



COLLECTIVE ADMINISTRATION OF COPYRIGHT IN NIGERIA

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Abstract

Copyright and neighbouring rights cannot be exercised by individual owners of rights owing to the fact that the works concerned are used by a great number of users. Individuals, in general, do not have the capacity to monitor all those uses, to negotiate with users and to collect remuneration. Collective management organization role is to monitor the use of copyright works on behalf of the owners; negotiate the terms of license with prospective users of copyright works; grant licenses against appropriate remuneration on the basis of a tariff system and under appropriate conditions; collecting such remuneration and distributing same among the copyright owners on whose behalf they were collected. Using the doctrinal approach, this paper examines the evolution of collective administration of copy right in Nigeria, the legal and regulatory framework and the challenge of locus standi in the collective administration of copyright in Nigeria. This paper found that the Nigerian Copyright Act seems to support a single Collective Management Organisation but it is inappropriate for a large country like Nigeria. This paper concluded by recommending that there is much work to be done by the Nigerian Copyright Commission and respective societies to improve on the collective administration in Nigeria so that creative industries can thrive.

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Introduction

Many at times, copyright and neighboring rights cannot be exercised by individual owners of rights owing to the fact that the works concerned are used by a great number of users. Individuals, in general, do not have the capacity to monitor all those uses, to negotiate with users and to collect remuneration. Collective management organization carries out the role of monitoring the use of copyright works on behalf of the owners; negotiating terms of license with prospective users of copyright works; granting licenses against appropriate remuneration on the basis of a tariff system and under appropriate conditions; collecting such remuneration and distributing same among the copyright owners on whose behalf they were collected.¹ Collective management serves the purpose of bridging the gap between owners and users by simultaneously addressing the needs and concerns of both parties under a single platform.² This paper wishes to trace the evolution of collective administration of copy right in Nigeria, the legal and regulatory framework and the challenge of locus standi in the collective administration of copyright in Nigeria. The paper is divided into six parts. Part one is on the general introduction, part two examined the evolution of collective management of copyright, and while part three accessed the indigenous copyright management organizations. Part four considered the collective management organisations in Nigeria, Reproduction right society of Nigeria and audio visual right society of Nigeria. Part five perused the legal framework for the existence of collective management in Nigeria, locus standi and problems of collective management in Nigeria. Part six deals with the conclusion and recommendation.

The Evolution of Collective Management of Copyright

The origin of Copyright Management can be traced to 3rd July, 1777 when Pierre Augustin Caron de Beaumarchais gathered twenty two authors, some of the most creative writers at that time arising from a complaint lodged by him of his dissatisfaction regarding the remuneration from Comedie Francaise in respect of performance of his “Barbier de Seville”³. Prior to the said

¹ M. Ficsor, ‘Collective Management of Copyright and Related Rights’ (2012) *WIPO Geneva*, 17

² J. Odion and D. Oriakhoba, ‘Copyright Right Collective Management Organizations in Nigeria: Resolving the Locus Standi Conundrum’ (2015) *Article in Journal of Intellectual Property law & Practice*, 2

³ O. Ola, ‘Operation and Regulation of Copyright Collective Administration in Nigeria : Important Lesson for Africa’, (2012) Masters’ Thesis, University of South Africa.



complaint, other writers whose works had been performed and who were displeased by their remuneration had similar complaints that were not attended to by the authorities, but Beaumarchais's influence with the French leadership, at the time, induced the performers to heed his complaints and negotiated with him resulting in a review of the Royal theatre regulations⁴. The gathering of authors assembled by Beaumarchais led to the birth of the first Collective Management Organisation (CMO), Societe de Auteurs et Compositeurs Dramatiques (SACD), a professional association for creative writers based in France, which was followed by Societe des gens de Letters (SGDL). In the field of literary works constituted by notable French authors.⁵ However, it was about 1847 that the concept of modern CMO evolved through the suit initiated by Ernest Bourget (a writer). Paul Henrion and Victor Parizot (composer) supported by their publisher Jules Colombier against a Paris "Café Ambassadeurs" (a restaurant) for claims of royalties for the Public performance of their works, which ended in their favor⁶. This development goaded the establishment of Societe des Auteurs, Compositeurs et Editeurs de Musique (SACEM) in (1851)⁷, and similar CMOs across Europe, particularly the Performing Right Society which was established in 1914 and based in London the United Kingdom. The British Empire was at the time the largest empire in the world, Nigeria was at the time a colony of the British Empire and by virtue of the reception and application of English laws, which had been extended to all British territories, Nigeria's copyright system became governed by the then passed Copyright Act of 1911. Performing Right Societies (PRS) was formed after the passage of this Copyright Act to cater for the need of right owners within the British Empires and as was the case with other countries under the British Empire. The PRS became responsible for the collective administration of Copyright and related rights in Nigeria. At about 1940, royalties were paid by the old Nigerian Broadcast Service (NBS) to PRS for the use of music⁸. However after independence in 1960, and the subsequent enactment of the first indigenous Copyright Act in 1970, which was also partly attributable to the need to build a strong political and economic

⁴ M. Krestchmer, 'The Failure of Property Rule in Collective Administration: Rethinking Copyright Societies as Regulatory Instrument' (2002) 24 (3) *European Intellectual Property Review* 126-137

⁵ Fiscor (n, 1).

