



Licensing and Operations Manual for Collective Management Organizations in Nigeria



Definition of terms

author in the case of cinematograph film: person by whom the arrangements for the making of the film were made, unless the parties to the making of the film provide otherwise by contract between themselves.¹

author in the case of literary or musical works: creator of the work.²

author in the case of a sound recording of a musical work: artist in whose name the recording was made, unless in either case the parties to the making of the sound recording provide otherwise by contract.³

broadcast: sound or television broadcast by wireless telegraphy or wire or both, or by satellite or cable programs and includes rebroadcast.⁴

cinematograph film: includes the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and includes the recording of a soundtrack associated with the cinematograph film.⁵

collective management organization (CMO) or collecting society: association of right owners that has as its principal objectives the negotiating and granting of licenses, and the collecting and distributing of royalties in respect of copyright works or related rights.⁶

communication to the public: in addition to live performance or delivery, includes any mode of visual or acoustic presentation but not a broadcast or rebroadcast.⁷

copy: reproduction in written form, in the form of a recording or cinematograph film, or in any other material form.^{8,9}

copyright: a monopoly right, which the creator of an eligible work acquires as soon as that 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.¹⁰ Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. There are

¹ See Section 51 of the Copyright Act Cap C28 Laws of the Federation of Nigeria (LFN) of 2004.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ See Section 39(8) of the Copyright Act Cap C28 LFN of 2004.

⁷ See Section 51 of the Copyright Act Cap C28 LFN of 2004.

⁸ The concept of reproduction as conceived in the context of the internet treaties of which Nigeria is a party. Includes reproduction in any form, including a digital copy.

⁹ See Section 51 of the Copyright Act Cap C28 LFN of 2004.

¹⁰ Okoroji, Tony. "Copyright, neighbouring rights and the new millionaires (the twists and turns in Nigeria)." (Tops Limited, 2008)

two types of rights under copyright: economic rights, which allow the rights owner to derive financial reward from the use of their works by others; and moral rights, which protect the non-economic interests of the author.¹¹ Most copyright laws state that the rights owner has the economic right to authorize or prevent certain uses in relation to a work or, in some cases, to receive remuneration for the use of their work (such as through collective management).¹²

copyright license negotiation: dialogue between rights owners/holders and users seeking to discover common ground and reach agreement to settle the application of a tariff, the terms of a licensing scheme or related licensing matter of mutual interest.

exclusive license: license signed by or on behalf of a copyright owner, authorizing the licensee to the exclusion of all other persons (including the person granting the license), to exercise any right that would otherwise be exercisable exclusively by the copyright owner.¹³

license: lawfully granted license permitting the doing of an act controlled by the Copyright Act.¹⁴ It is a permission or authorization granted to a user, to use or exploit a work the user would not otherwise have the privilege to do. A license is therefore the exercise of a limited privilege.

literary work: includes any of the following works or works similar thereto, irrespective of literary quality:¹⁵ novels, stories and poetical works; plays, stage directions, film scenarios and broadcasting scripts; choreographic works; computer programs; text books, treatises, histories, biographies, essays and articles; encyclopedias, dictionaries, directories and anthologies; letters, reports and memorandums; lectures, addresses and sermons; law reports, excluding decisions of courts; and written tables or compilations.

management or administrative fees: the amounts charged, deducted or offset by CMOs from royalties or from any income arising from the license fees paid by licensees or users, in order to cover the costs of its management of copyright or related rights.

member: copyright owner or right holder, or a company representing right holders or associations of right holders, fulfilling the membership requirements of a CMO and admitted by the CMO.

¹¹ WIPO. "Copyright." *wipo.int*. World Intellectual Property Organization. Web. June 8, 2022. <<https://www.wipo.int/copyright/en/#>>.

¹² *Ibid.*

¹³ See Section 51 of the Copyright Act Cap C28 LFN of 2004.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

music publishers: person responsible for maximizing the commercial potential of a songwriter's musical works by promoting the songs and issuing licenses in television programs, movies/films, advertisements, video games and other commercial opportunities.

musical work: any musical composition, irrespective of musical quality, including works composed for musical accompaniment.¹⁶ Also, the underlying composition created by a songwriter or composer along with any accompanying lyrics.

neighboring rights: also referred to as related rights, neighboring rights are those that belong to owners regarded as intermediaries in the performance, production, recording or diffusion of works. Refer to works sometimes created by a performer commonly referred to as an artiste.¹⁷

performer: actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary or artistic works or expressions of folklore. Performers can also be recording artistes or audiovisual performers.

phonogram producers: in Nigeria, commonly referred to as record companies or record labels.

regulators: The Nigerian Copyright Commission (NCC) is in charge of copyright matters in Nigeria, the Corporate Affairs Commission (CAC) of company and business registrations.

reciprocal representation agreement: any agreement between a local CMO and foreign CMOs whereby one grants to the other the rights to manage its repertoire in the territory of the other. Any agreement between CMOs whereby one CMO mandates another CMO to manage the rights it represents in their respective territories.

repertoire: the works in respect of which a CMO manages and controls on behalf of the copyright owners or right holders.

reproduction: the making of one or more copies of a literary, musical or artistic work, cinematograph film or sound recording.¹⁸

right: a claim to right (property) that enables the right owner to exclude or prevent others from exploiting or using their work(s) or performance embodied in a work without their permission (license).

right holder: any person or entity, other than a CMO, who holds a copyright or related right, or, under an agreement for the exploitation of rights or by law, is entitled to a share of the royalty.

¹⁶ See Section 51 of the Copyright Act Cap C28 LFN of 2004.

¹⁷ See Part II, Section 26 of the Copyright Act Cap C28 LFN of 2004.

¹⁸ See Section 51 of the Copyright Act Cap C28 LFN of 2004.

royalty: income collected by a CMO on behalf of copyright owners or right holders, whether deriving from an exclusive right, a right to remuneration or a right to compensation.

songwriters: authors of musical works are composers, lyricists and/or songwriters. A songwriter may contribute music, lyrics, or both. A songwriter is anyone who creates or writes an original song.

sound recording: the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced, but not a soundtrack associated with a cinematograph film.¹⁹ This is created when a performance of a musical work has been fixed in a recording medium such as a compact disc (CD) or digital file.

tariff: fee or a schedule of fees chargeable by CMOs for the exploitation of copyright works administered by them.

user: any person or entity carrying out acts subject to the authorization of right holders, remuneration of right holders or payment of compensation to right holders, and not acting in the capacity of a consumer.

¹⁹ See Section 51 of the Copyright Act Cap C28 LFN of 2004.

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Abbreviations and acronyms

AVRS – Audio Visual Rights Society of Nigeria

BON – Broadcasting Organisations of Nigeria

CAPASSO – Composers, Authors and Publishers Association

CISAC – International Confederation of Societies of Authors and Composers

CMO – collective management organization

COSON – Copyright Society of Nigeria

DSP – digital service provider

GHAMRO – Ghana Music Rights Organization

IFPI – International Federation of Phonographic Industries

IFRRO – International Federation of Reprographic Rights Organisations

MCSN – Musical Copyright Society Nigeria

NCC – Nigerian Copyright Commission

REPRONIG – Reproduction Rights Society of Nigeria

PMAN – Performing Musician Employers' Association of Nigeria

RRO – Reproduction Rights Organization

SACEM – Société des Auteurs, Compositeurs et Éditeurs de Musique

SAMRO – Southern African Music Rights Organisation

SAMPRA – South African Music Performance Rights Association

SCAPR – Societies' Council for the Collective Management of Performers' Rights

WCT – WIPO Copyright Treaty

WIPO – World Intellectual Property Organization

WPPT – WIPO Performances and Phonograms Treaty

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Introduction

In a field as dynamic and complex as collective management, the training and retraining of key staff members is essential to the success of the collective management organization (CMO). The importance of training, therefore, cannot be overemphasized; it helps equip employees with new skills and/or provide them with updates for existing skills to enhance productivity and efficiency.

It is in this regard that a training manual has been developed for staff of CMOs, particularly those involved in licensing, sales and marketing. This manual aims to empower CMO staff and personnel in Nigeria with practical and up-to-date knowledge, and to promote a culture of transparency and good governance to advance the interests of rights holders and meet the demands of the user public.

Beyond providing important information for CMO licensing officers, this manual will also supply useful material on CMO operations for stakeholders in the copyright sector, such as members and managers of CMOs, members of CMO governing boards and officials involved in regulating CMO activities. It further aims to:

- familiarize staff and licensing agents with the requisite knowledge of copyright and related rights management in the operations of CMOs;
- inform staff and licensing agents of the theoretical and practical aspects of licensing operations;
- acquaint staff and licensing agents with knowledge of licensing operation procedures and guidelines;
- review relevant licensing documents and explain critical aspects of user engagement; and
- teach staff and licensing agents the value of professional ethics.

There is no doubt that training licensing staff is critical to the collective performance of a CMO in meeting its revenue targets and other related objectives.

This manual applies to all areas of the collective management of copyright and related rights, whether music, sound recording, audiovisual or text and images.

It is expected that after systematic deployment of this manual, CMO trainees will have acquired an in-depth, enhanced understanding of the licensing processes and be able to identify challenges and opportunities in copyright and related rights licensing. Ultimately, this should improve the revenue collection and visibility of all CMOs in Nigeria.

A. The Nigerian Copyright Commission

1. Mandate of the Commission

The Nigerian Copyright Commission (NCC) is an agency of the Federal Government of Nigeria, established under the Copyright Act (now Copyright Act Cap C28 Laws of the Federation of Nigeria (LFN) 2004, henceforth referred to as the Copyright Act). It has responsibility for all copyright matters, including copyright protection, promotion, regulation and enforcement. The NCC is also charged with the statutory mandate of monitoring and advising on Nigeria's international obligations.

Under Section 34(3), the NCC will, among other things:

- be responsible for all matters affecting copyright in Nigeria;
- enlighten and inform the public on matters relating to copyright;
- monitor and supervise Nigeria's position in relation to international conventions and advise the government thereon;
- advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other countries;
- enforce the criminal provisions of the Copyright Act, including investigation, seizure, arrest and prosecution;
- maintain an effective databank on authors and their work; and
- be responsible for such other matters as they relate to copyright in Nigeria.

The Copyright Act was amended in 1992 and 1999, transforming the Commission from an administrative agency to a regulatory and enforcement one with additional powers to prosecute copyright offences. First established as the Nigerian Copyright Council, it was elevated in April 1986 to a commission.

In accordance with the provisions of the Copyright Act, the NCC has issued the following regulations and orders:

- Copyright (Collecting Societies) Regulation, August 16, 1993 (repealed).
- Copyright (Video Rental) Regulations, September 7, 1999.
- Copyright (Security Devices) Regulations, September 7, 1999.
- Copyright (Optical Discs Plants) Regulation 2006.
- Copyright (Collective Management Organisations) Regulations 2007.
- Copyright (Levy on Materials) Order 2012.

In addition, the NCC introduced the Copyright e-Registration system in 2014 to replace the analog copyright notification scheme.

Within the scope of its statutory mandates, the NCC's vision is to harness creative potential for national development. It promotes the use of the copyright system as a tool for advancing Nigeria's creative industry.

2. Structure of the Commission

The NCC has its head office in the Federal Secretariat Complex, Phase I, Annex II, Shehu Shagari Way, Maitama, Abuja. It has nine departments and four units.

3. Supervision and oversight

(a) Management

The Director General of the NCC is the Chief Executive, responsible for day-to-day administration, assisted by the heads of departments (who together make up the management board) and unit heads. State offices are headed by coordinators, who are responsible for the day-to-day management of activities within their states and are accountable to the Director General.

(b) Governing board

The Copyright Act makes provision for a governing board, whose responsibility is to supervise the management of the NCC, with powers to grant approvals for some actions in line with government rules and circulars. The composition of the board reflects both the interests of the public sector and copyright industry stakeholders, who include representatives of the major industry sectors such as literary/publishing, music and sound recording, film industry, broadcasting and the visual arts. The public sector interest is represented by Federal

Government ministries and agencies, including the ministries of education and justice, the police and the customs service, whose mandates are considered related and critical to the operations of the copyright system.

(c) Federal Ministry of Justice

The NCC is under the institutional supervision of the Attorney General of the Federation and the Minister of Justice. The Minister, under Section 51 of the Copyright Act, is empowered to give directives of a general or special character regarding any functions of the NCC. It is the NCC's duty to comply with such directives.

(d) Legislative oversight (National Assembly)

Nigeria operates a bicameral legislature (two chambers) at federal level, made up of the Senate (upper chamber) and the House of Representatives (lower chamber). Consequently, the NCC is under the legislative oversight of both houses. The Senate Committee on Judiciary, Human Rights and Legal Matters and the House Committee on Justice, on behalf of the respective arms of the National Assembly, exercise oversight functions on the Federal Ministry of Justice and, by extension, the departments and agencies (MDAs) under the Ministry, including the NCC. These oversight functions may be conducted through periodic visits and interactions with the MDAs.

B. Collective management organizations in Nigeria and their roles/functions

The entertainment (film and music) industry is the second largest non-oil sector in the country. Revenue was estimated at 5.55 billion United States dollars in 2019 and is projected to increase to \$10.8 billion by 2023. The film industry (popularly called Nollywood) is one of the priority sectors identified in Nigeria's Economic Recovery and Growth Plan. Recognized as the second largest in the world, it employs about a million people and generates more than \$7 billion for the economy.²⁰

Music revenue, however, was estimated to rise to just \$73 million in 2021, the relatively low figure compared with the scope of activity due largely to piracy. Nigeria today is undoubtedly Africa's biggest music space, but the creative community, particularly in music, film and text and images, is still struggling with piracy, whether physical or digital.

²⁰ Ibanga, Inyene. "Big data, entertainment and the digital economy In Nigeria." *Premium Times*, Mar. 2, 2021. Web. Nov. 1, 2021. <<https://www.premiumtimesng.com/opinion/446246-big-data-entertainment-and-the-digital-economy-in-nigeria-by-inyene-ibanga.html>>.

With a vibrant creative sector, huge population and dynamic marketplace, Nigeria has the potential to become Africa's biggest contributor in the field of copyright, related rights and collective management.

A year after the enactment of the first indigenous copyright law in 1970, Giwa and Atilade and Company (later Giwa and Company) was reported to have approached the Performing Right Society (PRS),²¹ requesting to represent its repertoire in Nigeria.²² Giwa and Company, who appeared to be the only domestic law firm interested in copyright, had little trouble establishing a relationship with PRS, and the principal partner, Alhaji Giwa, became its public face and champion.²³

After securing the PRS partnership in Nigeria, Giwa and Company had two tasks. First was to recruit a number of Nigerian composers as PRS members, thereby diminishing the notion that PRS's interest was entirely foreign. And second, was to begin the extensive licensing of users in Nigeria.²⁴

Giwa and Company is said to have succeeded in the first task, which was made easier as composers were informed of the possibility of earning and increasing their incomes. The second task proved more difficult, the majority of users declining to pay for copyright despite the best efforts of the agency.²⁵

The broadcasters refused to pay royalties to the Giwa Agency, even though pre-independence the old Nigerian Broadcasting Service (NBS) had paid royalties to London-based PRS. Their refusal was reportedly based on the assumption that the number of local rights owners in PRS were few compared with their foreign counterparts, and that they would rather deal with a Nigerian organization.²⁶

With the growing awareness of copyright, campaigns against piracy and the call for an independent CMO separate from Giwa and Company, on July 20, 1984, Alhaji Giwa helped

²¹ The Performing Right Society, later PRS for Music, was founded in 1914. PRS for Music is the home of the Performing Right Society (PRS) and the Mechanical-Copyright Protection Society (MCPS); see <https://www.prsformusic.com/what-we-do/prs-and-mcps>.

²² See Okoroji, Tony. "Copyright, neighbouring rights and the new millionaires (the twists and turns in Nigeria)."

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

bring about the Musical Copyright Society Nigeria Limited by Guarantee (MCSN), the country's first collective management organization for the music industry.²⁷

C. Musical Copyright Society Nigeria

The Musical Copyright Society Nigeria Limited by Guarantee (MCSN) is an incorporated collective association of authors, composers, arrangers and publishers. Before Nigeria gained independence from Britain in 1960, most composers and authors were registered with PRS and the Mechanical-Copyright Protection Society (MCPS), in the United Kingdom, which were responsible for collecting and distributing performing and mechanical rights in musical works.²⁸

In 1984, MCSN was set up to take over the responsibilities of both PRS and MCPS in Nigeria. While many Nigerian creators transferred to MCSN, others remained with PRS and MCPS. MCSN entered into reciprocal representation contracts with PRS and MCPS, under which MCSN was vested with virtually the entire repertoire of copyright music available in Nigeria.²⁹

The MCSN vision, published on its website, is to be the leading rights management society in Africa, ensuring the growth of creative enterprise, and cooperation and integration across creative disciplines. Its stated mission is to manage the intellectual property (IP) rights of members and affiliates, protect their rights adequately, and collect and distribute their fees and other economic benefits on a regular basis.³⁰

Further, MCSN said that to become the single largest owner, assignee and exclusive licensee of copyright in musical works and sound recordings in Nigeria, it not only relies on assignments and contract agreements with various composers, authors, publishers, performers and producers of music and sound recording, but also on sister organizations around the world.³¹

MCSN is also an approved CMO on the authority of the NCC as directed by the Attorney General and Minister of Justice, and as adjudicated on by the Supreme Court.³² It joined the International Confederation of Societies of Authors and Composers (CISAC) in 1986, with a

²⁷ *Ibid.*

²⁸ MCSN. "Celebrating our members." *mcsnnigeria.org*. Musical Copyright Society Nigeria. Web. Nov. 7, 2021. <<https://mcsnnigeria.org/>>.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ MCSN. "Music, the law and you." *mcsnnigeria.org*. Musical Copyright Society Nigeria. Web. Nov. 7, 2021. <<https://mcsnnigeria.org/music-the-law-you/>>.

³² *Ibid.*

CISAC registration code of 22.³³ Based on information contained in its 2019 and 2020 annual reports, the MCSN board is made up of 18 directors.³⁴

D. Copyright Society of Nigeria³⁵

Ten years after the formation of MCSN, the Performing and Mechanical Rights Society of Nigeria Limited by Guarantee (PMRS), predecessor of the Copyright Society of Nigeria (COSON), was, on December 22, 1994, approved by the NCC to act as CMO for musical works and sound recordings. Its first and only chief executive officer was Chris Ajilo, a well-known composer, producer and artist.

After several years of internal industry wrangling between artists and record label owners, and the need to close ranks for the benefit of all stakeholders, the PMRS model grouped songwriters, composers, publishers, performers and record producers into one organization.³⁶ During the establishment of PMRS and its subsequent approval by the NCC, it was not a common practice in collective management to group owners of musical works (songwriters and publishers) and sound recordings (performers and record labels) under one CMO. The common practice usually is to have a CMO dedicated to musical works and another dedicated to sound recordings. For ease of administration and more, a majority of the songwriters and performers in the 70s/80/90s have assigned whether fully or partially the rights in their musical works and sound recordings to the labels. The PMRS model therefore represented a form of compromise where these songwriters and performers can share from the royalties accruing to these works even though the labels own the copyright to the works. At the time, this appeared strange, but it worked, allowing artists and composers to earn some remuneration even when most had signed their rights to the labels and publishers in perpetuity.

As a result of the ongoing disagreements, the government began to reform the music copyright collective management environment. This gave rise to the Copyright (Collective Management Organisations) Regulations 2007, which repealed the regulations of 1993.³⁷

³³ See 2018 CISAC Members Directory Booklet

³⁴ Musical Copyright Society Nigeria (Ltd/Gte) 2021 Annual General Meeting/2019 & 2020 Annual Reports

³⁵ The subject of its approval is before the court.

³⁶ See Okoroji, Tony. "Copyright, neighbouring rights and the new millionaires (the twists and turns in Nigeria)."

³⁷ Ola, Olukunle Rotimi. "Operation and regulation of copyright collective administration in Nigeria: Important lessons for Africa." *uir.unisa.ac.za*. University of South Africa, May 31, 2012. <<https://uir.unisa.ac.za/handle/10500/7768>>.

Following the new regulations, a request for applications from interested organizations to operate CMOs was made; three were received. After due process, the Nigerian Copyright Commission (NCC) approved the Copyright Society of Nigeria (COSON) to cover rights involving music and sound recordings.³⁸ To allow for a smooth transition, PMRS and other industry associations subsumed their copyright interests under the newly formed COSON and approved the CMO.

The decision to establish COSON was a result of broad-based agreement between the owners of musical works, the users of the works and the statutory regulator, on the need for the industry to close ranks and have one formidable national CMO promoting and protecting copyright in the Nigerian music industry. The new CMO was also to ensure the rights of people from other countries with an interest in music used in Nigeria were protected.³⁹

In 2000, the existing collective management structures agreed they must be collapsed into COSON to end the schism in rights management within the music industry. But decisive action was not taken until the Nigerian Music Industry Coalition was formed in 2009, with all stakeholder groups invited to develop the architecture for collective management in Nigeria.⁴⁰

With the emergence of the coalition, the process of setting up COSON began. On September 24, it was registered with the Corporate Affairs Commission as a company limited by guarantee,⁴¹ and on May 20 the following year approved as a CMO for musical works and sound recordings.

COSON represents owners of musical works and sound recordings in the music industry. Its operating license was renewed until 2018, when the Commission, following a board dispute, suspended it. Approval is currently before the courts.

The COSON board comprises 11 copyright holders representing the different categories of right holders, namely songwriters, composers, publishers, performers (artists) and phonogram producers (record labels). COSON has a membership of 5,000 and 15 staff. It has signed

³⁸ *Ibid.*

³⁹ COSON. "How it all started." *cosonng.com*. Copyright Society of Nigeria. Web. Nov. 7, 2021. <<http://www.cosonng.com/about-us/>>.

⁴⁰ *Ibid.*

⁴¹ A company limited by guarantee is a distinct legal entity from its owners and responsible for its own debts; see <https://www.gov.uk/limited-company-formation>.

international representation agreements with several CMOs and music licensing companies (MLCs) around the world.

With regard to sound recordings, it has signed international representation agreements with the world's major labels and other MLCs, and participated in the African development initiatives of the IFPI sub-Sahara office. In respect of musical works, it has signed reciprocal representation agreements, is a member of CISAC (registration code of 268) and has participated in CISAC activities.

