**IMPACT OF THE NIGERIA COPYRIGHT ACT ON ART MUSIC BUSINESS: IMPLICATION FOR NATIONAL DEVELOPMENT**

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Abstract

Art music, as a viable business enterprise in Nigeria, is affected by certain laws in the Nigerian constitution. This is in tandem that every nation has a set of laws, statutory or otherwise, which govern business enterprises, professional practices, leisure, organizations, and general human endeavors in the society. However, it is observed that a number of laws are identified as helpful or inimical to the practice of music business. In any given society, it is important to note that without guiding laws, there will be chaotic situations, unrest and this will be detrimental to the development of the nation and her business ventures. Therefore, this study is based on the critical analysis of the copyright act as it affects the arts music business in the Nigeria constitution. As a guiding business principle, copyright act protect creative music compositions that are properly fixed in a tangible form. The study examines the peculiarities of copyright act and highlights the required qualities of art music for business eligibility and protection in the Nigerian society. Therefore, data for this study is gathered through library research methods, internet sources, and textual method of analysis was adopted to interpret data. Using qualitative method as tool of enquiry, this study reveals the complex and intimidating aspects of copyright law in the Nigeria law book. The study provides explicit explanations of copyright law and addresses the often misunderstood issue of what exactly copyright law protects in music arts business. The study concludes by laying into bear the legal jargons and simple explanations of the laws and makes the law concepts explicit for the use of art music business entrepreneurial.

**Keywords:** Art music, Business enterprise, Copyright acts, Nigerian constitution, National development

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Introduction

 An objective assessment of art music, as a viable business enterprise, must take into account the vast and diverse array of guiding philosophy and laws of the land. Music business refers to the activities and the overall engagements of musicians that earn money by composing and creating new songs with organization of live concerts, shows, audio and video recordings, selling of notated sheet music and music album production. However, the two major groupings of creative musical works that are usually protected include; composed music art work and sound recordings. Music art composition and sound recording are viable business technique that has generated millions of naira for art and popular music practitioners in Nigeria. Section 51 of the Nigerian Copyright Act defines a musical work as any music composition that includes sheet music with all the nitty-gritty of an original art music composition, while sound recording is a specific sound production of a particular music album or music works. The need for this analysis and the review of copyright laws is justified, because it is imperative that art music composers and music producers, as entrepreneur, be acquainted with clear understanding of the national laws where they operates. Moreover, music as a viable business enterprise contributes immensely to the overall national gross domestic’s products (GDP) in Nigeria, hence the justification for this study.

 This paper attempts the analysis of the laws that guides the art music composers as a business enterprise in the Nigerian constitution. There are two main components of guiding principles in musical art business which are codified as the technical laws and the social laws. The technical laws connote the compositional principles or rules of composition usually studied under the umbrella of music theory; while the societal laws are the overall guiding principles which encompass the socio-political guidelines for music practitioners that is enshrine in the constitution as copyright act. Constitutions are written documents which stipulate the overall guiding principles within a given society. Art itself is a cultural universal; that is, there are no known human cultures in which there cannot be found some form of arts: music, sculptures, dance, body adornment and poetry. Such diverse artistic genres and cultural variability of ways in which artistic interests are focused and expressed raises the question; is it possible to identify the guiding principles and laws of the hosting nation? For a classification of excellent in art music business, it is imperative that major criteria must be met that categorized the artistic contribution as above board.

 Art musicalternatively called ‘serious music’ismusicof high aesthetic value and typically implies advanced structural and theoretical considerations of a written musical tradition. The concept of musical art composition refers to the act of conceiving a piece of music and creating it as a finished product. Besides, art music is a viable business venture in which the composer composes fresh music, usually notated for high aesthetic performance. A composer is a creative individual communicating personal, original and unique thoughts with a distinctive style and a particular point of view and expression. Composition is necessarily distinct from improvisation; therefore, musical art composition can mean an original piece of music. Therefore in exploring the qualities of guiding principles and laws; work of art is conditioned by cultural contexts and the national laws. For a monopolistic right to be enjoyed, the work of arts must be excellent and in accordance with the laws of the land. The history of creativity has only given credence to meaningful and outstanding musical art compositions. The word ‘composition’ means ‘putting together’; therefore, musical composition is the act of weaving musical notes together. The contributions of some composers have been remarkable in stylistic and quantitative terms; within the heavy traffic of art music production.