⁶ Krestschmer, (n, 4)

⁷ Ibid

⁸ T. Okoroji, *Copyright, Neighboring Rights and the New Millionaires* (2018) pg 192



structure free from colonial supervision⁹, the direct control and administration of Copyright and related rights by PRS had to give way to some other structure.

Indigenous Copyright Management Organisations

In 1971, Performing Right Societies (PRS) was approached by a law firm in Nigeria, seeking to be appointed as its agent in Nigeria. Flowing from this, Performing Right Societies appointed a law firm, Giwa and Atilade and Co. as their agent and this was when the first indigenous Copyright Act had been passed just a year before this and on the heels of the end of the war, there was the apparent need for the economy to be strategically refocused for national development. Thus, the PRS-licensed agency Giwa and Atilade and Co could be regarded as the first indigenous organization to be responsible for collective administration of copyright and related rights in Nigeria. The Law firm had two major tasks to accomplish. The first was to get a good number of Nigerian composers to join the membership of Performing Right Societies (PRS), and the second was to commence extensive licensing of users in Nigeria¹⁰. Considerable success was achieved on the first task with several popular names¹¹ joining the membership of PRS. The second task was vigorously pursued but despite the entreaties and efforts of AlhajiGiwa, most users simply refused to pay. In fact the task was not accomplished. One may think that, the lack of willingness to pay by users was based on the pretext that the number of Nigerians in the PRS membership was too small and that users would rather deal with a Nigerian institution. To satisfy the aspiration of users who would rather deal with a Nigerian Institution, AlhajiGiwa set up the Musical Copyright Society of Nigeria (MCSN), a company limited by guarantee, to administer the public performance right of musicians in Nigeria. The company was registered on the 20 July 1984 and this marked the formation of the first full-fledged collective management organization in Nigeria. After the registration of Musical Copyright Society of Nigeria (MCSN), a contract of reciprocal representation was signed between PRS and MCSN in 1986 thereby terminating the earlier agency agreement between PRS and Giwa and Atilade and Co.

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid



Collective Management Organisations in Nigeria

Before the approval of Copyright Society of Nigeria (COSON) in 2010, only two licensed collecting societies exist in respect of performance, namely Performing and Mechanical Rights Society of Nigeria (PMRS) and Musical Copyright Society of Nigeria (MCSN)¹². Musical Copyright Society of Nigeria was approved as a CMO for authors, composers, arrangers and publishers of music. MCSN was set up to take over responsibilities from Performing Rights Society (PRS) and the Mechanical Copyright Protection Society (MCPS). Recall that to the various agitations, and taking advantage of the amended Nigerian Copyright Act¹³ which made provisions for the administration and regulation of collecting societies, a group of right owners consisting of performers, composers of music, and phonogram producers registered the Performing and Mechanical Rights Society of Nigeria (PMRS). The organization was registered as a company limited by guarantee and upon request for approval to the Nigerian Copyright Commission; PMRS was approved marking the birth of the second collective management organization in Nigeria. In 1994 when the Nigerian Copyright Commission called for application from interested societies, to apply as CMO after Collective Management Organization was introduced to the Copyright Law via an amendment introduced in 1992.

Prior to this time, MCSN had applied¹⁴ to the Nigerian Copyright Commission for approval to operate as a collecting society, in line with the Copyright (Amendment) Decree. The approval was, after due consideration, denied based on the refusal of MCSN to provide the documents requested by the Nigerian Copyright Commission and the fact that the structural composition of the organization did not represent a nationalistic interest, in view of the dominant position that the PRS and the Mechanical Copyright Protection Society (MCPS), both of the United Kingdom, had in MCSN. The Commission was consequently not convinced that the organization would cater for the interest of National creators. The combined effect of the denial of the application by MCSN for approval to function as a collecting society and the subsequent approval of PMRS was that the approval gave PMRS a legal backing to operate as a collecting society, whilst the

¹² O. D. Adeleye, 'Comparative Analysis of Collective Administration of Performance in Australia and Nigeria' (2015) *Ife Journal of International and Comparative Law (IJCL)* part 1&2 pg 7

¹³ Copyright (Amendment) Decree No. 98 of 1992. The amendments are now consolidated in Cap C28 of the Laws of the Federation of Nigeria, 2004.