E. Audio Visual Rights Society of Nigeria

The Audio Visual Rights Society of Nigeria (AVRS) is the newest CMO in the country. It was approved on October 22, 2014, as the sole CMO to conduct collective management of rights in films in Nigeria. Under existing laws, it can issue licenses on behalf of copyright owners in the movie industry for public and commercial users of films, and collect royalties accruing from such licenses and pass them on to copyright owners.⁴²

The approval of AVRS as the only CMO is pursuant to the provisions of Section 39 of the Copyright Act, and the Copyright (Collective Management Organisations) Regulations 2007, with the prior consent of the Attorney General.⁴³

The AVRS vision is to facilitate a vibrant audiovisual industry in Nigeria through which right owners derive full reward from the commercial use of their works and intellectual property by others. Its mission statement is to create a durable implementation structure and deploy effective mechanisms to mitigate abuse of rights and revenue leakage.⁴⁴ The objective is to see those who invest effort, time, money and creative energy in cinematograph films enjoy returns on their labor. This will ensure the creative industry can truly grow, offering the nation's talent good recompense and employment, while the users can continue to utilize works legally, without harassment or litigation.⁴⁵

⁴² AVRS. "Activity Report 2016." Booklet

⁴³ Audio Visual Rights Society. Web. Nov. 7, 2021. <<https://www.avrsnigeria.com/?q=news/avrs-approval-public-notice-ncc>>

⁴⁴ AVRS. "Vision and mission." *avrsnigeria.com*. Audio Visual Rights Society of Nigeria. Web. Nov. 7, 2021. <<https://www.avrsnigeria.com/?q=page/vision-mission>>.

⁴⁵ AVRS. "Activity Report 2016" Booklet

AVRS is closely regulated by the government to ensure users are not exploited and that the interests of owners of copyright in cinematograph film and other related rights are not abused. It has a membership of about 1,000, comprising producers, actors, directors and screenwriters. Each of those four categories is represented on the board of 12 celebrated practitioners in the Nigerian film industry. The society has a staff of five, including a general manager.

AVRS issues audiovisual rights licenses to users, including broadcast stations, hotels and similar establishments, bus operators, restaurants, salons, lounges, supermarkets and chain retail outlets, and airlines and airport lounges. It distributed its first royalties to members in 2020.

AVRS is working to join CISAC and SCAPR, and to sign reciprocal representation agreements with sister CMOs around the world.

F. Reproduction Rights Society of Nigeria

After a copyright forum organized by the NCC passed a resolution in November 1994, the following year the Academic and Non-Fiction Authors Association of Nigeria (ANFAAN) was formed, charged with establishing a reproduction rights organization (RRO) in Nigeria. This led to the incorporation of the Reproduction Rights Society of Nigeria (REPRONIG) on December 11, 2000 as a CMO catering for authors.⁴⁶ REPRONIG represents copyright owners in literary and artistic fields, managing reproduction rights, granting licenses and distributing accrued royalties.⁴⁷

The NCC approved REPRONIG to operate as an RRO in December 2001 and it commenced full operation in 2003.⁴⁸ The initial membership was made up of the following associations representing authors and publishers in the print medium:

- Association of Nigerian Authors (ANA).
- Academic and Non-Fiction Authors Association of Nigeria (ANFAAN).
- National Association for Translators and Interpreters (NATI).
- Newspapers Proprietors' Association of Nigeria (NPAN).

⁴⁶ "Reproduction Rights Society of Nigeria – REPRONIG." Facebook. Meta, Web. Nov. 7, 2021. <<https://www.facebook.com/repronig/>>.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

- Nigerian Publishers Association (NPA).
- Photographers Association of Nigeria (PAN).
- Society of Nigerian Artists (SNA).

Representatives of the associations sit on the REPRONIG governing board, although membership is open to individual right owners. This means REPRONIG receives its mandate to function from its associations and individuals. The NCC is represented on the board as an observer.⁴⁹

The sole CMO with responsibility to negotiate on behalf of authors of literary texts and images, REPRONIG grants licenses to users on behalf of members, and collects agreed royalties and distributes them to members. For now, it is concerned with reproduction rights, including secondary use of works through photocopying, scanning and electronic storage of printed materials. Such materials, which are protected under copyright, include fiction and non-fiction books, journals, periodicals, magazines and newspapers, and works of visual art, photographs and computer programs.⁵⁰

REPRONIG will normally license all types of printed works and any reprographic reproduction that requires the prior authorization of the copyright owner, including use in educational institutions and research institutes, commercial reprographic reproduction, digitization and use in document delivery services. Businesses such as education and research centers, copy shops, corporations and document delivery services would require a license from REPRONIG.⁵¹

It is affiliated to the International Federation of Reproduction Rights Organisations (IFRRO) and has bilateral and representation agreements with several RROs in other countries, thereby giving it the legal basis for representing foreign interests in Nigeria. As collective management organizations, RROs act as intermediaries and facilitators between the right holders and those engaged in reprographic and other forms of reproduction of copyright works.⁵² IFRRO is the main international network of CMOs and creators' and publishers' associations in the text and image spheres.⁵³

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ IFRRO Membership List *ifrro.org*. Web. Nov. 7, 2021. <[https://ifrro.org/page/membership-list/#!](https://ifrro.org/page/membership-list/#!>)>

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It has 500-plus members based on the strength of the member associations, and a staff of two, including its executive director. The board has nine members. REPRONIG is the only CMO whose operational base is outside Lagos, the commercial center of Nigeria, its headquarters being based in Ibadan South-West.

Chapter I

The role of collective management organizations in copyright and related rights licensing

A. Introduction

There are three pillars to an effective copyright and related rights system. All must be present for a well-functioning copyright system. The pillars are as follows:

1. Legislation.
2. Enforcement.
3. Management.

Though the three interact to promote a successful copyright and related rights system, this report emphasizes the third.

B. The three pillars of an effective copyright and related rights system

1. Legislation

For any copyright and related rights system to function optimally, and meet the demands of stakeholders, it requires good, forward-looking copyright laws and regulations that encourage creativity and investment and do not hamper progress.

Good copyright and related rights legislation must elucidate the exclusive rights it grants to authors, and the exceptions to these rights, without ambiguity. These exclusive rights will be explained in subsequent chapters. In some cases, legislation does not always provide for exclusive rights for certain kinds of exploitations but does provide for the right to equitable remuneration. This means the right owner/holder may not be able to stop the use of their works but they will be entitled to equitable remuneration from the user.

Copyright and related rights legislation must anticipate changes occasioned by technological advancements or developments. It must provide the solid foundation on which the creative enterprise thrives. Copyright law must be constantly updated and fine-tuned to match rapid

development in technologies and new ways of exploitation – what is commonly referred to as a changing business model.

On the international scene, treaties such as those administered by the World Intellectual Property Organization (WIPO) have been developed and signed by contracting countries, providing minimum standards for copyright and related rights protection. It is anticipated that signatories will adapt treaty provisions to their specific situations. Provisions in national copyright laws are expected to be in agreement with the provisions of the treaties.

National parliaments are allowed, however, within the confines of the international treaties, to create provisions for exceptions to copyright and establish the mechanisms essential for the collective management of copyright and related rights.

Recently, the Nigerian Parliament consisting of the Upper or Red Chamber, which is commonly referred to as the Senate and the Lower or Green Chamber commonly referred to as the House of Representatives, jointly referred to as the National Assembly, having harmonized the private member bill and the executive bill, passed the bill for an Act to Repeal the Copyright Act, Cap C28, Laws of the Federation of Nigeria (LFN), 2004 and enact a new Copyright Act, 2022. This was a sequel to the passage of the Bill by the House of Representatives on Wednesday, July 27, 2022, in concurrence with the Senate, which had earlier on Wednesday, April 6, 2022, passed it. This author was privileged to take part in the public hearing leading to the passage of the Bill by the National Assembly and is confident that the President will accede to the bill before the end of the year.⁵⁴

2. Enforcement

One of the most important provisions of national copyright laws is the right granted to copyright and related right owners/holders to enforce their rights when they have been infringed, through either the court system or administrative means, such as the NCC dispute resolution panel or WIPO Mediation and Arbitration Center.

In Nigeria, the Federal High Court has exclusive jurisdiction over copyright matters, while the NCC may, through its regulations, provide an administrative mechanism to resolve copyright

⁵⁴ National Assembly Passes Copyright Bill. Web. August 21, 2022.
<https://guardian.ng/features/national-assembly-passes-copyright-bill/>

disputes. Under the Copyright (Dispute Resolution Panel) Rules 2007, which are contained in the Second Schedule of the Copyright (Collective Management Organisations) Regulations 2007, the NCC has the discretion to set up a panel for resolving disputes relating to payment of copyright royalties or terms of a license agreement.

To provide a further administrative mechanism for copyright disputes, in December 2020 a collaboration framework was established between the [NCC](#) and WIPO, with a memorandum of understanding signed to that effect. Under it, the NCC and the [WIPO Arbitration and Mediation Center](#) would work to raise awareness of alternative dispute resolution (ADR) options to court litigation.⁵⁵

The WIPO ADR mechanism, which offers timely, cost-efficient options, has resolved copyright contractual disputes over licensing agreements, content distribution agreements, broadcasting agreements and software-related agreements, among others, and non-contractual commercial disputes that may be related to copyright infringement.⁵⁶ For parties willing to take advantage of the option, WIPO has published details of how to request mediation. The process is as follows (see Annex 1):

- (a) In the absence of a mediation agreement, a party that wishes to propose submitting a dispute to mediation (unilateral [request](#)) shall
- i. complete and sign the [Request for WIPO Mediation](#);
Email the request to the WIPO Center at arbiter.mail@wipo.int, to NCC at adr@copyright.gov.ng, and to the other party
 - ii. on receipt of the request, the WIPO Center would be available to provide information on the WIPO Mediation process to the other party. Should the other party be interested in participating in the WIPO Mediation process, such party shall sign and email the request to the WIPO Center at arbiter.mail@wipo.int and the NCC at adr@copyright.gov.ng
- (b) If both parties agree to refer a dispute to WIPO Mediation (Mediation Agreement), the parties shall
- i. complete and sign the Request for WIPO Mediation
 - ii. email the request to the WIPO Center at arbiter.mail@wipo.int and the NCC at adr@copyright.gov.ng

⁵⁵ WIPO. "Mediation and Arbitration for Copyright Disputes in Nigeria." *wipo.int*. World Intellectual Property Organization. Web. Nov. 10, 2021. <<https://wipo.int/amc/en/center/specific-sectors/ipoffices/nigeria/>>.

⁵⁶ *Ibid.*

The unauthorized reproduction and distribution of works is commonly referred to as piracy or copyright infringement. To counter this threat – which has deprived creators and right owners of the opportunity to earn from their creativity and investments – a strong and considered enforcement mechanism must be put in place, backed by strict legislation.

No matter how well-crafted the law, or how good the intentions of the legal drafters, without firm and focused enforcement, no serious commercialization or monetization of copyright assets will happen. It should be the goal of right holders to ensure compliance is enforced to the letter. The court system must meet the challenge, too, applying the law when infringements are brought before it, and ensuring justice is swift. Justice delayed could be justice denied.

To further strengthen an enforcement mechanism, educating the public and stakeholders on the copyright ecosystem is paramount. Apart from collecting and distributing royalties, CMOs must pay close attention to advocacy strategy. The CMO must enlighten the public and users on the importance of copyright and their obligations to right holders. It has always been beneficial to CMOs when they can show the courts they have educated the public on copyright liabilities.

Moreover, in this part of the world, the public do not perceive piracy or copyright infringement as a serious crime, and this attitude has long encouraged a huge illegal industry, from the time of the physical recording device through to the digital era and beyond. Strong advocacy and enforcement cannot be underestimated, or overlooked.

3. Management

Under most national laws, copyright and related rights can be managed individually or collectively, depending on several factors.

C. Individual management vs. collective management

Whether for authors, songwriters, performers, music publishers, record labels, producers or book publishers, copyright law grants the owners of copyright in literary works, musical works, sound recordings and cinematograph films certain exclusive rights to exploit their works to the exclusion of others, or to authorize others to do same. For music and cinematograph films, copyright law also grants certain exclusive rights to owners of related or neighboring rights in jurisdictions where such rights are recognized.

The exclusive nature of copyright and related rights means only the owner is in a position to determine who exploits their works, and under what condition(s) this can take place. It allows the owner to individually manage, control and monitor the exploitation and distribution of their works. Rights owners may believe the ideal situation would be for individuals to administer their rights themselves. This is possible, and may be preferable, in situations where the licensing negotiation is with a user or a limited number of users. This is commonly referred to as individual rights management.

Examples of where individual rights management might work without burden on the copyright owner include licensing musical works or sound recordings for synchronization or transcription rights (music in adverts played on the radio), or a movie producer licensing a television broadcaster. Such situations would involve the copyright owner and the user, which may be a television production company, games company, advertising company or even an education center. This type of negotiation is usually straightforward.

Ficsor captured this model of rights management thus:

“It goes without saying that an exclusive right may be enjoyed, to the fullest possible extent, if it is exercised individually by the owner of the right himself. In such a case, the owner maintains control over the exploitation and dissemination of his work, he can personally decide under what conditions, and against what kind of remuneration, his work may be used, and he may more or less closely monitor whether his moral and economic rights are duly respected. However, this is only completely true if individual owners of rights- such as authors- exercise their rights directly.”⁵⁷

However, in cases where many works are used by a large number of users in far-flung places, the copyright owner’s ability to negotiate, manage, control and monitor their use, as exclusively granted by law, is made difficult, impracticable and often impossible. If the copyright owner had to run around authorizing or licensing their works – together with numerous other works exploited in distant or remote places and on different platforms – they would fail in their ‘duty of creating’, which is writing, performing and producing beautiful content for their own benefit and that of the society.

⁵⁷ Ficsor, Mihály. “Collective Management of Copyright and Related Rights.” *wipo.int*. World Intellectual Property Organization, 2002.
<https://www.wipo.int/edocs/pubdocs/en/copyright/855/wipo_pub_855.pdf>.

It is because of these difficulties in individual right management that copyright owners in the classes of works eligible for protection (literary, musical, sound recordings and cinematograph film) came together to form collective management organizations (CMOs) that would administer the rights on their behalf.

The collective management system was established to facilitate the negotiation and collection of license fees from diverse users across geographical locations on behalf of copyright owners. This saved on transactional costs and provided the owners with an efficient system for managing their copyrights, and made it easy for the users to access and use works without fear of infringement. Collective management was established to complement individual right management, not compete with it, and is most suitable for low-value uses of copyright works and when there is a large number of users. The model is justified where individual right management is difficult, impracticable or impossible.

An example of where collective management is required is where a copyright owner would have to license the 600-plus broadcast stations in Nigeria, the 100,000 or so hotels and similar establishments, and the hundreds of thousands of pubs, restaurants, event centers, copy shops, institutions of higher learning and other places where photocopying, public performance of music and audiovisual works take place almost on a daily basis. No matter how resourceful you are as a copyright owner, you might not be able to deal with the situation on an individual right management basis. You need the help and expertise of an intermediary and a specialized organization, and that is where CMOs step in to perform the role for the benefit of copyright holders, the user public and society.

Collective management complements individual right management and helps reduce transaction costs, thereby serving both the copyright owners' interests and that of the public. The copyright owners receive remuneration or compensation for the exploitation of their works while the users have legal access and authorization to use these works without fear of getting into trouble.

D. What then is collective management?

To answer the question, we review definitions offered by experts in the field.

Gervais describes collective management as:

“licensing (the contractual grant of authorisation to use work protected by copyright where such is not otherwise allowed by an applicable exception or limitation) performed by a CMO on behalf of a plurality of rights holders.”⁵⁸

Ficsor, meanwhile, said that collective management:

“only refers to those forms of joint exercise of rights where there are truly ‘collectivized’ aspects (such as tariffs, licensing conditions and distribution rules); where there is an organized community behind it; where the management is carried out on behalf of such a community; and where the organization serves collective objectives beyond merely carrying out the tasks of rights management (this is typical in the case of the management of the rights of authors and performers).”⁵⁹

Hooijer states collective management is:

“the exercise of copyright and neighbouring rights by organizations acting in the interest and on behalf of a class of owners of rights.”⁶⁰

It is because of the difficulties encountered in individual right management that copyright owners in different jurisdictions have come together to establish CMOs to manage their copyrights and related rights. A CMO is undoubtedly the most cost-effective way to administer the interactions of a multitude of copyright owners and various classes of users who might require copyright licenses for their businesses.

In defining collective management organizations, Hooijer said:

“As important links between rights owners and consumers of copyright and neighbouring rights works as they ensure that the owners of rights receive payment for the use of their works.”⁶¹

Article 3(a) of Directive 2014/26/EU of the European Parliament and of the Council of 26 February, 2014, on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, defined collective management organization to mean,

“any organisation which is authorized by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those right holders,

⁵⁸ Gervais, Daniel J. ed. *Collective Management of Copyright and Related Rights*, 2016. 3rd edition. Netherlands: Kluwer Law International, 2016.

⁵⁹ Ficsor, Mihály. “Collective Management of Copyright and Related Rights.” *wipo.int*. World Intellectual Property Organization, 2002.
<https://www.wipo.int/edocs/pubdocs/en/copyright/855/wipo_pub_855.pdf>.

⁶⁰ Hooijer, R. and J.J. Baloyi. “Collective Management Organizations: Tool kit - Neighboring rights.” *wipo.int*. World Intellectual Property Organization, Feb. 2016.

<https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_2.pdf>.

⁶¹ *Ibid*.

as its sole or main purpose, and which fulfils one or both of the following criteria: (i) it is owned or controlled by its members; (ii) it is organised on a not-for-profit basis”.⁶²

The Copyright Act defines a CMO as,

“an association of copyright owners which has as its principal objectives the negotiating and granting of licences, collecting and distributing of royalties in respect of copyright works”.⁶³

For a CMO to carry out its mandate as a facilitator, the copyright owners assign or exclusively license some of the rights in their works to management. By assigning such rights, the owner is authorizing the CMO, on their behalf, to negotiate, license and collect copyright fees from users, and distribute them to the owner after deducting its own administrative fees. Assignment from the copyright owner also authorizes the CMO to monitor the use of the works, and where necessary, sue on behalf of the owner.

There is another type of organization that performs joint licensing but it is referred to as a rights clearance organization. Ficsor described these organizations thus:

“Those which perform joint exercise of rights without any real collectivized elements in the system; simply a single source is offered for users to obtain authorization and pay for it; the remuneration may be – and quite frequently is – individualized, and what is involved may not be characterized as ‘distribution’ but rather transfer to each owner of rights of what is owed to him (this is typical in the case of rights owned by producers and publishers).”⁶⁴

There is a further type of body provided for in Directive 2014/26/EU. Known as an independent management entity (IME), Article 3(b) defines it as,

“any organisation which is authorized by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those right holders, as its sole or main purpose, and which is: (i) neither owned nor controlled, directly or indirectly, wholly or in part, by right holders; and (ii) organized on a for-profit basis”.⁶⁵

While both the CMO model and the IME concept under Directive 2014/26/EU have as their main purpose the management of copyright or related rights on behalf of more than one right holder, for the collective benefit of those right holders, they differ in their ownership structures.

⁶² EUR-Lex. “Document 32014L0026”. *eur-lex.europa.eu*. European Union. Feb. 26, 2014. <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0026>>.

⁶³ See the Copyright Act Cap C28 LFN of 2004.

⁶⁴ Ficsor, Mihály. “Collective Management of Copyright and Related Rights.” *wipo.int*. World International Property Organization, 2002. <https://www.wipo.int/edocs/pubdocs/en/copyright/855/wipo_pub_855.pdf>.

⁶⁵ EUR-Lex. “Document 32014L0026.” *eur-lex.europa.eu*. European Union. Feb. 26, 2014. <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0026>>.

The CMO is owned or controlled by its members and/or set up as a not-for-profit organization, but the IME is neither owned nor controlled, directly or indirectly, wholly or in part, by right holders, and is organized on a for-profit basis.

Although the structure, practice and scope of right representation may differ from country to country, the collective management system is a trend throughout the world.

E. Role of copyright collective management organizations

Collective management of copyright and related rights serves two primary purposes. First, it enables copyright owners to manage certain of their exclusive rights and rights of equitable remuneration by cutting down on administration costs, and get a fair return on their work. Secondly, it provides a service to rights users by facilitating ready access to and licensing of copyright works in a cost-effectively.⁶⁶

Imagine a situation where there is no music on your mobile phone, no music in your car as you drive to work, no music on radio or television, no movies in hotel rooms or lounges, no music in nightclubs, restaurants or beer parlors, or in gyms, no music or movies in airplanes on long-haul flights. What kind of world would that be?

Creators of music and movies and those in the collective management system make sure we never have a world without music or movies by making them easy to access, and ensure those who create such works receive appropriate compensation. With this system, creativity is encouraged and our world is a better place.

Right holders, no matter how effective they may be, do not have the capacity to monitor and license the use of their works by many users in far-flung places. The role of CMOs is appreciated in such situations, and in those where licensing by authors and right holders, or individual management, becomes almost impossible or impracticable due to the high volume of works/use involved. Right holders require the assistance of a third party set up for the purpose of providing licensing services at scale.

⁶⁶ CISAC, The Role of Collective Management Organisations, *cisac.org*, 2022
<https://www.cisac.org/sites/main/files/files/2020-11/CISACUniversity_The_Role_of_CMOs_FINAL.pdf>

CMOs are created as associations of copyright owners who have assigned their rights for management or administration. With such representations, CMOs can license their repertoire to users of music and audiovisual and literary works, collect the agreed fees and distribute the same in the form of royalties to their deserving right owners or members.

F. Nigeria Collective Management Legal Framework

The CMO model is determined by a country's legal or legislative framework. The framework, in Nigeria's case, the Copyright Act and the Copyright (Collective Management Organisations) Regulations 2007, lays the ground rules on how CMO's operate. Such rules could include but are not limited to the following:

- type of company with reference to registration at the Corporate Affairs Commission (limited liability company or limited by guarantee);
- nature of CMO (for profit or not-for-profit);
- type of CMO (sole/multiple);
- conditions for approval of CMO;
- principal activities of CMO;
- CMO area of activity (musical work, sound recording, cinematograph film, literary work);
- types of rights managed or administered by CMO;
- type of CMO membership;
- method of acquiring copyright from the right owners/holders;
- method of licensing;
- method of distribution; and
- type of governance structure.

Section 39 of the Copyright Act, and Section 88 of the proposed Copyright Bill 2021 are outlined here.

Section 39 of the Copyright Act: Collecting society

(1) A collecting society (in this section referred to as a Society) may be formed in respect of any one or more rights of copyright owners for the benefit of such owners, and the Society may apply to the NCC for approval to operate as a collecting society for the purpose of this Act.

(2) The Commission (NCC) may approve a Society if it is satisfied that:

The role of collective management organizations in copyright and related rights licensing

- a. it is incorporated as a company limited by guarantee;
- b. 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;
- c. it represents a substantial number of owners of copyright in any category of works protected by this Act; in this paragraph of this subsection, owners of copyright includes owners of performer's rights; and
- d. it complies with the terms and conditions prescribed by regulations made by the Commission under this section.