 This paper is hinged on ‘social reconstructionism theory’ because both the arts music and copyright acts were social phenomenon already in existence in the Nigeria society and has been properly documented in the constitution. ‘Social reconstructionism’, as a theory, posits that a socially constructed phenomenon can be socially deconstructed and socially reconstructed contingent upon prevailing social-historical processes. ‘Social constructionism’ is a sociological theory that examines how social phenomenon develops in partial social contexts. To deploy this theory in this analysis, the copyright arts which is a socially constructed phenomenon is analytically and socially reconstructed in a simpler form for the purpose of laying into bear the contents of the acts and make the laws concepts explicit for music business enterprise. The social constructionism theory therefore aims to uncover the ways in which social phenomenon are created, institutionalized and made into living traditions by society. The proponents of the theory are Searle (1995), Hacking (1999) and Boghossian (2001). Data for this study is generated through library research methods, internet sources, and textual method of analysis was adopted to interpret data. Using qualitative research method as a tool of enquiry, the study explores the complex and intimidating aspects of copyright law in the Nigeria law book. The quantum of the art music compositions have been left to individual struggles and preservation, without a thorough understanding of the guiding principles and laws. Therefore, the main preoccupation of this study is a thorough analysis and a simplification of the Nigerian Copyright Laws.

Art Music Theoretical Underpinning

 Art music, in a general sense, implies advanced structural and theoretical considerations of a written musical tradition and Mereni (2006) posit that art music is the music composed under the influence of Western music counterpoint studies. However, Nigerian art music refers to music composition by Nigerian music scholars and composers operating under a high influence of Western music school. These academic musicians have gone through a serious schooling in the art and acts of music production. Besides, oral or unwritten voice and dance composition pervades the Nigerian music scene before the arrival of missionaries. According to Adegbite (2001),

The history of art music in Nigeria dated to the first half of nineteenth century, when Christian missionaries set their feet on Nigeria soil. The Anglican came in 1842, the Methodist in 1845 and the Baptist in 1850. These churches established mission schools in some part of the country where they trained their converts. While these mission schools paid great attention on music education, it was to Western European music and with the aim of enabling their school teachers and priest to play simple hymn tunes from staff notation on the harmonium.

Thus, the strong foundation of art music education was laid in the Southern parts of Nigeria by the missionaries. The struggle for refine art music metamorphosis and migrated to experimentation of Western music structures on Nigeria folk tunes. Omojola (2001) posits that

a striking feature of Nigerian Art music is the attempt by composers of the genre to make their works culturally relevant to the Nigeria situation. Having been trained in a predominantly or totally European tradition and having chosen a largely European idiom as the conceptual basic for much of their works, the issue of relevance to their local environment has constantly engaged the attention of many of these composers.

 The various possessed ideologies on the above relevancy of art music have created divisions and hatred among the Nigerian music scholars. However, quite a few are striving hard in diverse ways to tackle and perhaps overcome the problems. To this end, therefore, many ideal and talented composers have immerged, with competency in language and linguistics, with a sound knowledge of theories of music and vast competent experience in harmony and counterpoint. Besides, the current art music composers now make use of folksongs and traditional music components. Most importantly, Idolor (2001) observed that the progress made notwithstanding, has been disastrously retarded by the absence of printing and publishing efforts and facilities. Challenges facing musicians, in a changing society like Nigeria, are numerous, such problems as; social, political, economic and religious problems.

 However, through proper education, art music composition in Nigeria, has overcame some of her teething problems. Music education has been recognized as an instrument per excellence for the development of the individual and the advancement of the society. Currently, Nigerian art musicians are realizing the rapidly accelerate changes in the society and that technology advancement is a non-qua-non to the profession. As such, the critique of the copyright laws affecting arts music compositions in Nigeria are expected to transforms the art music profession.