¹⁴ This Application was dated the 25th of August 1994.



denial to MCSN did remove the legality behind a thriving structure. But the reality was that PMRS neither had the infrastructure, nor the needed foreign co-operation to enable it to negotiate reciprocal representation agreements. Despite this shortcoming, the PMRS made efforts at issuing licenses locally¹⁵, but continued to struggle with regard to the licensing of international repertoire. MCSN, operating first as the “Giwa Agency” (and subsequently as MCSN after been duly registered), had already signed a reciprocal representation agreement giving it the right to use PRS’ repertoire in Nigeria. Thus, we had a situation where MCSN, an experienced collecting society with more than two million members, lost the legal right to regulate the musical and mechanical rights of its members, while PMRS, with very few members and limited practical experience, became the legal face of the industry. It was believed that then MCSN was the de facto collecting society while PMRS was the de jure collecting society. The above scenario repeated itself in 2010 when NCC called for another set of applications for approval as collecting societies. MCSN, PMRS (now COSON), and Wireless Application Service Providers Association of Nigeria Ltd (WASP) applied. At the end of the process, NCC, again, approved COSON as the sole collecting society for musical works, sound recordings and the rights of performers.

The implication of this was that MCSN lost legal backing to protect millions of its members. MCSN deployed means of approaching the court to interpret the law in a way that would allow it to protect the rights of its members. MCSN was successful to an extent as some divisions of the Court of Appeal agreed with it that it could enforce the rights of its members as ‘owner, assignee or an exclusive licensee.’ In addition, MCSN petitioned the House of Representative and the office of the Attorney General of the Federation (AGF). After careful consideration of the facts in issue the House of Representative passed a resolution mandating NCC to register MCSN. With NCC’s total disregard for this resolution, MCSN filed a petition to the AGF. After due investigation, The AGF also gave a binding directive, authorizing the immediate approval of MCSN by NCC. In May 2005 the Nigerian Copyright Commission granted approval to the MCSN to operate as a collecting society in the music industry, alongside the existing PMRS. This action triggered a lot of protests from PMRS, who made representation to the government

¹⁵Okoroji (n, 8) 156



to withdraw the approval, leading to the subsequent withdrawal of the approval granted to the MCSN. This generated a lot of controversy and eventually laid the ground for the reform of collective administration in Nigeria.

The MCSN having met all the criteria under Article 2 Copyright (Collective Management Organisations) Regulations 2007 (CMO Regulation) and also by the judgment of the Federal High Court in *COSON v. MCSN & NCC*¹⁶, the Musical Copyright Society is validly appointed by the NCC as CMO. NCC had since implemented the directive of the AGF since it has the force of law under section 50 of the Act which reserves the interventionist power of the AGF. In terms of which a call for applications from interested organizations to operate collective management organizations was made. Three applications were received in this respect for music and sound recording and after a thorough process the commission granted approval to the Copyright Society of Nigeria (COSON)¹⁷ to cover the rights involving music and sound recording. From 2010 till date, the achievement of COSON have been tremendous. Although it can be said that the society spent four years creating awareness, litigating in court to assert its position and putting structures in place for effective administration of rights of its members, there are landmark achievements that can be pointed.¹⁸ However, following a tussle in the leadership of COSON, they recently lost their license and up till the time of writing this research it has not been renewed.

Reproduction Right Society of Nigeria (REPRONIG)

The reach of collective administration in Nigeria spreads beyond just the music industry, covering also the literary sector. In this sector, right owners are represented by the Reproduction Right Society of Nigeria (REPRONIG)¹⁹. The reproduction right society of Nigeria (REPRONIG) is the sole collecting society with responsibility to negotiate on behalf of authors of text and images in the literary field and also grant licenses. REPRONIG is a collecting society licensed in 2001 by the Nigerian Copyright Commission to cater for the rights of authors of

¹⁶FHC/L/CS/1259/2017

¹⁷ PMRS vide a special resolution dated 29th of September 2009 changed its name to COSON during the collective administration reform process.

¹⁸ O. D. Adeleye (n, 12).

¹⁹<http://www.ifro.org/member/reproduction-rights-society-nigeria.com> accessed 20th October 2022

literary works. Literary works here include but not limited to books (fiction and non-fiction), journals, articles, photographs, computer programs, periodicals, magazines, and newsletters. REPRONIG has a duty to ensure that the intellectual property rights of literary works are protected and make them aware of the remedial options available to authors against such violations. It is necessary for REPRONIG to continually sensitize about authors' rights and modalities for enforcement of such rights. Because of the low level of knowledge of authors on the existence REPRONIG as the sole licensed body appointed by government to act on their behalf, REPRONIG must draw close to popular authors and owners of copyright in various categories of literary works for the purpose of leveraging on these authors' popularity to effectively send home the message of its fight against piracy. It is a company limited by guarantee with its main object as negotiating and granting of licenses, as well as collecting, and distribution of royalties to right owners. It represents copyright owners in the literary sector and seeks to ensure that the reprographic rights of its members are protected and that members are adequately remunerated for the use of their works. The organization was approved by the Nigerian Copyright Commission in 2001k and commenced operations on the 3rd of November 2003. Its approval has been renewed twice, first in 2004 and subsequently in 2007.