(3) The Commission shall not approve another Society in respect of any class of copyright owners if it is satisfied that an existing approved society adequately protects the interests of that class of copyright owners.

(4) It shall be unlawful for any group of persons to purport to perform the duties of a Society without the approval of the Commission as required under this section.

(5) Any person who contravenes the provisions of subsection (4) of this section shall be guilty of an offence and liable on conviction to a fine of ₦1,000 on the first conviction and for any other subsequent conviction to a fine of ₦2,000 or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(6) Where the contravention is by a body corporate, it shall be guilty of an offence and liable on conviction to a fine of ₦10,000 on the first conviction and ₦2,000 for each day on which the offence continues.

(7) The Commission shall have power to make regulations specifying the conditions necessary to give effect to the purposes of this section of this Act.

(8) For the purposes of this section, collecting society means an association of copyright owners, which has as its principal objectives the negotiating and granting of licenses, collecting and distributing of royalties in respect of copyright works; group of persons includes a body corporate.

(9) The Commission may, where it finds it expedient, assist in establishing a collecting society for any class of copyright owners.

Section 88 of proposed Copyright Bill, 2021: Collective Management Organizations

(1) A Collective Management Organization (in this section referred to as a CMO) formed by rights owners may apply to the Commission (NCC) for approval to operate in respect of any one or more categories of works.

(2) The Commission may approve a CMO, if it is satisfied that

- a. it is incorporated as a company limited by guarantee;

- b. its objects are to negotiate, grant copyright licenses, collect royalties on behalf of copyright owners and distribute such royalties;
- c. it represents a substantial number of owners of copyright in any category of works protected by this Act; and
- d. it complies with the terms and conditions prescribed by regulations made by the Commission under this Act.

(3) The Commission shall not approve another CMO in respect of any category of copyright works if it is satisfied that an existing approved CMO adequately protects the interests of copyright owners in that category of works.

(4) It shall be unlawful for any person or group of persons, however described, to purport to perform the duties of a CMO without the approval of the Commission as required under this Act.

(5) Any person who contravenes the provisions of subsection (4) of this section shall be guilty of an offence and liable on conviction in the case of

- a. an individual, to a fine of not less than ₦1,000,000.00 or to imprisonment for a term of not less than five years or to both; and
- b. a body corporate, to a fine of not less than ₦5,000,000.00.

(6) The Commission may make regulations specifying the conditions necessary to give effect to the purposes of this section.

(7) For the purposes of this section Collective Management Organization means an organization representing copyright owners, which has as its principal objectives the negotiating and granting of licenses, collecting and distributing of royalties in respect of copyright works; group of persons includes a body corporate or entity; owners of copyright includes owners of performer's rights;

(8) The Commission may, where it finds it expedient, assist in the establishment of a CMO for any category of copyright works.

(9) Notwithstanding the provisions of this Act or any other law, a CMO may issue licenses permitting the use of works of owners of copyright who are not members of the CMO, provided that

- a. such works are of the same category as works for which it is approved to issue licenses;
- b. the owners of copyright in such works are not otherwise represented by any other CMO;
- c. there is not more than one CMO approved to operate in the particular category of works concerned;

- d. the owner of copyright in such works has not by written notice to the CMO, opted out of collective management of their rights; and
- e. the CMO does not discriminate against such owner in terms of the tariffs for the use of their works and the royalties paid to such owner.

Section 88 of the proposed Copyright Bill, 2021 is almost the same as the Copyright Act's Section 39. However, there are a few differences or additions, as follows:

- replaces collecting society with collective management organization;
- increases the penalty for any person/group of persons who perform the function of a CMO without the approval of the Commission; and
- introduces a new paragraph suggesting some form of extended copyright licensing.

Based on the powers granted under Section 39(7) of the Copyright Act, the NCC made the Copyright (Collective Management Organisations) Regulations 2007, expanding how organizations interested in performing the role of CMO make applications and conduct their affairs. The regulations have 23 sections, or paragraphs, divided into four chapters, and mostly deal with topics such as granting licenses to CMOs, membership and management of CMOs, licensing and distribution of copyright royalties, and more generally how they are expected to conduct their affairs and relate to members, licensees and the regulator.

The Copyright Act provides for a CMO to be formed in respect of any one or more rights of copyrights owners, for the benefit of such owners, and to apply to the Commission for approval to operate.⁶⁷ For example, in the music industry, CMOs mainly license the broadcast and public or commercial performance of non-dramatic music works, and what is commonly referred to as small rights on behalf of their members, the copyright owners. CMOs are *de facto* (and sometimes *de jure*) monopolies and creations of national legislations, set up as not-for-profit organizations.⁶⁸ For a CMO to operate in Nigeria, it has to be registered as a company limited by guarantee and approved by the NCC.

In the music publishing industry, such organizations are usually referred to as authors' societies, or performing or mechanical rights organizations (PROs/MROs), representing the copyright interests of authors, composers and publishers, while in the recording industry, such organizations are referred to as music licensing companies (MLCs), representing the copyright

⁶⁷ See Section 39(1) of the Copyright Act Cap C28 LFN of 2004.

⁶⁸ Gervais, Daniel J. ed. *Collective Management of Copyright and Related Rights*, 2016. 3rd edition. Netherlands: Kluwer Law International, 2016.

and related right interests of performers and phonogram producers and in the text and image based industries, such organizations are referred to as reproduction rights organizations (RROs), representing the interests of authors and book publishers.

The collective management system can be implemented in a number of the creative industries.

1. Musical works, sound recordings and neighboring rights

In some jurisdictions, rights in musical works and sound recordings are managed separately; for example, in the United Kingdom, PRS for Music manages the rights of authors, composers and publishers, while PPL UK (Phonographic Performance Limited) manages the rights of performers (artists) and phonogram producers. In other jurisdictions, these works are managed jointly; for example, in Nigeria and Ghana, COSON, MCSN and Ghana Music Rights Organization (GHAMRO) manage the rights both in musical works and sound recordings on behalf of their members.

In South Africa, the Southern African Music Rights Organisation (SAMRO) manages the performing rights in musical works, the Composers, Authors and Publishers Association (CAPASSO) the mechanical rights in musical works, and the South African Music Performance Rights Association (SAMPRA) the performers and phonogram producers' rights in sound recordings.

The Music Copyright Society of Kenya (MCSK) manages the performing and mechanical rights in musical works, the Performers Rights Society of Kenya (PRISK) the performers rights in sound recordings and Kenya Association of Music Producers (KAMP) the phonogram producers' rights in sound recordings.

2. Film and audiovisual

An example of a CMO in Nigeria's film and audiovisual sector is AVRS, while in Ghana it is the Audiovisual Rights Society of Ghana (ARSOG). There are few audiovisual rights societies in Africa compared with music CMOs.

3. Print and publishing

In Nigeria, the sole reproduction rights society for print and publishing is REPRONIG. A CMO is not yet established in the visual arts and photography dramatic works.

Despite important differences, there are basic economic functions that unite CMOs. Indeed, the three basic features of collective management are the same the world over, and for all rights. A CMO must

1. acquire the ability to license from a plurality of rights holders, or some other authority to get paid;
2. find a way to offer a license or other rights to users, and this necessarily includes negotiating or setting prices; and
3. obtain usage data or other data from users for the purposes of distribution.⁶⁹

G. History of collective management organizations

According to CISAC University, the “story of collective administration of rights in creative works began in France in the eighteenth century”. The CISAC article said:

“On 3rd July 1777, famous author Beaumarchais called together a group of 22 other authors to formulate a response to the under-remunerated use of their works by the Théâtre-Français. A number of the authors present on that distant summer’s evening, including Beaumarchais himself, had previously complained in writing about their treatment at the hands of the powerful theatrical institution. In the case of Beaumarchais, the complaint centred on the poor remuneration he received from the Comédie Française for the use of his play ‘Le Barbier de Séville’. Although not immediately successful, action by the group of authors – supported in no small part by Beaumarchais’ strong political connections – did eventually lead to change. In 1791 France passed the first law on authors’ rights. After a struggle lasting fourteen years, authors obtained the vote on the law of 13th January 1791, ratified on 19th January 1791 by Louis XVI, which recognised the concept of authors’ rights for the first time anywhere in the world. The year 1829 saw the creation of the Society of Dramatic Authors and Composers (SACD) combining two earlier societies created in 1791 and 1798 respectively.”

On the establishment of a music CMO still around today, the article had the following:

“In 1847 the French composer, Ernest Bourget, visited Les Ambassadeurs, a Paris café where live music was being performed. When he heard some of his own compositions being played, he was naturally angry that his permission for their use had not been sought and that he was not being paid either (while he, of course, had to pay the restaurant for his dinner). Subsequently, together with a lyrics writer, Paul Henrion, and a publisher, Victor Parizot, he brought an action against the owner of the café, asking the court to either forbid the performance of their works in the café or to hold that they, the creators of the works, should be paid for every performance of their works. The court found in their favour and, following appeal decisions in 1848 and 1849 upholding the original verdict, the principle was established that authors and composers had a performing right in their works which entitled them to be paid whenever and wherever their works were performed in public. Acknowledging that in

⁶⁹ Gervais, Daniel J. “The Landscape of Collective Management Schemes.” *Columbia Journal of Law and the Arts*. 34.4 (2011).

practice it was difficult to monitor and enforce the performing right on an individual basis, the authors and composers of France set up SACEM two years later.

“A parallel story had Bourget sitting down at a different establishment, the Café Morel, intending to enjoy refreshment. The fact that he was not in the mood for an alcoholic beverage and preferred instead a soberer ‘eau sucrée’ was meant with blunt refusal by a server. In turning down his order, she was, however, merely applying the café’s policy of discouraging customers from choosing drinks that would ‘deceive the corkscrew’. Water with a lump of sugar in it would certainly have been less profitable for this establishment than a bottle of fragrant Burgundy or even a ‘carafe’ of ordinary Cote du Rhone. Bourget was not to be intimidated. He left the café both thirsty and angry and immediately plotted a retaliatory move.

“The café owners were soon served with a take-it-or-leave-it ‘offer’. They were to either pay Bourget 10 francs for each of the musical performances based on his work and put up by artists on the café stage (mostly ‘scenes comiques’ and ‘chansonnettes’), or they were to cease immediately to have those works performed.

“Discovering for the first time that an alarming number of such performances were based on the works of their irate customer, the owners nevertheless turned down the ultimatum, arguing such performances were in themselves of direct benefit to its author as they helped connect him with his public; two tribunal hearings promptly followed, and the Court d’Appel de Paris finally settled the matter decisively in favour of Bourget in April 1849.

“A court battle that had started with sharp words over an order of sugary water had considerable legal and economic implications for French authors of music, music theatre and lyrics. The principle of a right to public performance of such works was now established and the positive economic fallout needed managing.

“The enterprising Bourget promptly founded the Agence et Compositeurs de Musique. A year later, in 1851, the organization became the Société des Auteurs, Compositeurs & Editeurs de Musique (SACEM), the world’s oldest authors’ society for the rights of authors of music and the French law of 1791 was finally enforced.”⁷⁰

As national precedents for protecting creators’ works rose sharply in the mid-nineteenth century, so did the momentum for an international agreement. In 1886, in the Swiss capital, the Berne Convention for the Protection of Literary and Artistic Works was signed. For the first time under international law, rights of public performance for authors and composers, along with a number of other basic rights, were recognized as a principal feature of the protection to be granted to all authors.

It would take a further 75 years for an international convention for performers and producers to be established. The Rome Convention secures protection in performances for performers,

⁷⁰ Albinsson, Staffan. “A costly glass of water: The Bourget vs. Morel case in Parisian courts 1847–1849.” *researchgate.net*. Jan. 2014.
<https://www.researchgate.net/publication/338690186_A_Costly_Glass_of_Water_The_Bourget_v_Morel_Case_in_Parisian_Courts_1847-1849>.

in phonograms for producers of phonograms and in broadcasts for broadcasting organizations.⁷¹

But as CMOs flourished in their own States, the need for international cooperation and harmonization became apparent.⁷² This led to the founding in France in 1926 of Confédération Internationale des Sociétés d'Auteurs et Compositeurs (International Confederation of Societies of Authors and Composers, or CISAC) by 18 authors' societies mainly representing the dramatic arts from 18 European countries. Today, the membership extends to 231 author societies (CMOs) in 120 countries, spread across all geographic regions and artistic repertoires, including music, audiovisual, drama, literature and visual arts.⁷³

CISAC protects the rights and promotes the interests of its 4 million creators worldwide. It enables CMOs to represent creators globally and ensure that royalties flow for the use of their works anywhere in the world.⁷⁴

In 1933, the International Federation of Phonographic Industries (IFPI) was formed, representing the interests of the recording industry worldwide. The IFPI lobbied at the [Rome Convention](#) of 1961, which instituted an international standard for the protection of sound recordings, live performances and broadcasts.⁷⁵ IFPI represents the recording industry worldwide; there are some 8,000 members across IFPI and its national group network.

The Societies' Council for the Collective Management of Performers' Rights (SCAPR), founded in 1986,⁷⁶ is the international organization that groups management companies of performing artists' neighboring rights. SCAPR's mission is to agree standards and best practices for affiliated societies and improve the efficiency of rights management and the conclusion of bilateral agreements.⁷⁷

⁷¹ WIPO. "Summary of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961)." *wipo.int*. World Intellectual Property Organization. Web. Nov. 1, 2021. <https://www.wipo.int/treaties/en/ip/rome/summary_rome.html>.

⁷² Gervais, Daniel J. ed. *Collective Management of Copyright and Related Rights*, 2016. 3rd edition. Netherlands: Kluwer Law International, 2016.

⁷³ CISAC. "Serving creators worldwide". *cisac.org*. Web. Nov. 1, 2021. <<https://www.cisac.org>>.

⁷⁴ *Ibid.*

⁷⁵ "International Federation of the Phonographic Industry." *en.wikipedia.org*. Wikipedia. Web. Nov. 1, 2021. <https://en.wikipedia.org/wiki/International_Federation_of_the_Phonographic_Industry#cite_note-12>.

⁷⁶ SCAPR. "About us." *scapr.org*. Societies' Council for the Collective Management of Performers' Rights. Web. Nov. 1, 2021. <<https://www.scapr.org/about-us/>>.

⁷⁷ *Ibid.*

A not-for-profit organization based in Brussels, it operates as a platform for the development of practical cooperation between performers' CMOs, seeking to advance the exchange of data and performers' rights payments across borders.⁷⁸ Currently, SCAPR has 56 members from 41 countries.⁷⁹

The International Federation of Reproduction Rights Organisations (IFRRO) began in 1980 as a working group of the Copyright Committee of the International Publishers Association and the International Group of Scientific, Technical and Medical Publishers (STM).⁸⁰ An independent non-profit membership association, it facilitates the collective management of reproduction and other rights in text and image works through the cooperation of its member reproduction rights organizations (RROs). IFRRO's mission is to develop and promote effective collective rights management to ensure the copyrights of authors and publishers are valued through the lawful and remunerated use of text and image-based works.⁸¹

IFRRO has more than 150 members, drawn from more than 85 countries, representing millions of authors and visual artists, and publishers of books, journals, newspapers, magazines and printed music.⁸² As part of international networking, CMOs across different classes of work collaborate with sister CMOs from other territories through a bilateral arrangement known as a reciprocal representation agreement. This allows a CMO in a class of work in a particular territory to represent all works and rights in the repertoire of another CMO in its territory, and vice versa. Under this arrangement, CMOs are able to represent a worldwide repertoire in their individual territories, making it easy for them to license local and international stock.

COSON, MCSN and REPRONIG all have such relationships within the network of these international organizations. AVRS, the newest of the right management organizations, is still working on such reciprocal partnerships.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ IFRRO. "IFRRO history." *ifrrro.org*. International Federation of Reproduction Rights Organisations. Web. Nov. 1, 2021. <<https://ifrrro.org/page/history/>>.

⁸¹ IFRRO. "What is IFRRO." *ifrrro.org*. International Federation of Reproduction Rights Organisations. Web. Nov. 1, 2021. <<https://ifrrro.org/page/what-is-ifrrro/>>.

⁸² *Ibid.*

H. History of collective management in Africa

The collective management system in Africa is a recent initiative compared with Europe, though prior to the establishment of national CMOs, some form of collective management activities did exist. This was via PRS and SACEM covering countries under British and French colonial rule.

Of the many African countries who gained independence from Britain and France in the 1960s and 1970s, some began to enact laws that would see them set up national CMOs. According to Ola, in his 2012 dissertation *Operation and regulation of copyright collective administration in Nigeria*:

“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 structure free from colonial supervision, the direct control and administration of Copyright and related rights by PRS had to give way to some other structure.”⁸³

In 2016, Baloyi and Pistorius said:

“Some of the first CMOs to be formed were SAMRO in South Africa (1962); SACERAU in Egypt (1965); BMDA in Morocco (1965); DALRO in South Africa (1967); BUMDA in Mali (1978). Nevertheless, because of its fairly recent development, exacerbated by the general conditions of under-development in Africa, collective management in Africa is not yet functioning at its optimal best and many of the CMOs need on-going technical assistance.”⁸⁴

Table 1: African CISAC member CMOs and their territories

Serial Number	Names of CMOs	Country
1.	BBDA	Burkina Faso
2.	BCDA	Congo
3.	BGDA	Guinea
4.	BMDA	Morocco
5.	BUBEDRA	Benin
6.	BUMDA	Mali

⁸³ Ola, Olukunle Rotimi. “Operation and regulation of copyright collective administration in Nigeria: Important lessons for Africa.” *uir.unisa.ac.za*. University of South Africa, May 31, 2012. <<https://uir.unisa.ac.za/handle/10500/7768>>.

⁸⁴ Baloyi, J. Joel, and Tana Pistorius. “Collective management in Africa” in *Collective Management of Copyright and Related Rights*, Daniel J. Gervais. ed. 3rd edition. Netherlands: Kluwer Law International, 2016.

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7.	BURIDA	Côte d'Ivoire
8.	BUTODRA	Togo
9.	CAPASSO	South Africa
10.	CMC	Cameroon
11.	COSBOTS	BOTSWANA
12.	COSOMA	Malawi
13.	COSOTA	United Republic of Tanzania
14.	COSOZA	Zanzibar
15.	GHAMRO	Ghana
16.	MASA	Mauritius
17.	MCSK	Kenya
18.	MCSN	Nigeria
19.	NASCAM	Namibia
20.	OMDA	Madagascar
21.	ONDA	Algeria
22.	OTDAV	Tunisia
23.	RSAU	Rwanda
24.	SACERAU	Egypt
25.	SACS	Seychelles
26.	SAMRO	South Africa
27.	SCM-COOPERATIVA	Cape Verde
28.	SOCILADRA	Cameroon
29.	SODAV	Senegal
30.	UNAC-SA	Angola
31.	UPRS	Uganda
32.	ZAMPCOPS	Zambia
33.	ZIMURA	Zimbabwe

Source: <https://members.cisac.org/CisacPortal/annuaire.do?method=membersDirectoryList&by=directory&domain=&alpha=&rme=>

Table 2: African IFPI members and their territories

S/N	Names of members	Countries
1.	Alam el Phan	Egypt
2.	Digital Media Production	Democratic Republic of the Congo
3.	Mazzika Group	Egypt

4.	Premier Records	Nigeria
5.	Universal Music Group	South Africa
6.	Sony Music Entertainment Africa	South Africa
7.	Warner Music South Africa	South Africa

Source: <https://www.ifpi.org/members/our-members/>

Table 3: African SCAPR members and their territories

S/N	Names of members	Countries
1.	SAMPRA	South Africa

Source: <https://www.scapr.org/our-ordinary-and-associate-members/>

Table 4: African IFRRO members and their territories

S/N	Names of members	Countries
1.	BBDA	Burkina Faso
2.	BURIDA	Côte d'Ivoire
3.	CopyGhana	Ghana
4.	COSBOTS	Botswana
5.	COSOMA	Malawi
6.	COSOTA	United Republic of Tanzania
7.	COSOZA	Zanzibar
8.	DALRO	South Africa
9.	KOPIKEN	Kenya
10.	MASA	Mauritius
11.	ONDA	Algeria
12.	REPRONIG	Nigeria
13.	SOCILADRA	Cameroon
14.	SODAV	Senegal
15.	URRO	Uganda
16.	ZARRSO	Zambia

Source: <https://ifrro.org/page/membership-list/#/>

I. Collective management model in Nigeria

For an organization to be approved as a CMO in Nigeria, it must be registered as a company limited by guarantee following the consent of the Attorney General and Minister of Justice. After registration, the organization applies for approval by the NCC.

It must operate as a not-for-profit organization, though it is allowed to deduct a certain percentage from collections as an administrative fee. The fee approved by the NCC is a maximum of 30 per cent; the regulations provide that the CMO “may withhold from the amount collected or received by it such deductions necessary to cover any expenditure incurred in the fulfillment of its functions and the amount so deductible will be within the limits to be decided by the Governing Board subject to a maximum limit of 30 per cent of the total royalties and fees collected during the year in which the deductions are made”.⁸⁵

Though not expressly provided for in the 2007 CMO copyright regulations, the expectation is that administrative fees will gradually drop as licensing improves, revenue increases and administration costs fall.

In Nigeria, CMOs are, in effect, *de facto* monopolies. At times, however, the music sector has had two CMOs holding mandates from right holders in musical works and sound recordings, licensed by the NCC.

The relationship between a CMO and its right holders is critical for issuing licenses to users. In most cases, CMOs take full assignment from members regarding the acquisition of rights and membership. A CMO's activities are, therefore, based on mandates received from its members and affiliates, which are on a voluntary basis.

The law allows right holders the freedom to be a part of a CMO in their professional field, or to manage their rights individually, thereby defining the scope of their mandates. In this case, the right holders may authorize a CMO to manage those rights that may appear difficult or impracticable to manage individually, but the CMO's deeds of assignment require interested right holders to fully assign those works and rights.

⁸⁵ See Section 11(1) of the Copyright (Collective Management Organisations) Regulations of 2007.

For the duration of the mandate granted by right holders, the CMO becomes the owner, assignee and exclusive licensee of the works and rights assigned, and is empowered to develop tariffs and issue licenses on behalf of the right holders. The right holders may even be precluded from licensing the same rights that the CMO has been mandated to license.

As a general rule, CMOs apply a blanket licensing system, authorizing users to make use of their entire repertoire, thereby cutting down on negotiation costs and any fear of infringing owner's rights. It is the most practical way of dealing with rights exploitations in the marketplace. The blanket license must not be prohibitive and discourage users from buying in. The CMO must always give room for negotiation.

