvantages regarding digitalisation in the form of the room it provides for different kinds of piracy. This is affected both by market issues, trends towards digital consumption and an inadequate level of awareness regarding copyright regulations and the protection of intellectual property through statutory regulations. Thus, little can be said of its enforcement, as there is a lot to be done in curbing piracy in terms of CDs while a proper apparatus is needed for cybersecurity regarding differing forms digital piracy and illegal profiteering on music.

In examining the complexities between digitalisation and copyright administration, the dispositions of some people towards copyright protection in Nigeria are mixed. While some understand the importance of protecting the intellectual property rights of musicians and creatives alike, many consumers view piracy as an essential means of accessing music due to the high costs associated with purchasing original copies. This is also closely associated with the attitude of some of the major stakeholders in the industry – the up-and-coming artists – who have different perceptions of the pirates’ activities than the law. To them, pirates help them to promote their work by bringing it into the limelight (Tade and Akinleye 2012: 1024).

Copyright law as administered through NCC aims at safeguarding the intellectual property of musicians and their producers (Clark 2015: 308). However, digitalisation has been accompanied by various challenges, the biggest of which is piracy, which has increased due not only to the criminal element but also to the proliferation of mixes over the web, making the issue complex. To some extent, piracy hurts both producers and musicians directly or indirectly, but its interconnectedness with new technologies and the high cost of original music products calls for further research and more robust policy approaches that take these recent technological changes into account when taking measures to fight piracy.

Copyright regulations are perceived as means to protect the intellectual property of recording and performing artists. However, copyright laws can also be inimical to artists’ creativity and ability to make money from their music. The imposition of restrictions by copyright-holders on how artists can use or adapt the contents they create is a limitation on the freedom of the creators of original work. Without un-



dermining the essence of copyright, we should also note that oftentimes strict copyright enforcement favours large corporations (the commercial producers) and established artists, and hinders the opportunities for emerging or independent artists to shine.

In the Nigerian music scene, piracy serves as a means for artists to reach a wider audience, and this is especially true for the upcoming artists struggling to break into the industry and/or gain recognition. Through bypassing the traditional distribution channels and gatekeepers, these upcoming artists are able to gain exposure to audiences who may not have otherwise discovered their work. This has been made possible by the activities of the 'entrepreneurs' at Alaba market. This increased visibility for aspiring artists often leads to greater fan engagement, opportunities for collaboration, and even future monetisation through legitimate means. Thus, the advantages of piracy to artists cannot be entirely dismissed because of the opportunities it offers, opportunities which strict enforcement of copyright law can erode. While copyright regulation aims to protect artists, its disadvantages cannot be overlooked. It restricts artistic freedom, poses barriers to upcoming artists, and limits public access to creative content. These issues call for a balanced copyright system that can promote innovation and also safeguard the rights of artists. Pragmatic copyright regulation should encourage creativity, support diverse artistic voices, and facilitate access to artistic works in a more balanced way that protects artists' rights and encourages music availability within the digital marketplace.



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