Audio Visual Right Society of Nigeria (AVRS)

Audio Visual Rights Society of Nigeria (AVRS) is a company limited by guarantee and incorporated under the laws of Nigeria as a non-profit company. It was approved in 2015 by the Nigerian Copyright Commission to operate as the sole Collective Management Organisation (CMO) for audio-visual works in Nigeria. It is authorized to license the public and commercial use of cinematographic/video works. Professor Dorcas Odunaike²⁰ has urged that the approval of AVRS has further heightened the need for Nigeria to give its assent to the recent Beijing Treaty on Audio-visual performance (BTAP), 2012, so as to provide the necessary legal framework for AVRS to function effectively.²¹

²⁰Dorcas Odunaike, 'Comparative Analysis of Collecting Administration of Performance in Australia and Nigeria,' 2015, *Ife Journal of International and Comparative Law (IJCL)* pt 1&2,

²¹ *Ibid.*

Legal Framework for the Existence of Collective Management Organisations in Nigeria

There are views to the effect that copyright being a private right, its management through CMOs should be left in the private domain without the need for State regulation.²² The opposite view posits that given the nature of rights managed by CMOs there is a great need for some governmental regulation to prevent abuses²³. We agree with the latter view but suggest that government's involvement in the activities of CMOs in the form of regulation should not be overbearing as to operate as a harbinger of the very purpose for which the CMOs have evolved. That said, it appears that the regulation of CMO is the norm, especially in European countries²⁴. Some countries like Germany²⁵ adopt the strict supervision approach where all CMOs are subject, under the enabling law, to a regulatory and supervisory legal system controlled by a regulatory body. Others like Netherlands²⁶ adopt an intermediate approach where apart from imposing a number of requirements of transparency and accountability, the law subjects the activities of CMOs to the supervision of an independent administrative body. Still some other countries, like United Kingdom, adopt the de minimis supervision system where the external control is essentially limited to tariffs. As shall be seen shortly, Nigerian regulatory framework for CMO follows the intermediate supervisory approach.

Section 39 of the Act is dedicated to CMO. Historically, however, it has not always been the case that our copyright law made such provisions. Under the 1970 Decree²⁷, there was no direct provision for CMO other than, inter alia, the provision for the Federal Commissioner of Trade to appoint a competent authority comprising three persons to review the grant of licenses by a licensing body. Unfortunately, there was total absence of a regulatory framework under the 1988 Decree²⁸ which repealed the 1970 Decree. This situation continued until the 1992 amendment which ushered in a new set of comprehensive rules regulating CMOs.²⁹ Under the Act, a CMO may be formed in respect of any one or more rights of copyright owners for the benefit of such

²² A. Adewopo, 'Nigerian Copyright System: Principles and Perspective' (Odade Publishers Lagos 2012)

²³ Ibid

²⁴ L. Guilbaut and S. Gompel, 'Collective Management in the European Union' in D. Gervais (ed), *Collective Management of Copyright and related Rights*, (2006) *Kluwer Law International The Hague* 117-152

²⁵ Administration of Copyright and Neighboring Rights Act, Germany, 1965.

²⁶ Supervision of Collective Management Organisation for Copyright and Related Right Act, Netherland, 2003.

²⁷ Adewopo (n, 18)

²⁸ Copyright Decree (No. 47), 1998.

²⁹ Copyright (Amendment) Decree, No. 98 of 1992.

owners, and the CMO may apply to the Commission for approval to operate as such for the purpose of the Act³⁰. It constitutes a crime for any group of persons to purport to perform the duties of a CMO without approval of the Commission and such a crime is punishable with a fine of N1, 000 on first commission and N2, 000 and six months jail in case of individuals; and N10, 000 and N2, 000 for each day in case of continuous offence and in case of commission by a body corporate³¹. The Commission may approve a society if it is satisfied that³² it is incorporated as a company limited by guarantee; its objects are to carry out the general duty of negotiating and granting copyright licenses and collecting royalties on behalf of copyright owners and distributing same to them; it represents a substantial number of owners of copyright in any category of works protected by this Act; it complies with the terms and conditions prescribed by the regulations made by the Commission. The Act further empowers the Commission to make regulations specifying conditions necessary to give effect to the purpose of section 39³³. In pursuance of this power, the Commission made the Copyright (Collective Management Organisations) Regulations, 2007 (the Regulation) under which it granted approval to COSON and refused the approval of MCSN after inviting applications. The Regulation, which contains 23 paragraphs, makes provisions for application, revocation and renewal of licenses for CMOs³⁴; membership and management of CMOs³⁵; licensing and distribution of royalties by CMOs³⁶ and other issues tagged miscellaneous³⁷. Finally, the Commission is empowered, where it finds it expedient, to assist in establishing a collecting society for any class of copyright owners.