To help track works represented by CMOs, COSON and MCSN have a system that allows them to effectively monitor the use of their repertoire by broadcast stations.

J. Summary of Chapter I

1. There are three pillars of an effective copyright and related rights system, namely:
 - Legislation.
 - Enforcement.
 - Management.
2. Copyright and related rights can be managed either individually by owners, who the Copyright Act, in the first instance, has granted exclusive rights to manage, control and monitor the use of their works, or collectively, through a system known as collective management. These are organizations of copyright owners who have as their principal objective the negotiating and granting of copyright licenses, and the collecting and distributing of royalties in respect of those works.
3. The collective management of copyright and related rights serves two primary purposes, which are:
 - first, it enables copyright and related rights owners to effectively administer certain of their exclusive rights and rights of equitable remuneration by cutting down on administration costs to obtain a fair return for their work; and
 - second, it provides a service to rights users by facilitating access to and licensing of copyright works, in a cost-effective way.

4. Regarding the legal framework in Nigeria, Section 29 of the Copyright Act and the Copyright (Collective Management Organisations) Regulations 2007 laid the ground rules on how CMOs are required to operate.
5. CMOs in Nigeria are private companies registered as not-for-profit organizations but regulated by the NCC. They are mostly monopolistic in nature.
6. The collective management system in Nigeria is implemented in the following areas of the creative industries:
 - musical works, sound recordings and neighboring (related) rights;
 - film and audiovisual works; and
 - print and publishing.
7. The 1886 Berne Convention for the Protection of Literary and Artistic Works, and later, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations in 1961, opened the floodgates for international cooperation and collaboration between CMOs.
8. Following the application of the Berne and Rome conventions, and as CMOs flourished in their own States, the need for international cooperation and harmonization became apparent. These developments brought into being several international federations, including:
 - Confédération Internationale des Sociétés d'Auteurs et Compositeurs (International Confederation of Societies of Authors and Composers, or CISAC) in 1926.
 - International Federation of Phonographic Industries (IFPI) in 1933, representing the interests of the recording industry worldwide.
 - Societies' Council for the Collective Management of Performers' Rights (SCAPR) in 1986.
 - International Federation of Reproduction Rights Organisations (IFRRO) in 1980.
9. The first CMOs to be established in Africa were:
 - SAMRO in South Africa (1962).
 - SACERAU in Egypt (1965).
 - BMDA in Morocco (1965).
 - DALRO in South Africa (1967).
 - BUMDA in Mali (1978).

10. Following the call for an independent Nigerian CMO, the Musical Copyright Society Nigeria Limited by Guarantee (MCSN) was incorporated on July 20, 1984, the first CMO in Nigeria.

Chapter II

Licensing tariff structures and scenarios

A. Introduction

The concept of licensing copyright works is based on the fact copyright is intellectual property, and therefore an intangible asset. And as such, it can be transferred, assigned or licensed. What this means is that the ownership of copyright can change, temporarily or permanently.

Before copyright is transferred, assigned or licensed, it must belong to someone, who may be referred to as the initial or first owner. The Copyright Act provides that copyright will vest initially in the author, and in the case of a sound recording of a musical work this may include an artist and/or a performer.⁸⁶

Copyright and related rights, as stated earlier, grant several exclusive or monopoly rights to its owner or holder, which means any or all of the exclusive rights can be licensed. In Nigeria, the exclusive rights granted by the Copyright Act to copyright owners in literary or musical work, cinematograph film and sound recording are outlined here for ease of reference.

In a literary or musical work, the author is granted the following exclusive rights:

- i. reproduce the work in any material form;
- ii. publish the work;
- iii. perform the work in public;
- iv. produce, reproduce, perform or publish any translation of the work;
- v. make any cinematograph film or a record in respect of the work;
- vi. distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement;
- vii. broadcast or communicate the work to the public by a loudspeaker or any other similar device;
- viii. make any adaptation of the work; and
- ix. in relation to a translation or adaptation of the work, do any of the acts specified in relation to the work in subparagraphs i to vii.⁸⁷

⁸⁶ See sections 2, 3 and 51 of the Copyright Act Cap C28 LFN of 2004.

⁸⁷ See Section 6(a) of the Copyright Act Cap C28 LFN of 2004.

In an artistic work, the author is granted the following exclusive rights:

- i. reproduce the work in any material form;
- ii. publish the work;
- iii. include the work in any cinematograph film;
- iv. make any adaptation of the work; and
- v. in relation to an adaptation of the work, do any of the acts specified in relation to the work in subparagraphs i to iii.⁸⁸

In cinematograph film, the author is granted the following exclusive rights:

- i. make a copy of the film;
- ii. cause the film, in so far as it consists of visual images, to be seen in public, and in so far as it consists of sounds, to be heard in public;
- iii. make any record embodying the recording in any part of the soundtrack associated with the film by utilizing such soundtrack; and
- iv. distribute to the public, for commercial purposes, copies of the work by way of rental, lease, hire, loan or similar arrangement.⁸⁹

In copyright in a sound recording, the author is granted the following exclusive rights:

- a. the direct or indirect reproduction, broadcasting or communication to the public of the whole or a substantial part of the recording, either in its original form or in any form recognizably derived from the original; and
- b. the distribution to the public, for commercial purposes, of copies of the work by way of rental, lease, hire, loan or similar arrangement.⁹⁰

In neighboring or related rights, which are a performer's rights

1. A performer will have the exclusive right to control, in relation to his performance, the following acts:
 - a. performing;
 - b. recording;
 - c. broadcasting live;
 - d. reproducing in any material form; and

⁸⁸ See Section 6(b) of the Copyright Act Cap C28 LFN of 2004.

⁸⁹ See Section 6(c) of the Copyright Act Cap C28 LFN of 2004.

⁹⁰ See Section 7(1) of the Copyright Act Cap C28 LFN of 2004.

- e. adaptation of the performance.⁹¹
- 2. Under the related rights section, performance according to the Copyright Act includes:
 - a. dramatic performance (includes dance and mime);
 - b. musical performance; and
 - c. reading or recitation of literary act or any similar presentation, which is, or so far as it is, a live performance given by one or more individuals.⁹²

Copyright and related rights are first and foremost a bundle or basket of economic rights; the right holders, apart from enjoying the art of creating and producing, must feed themselves, pay bills and meet other obligations.

In the previous chapter, we established that individual management of copyright and related rights may not always be straightforward or realistic. And we showed that in some situations, holders of copyright and related rights may be unable to contact, monitor, negotiate and license the 600-plus broadcast stations, 170 universities (leaving aside the polytechnics and colleges of education), and hundreds of thousands of hotels, restaurants, clubs and event centers scattered across the length and breadth of the country.

Lowe and Koskinen-Olsson captured the reality like this:

“Enormous amounts of copyright-protected works are used every year. To take only two examples: broadcasters play music for about 80 per cent of their airtime, and universities and other educational establishments consume hundreds of millions of pages of protected works in their activities.”⁹³

We also established it is not practicable or possible for users of creative content to contact, negotiate and acquire copyright licenses from every composer, artist, producer, publisher or record label for the use of each copyright holder’s individual work and rights. These difficulties grow exponentially when works are exploited globally.

To resolve what appears to be a difficult task for both right holders and users, we have determined that the copyright law of many countries, Nigeria included, makes provision for a

⁹¹ See Section 26(1) of the Copyright Act Cap C28 LFN of 2004.

⁹² See Section 26(2) of the Copyright Act Cap C28 LFN of 2004.

⁹³ Lowe, Nicholas and Tarja Koskinen-Olsson. “Educational Material on Collective Management of Copyright and Related Rights: Module 1 – General Aspects of Collective Management.” *wipo.int*. World Intellectual Property Organization, Aug. 31, 2016. <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2014_1.pdf>.

collective management system that serves as an intermediary between copyright holders and users. This helps copyright holders communicate their works to the public while users have legal access to them. Copyright holders are then able to receive remuneration for the exploitation of their works.

Over time, the collective management system has proved to be a better solution for managing certain types of exclusive rights, allowing copyright holders to focus on what they know best, which is creating or producing.

Kohn captured the need to compensate right holders in this manner:

“If authors were not compensated by the use of others of the works they create, few authors could afford to devote sufficient efforts to fully exercise their talents. By providing a means by which talented authors can earn a living by creating works of authorship, more works of authorship by a greater number of people, regardless of their economic background will be created.”⁹⁴

B. Deriving income from copyright and related rights

The Copyright Act provides for two basic ways right holders may earn income from their works, which are:

1. assignment; and
2. licensing.

One way, CMOs have chosen to act as intermediaries between right holders and users is through the mechanism of licensing. Central to the critical functions carried out by CMOs (monitoring the use of works by users, negotiating with users/their associations, collecting fees for works used, distributing royalties to members whose works have been used) is the licensing of works in exchange for payment. This is the function that allows right holders to earn income, or what is commonly referred to as a royalty.

C. What then is licensing?

A license apropos copyright and related rights is a permission, authorization or consent given by the copyright owner to another person to exercise the rights. The owner of the copyright or

⁹⁴ Kohn, Al, and Bob Kohn. *Kohn on Music Licensing*. 4th ed. Wolters Kluwer Law and Business, 2009.

related rights is known as the licensor, the beneficiary as the licensee.⁹⁵ A license is a permission to exercise a privilege. It does not transfer ownership.

There are two types of licensing, as follows:

1. An exclusive license, which authorizes the licensee to exercise the specified rights to the exclusion of every other person, including the owner of the copyright. In Nigeria, it must be in writing.⁹⁶
2. A non-exclusive license, which is a permission, authorization or consent given by a licensor to another person to exercise any or all of the rights conferred on the licensor, but at the same time the licensor, or anyone permitted by them, is free to exploit the same rights. A non-exclusive license does not create a monopoly. It may be written or oral, or inferred by conduct.⁹⁷

In the business of collective management, therefore, copyright licensing is the granting or issuing of non-exclusive copyright licenses to users to exploit the works and rights in the repertoire of the CMOs, based on the terms and conditions contained in a licensing agreement.

CMOs are able to license and enter into licensing agreements with users on the strength of the mandates they have received from their members and affiliates. Without these mandates to manage the works and rights, there would be no basis for negotiating licensing arrangements. A license agreement would usually specify the scope of the license, which may include:

- works and rights (repertoire) of the CMO issuing or granting the license;
- user or beneficiary of the license;
- purposes of usage;
- terms and conditions under which the work(s) will be used; and
- how the usage data will be reported and at what intervals submitted to the CMO.⁹⁸

⁹⁵ Okoroji, Tony, "Copyright, neighbouring rights and the new millionaires (the twists and turns in Nigeria).", Tops Limited, 2008

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Lowe, Nicholas and Tarja Koskinen-Olsson. "Educational Material on Collective Management of Copyright and Related Rights: Module 1 – General Aspects of Collective Management." *wipo.int*. World Intellectual Property Organization, Aug. 31, 2016.

The license granted by CMOs to users could either be a blanket license or a transactional license, depending on the licensing situation.

A blanket license allows a user to use or exploit all the works in the CMO repertoire, within the boundaries of a licensing agreement. Also referred to as a comprehensive licensing, it is the type of license a CMO would normally grant to mass users, such as a broadcaster or hotel or educational institution.⁹⁹

A transactional license, also called work-by-work licensing, grants a user a permission to use certain defined works. The method is often used in targeted areas; for instance, in certain digital licensing areas or television reality shows.¹⁰⁰

Every CMO license agreement contains a set of standard terms and conditions that define how the work should be exploited within the period of the license. The terms commonly used in a copyright licensing agreement are outlined below.

1. Definition

The definition of key licensing words or terms in a copyright licensing agreement are important in communicating and conveying the meaning and accuracy of the words used. For example, for a text and image CMO, the following definitions are important for the licensor and licensee:

- Academic year is calendar year.
- Authorized purposes are the educational purposes of the licensee, including study, research and use in the course of educational instruction.
- Bibliographic details in respect of a copyright work are
 - name of author;
 - title;
 - publisher;
 - place and date of publication;
 - ISBN/ISSN or other identifying number;
 - first page copied;
 - last page copied; and
 - total number of pages copied.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

- Copy and copying are
 - reproduction by authorized persons by reprographic process of copyright material to create course material;
 - distribution and making available of such reprographic copies to authorized persons and to students (enrolled in the paper for which the course material is prepared) in 1. hard copy, and 2. electronically in digital form by means of a secure system;
 - electronic or digital storage of such reprographic copies by the licensee; and
 - accessing of such reprographic copies in digital form by authorized persons and by students (enrolled in the paper for which the course material is prepared).
- Course material is a course pack or any other material (some may be subject to copyright) reproduced in multiple form and prepared by or for a department or staff member of a licensee for distribution to students enrolled on a course of instruction, or paper taught by that licensee, or made available for such students.
- EFTS is one equivalent full-time student enrolled with the licensee in an academic year.
- Enrolled number of EFTSs means the total number of EFTSs enrolled with the licensee in an academic year, as recorded with the Ministry of Education.¹⁰¹

2. Customer Capacity

Customer capacity is the maximum number of people who could, under normal circumstances, be accommodated in a room. The term is common among music and audiovisual CMOs.

3. Seating Capacity

All seats/chairs in the waiting areas or other public rooms where music is audible is the seating capacity. This term is also common among music and audiovisual CMOs.

4. Gross Revenue/Income

Gross revenue/income/receipts is the total amount paid for a service by a customer or subscriber.

¹⁰¹ University Pilot Copyright Licensing Agreement between Copyright Licensing Limited and University of Waikato, New Zealand for the period 2015 to 2016.

5. Shop Space

Shop space is the whole area, from wall to wall, of the whole of that part of the premises where the public is admitted and in which the music is audible, with no allowances made for space occupied by novelty machines, counters, shelves or display fixtures.

6. Public performance

This is a commonly misunderstood term in a music and audiovisual CMO licensing agreement. When CMOs demand the payment of 'public performance' fees from users, say for the performance of music or audiovisual works in their facilities, operators of these facilities are quick to defend the non-performance of music or audiovisual works; according to them, "we don't have a band that performs music in our facility". Most users also do not appreciate the difference between a performance in private or public. A performance in private forms a part of the domestic or home life of the person/s who arrange/provide the performance; a performance in public forms part of the non-domestic life of the person/s who arrange/provide the performance.

A definition of a public performance, therefore, includes any musical or audiovisual works played outside a normal circle of friends and family. A public performance also occurs when music is transmitted to the public via radio, television broadcasts, digital service providers (DSPs) and any other means.¹⁰²

7. Cost of living adjustment

The rates of charge are related to the Consumer Price Index (CPI) as published by the Nigerian National Bureau of Statistics. They are subject to a surcharge or discount in respect of changes in the weighted average figure of the index, such a surcharge or discount taking effect from the month following that in which the index is published.

8. Caution

This term applies only to the use of work covered by a license from the CMO, obtained before use commences. Any use not so covered will be assessed at a premium to the normal term.

¹⁰² BMI. "What is a public performance of music and what is the 'performing right'?" *bmi.com*. Broadcast Music, Inc. Web. Nov. 3, 2021. <https://www.bmi.com/faq/entry/what_is_a_public_performance_of_music_and_what_is_the_performing_right1>.

9. Disclaimers

The CMO is not bound to offer a license under a particular tariff in respect of any use for which an application was not made in advance.

A CMO has the right to make any variations it considers appropriate when licensing premises, platforms or performances that, in its opinion, do not fall within the scope of a particular tariff.

D. Standard terms and conditions in a licensing agreement

The following is an example of what is included in the standard terms and conditions of a licensing agreement:

1. The licensee will furnish the CMO with such information, as the CMO will, from time to time, require, enabling the CMO to calculate the fees payable in accordance with published tariffs.
2. The license fee payable is subject to value added tax (VAT) at the current rate. All fees apply on an annual basis.
3. If the premises or platform is used for any activities different in number or type from those for which the license has been granted, the license will not extend to or be deemed to authorize such different use, unless the appropriate fee is paid.
4. Without the express written consent of the CMO, the licensee may not assign this license agreement, unless the assignment takes place as part of a business transfer where all material assets of the licensee are transferred to a third party.
5. All rights not specifically and expressly documented to the licensee by the license agreement are reserved to the CMO.
6. For premises that allow the performance of music or movies, the CMO, by its authorized official, will be allowed free entry for the purpose of checking the particulars on which the fee under the license is assessed, as well as compliance with terms and conditions of the license. For DSPs, the tendency is to grant CMOs back-end access to view and receive live reporting.
7. Should the CMO find it necessary to resort to legal proceedings against the licensee as a result of failure to comply with the obligations imposed by the license agreement, the licensee shall be liable for all costs arising from such legal proceedings, as well as the brief fee.
8. If the licensee should fail to comply with any of the terms or conditions of the agreement, or to make any payment provided for in a license, on a specified day or

thereafter within reasonable days, as defined by the CMO from the date of any demand for payment or compliance, the CMO may, notwithstanding anything previously expressed to the contrary, terminate the license by written notice sent to the licensee. The license will terminate, save the right of the CMO to recover any monies due.

E. Tariff-setting principles

The Copyright Act grants authors and right holders the right to negotiate tariffs and collect the revenue generated from the exploitation of their works. The legal position in Nigeria regarding licenses and tariffs is that rights are transferable at rates determined by the right holders. Just as in dealing with physical property, individual owners are at liberty to determine the rates for use of their intellectual property.¹⁰³

However, within the collective management system, CMOs are responsible for developing and setting tariffs.¹⁰⁴ Determining tariffs that are appropriate, fair and justifiable for the different bundle of rights it manages, and for the different levels of users, is one of a CMO's most challenging tasks.

Tariffs imply commerce, money and value. Absolute care must be taken to develop ones that are not constantly challenged by users in court or at tribunals, defeating the purpose of using tariffs as an instrument of wealth creation for copyright holders. Tariffs must adequately reflect market conditions while ensuring proper and fair remuneration for rights holders.¹⁰⁵

In setting tariffs, CMOs must consider legal, economic, political and market factors. Tariffs are not arrived at carelessly. They require analysis and best practice, given repertoires represented by CMOs have an economic and monetary value. In a sense, a repertoire is a tradable asset.

When CMOs fail to use reliable and credible methods, they end up creating tariffs that cannot be implemented, are open to different interpretation and highly contestable. WIPO, in

¹⁰³ Ige, Justin. "Building a Future Proof African Direct Licensing Platform". November 2021

¹⁰⁴ See Section 14 of the Copyright (Collective Management Organisations) Regulations of 2007.

¹⁰⁵ Hooijer, Robert, and J. Joel Baloyi. "Collective Management Organizations: Tool Kit – Neighboring Rights." *wipo.int*. World Intellectual Property Organization, Feb. 2016.
<https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_2.pdf>.

paragraph 8.3.1 of its *Good Practice Toolkit for Collective Management Organizations*, captures it thus:

“A key principle when a CMO sets tariffs (sometimes known as ‘licensing schemes’) is that their criteria should be clear, objective and reasonable. The price of the license issued should be fair and equitable.”¹⁰⁶

The toolkit recommends a CMO backs its tariff proposals with independent research on the economic value of the rights in relevant markets. It also advises that when assessing the fair value of a CMO’s license, all aspects of the transaction be taken into account, including the value of the rights, and how collective licensing benefits users by reducing the number of licensing transactions they have to make.¹⁰⁷

Attaching value to copyright works is an important consideration in the development of tariffs.

The importance of developing tariffs for the different exploitation that happens in the licensing marketplace cannot be overemphasized. Tariffs are a tool that CMOs use to communicate the value of the copyright works they represent or manage.

Tariffs are standard charges or rates that users must pay to CMOs to use copyrighted works in their facility or business.

CMOs must draw up a tariff based on the work, right and usage. The business regulations that apply to CMOs in Nigeria mandate the following regarding tariff development:

1. A CMO will make available to users, on non-discriminatory terms, the complete repertoire of works in respect of which it is representing the right owners.
2. A CMO will draw up a tariff in respect of the remuneration it demands for the use of copyright works it administers.
3. In setting the tariff, a society may have regard to
 - the monetary advantage obtained from the exploitation;
 - the value of the copyright material;
 - the purpose for which, and context in which, the copyright material is used;
 - the manner or kind of use of the copyright material;
 - the proportion of the utilization of a work in the context of exploitation;

¹⁰⁶ WIPO. “Good Practice Toolkit for Collective Management Organizations (The Toolkit): A Bridge between Rightholders and Users.” *wipo.int*. World Intellectual Property Organization, Sept. 15, 2021. Web. Nov. 9, 2021. <<https://www.wipo.int/publications/en/series/index.jsp?id=180>>.

¹⁰⁷ *Ibid*.

- any relevant decision of the court or the dispute resolution panel; and
 - any other relevant matter.
4. A CMO may enter into an agreement with representative trade associations concerning the use of its repertoire by members of such associations.
 5. A CMO will notify the NCC of any tariff scale accepted under an agreement referred to in subparagraph 4 above.

F. Considerations for developing tariffs

How the CMO is set up and what it is licensed or approved to do regarding the management of works and rights within its repertoire will have an influence on tariff levels. CMOs in Nigeria are private companies registered as not-for-profit organizations but regulated by the NCC. They are mostly monopolistic in nature except in the music industry, where there are two organizations.

Though it regulates the activities of CMOs, the NCC does not set their tariffs. However, under the regulations, where there is any alteration in adopted tariffs, the CMO must notify the NCC within 30 days.¹⁰⁸ Where there is a dispute between a CMO and a user over tariffs, the regulations provide that it should be referred to the NCC, which may set up a dispute resolution panel.¹⁰⁹

In developing tariffs, a number of elements must be considered.

1. Legal form of CMO

In most cases, CMOs are not-for-profit organizations. Their legal forms can be private, public, statute regulated or a department of government.

Their legal form influences how tariffs are developed, whether pre-approved or through negotiations or statute. In Nigeria, CMO tariffs can also be determined through the dispute resolution panel or litigation after negotiations have failed.

¹⁰⁸ See Section 8(1)(b) of the Copyright (Collective Management Organisations) Regulations of 2007.

¹⁰⁹ *Ibid.*

2. Types of works

CMOs can also be single-work or multi-work organizations. A CMO can be set up to manage different works – literary works, musical works, sound recordings and audiovisual works – under one roof, or to manage works separately.

In Nigeria, standard practice is that CMOs are approved and operate along the classes of work eligible for copyright protection. The type of works determines how a CMO develops its tariffs. For example, while a music CMO would develop tariffs for both radio and television stations, an audiovisual CMO would focus its efforts on tariffs for work on television. In the same way, multi-work CMOs will develop tariffs for the different classes of work they manage.

It is likely that the more works covered and licensed by a CMO, the greater the revenue. For example, a CMO that licenses musical works, sound recordings and audiovisual works (music videos) will generate higher revenue than a single works CMO.