Nigeria Copyright Act

 In the narrowest and strictest sense, the simplest known definition of copyright is ‘the right to copy’; however, Okoroji (2016:) aptly captured copyright; as a monopoly right which the creator of an eligible work acquires as soon as such a work is put in a tangible form and which right precludes all others from the exploitation of such work without the authorization of the creator, for a specified period. Copyright is the legal right to decide who can make and sell copies of a book, show a film, perform a piece of music for business purposes. Besides, law is the system of rules that must be obeyed in the society. It is an official rule that people must obey, or a set of these rules that guide the human activities. Therefore, copyright law refers to the system of rules that guide the creator of an eligible work. The Nigerian copyright act provided for music protection, transfer, infringement of and remedy, and penalty for offenders.

This analysis is in reference to the ‘Copyright Act’ promulgated in 1988 as the Copyright Degree (No. 47) of 1988. The degree was re-designated the Copyright Act and contained in Cap. 68 Laws of the Federation of Nigeria, 1990. However, the Act was amended by the Copyright (Amendment) Degree (No.98) of 1992 and the Copyright (Amendment) Degree (No. 42) of 1999. This analysis therefore is a codified structure of the laws and requirements of art music composition in Nigeria. The basic laws affecting art music compositions are define in Section 1 (2), section 2, 3 and 4, laws of Nigerian Copyright Act.

In section 1 (1) of the Nigerian Copyright law, art music composition is recognized as eligible for copyright as a business enterprise. According to the law, art products such as literary works, musical works, artistic works, cinematograph films, sound recordings and broadcasts are eligible for copyright. However, Section (1), subsection (2a) demand for sufficient efforts on making the work an original character. An original art music composition is a musical composition with an authentic origin or fresh beginning of existence with a standard structured process. Art music composition is expected to be notated in staff or solfa notations and the music composition must be new, interesting, and different from anything else previously in existence with a highly original design and not copied from something else or a previous art music composition. For clarity and specification on the demand of the copyright act on music originality, some efforts in the sense of independent skill, industry and experience must have been expended in the production of the musical work. For a music composition to measure up on the law of originality, some properties or elements of music used, in the new music, must not be the same, such music elements as; key signature, time signature, form and structure, range, tonality, harmony, modulation, melody, texts, phrases, sentences, dynamics, signs and the general lay out of the music. The composer must have a novel and evolve a new and fresh artistic expression in the medium. He has to be a master of the genre and idiom with which he decides to work. The composer must be original in the newness, phraseology, and general compositional techniques. The basis of an original character of art music composition starts from the ‘originally conceived melody’ of the music.

Original melody is a pattern of different tones (sounds with good quality) performed one after another. It is a succession of a single notes or sound, i.e. one tone at a time. Tonality (noun) and tonal (adjective) is the organized relationship of tones with reference to a definite center; the tonic, and generally to a community of pitch class called a scale. The tonic is the principal tone: sometimes also synonymous with key and embodied by the use major and minor scale, their triads and functions. Melody writing, in an original art music composition, depends largely on the creative ability of the writer. Tonicity is the hierarchy of pitch class (PC), where at minimum, one pitch class predominate and the tonic. Melody of original music composition must possess the following characters: must be for a medium; must have a specific key; it must have a sense of direction; must be a mixture of conjunct and disjoint motions, must be for a specific medium; voice, instruments, solo, choir, or acappela, it must also be on a standard form. Generally, patterns in melody are the design components of the entire composition with motives, phrases, and sentences usually developed to a full reasonable composition. Furthermore, a piece of music generally divides into clearly defined rhythmic or melodic sections which indicate the plan. Original melody composition requires a well plan ‘lay-out’ in order for the music to be meaningful to the listeners.

According to Section 2 (1a) of Nigerian copyright acts; copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the authors is at the time when the work is made, a qualified, that is to say-(a) an individual who is a citizen of, or is domicile in Nigeria, (Cap.c28 Copyright Act). Bearing the foregoing in mind, it is essential for art music composers in Nigeria to be a bona fide citizen of Nigeria or must be a person domiciled in Nigeria. Most importantly, the art music must be made or composed on the soil of Nigeria. As part of the requirement of the origination of art music, the composition must also be published in Nigeria. It may be necessary to mentioned that if a Nigerian art composer travel abroad and a work is composed, it is copyright property that the composer affixed that determines the eligibility of the work in Nigeria. The copyright protection begins as soon as an original work is made and put in a tangible form in Nigeria.