Copyright (Collective Management Organisation) Regulation of 2007

As a result of the tussle between MCSN and COSON and the need for more effective way to cover the lacunas on the already existing laws, a review of the legal framework for collective administration in Nigeria was embarked upon by the Commission. After a very rigorous exercise

³⁰Copyright Act, s. 39 (1).

³¹Copyright Act, s. 39 (4), (5), (6).

³²Copyright Act, s. 39 (2).

³³Copyright Act, s. 39 (7).

³⁴Regulation 1-3

³⁵Regulation 4-12

³⁶Regulation 13-15

³⁷Regulation 16-23



and upon obtaining the consent of the Supervising Minister, the Copyright (Collective Management Organization) Regulation was issued and published in the Federal Republic of Nigeria official gazette³⁸, pursuant to section 39 (7) of the Nigerian Copyright Act. The Regulation is comprised of four parts, twenty-three provisions and a schedule. The first part provides for the grant of licences (application, revocation and renewal of licences); Membership and Management of the organization is provided for in the second part, while Licensing, Distribution of royalties and Miscellaneous Provisions are captured in the third and fourth parts. The 2007 Regulation revoked the Copyright (Collecting Societies) Regulation 1993 and changed the nomenclature of societies carrying on the business of copyright collective management from collecting societies to collective management organisations (CMOs)³⁹. Section 39 of the Nigerian Copyright Act in conjunction with the 2007 regulation provides the legal and regulatory framework for the administration of collective management organizations in Nigeria.

Grant of Licence: Part 1 of the CMO regulation provides for the grant of licences. It provides for the requirements and conditions for application, revocation and renewal of licences.

Application: An interested applicant may apply⁴⁰ in the prescribed form upon payment of the prescribed fees⁴¹. In addition to the above requirements of the Regulation every company applying for licence to operate as a CMO shall furnish the Commission with the following documents:

- a. “a Certificate of registration in respect of the company issued under the Companies and Allied Matters Act;
- b. the Memorandum of Association of the Company;
- c. the Articles of Association of the Company
- d. a Statement indicating the class of right or category of right owners in which the society owns rights, or intends to represent or act for;

³⁸As No. 98 of volume 94, on the 3rd of October, 2007.

³⁹ Regulation 22

⁴⁰ Regulation 1 Copyright (Collective Management Organisation) Regulation 2007 (hereinafter referred to as CMO Reg)

⁴¹ Regulation 18 CMO Reg



- e. membership list of not less than 100 right owners representing the class (es) of right to which the company is seeking a licence to operate as a Collective Management Organisation, which list shall indicate the signed consent of such persons to belong to the Organisation, or where the Organisation has been in existence, that they are members of the society;
- f. Undertakings by at least 5 (five) Directors including the Chairman of the Company that the Company shall comply with provisions of the Copyright Act and these Regulations in respect of the operations of the Organisation;
- g. membership agreement used by the organisation;
- h. evidence of payment of the prescribed fee(s); and
- i. such other documents as may be required by the Commission.”

The new regulation provides for further requirements to be met prior to the acceptance of an application. The old regulation had provided for six requirements to be met prior to the grant of an approval, but the new regulation added the following requirements:

1. All requirements as stipulated by the Act and the CMO regulation have been met;
2. Organs of the company to comprise at least a General Assembly and a Governing Board;
3. The Chief Executive Officer shall not be a member of the company, should be knowledgeable in copyright matters and approved by the Commission as competent to run the affairs of a CMO.
4. The Management to be approved as competent to run the affairs of a CMO;
5. The memorandum of association to provide the main function of the organisation to be the administration of collective management of copyright;
6. The articles of association provides for attendance of the Commission’s representative at the Governing Board and other general meetings as an observer;
7. The Chairman of the Governing Board must be a member of the organization.
8. The Governing Board and Management of the CMO consist of citizens of Nigeria and ordinarily resident in Nigeria.

The CMO regulation introduced the requirement of obtaining approval as to the competence of the Chief Executive Officer and the Management of the organisation. It further requires that both the Governing Board and the Management of the organisation shall consist of persons who are Nigerian citizens and ordinarily resident in Nigeria. The new Regulation by the introduction of the seven under-listed additional requirements raises the regulatory bar and seeks to ensure that organizations seeking to operate as collective management organizations meet the set standards.