3. Types of Rights

As with works, the type of rights assigned to a CMO for management will determine its tariff levels. Based on the assigned rights and NCC regulation, music CMOs in Nigeria may manage one or more of the following rights:

- reproduction (mechanical) rights;
- public performance rights;
- broadcast rights;
- communication to the public;
- making available (not currently provided for in the Copyright Act);
- making any cinematograph film or a record in respect of the work; and
- making any adaptation of the work.

Basically, a music CMO may be entrusted with managing mechanical (reproduction) rights and performing rights, which include public performance rights, broadcast rights (terrestrial and satellite), cable retransmission and communication to the public, and sometimes also the making available right, for literary and musical works, audiovisual works and sound recordings.

Mechanical rights can either be implicated in a physical reproduction of works, which is fast disappearing, or in digital downloads, and to an extent, streaming services. An understanding of these dynamics is important in developing tariffs.

In the past, music CMOs licensed some synchronization rights (use of musical work and/or sound recordings in advertisement/commercials, television/movie productions and games) and transcription rights (use of music in radio advertisements/commercials), which are types of mechanical right. International practice is that right holders, whether publishers or record labels, largely license these rights directly and on an individual basis. In some dispensations, however, CMOs are mandated to license them on a transactional as opposed to a blanket basis.

Thus, the scope of the rights licensed by CMOs determines how the rates are set.

In the case of an audiovisual CMO – AVRS, for example – members will usually grant the following rights, as reflected in the CMO's deed of assignment:

- right to reproduce the work in any material form;
- right to display or perform the work in public;
- right to broadcast or communicate the work to the public; and
- right to make any adaption of the work.

While it is fairly straightforward for a CMO such as AVRS to develop tariffs and issue licenses for the public performance and/or communication to the public of its repertoire, getting broadcasters to pay copyright royalties has been a challenge, as many claimed to have received authorization from producers, who, according to the Copyright Act, are regarded as authors of cinematograph films. However, based on AVRS distribution rules, the fees from its licensing activities have been designed to accommodate all categories of its membership; directors, actors and screenwriters receive some form of remuneration, including the producers who may have authorized the broadcasters as copyright owners. Even though the rights are still owned by the producers, they have agreed to share the income from licensing carried out by AVRS with other right holders.

REPRONIG manages secondary use of copyright works, which is exploited when photocopying and digital downloads of text and images are carried out. The right implicated

when these activities take place is the reproduction right. This affects how REPRONIG, for instance, will set its tariffs.

Typical tariff structures for reproduction rights organizations (RROs) are based on price per page, or price per student/employee. Tariffs normally differ depending on the user category, such as education, public administration or businesses.¹¹⁰

4. Advancement in technologies and changing business models

Developments in new technologies have brought about change in the business models of CMOs, impacting the levels of tariffs and how they are determined.

In the old-school analog environment, CMOs, particularly music CMOs, created tariffs for both the exploitation of musical works and sound recordings; in today's digital world this is no longer the practice. It is now the norm for record labels, or even artists, to themselves grant master right and sound recording right licenses to DSPs such as Boomplay, uduX, Jumamo, Audiomack, Apple and Spotify, while CMOs continue to develop and implement tariffs for the underlining musical works.

Based on the business models below, music CMOs determine the type of rights involved in these exploitations, and what type of tariffs will be deployed in licensing them:

- Transactional video on demand (TVOD): gives viewers the option to watch content live, download to own (DTO) or download to rent (DTR) for a one-time fee.
- Subscription-based video on demand (SVOD): viewers are charged a recurring fee in exchange for unlimited access to content. Services offer catalogs of videos as part of a flat-rate subscription plan.
- Advertising-based video on demand (AVOD): viewers are allowed to watch content without purchasing individual videos or a membership/subscription; they must simply watch a short ad.
- Hybrid: combination of the above service options.

¹¹⁰ Koskinen-Olsson, Tarja. *Collective Management in Reprography*. World Intellectual Property Organization and International Federation of Reproduction Rights Organisations, 2005.

The rise of video on-demand and subscription-based platforms in the film industry has impacted how tariffs are set. To deal with this new area of exploitation, AVRS has created tariffs based on the type of exploitation:

- **SVOD:** this subscription-based model works like the traditional pay-TV packages, DStv or StarTimes. It charges users a monthly or yearly subscription fee for unlimited access to an entire library of movies, series, television shows and podcasts. Examples of SVOD services include Netflix and Showmax.
- **AVOD:** viewers pay with their eyeballs or attention. This model includes free content funded by ads. Much like in television broadcast, 10 per cent of revenue comes from selling ads on videos. An example of an AVOD platform is YouTube.
- **TVOD:** also known as pay-per-view (PPV), the model sells or rents individual videos to customers, just like movie stores did in the analog era. It is a good model for copyright holders who may want to sell specific sets of movies, such as the rights to latest movies. An example is Amazon Prime Video. The TVOD model is divided into two categories
 - electronic sell-through (EST), where users pay once to have permanent access to movie content; and
 - download to rent (DTR), where users pay a lower fee to access movie content for a limited period.
- **Premium video on demand (PVOD):** type of TVOD where users pay to access movie content before other users. Allows certain subscribers to be the first to watch a movie before release to the general public. The model was popularized during the Covid-19 restrictions, as people globally were locked down at home. Has become an alternative to attending movie premiers.

5. Ownership of rights

How a CMO deals with rights ownership will determine how it sets its tariffs. As discussed, copyright ownership can change hands. This may create new owners, rights in the works and user markets.

Authorship can be extended to a person(s) who is not the original creator of a work; for example, copyright in musical works and sound recordings (they co-exist and also have

specific individual rights), adapting a book into a film, or transferring ownership such as in the case of a composer to a publisher.¹¹¹

When you make a sound recording of a musical work, a new work and rights are automatically created, as well as new markets and tariffs to capture this new reality.

In the same manner, when a movie is adapted from a book, or a game from a movie, new works, rights and user markets are created, which means new tariffs must be developed to address the changed situation. Tariffs are set either through:

1. Direct negotiations between users (or their representatives or associations) and CMOs, which is the practice in Nigeria.
2. By a third party when users and CMOs cannot agree on a price or rate. In Nigeria, the third party is referred to as a dispute resolution panel, which is set up by the NCC.¹¹² To the best of the writer's knowledge, the panel has been used once, in COSON v. StarTimes when it found in favor of COSON. By law, this is subject to judicial review by either party, which StarTimes has taken advantage of and the matter is before a Federal High Court, Lagos.
3. Litigation. Where 1 and 2 fail, either party can take the matter to court. This option has been used by COSON and MCSN. Recently, AVRS used litigation, initiating proceedings against two hotels that refused to take up a copyright license. The matters are pending. The courts can also set a tariff between disputing parties, which would be the CMO and user.

6. Blank tape levy (private copy levy)

With the advent of new technologies, most people no longer get their music, movies or other copyright protected works by buying CDs, DVDs or even physical books. They obtain them via the Internet or through other digitally enabled means. Downloads of creative contents by the public might sometimes be illegal, without the consent of the copyright owners, denying them significant revenue.

¹¹¹ Hooijer, Robert, and J. Joel Baloyi. "Collective Management Organizations: Tool Kit – Musical Works and Audio-visual Works." *wipo.int*. World Intellectual Property Organization, Feb. 2016. <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_1.pdf>.

¹¹² See Paragraph 15(1) of the Copyright (Collective Management Organisations) Regulations of 2007.

To compensate owners, in many countries a small levy is charged on the devices and gadgets employed for the unauthorized use of copyrighted works. The money collected from the levy on devices such as MP3s, MP4s, mobile phones, memory cards, flash drives, computer hard drives and photocopy equipment is paid through the collective management system to the artists, writers and producers whose music, movies and books have been stolen.

Hence, the private copy levy is a copyright royalty that compensates authors, songwriters, composers, music publishers, recording artists, record labels, filmmakers, actors and book publishers for private copies made of their works. It is applied to the kinds of media that are ordinarily used for private copying. It is not a tax but a remuneration to right holders to make amends for massive copying in circumstances that may not allow for direct licensing. The private copy levy is earned income for rights holders and helps them continue creating copyright works.

The Copyright Act provides for this, recompensing copyright holders for the supposed harm they suffer as a result of private copying of their works on material, equipment and devices such as CDs, DVDs, memory cards, flash drives, laptops, printers, scanners, photocopying and printing papers, radio/television sets enabling recording, hard drives, mobile phones and recorders, or anything that can potentially be used to make copies of works.

The Order-Levy on Copyright Material to activate the private copy levy scheme was published in the *Federal Republic of Nigeria Official Gazette* on December 26, 2012, in line with the provisions of Section 40 of the Copyright Act. The media that the levy applies to, and the tariffs charged, are set in the order, made by the Attorney General and Minister of Justice.

In line with subsection 3 of Section 40, the collected levy will be paid to the NCC. It will disburse the funds collected from manufacturers and importers among CMOs, in accordance with NCC regulations. And when activated, it will become an important source of income for Nigeria's creative industries. It should be noted that the NCC and various creative industry groups have over the past nine years made stringent efforts to engage with the Ministry of Finance to activate the levy, with little success.

Following the issuance of the order in 2012, the NCC, at the instigation of the then Minister of Finance, conducted several consultations and sensitization programs for stakeholders, including the Manufacturers Association of Nigeria and the Importers Association of Nigeria. It was welcomed by participants, who acknowledged the proposed benefits. In 2013, a

benchmark study visit by Nigerian officials to Ghana – one country that has successfully applied the scheme – was undertaken to facilitate the adoption of practical implementation modalities for Nigeria.

The NCC had continued to collaborate with stakeholders towards implementing the order, and there are indications this will soon commence.

In April 2021, at the invitation of the Presidential Revenue Monitoring and Reconciliation Committee (PRM&RC), the body that advises on any levies or charges to be collected, Dr. John Asein, the Director General of the NCC, gave a presentation on the Copyright (Levy on Materials) Order 2012. The objective was to provide information on the order and its revenue potential. Following this, the PRM&RC also noted the benefits of the levy scheme, particularly in the creative sector, and directed the NCC to work with the Nigeria Customs Service on methods of implementing the order. To ensure, the activation of the Order, a technical implementation committee was set up, which committee comprised of all government agencies with a role in the process, including the Ministry of Finance, Nigeria Customs Service, Federal Inland Revenue Service, Office of the Auditor General of the Federation and the NCC.

Several items listed in the schedule of the copyright levy order have become obsolete due to technology advances, and may not yield much. A review of the order is likely to bring it in line with current realities.

G. Different rights, different tariffs: how are license fees determined?

Having looked at the considerations for determining tariffs, and the different types of rights that the Copyright Act grants to owners of literary, artistic and musical works, cinematograph film and sound recordings, we will examine how different tariffs are set based on the scope of mandates (local and international), the exploitation of the works and the rights implicated in those exploitations.

Many criteria can be taken into account in setting a tariff that best reflects the use or exploitation of a copyright work. The scope of each exploitation requiring a specific license is determined, and the nature of all the exploitations, to avoid failing to capture a use (referred to as off-radar use) within the licensing scheme. CMOs must ensure that all use of works it administers is licensed. The CMO has, therefore, to define a best method to determine tariffs for such exploitations.

In developing tariffs, the CMO must show they are reasonable under the circumstances, which is why tariff-setting requires a careful and methodological approach. For transparency and to be acceptable to users, tariffs should be based on objective and non-discriminatory parameters.

Determining the cost of a copyright work license may depend on the following factors:

- the nature and extent to which the copyright work is used, and how many people are exposed to its usage or exploitation;
- the purpose of the use or exploitation;
- the value of the copyright work to the trade or business (what is the monetary advantage obtained from the use of the work);
- the type of facilities or premises where the work is used or exploited (what is their size or capacity);
- the type of trade or business; and
- any other relevant information or data that may assist the CMO in determining the particular use.

The NCC regulates tariffs. Where there is a disagreement between the CMO and a user, the user can request the NCC set up a tariff dispute resolution panel as provided under the Copyright (Collective Management Organisations) Regulations 2007.

In setting tariffs, the CMO must thoroughly consider the above factors in order to place the correct value on the use of copyright works. It will breed discontent if, for instance, a CMO bills a hotel using less music or audiovisual works for more than a broadcaster whose business is dependent on the transmission of music and audiovisual works.

For a CMO, the key objective is to ensure that tariffs for the public or commercial use of copyright works are fair to both right holders and their customers.

To help resolve this challenge, Hooijer and Baloyi said:

“In determining the value to be attached to a particular usage of rights (and thus what the applicable tariff is), it is often important to do so using a hierarchy of value attribution/allocation.”¹¹³

¹¹³ Hooijer, Robert, and J. Joel Baloyi. “Collective Management Organizations: Tool Kit – Musical Works and Audio-visual Works.” *wipo.int*. World Intellectual Property Organization, Feb. 2016. <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_1.pdf>.

Hooijer and Baloyi further broke down the hierarchy of value allocation (see table 5).

Table 5: Hierarchy of Value Allocation

Business	Rights	Operations	Allocation of value
Essential use	Featured use	Copyright work intensive	Highest value
Necessary use	Semi use	Copyright work plays a general/secondary role	Moderate value
Incidental use	Background use	Copyright work is used occasionally	Lower value

Source: Hooijer and Baloyi, 2016.

In discussing copyright license fees, and the collection and distribution of royalties, the following must be considered:

1. Copyright royalty is not a token to appease the right holders or the CMO but a legally required compensation for the use of the works.
2. As a legal duty, payment of a copyright license fee is a cost of doing business and does not arise after profit has been made.
3. There is a cost associated with collecting, managing and distributing copyright license fees and any tariff that cannot absorb this cost and leave reasonable distributable income is not in the interest of the right holders.
4. While there might be significant variations in tariffs between CMOs in different territories having reciprocal representation agreements, these ought not to be such that one country is seen as cheating right owners from another country. This is contrary to national treatment obligations under the copyright conventions.

Based on tariffs sourced directly from CMOs or their websites, the different exploitations, rights involved in the exploitations and the tariffs addressing such usage will be examined.

1. Photocopying in universities, polytechnics, education colleges and research institutes

If there is a place where copyright infringement should never happen, it is tertiary and research institutions. Citadels of learning, they are expected to set an example. This, however, is not

the case. Scattered within these institutions are various photocopying centers, reproducing works unhindered by institution authorities or copyright licenses from a CMO. The Internet has contributed to this unlawful exploitation of text and images by allowing digital downloads on the premises.

The common excuse for this massive copying is always the non-availability of books, and where they are available, by exorbitant prices. It is surprising that lecturers, many of whom are also authors and possibly beneficiaries of a proper licensing scheme, remain undisturbed.

According to a 2009 study by REPRONIG, an undergraduate in Nigeria's tertiary institutions makes an average 1,516 photocopies from books and copyright-protected materials in one school session.¹¹⁴ With the enrolment of more than three million students every year, this amounts to some 4.5 billion photocopied pages.¹¹⁵

Photocopying is defined as making a copy or duplicate or a replica through a photographic means. The description helps a CMO define that the right involved in photocopy is a reproduction right requiring a reproduction license.

To ensure authors and publishers are well remunerated, REPRONIG has developed a tariff structure that enables it to license such institutions. It set a benchmark of ₦500 per student per session. This was agreed by the National Working Group on Copyright Licensing in Tertiary Institutions, which was established in 2017 and comprised of REPRONIG, the Association of Vice Chancellors of Nigerian Universities, the National Universities Commission, and stakeholders in the literary and artistic field.

2. Photocopy and business centers

Photocopy centers are not the easiest of places to license due to their unstructured nature. Little wonder, then, that REPRONIG is yet to start any proper licensing of use in this area. Adopting a funnel approach, its focus is on educational institutions, which is understandable given it may take more resources to license photocopy centers than institutions, or public and research libraries.

¹¹⁴ A session is one academic calendar year in most Nigerian higher institutions, made up of two semesters.

¹¹⁵ Edukugho, Emmanuel. "Nigeria: Varsity students photocopy 4.5 billion pages of books yearly – study." *Vanguard*, April 30, 2009. Web. Nov. 18, 2021. <<https://allafrica.com/stories/200904300593.html>>.

When setting tariffs for the reproduction that takes place in photocopy centers, the CMO must first determine the center's location; those in a more commercial environment are expected to pay more than those in a less commercial environment.

To license such centers, and since no students or employees are associated with the physical act of photocopying, the tariff structure will be based on price per page

3. Broadcast of musical works, sound recordings and audiovisual works

The broadcasting industry's lack of conviction in taking responsibility for copyright license fees for the broadcast of musical works, sound recordings and audiovisual works is one of the challenges CMOs in Nigeria have had to contend with over the years.

For some four decades, the music industry has sought to resolve the problem with the Nigerian broadcasting industry but with little success. For instance, one dispute, between COSON and the broadcast industry in 2013, is now part of Nigerian mythology. In it, COSON sued nine broadcast stations, while the stations, under the banner of Independent Broadcast Association of Nigeria (IBAN) and aligned with Broadcasting Organisations of Nigeria (BON), retaliated by suspending the broadcast of top artists who were COSON members. And the June, 2020 Court of Appeal, Lagos ruling affirming the judgment of a Federal High Court, Lagos, which awarded about N5.959 billion against Multichoice Nigeria Limited, a major satellite broadcaster and owners of DSTV and GoTV, as damages in favour of Musical Copyright Society Nigeria (MCSN) is still fresh in our memories.

Despite the best attempts of CMOs, less than 0.4 per cent of the more than 600 broadcast stations in Nigeria are licensed.

When it became obvious there was little interest in pursuing an industry-wide agreement, and to ensure its mandate was not curtailed, COSON in May 2014 developed a low tariff structure based on the National Broadcasting Commission (NBC) licensing scheme.

The NBC is the Nigerian Federal Government Agency response for the licensing and regulation of the broadcast stations in Nigeria. The tariffs, interim at that time and the lowest in the world, were entry-level and aimed at giving the broadcast industry an opportunity to develop a culture of royalty payments.

The common parameters used globally in determining tariffs for broadcasters include the following:

1. The rights and legal basis

- Mechanical right. May be implicated when a work (music or audiovisual) is copied on a server or computer for the purpose of broadcast.
- Broadcast right. When works are transmitted by broadcast or satellite.
- Communication to the public right (performing right). Implicated in a retransmission service.
- Making available right. May be viewed as a modification or extension of the communication to the public right and implicated when access to a work is carried out on demand from a chosen place and at a chosen time.

The legal basis for these rights can be found in national legislation (the Copyright Act) and international treaties such as the Berne Convention, Rome Convention and the WIPO Internet Treaties.

2. Business model. It is important to understand the broadcaster's business model. The questions that should be asked are

- Who is responsible for the act of reproduction and broadcast or rebroadcast?
- Who is responsible for the payment of license fees?

3. Repertoire

- Local or direct repertoire.
- Foreign or represented repertoire.

4. Territory

- National territory. Local plus foreign repertoire (universal repertoire).
- Multi-territory. Local plus foreign repertoire (universal repertoire).

Generally, these four parameters are referred to as the scope of the mandate controlled by a CMO, though the key parameters employed by COSON in developing tariffs for broadcasters are as follows:

1. nature of broadcast (television, radio FM or AM, cable/satellite);
2. nature of broadcast content (in case of rebates for certain stations);
3. geographical location of the station;
4. reach of the station; and
5. any possible spillover of the station's broadcast footprint.

Despite the unrelenting efforts to find a middle ground with broadcasters, many began to offer a similar litany of reasons not to pay, such as “we are spending too much money on diesel to power our generators”, “advertising agencies owe us”, “artists bring their works to us authorizing us to play them for free” or “we do not have the budget”.

COSON’s proposed tariff scheme for musical works and sound recordings for discussion with broadcasters includes the following:

- radio (the tariff applies to audio broadcasts of musical works and sound recordings falling within the repertoire of the CMO);
- general television (the tariff applies to broadcasts of musical works and sound recordings and audiovisual works falling within the repertoire of the CMO included in general television broadcast channels); and
- music video channels (the tariff applies to the broadcast of music videos falling within the repertoire of the CMO in music video channel services).

Tariffs are calculated by referencing the broadcast service’s gross revenue for any license period, subject to a minimum fee calculated by referencing the gross operating costs, which are further subject to a monthly minimum amount. This minimum amount is linked to movements in the CPI. The proposed scheme also provides for the premium assessment to the applicable tariff of any broadcast not so covered. It should be noted that broadcast tariffs could be one or a combination of the following:

- percentage tariffs (may be a percentage of gross revenue or gross operating cost); and
- fixed amount tariffs (a lump sum or flat amount paid by the user to the CMO).

It is also important that these tariffs come with minimum fees. Even though CMOs are mostly set up as non-profit organizations, they cannot operate at a loss. The minimum fee helps CMOs to incur no losses when applying the percentage tariff, and also when applying the fixed amount tariff.

In COSON’s proposed tariff scheme, gross revenue and gross operating cost are defined as follows:

- gross revenue for any license period means the actual gross amounts received by the service, its agents, licensees and subsidiary or associated companies from each programming channel:

- in respect of advertisements or other programs broadcast/transmitted by the Service;
- by way of license or subscription fees;
- as grants-in-aid, subsidies or financial sponsorship, whether of a public or private nature; and
- where merchandise, services or anything or service of value is received by the Service in lieu of cash consideration for the use of the Service's programming channel (i.e., trade outs and barter), the fair market value thereof, or the Service's prevailing published card rate, whichever is less; and monies received as donations (more applicable to non-profits).

Less any commission actually paid by the Service to advertising agents, subject to a maximum of 16 per cent of advertising income generated by the advertising agencies and received by the Service.

- gross operating costs for any license period means all or any of the following:
 - gross salaries, wages or other emoluments paid to disc jockeys, presenters and/or announcers, studio engineers, controllers and/or technicians, program compilers and music librarians, and general/operations/management staff involved with the delivery of the Service's signal;
 - gross fees paid to third parties for the services of such disc jockeys, presenters, announcers, engineers, technicians, program producers and management services, including payments to providers of pre-packaged music program material;
 - the actual gross expenses incurred in connection with the hire of studio facilities, the Service's accommodation rental and hire of related equipment;
 - the cost incurred in the hire of transmission equipment, including payment made to signal distributors/carriers for the use of facilities to enable the signal of the Service to be broadcast; and
 - the fair market value of any equipment, facilities or services donated to or rendered free of charge to the Service.

It further describes the following models and terminologies used in its tariffs:

General television channel is defined as including television broadcasts where total duration in time constituted by music videos comprises less than 45 per cent of the Service's over the air broadcast signal.