 In the Nigerian Copyright Acts, Section 1(2b) requires that musical art composition must have been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any mechanical device. The concept of fixation in music art composition is to bring to fore the idea earlier conceived tune or melody by the composer, in a concrete forms on paper or compact discs. A piece of music, whether as a musical work or a sound recording is created, immediately upon creation a satisfaction fixing in tangible medium of expression is required. Technically, for a proper fixation of art music composition as required by the law, it is necessary to adopt the system of ‘solfa’ or ‘solfege’ which is a music theoretical system in which a series of syllables stands in for the seven notes of a scale. The ‘solfege’ syllables of a major scale are ‘do re mi fa soh la ti’. ‘Solfege’ is a method of learning and reading music attributed to the 11thcentury monk, named Guido D’Aresso. Therefore, the art music is concretized through solfa notation and its provides the opportunity for musical understanding at the deepest level, improve the quality of vocal pitching, facilitates memorization and properly fixed musical sounds on musical sheets. Sheet music or notated music on paper has provides an income stream that is paid exclusively to the composers and their published companies.

 Fixation of music also includes recording on compact discs. Advances in digital recording technology have allowed many producers and artists to create home studios. Besides, audio engineers are responsible for ensuring good audio quality during the services of an arranger, orchestrator, studio musicians, session musicians, vocal coaches, and lyrics writers. Physical medial such as CDs are sold by music retailers and are owned by the consumer. However, buyers do not have the right to make digital copies from Cds, because they own the individual physical copies. The music art composition must have spelt out in solfa notation of all the nitty-gritty of the musical work. The melody must be original, harmony already fixed, phrases, sentences and music dynamics must have be concretized and not in facial expression. Citing Okoroji (2016) on the need for fixation;

Why is it necessary for an idea to be fixed before it is eligible for copyright protection? Put differently, what will be the consequence if ideas were granted copyright protection? It seems clear that it will result to something close to legal anarchy because anyone will be free to lay claim to any ideas that meets his fancy and demand legal rights to such ideas--anyone who wishes to enjoy some legal rights should be prepared to take practical steps to enjoy such rights. Having an ‘idea’ is not enough to enjoy copyright protection, practical steps must be taken to write down, record or fix such an idea in a definite medium of expression.

 A definite medium of expression of art music composition must have the correlative ideas of creativity, personal expression and originality. Invention and originality distinguish genius from talent. Talent imitates but genius creates. Creativity is making something new, something that the world had not seen or heard before, something fresh, original, personal and properly fixed. Furthermore, in the general nature of copyright law, section 6 (C28 – 4, CAP c28), of the copyright act opined that; subject to the exceptions specified in the second scheduled to this Act, copyright in a work shall be the exclusive right to control the doing in Nigeria of the following arts, that is- [Second Scheduled], in the case of a literary or musical work, to do and authorize the doing of any of any the following acts-

1. reproduce the work in any material form;
2. publish the work;

The above copyright act is specific about the publication requirement of a music art composition. Standard publication of musical art composition is to foster a degree of depth as well as breadth with the concretization and easy distribution of the work. Acceptable music publication must possess distinctive quality, originality, and other excellent paraphernalia elements. As part of publication of a standard book requirements or format it must have title page, black page, copy right verifiable ISBN, dedication, acknowledgement, preface, foreword, and table of contents, chapters, references and index. While justifying the necessity of standard publication of Nigerian music books, through musical notation, Mereni (2014) submits that

The often head declaration that “our music is not written down” (referring to African music), can be sheer ostrich-hiding. For, it may not mean that the “artiste” (composer, performer, judge etc) decided to abandon that musical notation he had learnt and mastered well. But the tonic solfa which he brandishes as a preferable better substitute for the staff notation-the official hand-writing of the musical language-can in no way be of advantage in composing; neither may teaching by rote the songs conceived in the mind without writing them down, be justified by the theory of oral notation of the African traditional practice. These are regrettable practices.

Although not explicitly declared, however, the study of African music, like most of the Western world, is gradually ridding itself of the problems associated with the theory of oral notations. Nigeria is fast overcoming the regrettable practice of teaching by rote and scholars are now adhered strictly to the copyright law of standard publication of musical art composition.