1. A statement indicating the class of right or category of right owners in which the society owns rights, or intends to represent or act for;
2. Membership list of not less than 100 right owners;
3. Undertaking by at least five Directors including the chairman of the company;
4. Membership agreement;
5. Obtain approval as to the competence of the CEO
6. Obtain approval as to the competence of the Management of the Organisation
7. The Governing Board and Management of the Organisation to be comprised of persons who are citizens of Nigeria and ordinarily resident in Nigeria.

Where an applicant satisfies the above requirements and other requirements stipulated in the Act and the Regulation, the Commission may accept its application and upon approval issue it with a certificate as evidence of its license to operate as a collective management organization⁴². If the Commission is not satisfied, it may refuse to grant a license. In the event of a refusal and at the request of the applicant, the Commission shall provide in writing the grounds for its decision⁴³.

Locus Standi of Collective Management Organisations

Generally, the term “Locus Standi” is one used to describe the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support the party’s participation in the case. It is a development of the common law, which is now deeply entrenched in the Nigerian legal process⁴⁴ as it is applicable to all categories of actions in Nigeria. Locus Standi or standing to sue is defined as the legal right of a party to an action to be

⁴² Regulation 1 (3) d CMO Reg

⁴³ Regulation 1 (8) CMO Reg

⁴⁴ Adesanya v The President (1981) 2 NCLR



heard in litigation before a court of law.⁴⁵The point must, however, be made that even when a litigant has successfully satisfied the court of his locus standi in a matter in that he has sufficient interest in the cause of action or a civil right that has been or is likely to be infringed, the court may still decline jurisdiction to entertain the suit if there is a mandatory precondition that must be satisfied by the litigant before initiating the suit. Such preconditions are usually set by the law regulating the particular cause of action. An example is section 17 of the Act, which shall be discussed shortly.

Generally, CMOs are owners, assignees, and exclusive licensees of copyright and as such have interests to protect in the works forming their repertoire, which interest they could ordinarily enforce through a civil suit under section 16 of the Act. But by the combined effect of sections 39 (4), (5) and (6) of the Act it is criminal for a CMO to operate without approval by the Commission. This same position existed under section 32B of the 1992 Decree, which came up for consideration in the case of *MCSN v. Adeokin Records*⁴⁶. In that case, the appellant had obtained an Anton Piller injunction ex parte, at the Federal High Court, against the respondent but when the matter came up for hearing the respondent raised an objection on the grounds, inter alia, of locus standi contending that since the appellant does not have the requisite approval to act as a CMO from the Commission, it cannot institute the suit. The appellant's response that it initiated the suit as owner, assignee and exclusive licensee of copyright and not as a CMO did not impress the court, which held that the appellant was a CMO and that non-approval from the Commission deprives the appellant of the requisite locus to institute the suit. The suit was consequently dismissed, but on appeal to the Court of Appeal, the Appellate Court held that the appellant had the locus standi to sue as owners, assignees and exclusive licensees of copyright regardless of the fact that they lacked approval from the Commission. The court took this view because at the time of the suit, there was no equivalent provision as that of section 17 of the Act. What existed was section 15 (now section 16 of the Act). The amendment to the 1992 Decree that came in 1999 introducing section 15A (similar to section 17 of the Act) was done after the suit was instituted and as such could not be applied to the case retroactively. But a different position was reached in a case with similar facts by the Federal High Court. In that case, *MCSN v.*

⁴⁵ASSU v Bureau of Public Enterprise (2013) 14 NWLR (pt 1393) 33.

⁴⁶CA/L/498/97



*Detail*⁴⁷, the plaintiff, as owner, assignee and exclusive licensee of copyright, obtained an ex parte order against the defendant for unauthorised use of copyright within their repertoire. When the matter came up for hearing, the defendant objected to the suit on the grounds of lack of locus standi on the part of the plaintiff as it has not been approved as CMO under section 32B. After establishing that the plaintiff was carrying on the business of a CMO, the court held that it lacked locus standi to initiate the suit having not been approved by the Commission under section 32B of the 1992 Decree. But one can rightly say that the decision of the court did not take away the right of owners, assignees and exclusive licensee to initiate actions for infringement of their copyright. If this case was decided on the basis of the 1999 amendment of the Decree one can also rightly say that it is rightly decided, since the licensing of any association as CMO is a pre-condition to it exercising the right to enforce its assigned rights.

We now turn to section 17 of the Act which states that –

Notwithstanding the provisions of this Act or any other law, no action for the infringement of copyright or any right under this Act shall be commenced or maintained by any person

(a) Carrying on the business of negotiating and granting of licenses;

(b) Collecting and distributing royalties in respect of copyright works or representing more than fifty owners of copyright in any category of works protected by this Act, unless it is approved under section 39 of this Act to operate as a collecting society or is otherwise issued with a certificate of exemption by the Commission.