- Music video channel is defined as including television broadcasts where the total duration in time constituted by music videos comprises greater than 45 per cent controlled video content.
- Copyright music content for the purposes of COSON's tariff means the total duration in time of all the musical works and sound recordings eligible for copyright in terms of the Copyright Act in the Service's transmission signals expressed as a percentage of the duration of the Service's over the air broadcast signal as a whole.

(a) Rates of radio service charge

License fees are charged by reference to the following tables.

Table 6: License fee charges

<i>Percentage of copyright music content</i>	<i>License fee as a percentage of gross revenue or operating costs</i>
Up to 24.99	3.9
25–49.99	6.5
50–74.99	8.6
More than 75	12.5

The above are subject to the following annual minimum fees in naira millions

Up to 24.99	₦3 142 111.00
25–49.99	₦5 581 001.00
50–74.99	₦7 902 398.00
More than 75	₦10 100 921.00

Source: COSON Tariff Structure for Terrestrial Broadcasters

The AVRS broadcast tariff is tailored towards the COSON broadcast tariff but here it applies to broadcasts of audiovisual works and cinematograph films attributable to script writers, actors, directors and producers falling within its repertoire included in general television broadcast channels.

The license fee payable by a broadcaster is based on whichever is the greatest of the following:

- a percentage of gross revenue; or
- a percentage of gross operating costs; or
- a minimum annual fee (as adjusted by the CPI).

(b) Rates of charge

License fees are charged by reference to table 7.

Table 7: Rates of charge

<i>Percentage of controlled audiovisual and cinematograph film content</i>	<i>License fee as a percentage of gross revenue or operating costs</i>
Up to 24.99	2.5
25–49.99	5
50–74.99	7.5
More than 75	10

The above are subject to the following annual minimum fees in naira millions

Up to 24.99	₦2 125 000.00
25–49.99	₦3 750 000.00
50–74.99	₦5 375 000.00
More than 75	₦6 500 000.00

Source: AVRS Tariff Structure for Terrestrial Broadcasters

Note: Copyright audiovisual content is the total duration in time of all audiovisual works established in the broadcaster's transmission signals falling within the AVRS repertoire, expressed as a percentage of the duration of the broadcast over the broadcast signal as a whole.

Notes: The annual minimum fee is a must and is determined by prevalent economic indexes. The annual minimum fees ensure fees payable by broadcasters do not fall below a particular value threshold. The gross revenue and gross operating costs must be certified as correct by the broadcaster's auditors, or in a manner acceptable to the CMOs. The CPI will always affect whatever rate is charged and broadcast tariffs must give allowance for adjustments subject to CPI.

According to the MCSN website, its broadcast tariff applies to performances of music broadcast or transmitted live, whether terrestrially, by cable or satellite, or any other such devices, and tariffs are calculated by reference to the total estimated population area/quarter (see table 8).¹¹⁶

¹¹⁶ MCSN. "Broadcasts (Tariff BC)." *mcsnnigeria.com*. Musical Copyright Society Nigeria. <<https://mcsnnigeria.org/broadcasts-tariff-bc/>>.

Table 8: Sample MCSN tariff satellite/cable for repertoire

<i>S/N</i>	<i>Basis</i>	<i>Net subscription revenue (%)</i>	<i>Net advertising revenue (%)</i>
1	Channels with 60% music, sound recordings and general entertainment contents	15	10
2	Channels with below 60% but not less than 20% music, sound recordings and general entertainment contents.	12	7.5
3	Channels with less than 20% music, sound recordings and general entertainment contents.	12	2.5

4 Minimum charge per quarter is applicable to cable television channels pending the determination of actual subscription revenue.

A minimum \$20 000.00 per quarter, which may be paid in the naira equivalent at the CBN ruling exchange rate, is applicable to satellite television channels pending the determination of actual subscription revenue.

A minimum of \$10 000.00 per quarter, which may be paid in the naira equivalent at the CBN ruling exchange rate, is applicable to satellite radio channels pending the determination of actual subscription revenue.

Source: MCSN, 2022
Note: CBN is Central Bank of Nigeria.

The Mechanics of Licensing Multichoice Channels

Let us look at MultiChoice, Nigeria’s pioneer pay television service provider, on the subject of music and rights.¹¹⁷ With such a broadcaster there is a convergence of rights, as follows:

- reproduction (represents the reproduction of a work in the different chains leading to a broadcast and/or making available);
- broadcast to the public;
- communication to the public; and
- making available.

CMOs in the music and audiovisual industries must develop new licensing methods to deal with the changing business model of MultiChoice’s satellite television service, DStv, and the various rights involved in its exploitation. A South African company owned by the Naspers media conglomerate, MultiChoice has a major footprint in sub-Saharan Africa. Formed from the subscriber management branch of the M-Net terrestrial pay television company, it broadcasts the full range of M-Net channels on the DStv service. One of MultiChoice’s subsidiaries is DStv Mobile, a service that delivers television transmission to mobile devices such as laptops, smartphones and notebooks.

Table 9: Transitional Stages of Multichoice Broadcast

<i>Beginning</i>	<i>Current</i>	<i>Future</i>
	<i>Explora decoder</i>	<i>DStv Now</i>
Straightforward satellite broadcaster with little/no online-based products/exploitation areas. Decoder restrictions meant recording/catch up was kept to a small percentage of service offering.	2 terabytes storage (9 days’ worth of content). 2 hours constant recording (pause, rewind). DStv Catch Up stored locally. DStv Catch Up Plus with WiFi connector.	Complete on-demand streaming service (available on 5 devices). DStv offers live online viewing of most channels on the platform. Showmax included for DStv premium subscribers.

¹¹⁷ Excerpts from techniques for negotiations and licensing of broadcasters by Composers, Authors and Publishers Association (CAPASSO) and Southern African Music Rights Organisation (SAMRO).

Table 10: Linear broadcast: total points of reproduction – 3

<i>Reproduction house (internal/external)</i>	<i>MultiChoice</i>	<i>IS-20</i>	<i>User decoder</i>
<ul style="list-style-type: none"> • Download music (MR1) • Sync with programming (MR1) 	<ul style="list-style-type: none"> • Receive content • Transcode and reformat as required (MR2) • Schedule for play-out 	<ul style="list-style-type: none"> • Content uplinked (MR3) 	<ul style="list-style-type: none"> • Linear broadcast received (PR1)

Table 11: Explora decoder: total points of reproduction – 6

<i>Reproduction house (internal/external)</i>	<i>MultiChoice</i>	<i>IS-20</i>	<i>User decoder</i>
<ul style="list-style-type: none"> • Download music (MR1) • Sync with programming (MR1) 	<ul style="list-style-type: none"> • Receive content • Transcode and reformat as required (MR2) • Schedule for play-out 	<ul style="list-style-type: none"> • Content uplinked (MR3) 	<ul style="list-style-type: none"> • Linear broadcast received (PR1) • 2-hour recording copy (MR4) • Record on demand (MR5) • Catch Up catalog copied to device (MR6) (PR2)

Table 12: DStv Now (live stream): total points of reproduction – 9

<i>Reproduction house (internal/external)</i>	<i>MultiChoice</i>	<i>Internal server</i>	<i>User device (5 separate streams)</i>
<ul style="list-style-type: none"> • Download music (MR1) • Sync with programming (MR1) 	<ul style="list-style-type: none"> • Receive content • Transcode and reformat as required (MR2) • Schedule for play-out 	<ul style="list-style-type: none"> • Content uploaded (MR3) • Redundancy provisions created (MR4) 	<ul style="list-style-type: none"> • Live stream received (PR1) • Cache created on each respective device (MR5–9)

Table 13: *DStv Catch Up, on demand and DStv Now: total points of reproduction – 14*

<i>Reproduction house (internal/external)</i>	<i>MultiChoice</i>	<i>Internal server</i>	<i>User device (5 separate streams)</i>
<ul style="list-style-type: none"> • Download music (MR1) • Sync with programming (MR1) 	<ul style="list-style-type: none"> • Receive content • Transcode and reformat as required (MR2) • Create content library (MR3) 	<ul style="list-style-type: none"> • Content uploaded (MR4) • Redundancy provisions created (MR5) 	<ul style="list-style-type: none"> • Content streamed (MR6) (PR1) • Offline viewing downloads (MR7) (PR2) • Cache created on each respective device (MR8–14)

Source: Presentation made by Jotam Matariro, CEO, CAPASSO on Licensing Techniques for Negotiation and Licensing Of Broadcasters

Notes: Business models change quickly as technology evolves; total points of reproduction (how many times a work subject to transmission is reproduced within that value chain), etc.

Changes in Licensing of DSTV Occasioned by Advancement in Technology

In determining a licensing scheme for DSTV, all channels on the DSTV bouquet must be factored in depending on the works being licensed.

For example, reproductions made for:

- Rebroadcast of local channels
- Upload to server (DSTV Explora, DSTV Now and Showmax), which now comes with pause and rewind features

What do DSTV Explora, DSTV Now and Showmax stand for?

DSTV Explora offers subscribers a viewing and recording environment, and includes services like DStv Catch Up, Box Office, and remote recording.

DSTV Now service enables a subscriber to stream live TV on his or her computer or mobile devices.

Showmax is an internet TV streaming service that is accessible on internet-connected devices like tablets, laptops, smartphones, gaming consoles, media players and smart TVs.

Usage Reporting

As a standard practice, it is required of Multichoice and any other broadcaster for that matter, to provide reports, which may be log sheets for all the music deployed on its various channels or platforms or cue sheet for audiovisual works shown on its services.

A log sheet is a report generated by broadcasters reflecting a broadcaster's use of music on its services or platforms. In order, to confirm reports generated by broadcasters, some CMOs are beginning to invest in tracking and monitoring technology, to enable them capture effectively and transparently, the use of their works by broadcasters.

While a cue sheet is a means by which broadcasters report the use of music in films and television productions used on their channels or platforms, which makes it easy for CMOs to track the use of their works in such films and television productions.

Without log sheets and cue sheets, it would be nearly impossible for rightholders to be rewarded or compensated for use of their works.

Depending on the agreement between the CMOs and the broadcasters, log sheets are usually sent to the CMOs monthly or quarterly.

An accurately filled log sheet is a report of all the music used by the broadcaster and would usually contain the following information:

- a. Title of song/recording
- b. Name of artiste(s)
- c. Name of composer(s)
- d. Name of record label
- e. Name of publisher
- f. Duration of play
- g. Date of broadcast
- h. Name of CMO

For a cue sheet, the following information will usually suffice:

- a. Movie/Series Title
- b. Episode Title (If it is a series)
- c. Episode Number (If it is a series)
- d. Duration of Movie/Series

- e. Song Title
- f. Composer
- g. Duration of Music
- h. Music Publisher
- i. Name of CMO
- j. Name of Production Company
- k. Platform

In determining tariff rates for a satellite broadcaster like Multichoice, the following factors should be considered and should be based according to percentage of revenue:

- a. Subscriber/advertising revenue intrinsically linked to usage of music.
- b. Subscriber/advertising allows for differentiation of service offerings.
- c. Subscriber cannot access DStv without a decoder.
- d. Decoder directly related to how a subscriber can make reproduction.

A new licensing formula for MultiChoice will take into account the following:

- a. percentage of music per channel type;
- b. percentage of music per package type;
- c. channel availability; and
- d. all exploitation areas.

In negotiating a tariff with respect to the use of copyright work on Multichoice channels or platforms, the following techniques should be considered:

- a. Quantitative analysis
 - revenue analysis (ad revenue, subscription fees, number of subscribers);
 - channel analysis (number of channels, content types per channel); and
 - channel availability on each package offered.
- b. Qualitative analysis
 - understand the licensee's service;
 - understand where value is created;
 - understand the technical specifications to showcase what right is exploited, and where; and
 - showcase value added through exploitation of music.

In summary

- Mechanical or reproduction right is the first right that is implicated in a broadcast activity, whether it is the broadcasting of recorded programs, such as music shows or movies, or content, like music used in live shows.
- When rights in musical works (as opposed to sound recordings) are licensed, the mechanical right owner will usually share the royalty paid by a broadcaster for the broadcast mechanical, which the reproduction of the musical works. The split is usually weighted in favor of the mechanical right over the performing right, 75:25 or 67:33.
- Broadcast right is implicated when works are transmitted by broadcast or satellite, while communication to the public right is implicated in a retransmission service; that is, when a third party (such as a cable operator or satellite broadcaster) retransmits the signals of the original transmitting entity (normally a broadcasting organization).
- For rights in musical works (as opposed to sound recordings or audiovisual works), the split of the royalty share is usually weighted in favor of performing right over mechanical right, 75:25 or 67:33.
- Making available right could be regarded as an extension of communication to the public right. This is implicated when access to copyright works can be done on demand from a chosen place and at a chosen time.

Generally, in determining the basis of broadcast fees payable to CMOs, it is important to identify all revenue sources linked to broadcast activities, excluding VAT. Examples of bases may include the following:

- subscription fees;
- advertising revenues;
- sponsorship revenue;
- bartering (net value of the benefit of exchange of services or goods);
- program time sales/sale of broadcasting slots;
- product placement; and
- budget (for public broadcasters, etc.).

4. Use of musical works, sound recordings and audiovisual works in hotels, lounges, restaurants, event centers, clubs and factories

The use of music and audiovisual works in facilities such as hotels and similar establishments, lounges, restaurants, event centers, clubs, conveyances (buses, ferries, trains and airplanes) and public places without the authorization of the copyright holders or their CMOs is infringement of copyright. The right/rights implicated in this type of exploitation are public performance or communication to the public rights.

Apart from broadcast (and more recently new media and digital), public performance categorized under general licensing is one of the biggest sources of income for CMOs, particularly in Nigeria where income from broadcast remains problematic. Consequently, public performance licensing forms a significant part of the licensing income of performing rights CMOs given the large number of users. Increased focus should be paid to this licensing source.

With public performance licensing sustaining the operations of the CMOs, maintaining a close, business-like relationship with users is important. To ensure the welfare of right owners, they must be seen as partners.

It is good practice to have dedicated public performance account executives representing different public performance sources, ensuring any customer dissatisfaction, or disputes or potential disputes, are nipped in the bud.

Developing public performance tariffs means establishing recognized segments under this category (see annex 2 for a list of public performance sources, arranged alphabetically). These may be as follows:

1. Accommodation sector
 - hotels;
 - resorts;
 - lodges; and
 - guest houses.
2. Hospitality sector
 - restaurants;
 - eateries;
 - pubs;
 - clubs;
 - lounges; and

- bars.
- 3. Retail sector
 - supermarkets;
 - shopping malls;
 - retail outlets; and
 - showrooms.
- 4. Entertainment sector
 - cinemas;
 - concert promotions;
 - event centers;
 - parks; and
 - gardens.
- 5. Conveyances sector
 - taxis;
 - buses;
 - coaches;
 - aircrafts;
 - airport lounges; and
 - boats.
- 6. Product activations sector
 - roadshows;
 - exhibitions;
 - trade fairs; and
 - product launches.

Different sectors will have different tariffs, separated according to their category; music, for instance, into essential, necessary or background.

The general licensing income-public performance income is influenced by

- number of users;
- type of premises;
- location; and
- extent of rights use by the establishments involved.

To assist licensing officers or operatives to better understand the concept of public performance and/or communication to the public, and how they can be dealt with in the licensing marketplace, definitions and judicial interpretations from other territories are examined.

H. Copyright, related rights and performing rights for musical works, sound recordings and audiovisual works

The Copyright Act confers copyright on every original musical, literary, artistic and audiovisual work, with sections 6 and 7 specifying the following, which may not be done without the permission of the author:

1. reproduction of the work in any material form;
2. distribution to the public of the work;
3. communication to the public of the work; and
4. broadcasting of the work.

The rights of broadcasting, performance in public or communication to the public are frequently termed the performing rights.

Communication to the public is defined in Section 51 as including,

“a live performance, or a transmission to the public, other than a broadcast, of the images sounds or both, of a work, performance or sound recording”.

Performance is regarded as including,

“the representation of a work by such action as dancing, playing, reciting, singing, acting or projecting to listeners by any means whatsoever”.

As indicated, the Copyright Act confers on the author of an original work the copyright in that work. One of the constituent rights is the exclusive right of communication of the work to the public.

What is a communication to the public?

Performance has long been accepted as adequately understood, and its interpretation has not in recent years given rise to any serious difficulties. But when it comes to performing in public, or public performance, or communication to the public, there is limited statutory guidance. Interpretation of public performance was for many years left to the courts.

For the purposes of this training manual, we could consider Copinger and Skone James published by Sweet & Maxwell, United Kingdom; Allen J. C. Copeling or Owen Dean from South Africa and no doubt some of our own leading academics amongst many others who

write on Copyright Law. In summation, they all appeared to have articulated similar principles on the definition of public performance.

Namely, if the members of the audience are representative of some interested cross-section of the public the audience will be considered to be public in character, and, accordingly, the performance will be regarded as having been given in public. If, on the other hand, the members of the audience represent a particular domestic or home circle - and for this purpose it matters not that some of the audience are present as guests of the person providing the entertainment - the audience will be considered to be private in character, and, accordingly, the performance will not be regarded as having been given in public. Naturally, it may not always be easy to decide whether the members of the audience in fact represent an interested cross-section of the public or a particular domestic circle.

The courts have consistently applied the test of the domestic circle.

I. Music and audiovisual works in various establishments, including judgments for sound recordings

In many jurisdictions, the courts have found that music or audiovisual works performed or communicated to the public included use in various establishments.

1. Hotel lounges, bedrooms

The matter of performances or communications to the public in public rooms of hotels has not been contentious in most countries. What has been disputed is the legislation that defines a hotel guest room as a place of private residence, and therefore not subject to royalties. Or that is until recently.

The Court of Justice of the European Union (CJEU) clarified the position in December 2006 when it delivered a judgment in favor of the Spanish society, SGAE, against a hotel group. The CJEU ruled that the use of television sets and the playing of ambient music within hotel premises constituted acts of public communication, and therefore they must pay royalties. The decision covered public rooms as well as guest rooms. This is a step towards achieving stronger legal protection for authors in the hospitality industry, particularly in those countries where guest rooms are regarded as places of private residence.

2. Clubs and lounges

For copyright purposes, a public performance, broadly speaking, is any performance outside the domestic circle. Courts around the world have held that this includes performances given to audiences restricted to members of a club or workers in a factory. We can refer to *PRS v. Gillette Industries Ltd.* in the United Kingdom, and also *Ernest Turner Electrical Instruments Ltd. v. PRS*, where Lord Greene said, “the audience, in the case of each factory, must be regarded as a section of the public”.

In another case, in Malta, the Court of Appeal confirmed an earlier judgment that “the true criterion of a public performance was the character of the audience. It was pointed out that the presence or absence of visitors was not a decisive factor, nor did it matter whether the performance was paid for or gratuitous”.

In terms of Nigerian copyright law, a communication to the public will include a performance in public.

3. Factories

Owners of factories and workshops invariably argue that their premises are private because access is restricted to employees. Of course, it is true a factory is not a public place in the same sense as a street corner, market square or station waiting room. But the Copyright Act does not prohibit a performance in a public place; it prohibits a communication to the public and therefore a performance in public.

In *Southern African Music Rights Organisation Ltd. v. Svenmill Fabrics (Pty) Ltd*, the defendant relayed music broadcast from a South African Broadcasting Corporation radio station through extension speakers in its factory, which some 400 employees could hear while at work. The factory was private property and the public had no access. The court granted an order forbidding the act and ruled the defendant should pay damages and costs.

In his judgment, Berman A.J. said,

“the real difference between a performance in private and one in public is that in the former case the entertainment forms part of the domestic or home life of the person who provides it; in the latter case the entertainment forms part of the non-domestic life. On this basis it becomes readily apparent that Defendant's performance is not private insofar as it (or its staff) is concerned”.

4. Private places but audible elsewhere

In determining whether a performance is in public, the nature of the premises where the equipment is located is irrelevant. In *Performing Right Society v. Camelo*, it was found that where a wireless receiving set was installed in the private room of a house adjoining a restaurant, and the door to the restaurant was normally left open, the performance had taken place in public. In his Supreme Court judgment, Justice Clauson said:

“I do not take the view that when the wireless set reproduces music, it reproduces it purely within the area where that wireless set stands, the area in which it actually, mechanically or quasi-mechanically, operates. When a wireless instrument reproduces a piece of music, the performance which ensues seems to me to take place wherever that music is audible as music to such an extent that persons hearing it recognise it as a musical piece.”

This was consistent with Justice Farewell, who in an earlier case had said:

“...although it may be on some occasions a private room, nevertheless if at any time members of the public are entitled to resort to it and music is played in such a way that the persons who do resort to it can hear the music plainly, then that does constitute an infringement of the plaintiff’s rights unless the plaintiff’s consent has been obtained for such a performance. Further, even eliminating that room, if the wireless is played in such a way that the music can be heard in the bar in front of the house to which members of the public are entitled to resort if they so desire, that also again is quite plainly an infringement of the copyright and a performance in public within the meaning of the Act.”

The examples cited are not intended to be exhaustive but present scenarios that are often encountered. Since the Copyright Act is closely modelled on United Kingdom statute law, it seems reasonable that Nigerian courts may regard the decisions of courts in the United Kingdom and the Commonwealth countries as persuasive authorities.

(a) Music For Own Entertainment

It sometimes happens that a music user maintains the radio receiving set on their premises is not used for the purpose of entertaining customers and/or employees, but purely for the benefit of the owner of the premises.

Buma is a Dutch music copyright collective management organisation. In *BUMA v. Wasserij en Chemische Wasserij de Zon*, the court ruled against the owner of a laundry who allowed one of his employees to play music on his premises by means of her portable radio.

The motive, though perhaps not entirely irrelevant, does not appear to be a deciding factor. It follows that, on application of the law, anyone who walks down the street with their radio playing loud enough for other people to hear will be guilty of giving an unauthorized

performance in public, even though they had no intention of entertaining members of the public.

In *South African Music Right Organisation Ltd. v. Trust Butchers*, in dealing with the matter of performance in public, Addleson J. said it was purely a question of fact, of whether “the radio on the defendant’s premises played sufficiently loudly to be heard by members of defendant’s staff and customers in the shop, or was it played so softly that it could only be heard by the defendant’s managing director and his wife in their office?”.

(b) Retransmission Or Cable/Diffusion Rights

Music and audiovisual users often tend to regard a ‘retransmission’ or re-diffusion as being part of, or included in, the broadcast right. But these two activities are separate and distinct. The Copyright Act defines a broadcast as “meaning sound or television broadcast by wireless telegraphy or wire or both, or by satellite or cable programs and includes rebroadcast”. COSON, MCSN and AVRS license broadcasters for the direct private reception and transmission of their repertoire. Any retransmissions or communications to the public require separate authorization. Retransmission or cable diffusion is dealt with in the Copyright Act under communication to the public.