Again, in the Nigeria copyright act, as provided in section 5, 6, 7, and 12, stipulates that music possessed the power of commerce and commercialization. In the general nature of copyright act in section 5 (1a) it is clearly stated that in the case of a literary or musical work, to do and authorize the doing of any of the following acts- (i) produce, reproduce, perform or publish any translation of the work; and (ii) broadcast to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan, or similar arrangement. Music for commercial purpose or as money making venture can be in the following area of specialization; music composition, music producer, recording engineer, studio musician, disc jockey, artist manager, music teaching, booking agents, publicist, composer, music arranger, pop music artiste, music radio presenter, music marketing, music consultant, CD retail, band manager, music promoter, voice coach, music mobile app developer, backup vocal singers, and music download services. The choice of music career is determined by personal goal, previous skills and experience. The world of music is very charming and glamorous, and it has a way of drawing people into it embrace. Though a lot of people do not know what to do with the myriads of potentials the music industry offers.

Conclusion

It is worthy of note that the contemporary rich men in the world today are the musicians, footballers, computer and software developers. The nature of wealth is gradually changing from visible or physical heavy plants, marching, trucks or large properties to the entertainment industries with the aid of computer devices. The quest and need for entertainment, socializing, communication and fostering relationship of all sorts have made the nature of wealth to change. This is more so because of the upsurge of the new media which is so widely available, utilized and celebrated, given its handy and convenient appeal. Music, as a leading form of entertainment has gained ground and makes people rich. Therefore, this paper provides platform for the art musicians to have deep understanding of the copyright acts for an effective operation in the business world and this invariably help the development of Nigerian nation.

Besides, a very significant contributors to art music business in Nigeria are the COSON; Copyright Society of Nigeria. COSON is the sole collective management organization for musical works and sound recordings approved in 2010 in accordance to section 39 of the Nigerian copyright acts (CAP 28, LFN 2004). The body was mandated to negotiate and grant licenses for the use of music, collect royalties to the musicians. COSON works on behalf of the artistes and music creators to ensure that those who invest their creative energy enjoy the fruits of their labor and their creative music business. The study provides explicit explanation of copyright acts for the use of the art musicians, the guiding rules as enshrined in the Nigerian law book. The paper viewed music, not only for its beauty, but more as business enterprise for the primary purpose of making profits for national development.

References

Adegbite, A. (2001). The Present State of Development of African Art Music in Nigeria, *in African Art Music Nigeria, edited by M.A. Omibiyi Obidike,* Stirling – Horden Publishers, Nig. Ltd. (5): 77 - 82

Berger, L., Luckman, T. (1966). *The Social Construction of Reality*, NEW YORK, Anchor Books

Hacking, I. (1999) *Social Construction of What*, Cambridge, Harvard University

Idolo, G.E (2001). Formal education and the Development of African Music in Nigeria, *in African Art Music Nigeria, edited by M.A. Omibiyi Obidike,* Stirling – Horden Publishers, Nig. Ltd. (11): 134 – 149

Johnson, S.O. (1937). *The History of the Yorubas before the Advent of Europeans*: Christian Missionary Society Book, Lagos

Mereni, A.V.E., (2014). *Theorizing Practice and Practicing Theory: A Phenomenology of Music in Nigeria*. Inaugural Lecture. Lagos: University of Lagos press

Okoroji, T. (2009). *Copyright, Neighbourhooh Right and the New Millionaires*. Lagos, Tops Publishers

Okoroji, T. (2009). ‘*The State of the Nigerian Music Industries Music Industry’* No Music Day 2013 Address delivered on Behalf of the Nigerian Music Industry Coalition by Chief Tony Okoroji, Copyright Society of Nigeria (COSON) Sept.1 2013

Olaleye, O.A. (2018). Music Performance Arts and the Burden of Its Protection in the Nigerian Society, *in Nigerian Music Review, Obafemi Awolowo University,* (15/16) 124-140

Omojola, B (2001). Nigeria Melodies and European Forms: A Study of Sowandes Organ Works, *in African Art Music Nigeria, edited by M.A. Omibiyi Obidike,* Stirling – Horden Publishers, Nig. Ltd. (8): 101 - 115

Nigerian Copyright Act (Cap. 68, Laws of the Federation of Nigeria, 1990 as amended by the Copyright Amendment Decree No. 98 of 1992 and the Copyright (Amendment) Decree (No. 42) of 1999

Searle, J. (1995). *The Construction of Social Reality,* New York, Free Press