Taking the above provisions literally, it appears they will become relevant only in suits for the infringement of copyright or any right under this Act filed by a CMO that has not obtained the requisite approval to operate as such from the Commission under the Act. But there are judicial authorities adopting far reaching constructions of the above section. The question to ask is can we interpret section 17 to mean that an unapproved CMO cannot institute an action in court to enforce any right whatsoever? Answering this question will enable us determine the extent of the restraint placed on the locus standi of CMO under the Act. However, let us pause to review notable cases wherein the provisions were considered.

⁴⁷FHCL/L/CS/934/95.



The case of *Compact Disc Technologies Ltd. v. MSCN*⁴⁸ offered the Court of Appeal an opportunity to interpret section 17 of the Act. The case was an appeal against an interlocutory judgment obtained by the respondent, suing as owner, assignee and exclusive licensee for infringement of its copyright at the Federal High Court⁴⁹ sitting at Lagos against the appellant. The appellant filed a motion on notice praying the trial court for an order dismissing the suit filed on 2nd August, 2007 by the respondent as per its Writ of Summons and statement of claim on the ground that it lacked the locus standi to initiate the action since it has not obtained the requisite approval from the Commission. On the close of hearing on the said motion on notice, the trial Judge rejected the appellants' contention and dismissed the said motion on the ground that the respondent did not sue as a CMO but as owner, assignee and exclusive licensee and as such, it could validly sue without the requisite approval. The reliance of the appellant on section 15A and 32B of the 1999 amendment did not impress the court.

Upon Appeal, the appellant formulated two issues for determination while the respondent formulated three issues. The Court of Appeal adopted the three issues formulated by the respondent as the issues upon which to determine the appeal as follows:

1. *Whether or not the Respondent as owner assignee and exclusive licensee of copyright in the musical work allegedly infringed in the action ipso facto have a locus standi to institute and maintain the action by virtue of section 15(1) of the copyright Act as amended and the Deeds of Assignment executed by different artistes and or Reciprocal Agreements (attached to the Respondent's statement of claim.*
2. *Whether or not the Respondent an exclusive assignee of copyright must be a collecting society and or have a collecting society's license in order to be entitled to enforce the right transferred to it by the copyright owners or assignors under the Deeds of Assignment or Reciprocal Agreements.*
3. *Whether the Court of Appeal Judgment in the case of Musical copyright society of Nigeria Ltd v. Adeokin Records and Anordelivered on the 27th day*

⁴⁸ CA/L/498/97

⁴⁹ FHC/L/713/2007



of September 2004 was based solely on the Nigerian copyright Act 1988, devoid of the Amendments of 1992 and 1999.

In answering the above questions, the Court of Appeal, per Saulawa, JCA, made a ‘judicial investigation’ from the records of appeal (particularly the statement of claim filed by the respondent at the trial court) after an exhaustive explanation of the doctrine of locus standi, and found that the respondent is a CMO which has not been duly approved by the NCC to operate as such, on the basis of which it rightly held that the respondent lacks the locus standi to institute the action. According to the learned JCA,

As explained above, the fact that the Respondent did not claim in the statement of claim thereof to be a collecting society, notwithstanding, it’s quite obvious, from the statement of claim thereof, the Respondent has assumed all the characteristics of a collecting society as defined by the provisions of the copyrights Act, 2004, especially section 39 thereof. In the light of the above, I have no doubt in my mind that by the combined effect of the provisions of sections 9, 10, 15(1), 17, and 39 of the copyrights Act, 2004, the Respondent ought to have obtained the prior approval of the copyrights commission before instituting the action in the lower court. Thus, having failed to secure or obtain the approval of the copyrights commission prior to the institution of the action in question, the Respondent lacks the locus standi to institute the action in the lower court⁵⁰.

The following are discernible from the judgment:

- i. Adeokin case was decided based on the 1988 Act which had no provision limiting the right of an owner, assignee or exclusive licensee.
- ii. The cause of action in Adeokin case arose prior to the amendments to the Act, thus the applicable law was the 1988 Act. On the contrary, the cause of action in this matter arose in 2007 therefore bringing the matter under the purview of the 1992 and 1999 amendments and specifically the extant Copyright Act, Cap C28, LFN, 2004.
- iii. Since the cause of action arose in 2007, a period after all amendments had been effected; neither the 1988 Act nor the Adeokin case could be applicable to the determination of the instant appeal.

⁵⁰ Ibid (n, 46)



- iv. Section 17 of the Act applies to suit for the infringement of copyright.
- v. By virtue of section 17 of the Act, a CMO can only institute an action for infringement of copyright if it has been approved to operate as such under the Act.
- vi. MCSN is a CMO without the requisite approval from NCC and as such it cannot institute an action for the infringement of copyright.