The practical effect of these provisions is that where programs containing musical works, sound recordings and audiovisual works are diffused from a central point to members of the public in their private homes or apartments (such as with cable transmission), a fee has to be paid to the authors. Although no performance in public may take place, the transmission is regarded as a communication to the public. Where the programs are diffused to a receiving apparatus that operates in such a way as to also make the musical works and sound recordings audible and visible in public, two separate activities take place involving the copyright owner – one for the transmission through the home/apartment network, the other the rendering audible and visible in public.

5. Digital exploitations: use of music, audiovisual and literary works on digital platforms

Digital copyright licensing is the process of licensing the use of copyrighted works in digital formats. It is intended to ensure that the copyright owners are compensated for uses of their works.

CMO digital licenses, depending on whether they are mandated to license the relevant rights, can cater for all current and future forms of service types, such as digital reproduction of literary works, downloads of music and audiovisual works, streaming, video on demand and online radio. Sound recording rights and rights in audiovisual works are not, as a rule, licensed by CMOs but directly by relevant right holders.

The exploitation that may happen on digital platforms are now reviewed, as well as what kind of rights may be implicated.

(a) Photocopy

Photocopying refers to a wide range of methods for reproducing text on a long-term basis. Causal link, subconscious copying, indirect copying, significant taking and unmodified copying are all examples of copying.¹¹⁸ Reprographic reproduction (making copies from the original of a work by means other than printing, such as photocopying) is becoming increasingly digital.

REPRONIG does not have a tariff for digital copying though it might be enough to adopt a price per download to reproduce the literary and artistic works it controls.

(b) Downloads

A digital download is a transmission to the purchasers that allows them to download copyright works to use repeatedly and indefinitely. This transmission can take place over the Internet, satellite or cell phone, or any medium as long as it is digital.¹¹⁹

¹¹⁸ CreativeLegal. "Photocopying: When you should worry about copyright violation." *creative.legal.com.ng*. Creative Legal. <<https://creativelegal.com.ng/2021/07/27/photocopying-when-should-you-worry-about-copyright-violation/>>.

¹¹⁹ Exploration. "What is a digital download?" *exploration.io*. Exploration. Web. Oct. 30, 2021. <<https://exploration.io/digital-downloads/>>.

(i) Limited downloads

The consumer does not have full control over the download. Copyright owners or digital service providers (DSPs) apply restrictions on how the download can be used, which can be based on time or use. Limited downloads are also referred to as conditional or tethered downloads.¹²⁰ The user loses access once the subscription lapses.

(ii) Permanent downloads

The consumer maintains full control over the download and owns it forever. They may copy it but only for personal, non-commercial use.¹²¹ Permanent downloads could either be *à la carte* or subscription based. The rights involved in this type of exploitation are the mechanical right and making available right. The license fee for permanent download is a percentage of end-user price, which is between 9 per cent and 10 per cent.

(c) Ringtones

A ringtone is the sound made by a telephone to indicate an incoming call or text message. With monophonic (single melody line) or polyphonic (melody and harmony) ringtones, there are only musical works involved. With master ringtones (those taken from a master recording), there are two copyrights involved (musical work and sound recording), and both must be licensed to avoid copyright infringement.

The right in a musical work covered in a ringtone license is the reproduction right or mechanical right and the rate charged is usually between 5 per cent and 12 per cent of end-user price excluding VAT, dependent on negotiations between the owner of the ringtone and CMO. With a few exceptions, sound recording rights are licensed by record labels or the owner of the master.

(d) Caller ringback tunes

A ringback tune is a song that plays for the caller after they dial the number of a participating subscriber.¹²² While some CMOs believe the rights in a musical work covered in a ringback tune license are communication to the public and the associated mechanical rights, others maintain only the mechanical right is implicated. With mobile networks, COSON licenses them for both communications to the public and mechanical rights.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² Perlow, Jonathan. "Ringtones aren't 'public performances', judge says." *Courthouse News Service*, Oct. 19, 2009. Web. Nov. 17, 2021. <<https://www.courthousenews.com/ringtones-arent-public-performances-judge-says/>>.

The tariff for a musical work used for a caller ringback tune is the same as for a ringtone, which is between 5 per cent and 12 per cent of end-user price excluding VAT, dependent on negotiations. The rights in the sound recording are negotiated separately by the artistes or record labels.

Until late 2018, ringtones and ring back tunes were arguably the biggest source of income for the Nigerian music industry but following reported government regulatory directives, which may have impacted the business model of the aggregators responsible for selling the services to mobile telecom subscribers, revenue from the business nosedived.

(e) Streaming

There are several different streaming service business models.

(i) Streaming of audiobooks

In this format, when text has been read (for example, reading a book or delivering a lecture) and recorded, a new work protected by copyright is created. That work is a sound recording. Generally, a sound recording is a recorded performance, often of another work. It must be fixed, meaning the sounds must be captured in a medium from which they can be perceived, reproduced or otherwise communicated.¹²³ The charge for audiobooks is usually based on percentage of gross income or the price that a subscriber pays.

(ii) Subscription: on-demand streaming = interactive streaming

On-demand music streaming is an interactive service, meaning the user is able to listen to any song in the DSP database without any restriction on time or playback capabilities. The user can pause, skip, rewind and create playlists, but not copy the digital file. Popular services include Spotify, Tidal, SoundCloud and Apple Music.

There are two tiers of on-demand music streaming

- advertiser-supported/'freemium': the on-demand digital service provided is free to the listener and supported by advertisements; and
- subscription/premium: the on-demand digital service provider charges a monthly subscription fee to users, who can listen without advertisements.

¹²³ Smyth, Danielle. "How do publishers get royalties for audio books?" *Chron*, Nov. 10, 2020. Web. Oct. 31, 2021. <<https://work.chron.com/publishers-royalties-audio-books-14264.html>>.

With musical works, there are basically two rights involved here: mechanical right and performing right. The tariff rate for on-demand streaming of musical work is a 15 per cent split of the end-user price, with 11 per cent credited to mechanical right and 4 per cent to performing right. Again, the artiste, record label or owner of the master licenses this act.

(iii) Non-demand streaming

Also referred to as non-interactive streaming, non-demand streaming is similar to an online radio service such as Pandora, where the user cannot choose which songs are played next.

The rights involved in respect of musical works and royalty split is the same as on-demand streaming.

(iv) Live streaming

This model became popular during the restrictions imposed by governments around the world due to the Covid-19 pandemic. It became another source of entertainment, and potential income for right holders.

This type of exploitation involves the performing right, but CMOs, particularly in Nigeria, are still grappling with how best to determine the tariff to cover the use of music.

CAPASSO has set its tariff on live streaming for musical works at 15 per cent of what is paid to the artiste as a fee, 15 per cent of sponsorship, or 15 per cent of net revenue derived from the sales or the equivalent of \$0.18 per user. Again, the artiste, label or owner of the master will deal with this.

(v) Video on-demand

There are different video monetization models, including:

- subscription-based video on demand (SVOD);
- advertising-based video on demand (AVOD);
- transactional video on demand (TVOD); and
- premium video on demand (PVOD).

The tariffs for this video on-demand business model for both musical works and audiovisual works (movies and films) is a percentage of the revenue generated by the service.

(vi) Music video streaming

Here the business model is also divided into subscription, on-demand streaming and subscription and non-demand streaming. In a music video streaming, one must distinguish between the musical work and the audiovisual work, which are treated separately in terms of determining their tariff.

For on-demand streaming, the split will tilt more to mechanical right, while for non-demand streaming, it will tilt to performing right.

(f) Levy on copyright material

The levy on copyright material is a form of remuneration to owners, recompense for the massive private copying of their works.

The Copyright (Levy on Materials) Order 2012 stipulates the following:

1. The levy payable under Section 40(1) of the Copyright Act on materials used or capable of being used for the infringement of copyright shall be as provided for in the schedule to this Order.
2. The levy payable under this Order, shall be paid:
 - a. in the case of materials imported into the country, at the point of entry, by the importer; or
 - b. in the case of materials manufactured or produced or assembled in Nigeria, at the point of manufacture, production or assembly, by the manufacturer, producer or person responsible for the assembling.

As previously mentioned, some of the storage and devices outlined in the order’s schedule have become obsolete. They are provided (see tables 14 and 15) to show current rates, likely pending review.

Table 14: Schedule to **Copyright (Levy on Materials) Order 2012**, storage media

S/N	Storage media	Levy (%)
1.	Audio-cassette	3
2.	MiniDisc	3
3.	Hi-MD	3
4.	CDs	3
5.	DVDs	3
6.	Video cassettes	3

7.	Blu-ray	3
8.	SD memory card	3
9.	USB flash drive	3
10.	iPod	3
11.	Photocopying papers	2

Source: Nigerian Copyright Commission

Table 15: Schedule to Copyright (Levy on Materials) Order 2012, devices

S/N	Equipment/devices	Levy (%)
1.	Digital jukebox	2
2.	MP3 player	2
3.	Mobile phones	2
4.	Photocopying machine	1
5.	CD recorders	2
6.	DVD recorders	2
7.	Blu-ray recorders	2
8.	Computer external hard drive	2
9.	Analog audio recorders	2
10.	Analog video recorders	2
11.	Personal computers	2
12.	Printing plates	2
13.	Printers/printing machines	1
14.	Radio/television sets enabling recording	2
15.	Camcorders	2
16.	Decoders/signal receivers	2

Source: Nigerian Copyright Commission

J. Transparency obligations and tariff publication

The subject of transparency in determining tariffs cannot be over-emphasized. It is important that the process leading to the setting of tariffs, is clear enough and easy to comprehend in order to engender trust and confidence amongst the users. When users are put in a comfortable position, where they are able to understand what they are paying for, why they have to pay for it and they also understand, the basis upon which the tariff is calculated, it actually makes it easy for users to willingly comply and take up licences. When this happens, it leads to increased collections and revenue for the CMOs. CMOs must therefore learn to keep it simple as they continue to determine tariffs for various uses.

Therefore, simplicity in computation and clear invoicing in respect of musical works, sound recordings, audiovisual works and literary works controlled by any of the CMOs are important.

As part of the CMOs' efforts, to continue to educate users and licensees on their roles as CMOs, their licensing processes and how tariffs charged are determined, various stakeholders' meetings have been held by these CMOs across the different regions of the country. At these meetings and engagements, the CMOs have used the opportunity to distribute pamphlets containing information about the CMO, its role, importance of copyright and related rights, its licensing processes and a section dedicated to frequently asked questions. Some of the CMOs have also created special educational programmes on radio, television and on the internet, as an important vehicle for continuous users education.

Beyond the above transparency requirements, the Copyright (Collective Management Organisations) Regulations 2007 requires CMOs to make available to users on a non-discriminatory term, the complete repertoire of works with respect of which they are representing the right owners.¹²⁴

AVRS and REPRONIG have been advised by the NCC to publish their tariffs on their websites. COSON and MCSN already have their tariffs published on their websites.

CMOs should endeavor to license every use of those works they represent and control. Users should not be able to use or exploit the works in the absence of licensing agreements. It is, therefore, necessary to identify the nature of all uses to avoid off-radar use.¹²⁵

For transparency and to help facilitate their acceptance, tariffs should be based on objective and non-discriminatory criteria. Users should be informed of all principles used to set tariffs. Finally, CMOs must provide users with sufficient information on their tariff schemes and repertoire prior to any negotiation.

K. Summary of Chapter II

1. The concept of licensing copyright and related right works is based on the fact they are property, which means they can be transferred, assigned or licensed.

¹²⁴ See Part 111, 13(1), Copyright (Collective Management Organisations) Regulations, 2007

¹²⁵ CISAC Guidelines for Television Licensing Scheme, 2018 (A guideline presented by Martin Vergne on behalf of CISAC on November, 2018 in Lisbon)

2. Copyright is first and foremost a bundle or basket of economic rights. Right holders, apart from enjoying the art of creating and producing, must feed themselves, pay bills and meet other obligations.
3. Copyright and related rights grant several exclusive or monopoly rights to their owners or holders. This means any or all of the exclusive rights can be transferred, assigned or licensed.
4. CMOs have mostly chosen to perform their role, for both right holders and users, through the mechanism of licensing.
5. Licensing in respect of copyright and related rights is a permission, authorization or consent given by the owner of the copyright to another person to exercise the rights belonging the owner.
6. Licensing can be exclusive or non-exclusive. An exclusive license excludes every other person, including the owner, from exploiting a copyright work. In Nigeria, it must be in writing. A non-exclusive license is permission granted to more than one user to use the works. It is what most CMOs give users in their licensing deals.
7. In collective management, copyright licensing is the grant or issuance of a non-exclusive copyright license to users, to exploit the works and rights in their repertoire based on agreed terms and conditions contained in the licensing agreement.
8. Most CMOs usually grant blanket licenses to their licensees for the use of all works in their repertoire.
9. As part of the bundle of rights granted to copyright and related rights owners, the Copyright Act also gives them the right to set and negotiate tariffs for the use of their works.
10. Tariffs are standard charges or rates that copyright and related rights users pay to CMOs to use certain works in a CMO's repertoire.
11. CMOs will usually draw up tariffs based on the work, rights and usage.
12. In determining the cost for the use of their repertoire by users, CMOs will usually consider the following:
 - nature and extent to which the copyright work is used, and how many people are exposed to its usage or exploitation;
 - purpose of the use or exploitation;
 - value of the copyright work to the trade or business (what is the monetary advantage obtained from the use of the work);
 - type of facilities or premises where the work is used or exploited (what is the size or capacity of the facilities or premises); and
 - type of trade or business.

13. Simplicity in computation and clear invoicing by CMOs with regard to the use of copyright works and related rights on those works they control are important in getting users to buy licenses.
14. CMOs should endeavor to license every use of the works they represent and control.
15. Tariffs should be based on objective and non-discriminatory criteria and users should be informed of all criteria used.
16. CMOs must endeavor to provide users with sufficient information on their tariff schemes and the repertoire they represent or control prior to any negotiation.

Chapter III

Building a successful licensing strategy

A. Introduction

For a CMO to properly engage with users and close licensing deals, it must establish precise procedures. These must be carried out prior to the CMO approaching users. If well planned and executed, they will help the CMO deploy limited resources to all licensing areas.

The funnel approach is always recommended as a way to engage. The CMO, having divided the user market into sectors, begins its licensing activities with major users and the least resistant ones. This will quickly bring in significant revenue. CMOs, particularly new ones, must be careful in how they use finite resources when executing licensing activities.

Before CMOs, through their licensing officers, begin to reach out, it is advisable to consider the following practices. They will help the CMO engage with users, with the aim of persuading them to paying licensees.

B. Licensing and user market research and analysis

An understanding of the licensing market, and users involved in it, is essential. It makes it easier for a CMO to properly engage with users based on the data collected directly from them and from the market. This data becomes a folder for market analysis, which helps the CMO make informed business decisions.¹²⁶

Thus, to ensure members and right holders benefit fully from their tariffs and licensing schemes, CMOs should adopt a scientific approach to market research. Properly carried out, this will "...involve an assessment of the positioning of the CMO in the marketplace, the status

¹²⁶ Epsilon. "Brief guide on market research vs market analysis." *india.epsilon.com*. Epsilon India, Dec. 2, 2019. Web. Feb. 21, 2022. <<https://india.epsilon.com/blogs/brief-guide-on-market-research-vs-market-analysis>>.

of its relationships and engagements with various major user/licensee sectors (possibly also with the associations representing users) based on the bundle of rights administered”.¹²⁷

In assessing their position in the market place, and determining where they are doing well and areas that need improvement, a SWOT (strengths, weaknesses, opportunities and threats) analysis is a tool that can be deployed. It can help assess a CMO’s internal strengths and weaknesses, along with external business opportunities and threats.

A SWOT analysis is a framework used to evaluate a company’s competitive position and develop strategic planning.¹²⁸ As well as assessing internal and external factors, it looks at current and future potential.¹²⁹ See table 16 for pointers to determining the strengths, weaknesses, opportunities and threats in a CMO’s operating environment.

Table 16: SWOT analysis

<u>Strengths</u>	<u>Weaknesses</u>
<ol style="list-style-type: none"> 1. What is working well and in favor of the CMO? 2. What is the CMO’s unique licensing proposition? 	<ol style="list-style-type: none"> 1. What is missing or needs improvement? 2. What advantage does the CMO lack?
<u>Opportunities</u>	<u>Threats</u>
<ol style="list-style-type: none"> 1. What are the opportunities the CMO sees? 2. How does the economic and political environment assist the CMO fulfilling its mandate? 	<ol style="list-style-type: none"> 1. What threats has the CMO identified? 2. Which market location is potentially unsuitable for activities of the CMO?

Source: <https://www.investopedia.com/terms/s/swot.asp>

A critical aspect of market research and analysis that should be considered is market segmentation and estimation. After conducting market research, it is important to segment, or separate, the user market. This involves dividing the market into its different segments or

¹²⁷ Hooijer, Robert, and J. Joel Baloyi. “Collective Management Organizations: Tool Kit – Musical Works and Audio-visual Works.” *wipo.int*. World Intellectual Property Organization, Feb. 2016. <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_1.pdf>.

¹²⁸ Kenton, Will. “Strength, weakness, opportunity, and threat (SWOT) analysis.” *investopedia.com*. Nov. 11, 2021. Web. Mar. 23, 2022. <<https://www.investopedia.com/terms/s/swot.asp>>.

¹²⁹ *Ibid*.

sectors, and estimating the size of the various sectors, to develop an effective licensing strategy that would be suitable for each segment/sector.

A CMO's market segmentation refers to "a strategy which involves the separation of the broad market of prospective or actual licensees or users into various categories, groups and subgroups which can be identified as having similar or common usage attributes".¹³⁰

This will help CMO licensing officers prioritize those sectors that would be more compliant with the Copyright Act and to paying licensing fees: those sectors that would help generate quick and significant income for the CMO. Based on these insights, management is able to develop tariffs targeted at these sectors in a timely manner, and activate its licensing activities.

Marketing segmentation and estimation is based on the following:

- An understanding of the user business model. CMOs are strongly advised to know their users (know your users, or KYU) before their licensing officers engage with them. They must know their business models and how they operate. Engaging users without an understanding of their businesses would likely bring less desirable results for the CMO.
- Identifying the works and rights that can be licensed. In addition to being familiar with the business model of a user, it is important licensing officers understand and identify the rights applicable in that model, the manner in which the rights are used and which of the rights can be licensed. The CMO must identify the type of works used and the rights implicated in the use or exploitation.
- The nature of the uses or exploitations and the licensing needs of the premises must also be understood.
- The categories of users and types of licensing schemes.
- The geographical location. The CMO must define the user market that will be addressed first. This could be
 - domestic (Nigeria, which could be further delineated to cities, town, communities and villages);
 - regional (it could be sub-Saharan Africa or the whole of Africa, which includes the North Africa countries); and

¹³⁰ Hooijer, Robert, and J. Joel Baloyi. "Collective Management Organizations: Tool Kit – Musical Works and Audio-visual Works." *wipo.int*. World Intellectual Property Organization, Feb. 2016. <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_1.pdf>.

- international (global).
- **Databases.** The importance of a database on users cannot be overemphasized. It helps the CMO store and organize information on the user segments gathered via market research. Continuous updating of a CMO's database provides the CMO with status reports on sales, licensing and users, and helps it better engage with users; for example, it helps the CMO know the number of licensed users and those who are still unlicensed.

C. Engaging with users, closing the deals

The next step is to engage with users. Having identified them, the CMO sends out introductory letters to users, or their groups or associations. As well as informing users on the CMO's status, the reason for its establishment, the works and rights it represents and controls, and the relevant law supporting its operations, the letter will usually include important communication materials. These could be the CMO brochures, which will outline the mandates and business models of the CMO, the legal framework on which it has been granted approval, and other frequently asked questions.

One of the most important tasks assigned the CMO's licensing officers is to make sales by closing deals as quickly as possible. This is not always easy. It may take a lot to convince a user to buy a copyright license.

In the matter of sales or licensing, it is never enough to know the relevant sections of the law that support the business of copyright and collective management. And it is never enough to simply tell the user how their business has infringed copyright. The goal of licensing officers is to convert these unlicensed users into willing clients and happy customers.

Consequently, CMOs must establish structures that allow for the proper training of licensing officers on the law that governs their businesses, including marketing, sales, communication and negotiations. More importantly, the officers must educate themselves on the industry in which the CMO is providing services. How well licensing officers are equipped to perform their roles will, to a large extent, determine how successful the CMO is at raising revenue for right holders.

The licensing processes of CMOs will now be considered, along with the skills required by their licensing officers. We will also look at the first, critical steps that need to be taken to engage with users or user associations.

D. Steps in a CMO's licensing procedures

Before their licensing operatives visit or write to users, CMOs must carry out market surveys, which are imperative for proper engagement with users.

Based on the market survey, a CMO is able to segment the user market and estimate the size of the segments in order to develop a licensing plan that will focus on each one.¹³¹ CMOs are advised to segment user markets based on the following:

- type of rights and/or works;
- categories of users;
- nature of uses or premises;
- types of licensing schemes; and
- geographical location.¹³²

It is also important for CMOs to have an understanding of the user's business model, how it operates, and common terminologies, if any. CMOs should be able to identify the rights that might be implicated in the user's business, and define the nature, scope and territory of their licensing needs. Finally, the CMO must be in a position to delineate the markets that are to be addressed; for example, it may choose to set out the markets based on:

- domestic (cities and towns);
- regional (African exploitation of domestic works); and
- global (international exploitation of domestic works).

E. Licensing procedures

According to the WIPO good practice toolkit: "Experience shows that an open and professional approach makes it easier for users/licensees to understand a CMO's licensing policies and

¹³¹ Hooijer, Robert, and J. Joel Baloyi. "Collective Management Organizations: Tool Kit – Musical Works and Audio-visual Works." *wipo.int*. World Intellectual Property Organization, Feb. 2016.

<https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_1.pdf>.

¹³² *Ibid.*

allows a CMO to market itself in a more effective and productive manner. CMOs should therefore treat all potential users/licensees in a fair, professional and non-discriminatory manner.”¹³³

The licensing process is broken down into four steps, as follows:

1. Awareness/survey/marketing/communication.
2. Invoicing (and new licensing).
3. Demand notices and notice of infringement.
4. Enforcement.

1. Awareness/Survey/Marketing/Communication

In this first stage of the licensing procedure, the CMO operatives visit a user(s) directly to inform, sensitize and explain, or issue them with a brochure containing information about the CMO, including the work(s) and rights it represents and manages. Where the user is too distant, a well written introductory letter will suffice.

The decision to visit or write to users must be intentional, as this will help the CMO deploy limited resources to users who are more likely to comply without much pressure from the CMO.