However the locus standi conundrum has been resolved by the recent judgement of the Supreme Court in the case of *Musical Copyright Society Nigeria (MCSN) v Compact Disc Technology Ltd &ors*⁵¹ on the 14th December 2018. In this case, the Supreme Court confirmed the locus standi of an unapproved collective management organization (CMO) to initiate copyright infringement actions in terms of the Copyright Act, Cap C28, Laws of the Federation of Nigeria, 2004. The reason for nod by Supreme Court was based on the fact that MCSN came into existence in 1984 long before the various amendment that made approval of NCC a requisite to confer locus standi on a collecting society. Unless the case is upturned by the same Supreme Court in the future or by legislative re-enactment, MCSN will remain a collecting society in Nigeria for Copyright owners in music, sound recording etc for a very long time.

The Problems of Collective Management Organisations in Nigeria

It remains a mystery why the framers of the Act elected to circumscribe the registration of collecting societies to cater to individual genres of copyrighted works to only one per genre, or more so, why the regulatory body (the NCC) was reluctant to license additional collecting societies up till very recently, even against public demands for more of such societies. The accumulation of market power by copyright collectives deprives potential users of an opportunity to object to onerous licensing rates by choosing less expensive alternatives. Moreover, the aggregation of such market power not only enables collecting societies to set prohibitively high prices, but also to discriminate between users or to insist that only certain kinds of performance can be allowed, since collecting societies are generally regarded as natural monopolies with a tendency towards an abuse of their market power.

⁵¹SC. 425/2010.



Another issue which is a cog in the wheel of progress for the effective administration of the collecting society in Nigeria is the issue of lack of transparency and accountability on the part of the leadership of the collective management organization in Nigeria. An organization which ought to be a non-profit making organization have been turned as an avenue of looting money. This is one of the major issue that caused leadership tussle in the management of COSON which later contributed to its failures. Evident on this was the complaint by Tubaba and Omawumi via instagram on what they seemed to regard as a misappropriation of funds in COSON⁵²

Conclusion

The recent Supreme Court decision appraised the Supreme Court's judgement against the backdrop of its earlier decision in the case of *Adeokin Records v MCSN*⁵³ on the 13th of July 2018 and existing literatures on the questions of locus standi of unapproved CMOs in Nigeria. It concludes that, based on the 14th December 2018 judgment, the question to be resolved when determining the locus standi of unapproved CMOs is whether or not the CMO obtained the copyright in its repertoire before or after the commencement date of section 17 of the Copyright Act.

Recommendations

Although it is true that the Nigerian Copyright Act seems to only supports a single CMO system and that there are countries with single CMO in their Music industry but it must be rightly put that the adoption of a single CMO or multiple CMO is not automatic. It depends on the peculiar situation of each country. Canada is a perfect example of one of the countries that allow multiple CMOs in a class of right and they are adjudged to have efficient CMOs. Single CMO is not right for Nigeria, first, Nigeria has a large population. Many countries with single CMO for their music industry have small populations (e.g. Italy, Argentina and Morocco). Secondly the level of respect for Intellectual Property by Nigeria music users is very low. The level of respect for IP in most of the countries that practice single CMOs is high such that their CMOs have little

⁵² <https://www.eelive.ng/tony-okoroji-responds-to-2babas-allegation-against-coson/><accessed 28/10/2022>

⁵³ SC. 336/2008



enforcement to do. This is not the case in Nigeria. Thirdly, the fact that the music CMO in Nigeria controls multiple rights makes single CMO inappropriate for us.

One effective way of limiting their wide-ranging authority and pervasive market control, in addition to strong regulatory oversight, is to engender healthy competition into the process by registering additional collecting societies. The economic efficiency which such increased competition engenders would ensure that the needs of copyright owners are adequately prioritized and that owners are properly remunerated for the creative works, whilst wasteful and unjustified depletion of fees and royalties meant for distribution are discouraged. CMOs in Nigeria should also endeavour to sign reciprocal agreement in relation to repertoire collection of royalties of its members in other countries. There should be internal control measure among the CMOs and external control measure by the NCC to checkmate the activities of the CMO in order to be transparent and accountable. Transparency and accountability ought to be the hallmark of collecting society as is the case in South Africa and Australia where their website of all their collecting society are open for access by any one from anywhere in the world. Provisions should also be made that where owners of rights are not seen their royalties could be used to carry out corporate social responsibilities by the CMOs.

In summary much more work is needed to be done by the NCC and the respective societies to improve on the system as we have seen in other jurisdictions. More modern technologies should be employed in tracking users of rights of owners online and offline particularly effective collection and distribution of royalties to right owners. There is so much money for the creative industries which are either stolen, neglected or untapped and the creative industry is the worst for it. NCC is therefore enjoined to wake up from sleep in their regulatory responsibilities. While collecting societies should bridle their greed and serve the interest of the right owners and by extension the creative industry.