The CMO is advised to use the funnel approach, whereby the bigger, more established users are at the top of the funnel, and the CMO gradually cascades its licensing actions down the tiers of users.

Whether it is through physical contact or via mail, attempts should be made to create cordial relationships with users to help them understand the essence of licensing, and why they should take out the CMO’s copyright license for the works they use or exploit.

Brochures attached to a letter or personally delivered by licensing operatives should give the CMO’s background in brief, its mandate and the sections of the Copyright Act that empower it to carry out its function. It should spell out the rights of copyright owners, the need to acquire a license and the penalties for infringement, and elaborate the collective management of copyright and related rights. The CMO must create opportunities for feedback to clarify any aspect of the brochure that is not understood.

¹³³ WIPO. “Good Practice Toolkit for Collective Management Organizations (The Toolkit): A Bridge between Rightholders and Users.” *wipo.int*. World Intellectual Property Organization, Sept. 15, 2021. <<https://www.wipo.int/publications/en/series/index.jsp?id=180>>.

Once the user comprehends the mandates of the CMO, copyright and related rights, and the copyright laws, they are given an assessment form, which should be returned to the CMO within five working days. The CMO licensing operatives are at liberty to cross-check the assessment form's authenticity by scrutinizing information supplied by users. They can also check user websites, where their facilities and services are usually publicized, or their communication or publicity brochures. In most cases, users who have websites and brochures are happy to share positive information about their products and services.

2. Invoicing

The process of invoicing is based on the CMO database, and a comprehensive list of users and their facilities, premises and platforms, contact information and compliance status. Usually, it is divided into two sections, one with the names and information of users who have complied with copyright obligations, the other the details of those yet to comply.

A good database will have current details on users and licensees, including their full names/identity, physical location, telephone number and email contact, and an assessment of them and their status regarding invoices issued. This database must be constantly updated with new users or licensees, and any information on them.

The CMO must ensure the database is secure and backed up, and that access is limited to CMO licensing operatives who use it in carrying out their job.

To help documentation, there are now front office¹³⁴ applications, such as WIPO Connect, built specifically for CMOs to help them in capturing and managing data, whether from CMO members or users/licensees. CMOs are advised to work towards acquiring such a licensing application, as it enables them to operate seamlessly in terms of invoicing, tracking sales and monitoring renewals.

Once a user has been properly assessed, they are issued with an invoice, which is mandatory, irrespective of the amount. This helps proper record keeping. There is no valid reason invoices should not be issued to new and already licensed users.

¹³⁴ The front office represents the customer-facing division of a firm; see <https://www.investopedia.com/terms/f/frontoffice.asp>.

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New users are issued with invoices and given an agreed period in which to pay and acquire a copyright license, so as to legalize and regularize their use of copyright works within Nigeria.

Existing licensees are issued with invoices at least one month prior to the expiry of their current licenses. The licensing operative calls or writes, notifying them their licenses are due to expire at the end of a certain period. The operative seeks an appointment to deliver the invoice for the renewal, and will use the opportunity to interact with the licensee, recognizing their cooperation and encouraging them to renew as quickly as possible.

It is important the licensing operative is well dressed, well prepared and articulate, particularly when meeting users for the first time.

After the invoice(s) has been delivered to the user or licensee, one of two processes follow, dependent on whether a sale has been made.

(a) Process 1: When a sale is made

1. At the time of calling a client and/or the delivery and sale of an invoice, the licensing officer takes the details of the transaction for payment and these are passed on to the finance/accounts department.
2. The finance department verifies the payment, and, if confirmed, a receipt is issued.
3. The finance department sends the receipt to the licensing head, who confirms the receipt amount with the amount paid.
4. If these tally, the licensing head issues a license for delivery to the licensee.

Note: From the time a sale is made, up to and including delivery of the license, the licensing officer has a duty to update the licensee of any progress. This is part of the customer care that should be included in CMO licensing procedures. The aim is to foster strong relationships, so the licensing operative has an easier time renewing the license. The parties will have bonded through these customer care and public relations efforts if they are performed well by the licensing operative.

(b) Process 2: When a sale is not made at first instance

When the user or licensee declines to take or renew a license after due notification and issuance of an invoice, the licensing operative notes their details and submits them to the office. Emphasis here is placed on the details of the user or licensee; these must be

captured accurately in the event of enforcement. User or licensee details are, however, captured even when a sale is made for future renewals.

The licensing officer submits the notes to the head of licensing, who directs the officer in charge to file them and ensure proper records are kept. Such records will contain the names of users and licensees who are yet to take up or renew a license. The list is reviewed after seven days and the licensing operative is expected to update the records to show users who may have obtained a license or renewed one. The role of the licensing operatives during the intervening seven days would be to continue to engage with users and licensees, preferably by telephone, to convince them to either take up or to renew licenses before expiry of the seven days, as provided in the invoice.

3. Demand Notices and Notice of Infringement

After seven days, and if the users or licensees have still not taken up or renewed licenses, the licensing operatives issue demand notices and notices of infringement. A demand notice gives the users or licensees a further seven days to pay the license fees. These, and the notices of infringement, are usually delivered by courier, as experience has shown recalcitrant users will do everything to avoid complying. Using a courier service also helps in keeping accurate proof of delivery. During the seven-day notice period, licensing operatives again continue to engage with users and licensees to try to get them to take up or renew licenses.

If the user or licensee comply and pay for the license, then the normal process is resumed.

At the expiry of the seven days, if users or licensees have failed to take up or renew their licenses, the licensing operatives send a list of defaulters to the head of licensing, who submits the details to the chief executive officer for further action.

The next step must be standardized and will require the CEO to bring their team together to review the situation and decide on appropriate steps. The review will also enable the team to prioritize its actions.

The review team will involve the licensing team, finance head, and legal and communication teams, as the next step may lead to enforcement. The CMO's external lawyers may not be involved at this first review meeting. Meanwhile, before the meeting, the CEO directs their licensing team to investigate and monitor the defaulter's facility or platform to acquire evidence in the event of prosecution or the deployment of a legal tool to force compliance.

4. Enforcement

Once the evidence has been analyzed – to confirm the works deployed in the facility belong to the CMO, and, particularly, if the defaulting user is large and well established – and the enforcement team, usually made of the licensing team, licensing head, the legal adviser and the CEO, has agreed legal action should be taken, the CEO will instruct external legal advisers to write to the defaulter informing them of the CMO's intention to sue. At the same time, the CEO submits a formal report to the board outlining management intentions, and to get their potential buy-in.

While this is going on, the CEO instructs the licensing team to do the following:

- collate all letters and documents sent to the user;
- gather evidence to establish the use of copyright material, whether music or audiovisual works, by the user;
- properly investigate the user; and
- assemble the user's data collected during the licensing process.

Alternatively, the CMO can opt for the copyright dispute resolution panel as provided in the Copyright (Collective Management Organisations) Regulations 2007, though the challenge here is that decisions are not binding on either party.

These actions together should provide strong evidence for litigation. All hard copies of data gathered should be placed in each licensing officer's file. A soft copy should be prepared and stored digitally, and shared with the CEO.

Strict adherence to licensing procedure is crucial, as is ensuring documentation is retained for all steps taken, as follows:

- collect data;
- issuance of brochures;
- fill in license application form; (complete the user assessment form)
- service/delivery of invoice;
- issuance/service of demand notice;
- issuance/service of reminder notice;
- issuance/service of non-compliance notice;
- issuance/service of final warning notice;

- instruct lawyers to commence legal actions;
- gather/collate evidence of works and rights infringed, their associated details and legal chain of titles; and
- enforcement.

There are also clear timelines in which CMO licensing operatives can make follow-ups. Following up with users or potential licensees must be well organised and each follow-up visits must be documented with dates, time, locations and licensing personnel that visited.

Collected data is important for the licensing, documentation, distribution and finance departments, and for management decision-making.

The head of licensing must ensure a proper segmentation of the user market, and the creation and maintenance of a proper licensing database. Beyond the licensing team, they must also maintain proper supervision of licensing consultants nationally when the CMO uses its machinery for licensing in other parts of the country.

F. Collective licensing of different types of rights examples

This author has been involved in licensing deals cutting across different sectors of the user community; for example, the hotel, broadcast, restaurants and eateries, transport and brand activation sectors, and many others within Nigeria's creative industries.

Each sector has its challenges and prospects, and the strategy for engaging with one may be different from another. But the common denominator is that they all use delaying tactics, 'kicking the can down the road' and testing the patience of CMO licensing operatives before they reluctantly comply. In some cases, the CMO may have to threaten and perhaps institute legal action to force negotiation. Examples from hotels and similar establishments, and the broadcast industry, two key sectors, are explored further.

1. Hotels and similar establishments

Hotels and similar establishments, which fall under the public performance licensing sector, are one of the biggest revenue generators for a music and audiovisual work CMO.

It is therefore important the CMO pay close attention to how best to establish a connection in this industry. Due to the large numbers and their wide spread, it may make no economic sense

to engage with individual users. What has worked, and may generate a quicker outcome, thus saving a good amount of administrative costs, is for the CMO to first enquire whether a hotel is a member of any industry group or association.

Once this is confirmed, the next step is to invite them, through their association leadership, to a stakeholders' forum. This mostly serves to introduce the work of the CMO, and at the same time, educate business operators on the law governing deployment of copyright contents in their businesses or facilities and the functions of the CMO as an intermediary between them and the copyright owners.

It is important that invitations to these forums be extended to any government agency regulating the activities of the sector relevant to the discussion. The Nigerian Tourism Development Corporation (NTDC), which is responsible for tourism in Nigeria, and the NCC have been invited to such forums.

This strategy was key to the landmark agreement between COSON and the Nigerian hotel industry, brokered by Otunba Runsewe, then Director General of the NTDC, in December 2012. Under the agreement, effective from January 1, 2013, a discounted copyright royalty rate was applicable to all hotel rooms, attached restaurants and events venues owned by registered hotels in Nigeria. The deal, negotiated over a period of more than two years between COSON and the Hotel and Personal Services Employers' Association (HOPESEA) and Hotel Owners Forum Abuja (HOFA), ended the rancor associated with copyright royalty payments by hotels. It also ended the fear of multimillion-naira copyright litigation hanging over most of the hotels. The same strategy has been employed by both MCSN and AVRS in licensing hotels, particularly in Lagos.

Apart from the introduction and education potential, forums give users the opportunity to ask questions and seek clarification. It is the duty of the CMO to respond accordingly. Afterwards, the CMO will further engage with users through their associations on what each hotel category will pay and the modalities of payment. There are usually three categories of hotels depending on their star ratings and location, as follows:

1. international;
2. national; and
3. urban.

The international category will usually pay more than the national, the national more than the urban.

For AVRS, its classification of hotels previously reflected this categorization, but the audiovisual CMO in January 2022 during its meeting with the Hotel Owners' Forum Abuja (HOFA) changed its ranking to look like this:

1. premium;
2. class A;
3. class B; and
4. class C.

Today in Nigeria, there are two major associations that the music and audiovisual work CMOs will normally deal with, namely HOFA and the Hotel Owners and Managers Association of Lagos (HOMAL). There have been situations where engagement and negotiations with these associations have involved regulators both in the hotel industry and copyright sector. This way, it is easier for all interests to be put on the table, facilitating swifter resolution of copyright payments. Such engagement has always ended with the CMO granting the hotels concessionary rates and discounts.

Once a CMO closes a deal with any user group or association, a memorandum of understanding (MoU) is required, communicating the mutually accepted expectations of the CMO and the association on behalf of its members. While not legally binding, the MoU – which contains specific terms and conditions, particularly compliance and default by association members – must indicate a binding contract is forthcoming. The key question is whether the parties involved “intend to be legally bound by the terms of the agreement and that the same has been specifically or impliedly incorporated therein”.¹³⁵ Thus, the user group or association must commit to enforcing it; experience has shown that they have not always done as promised, leaving CMOs endlessly running after them and incurring further costs.

After the group negotiations, the CMO is advised to enter into individual agreements with each hotel, based on the agreement with the associations. The CMO must be of the same opinion as the associations on how their members will be monitored to ensure compliance.

¹³⁵ Barve, Gauri Mehendale. “Are MOU’s legally binding and enforceable?” *linkedin.com*. LinkedIn, July 20, 2021. <<https://www.linkedin.com/pulse/mous-legally-binding-enforceable-gauri-mehendale-barve>>.

2. Broadcast industry

The broadcast industry in Nigeria should be another significant source of income for both music and audiovisual CMOs. But in spite of the huge number of broadcasting stations, both television and radio, the level of compliance is abysmal. Engaging with broadcasters requires much tact, lobbying and patience. It also requires a lot of tactical compromise.

While it may sometimes be easy to engage with users in the hotel industry without their association, the same cannot be said of broadcasters. Practically every broadcaster is a member of the Broadcasting Association of Nigeria (BON). Until recently, the private broadcasters were also members of the Independent Broadcasters Association of Nigeria (IBAN) but it has now been collapsed into BON.

To successfully license broadcasters, the CMO must engage with BON. This has never been easy, as the association will most times look for reasons payments cannot be made or should be delayed.

The regulators of both sectors are again involved in engagement and negotiations, this time the National Broadcasting Commission and the NCC. Apart from establishing contact at executive level, the CMOs, on several occasions, have been invited to speak with members at BON general meetings, though this does not appear to have delivered the desired results. The outcome sought by the CMOs is that broadcasters, heavy users of music and audiovisual works, are licensed and make payments to the CMOs.

It appears that when frustrated with the unwillingness of broadcasters to comply with the law and obtain copyright licenses, the CMOs have instituted legal actions. Sometimes, the broadcasters have sought out-of-court settlements. Commencing proceedings against users – a form of enforcement – is sometimes necessary though it may be a long process, which is why the option of court injunctions could be contemplated. A court injunction may allow the CMOs get an order of court requiring a user to take specific action or stopped from carrying out a specific action until the substantive matter of infringement is decided.

CMOs can also take advantage of the NCC dispute resolution panel in resolving disputes with broadcasters, particularly in respect of tariffs.

Apart from litigation, CMOs can use their strong membership creatively, particularly the well-known faces, to persuade broadcasters to comply with the Copyright Act. One way, the CMOs

can creatively do this, is to bring their prominent and well know creators and artistes, to some of the negotiation meetings with users. Their presence creates the impression that the right owners are in support of their CMOs and align with their demands. This writer was part of the team that adopted this strategy during his tenure as Chief Executive of a CMO and it produced some great outcomes.

G. Negotiation and the goal of negotiation

A negotiation is a strategic discussion that aims to resolve an issue in a way that both parties find acceptable.¹³⁶ In a negotiation, each party tries to persuade the other to agree with their point of view.¹³⁷ Because copyright licensing of rights usage is a peculiar type of sale, the process involves negotiation.

H. What then is copyright license negotiation?

Copyright licence negotiation is “a dialogue between rights owners/holders and users seeking to discover common ground and reach agreement to settle the application of a tariff, the terms of a licensing scheme or related licensing matter of mutual interest”.¹³⁸

In licensing, CMOs seek to get as much money as possible for their repertoire and their members, while users want to pay the least they can.

This writer has led negotiations on behalf of a CMO where users put forward several reasons why their businesses were not in a good position to pay, while they willingly cough up for other goods and services deployed in their businesses.

It is the job of the CMO to make users see value in the works and rights they use in their businesses, and how that value contributes significantly to the growth of their revenue. But CMOs must “understand that negotiation around a tariff or licensing scheme is accepted as a route to securing a fair value for the rights/repertoire”.

¹³⁶ Kenton, Will. “What is negotiation.” *investopedia.com*. Feb. 22, 2021. Web. Feb. 17, 2022. <<https://www.investopedia.com/terms/n/negotiation.asp>>.

¹³⁷ *Ibid*.

¹³⁸ Robert Hooijer, CMO/MLC Negotiation, Preparation & User needs, Regional Training Program on Collective Management of Copyright and Related Rights 2017.

In closing a licensing deal with a user, a CMO has to ensure it secures satisfactory payment and accurate reporting.

It is recommended that before a CMO's licensing officers embark on any negotiation, they do their homework and are prepared. This preparation stage is key to the licensing officers closing deals and converting users to licensees.

I. Negotiation process¹³⁹

1. How to prepare: What does the CMO want and why does it want it?

CMO licensing officers charged with the responsibility of leading negotiations must be well prepared, together with their team. They must be able to consider the information they want to share with the user and the information they seek from the user. This helps in confirming assumptions they may have made prior to a meeting. As part of their preparation, the CMO negotiation team must prioritize their objectives to avoid a merry-go-round of activity. A mnemonic to help with this is LIM; like to achieve, intend to achieve/important for you to achieve, and must achieve. It has also been recommended that during preparation, the three roles of leader, summarizer and recorder should be assigned within the team.¹⁴⁰

2. How to debate: What does the licensee want/need?

To get the best from the discussion, the CMO negotiator should concentrate on listening to answers rather than asking questions. At this stage it is better to listen than talk. After carefully analyzing what has been heard, the CMO negotiator can ask constructive, positive questions.

The CMO negotiator must be sensitive to the user's reservations, commitment and intentions.¹⁴¹

3. How to propose: What could the CMO trade?

The CMOs must identify what they can trade. In negotiations, there are always things to deal in order to give the other party some level of comfort. It must be something the CMOs knows the users want. For example, the practice among CMOs in Nigeria is to invoice users who are yet to buy a copyright license, from the date the user businesses or operations commenced

¹³⁹ *Ibid.*

¹⁴⁰ Kennedy, Gavin. *Kennedy on Negotiation*. First published Gower, 1988.

¹⁴¹ *Ibid.*

to the current year. This gives the CMO room to maneuver during negotiations in terms of giving discount or rebates.

4. How to bargain: What is the CMO prepared to trade?

The CMOs, having identified what to trade or give up during negotiations, must also decide how far they are prepared to go. They may choose to reduce the period the invoice covers, as a form of rebate or discount, but they must also decide the number of periods (years) they are ready to give up in order to give the user some ease, an action which may eventually lead to a deal.

J. Preparation for negotiation¹⁴²

In preparing for a negotiation, the CMO team must establish the availability of the following:

- A licensing and marketing plan, including the licensing market segment and location of users in that segment.
- Licensing communication materials, including general brochures and literature on copyright/neighboring rights and the CMO's work, such as information on the licensing of specific types of users and value of rights.
- Standard CMO licensing/sale presentations.
- Knowledge among officers of the CMO's licensing policies and practices.
- Reviews of particular licensee businesses.

1. Tips for licensing negotiation

Before beginning negotiations, CMO licensing officers must do the following:¹⁴³

- Know your users
 - study in advance the people you are going to meet at the negotiation table and their interests;
 - brainstorm solutions with your team;
 - decide options for mutual benefits;
 - identify common interests and build on them; and

¹⁴² Robert Hooijer, CMO/MLC Negotiation, Preparation & User needs, Regional Training Program on Collective Management of Copyright and Related Rights 2017

¹⁴³ Tarja Koskinen-Olsson, About Negotiation Theories with Personal Reflections, NORCODE Training Program 2017

- recognize even small signals at the negotiation table, either from your team or the users.
- Interest and position
 - identify and understand what you want as a CMO and what the user parties may want; and
 - identify how you get what you want and how much you are able to give up for the user parties.
- Listen
 - always separate people from the problem
 - people (perception, emotion, communication); and
 - problem (objective facts to be solved).
- Insist on objective criteria
 - gather relevant information;
 - conduct due diligence;
 - exhibit standards of fairness and professionalism;
 - understand precedence; and
 - exhibit ethics.
- Feel safe in yourself
 - learn to persuade (use feelings, but do not become emotional); and
 - full concentration is key (do not be easily distracted).
- Build your negotiation strategy
 - what do we want to achieve?
 - leave space for negotiations (do not be rigid);
 - see negotiation as a play; and
 - have a best alternative to negotiated agreement (BATNA).
- Take calculated risks
 - develop your capability to take risks;
 - start with small risks (you can bear calculated risks); and
 - dare to say no.
- Choose a good team
 - do not negotiate alone, and have one person in reserve;
 - learn about the other side;
 - define the roles (good cop, bad cop); and
 - know your team strengths and weaknesses.
- Have patience

- know yourself;
- control your body and facial language;
- have agreed warning signals;
- learn to be an actor in a negotiation; and
- practice in different situations.
- Dare to ask
 - write an agreement that is understood;
 - use terms you understand;
 - note down all that is needed, leaving nothing out;
 - limit your offer if required; and
 - adjust the scope or say no elegantly.
- Use negotiation pauses
 - you have a right to think things over (do not allow yourself to be rushed into a decision);
 - pause if needed or use a pause strategically;
 - see negotiation as a play;
 - try different strategies; and
 - leave and promise to come back.
- Long-term goal
 - you can win the battle but lose the war;
 - enduring business relationship;
 - do not burn bridges;
 - your counterpart is not wrong; and
 - admit your interests differ.

Note: CMO licensing officers or negotiators should be particular about their appearance, conduct, presentation and delivery, and time management.

2. Goal of negotiation

In the majority of cases, copyright licensing agreements are reached through negotiations between CMOs and users or their associations.

The most desirable outcome is proper remuneration for the works and rights of CMO members and affiliates, and as a result, the establishment of a management system that leads to a

framework for the collection and distribution of royalties collected within a reasonable time and for a reasonable cost.

3. Essential skills for negotiations

These include the following:

- knowing what questions to ask and actively listening;
- being observant;
- being assertive;
- an ability to influence;
- an ability to persuade;
- patience;
- a sense of humor; and
- being ethical.¹⁴⁴

K. Summary of Chapter III

1. To close copyright licensing deals as quickly as possible, CMOs must develop licensing strategies that enable them to properly engage with different types of users.
2. The funnel approach has been established as one of the most effective ways for CMOs to begin user engagement.
3. To adopt the funnel approach, CMOs have to first segment their user market, and then start their licensing activities at the top of the funnel, which represents the major users, and move down to the narrow bottom of the funnel, and the small users.
4. For proper user engagement, CMOs must also segment and estimate their markets. This involves separating the user market into segments/sectors and estimating the size of each.
5. Segmenting the user market enables the CMO's licensing officers to first focus on sectors that will generate quick and significant income for the CMO and prioritize those that will be less resistant to the CMO's demands.

¹⁴⁴ SlidePlayer. "Effective negotiation." *slideplayer.com*. Web. Mar. 23, 2022. <<https://slideplayer.com/slide/6096855/>>.

6. The primary task of licensing officers is to make sales by closing licensing deals as early as possible, thereby converting unlicensed users into willing licensees and happy customers.
7. For CMO licensing officers to be effective, they should be properly and continuously trained in the art and business of copyright licensing.
8. CMOs can quickly segment or sectorize their markets based on:
 - type of rights and/or works;
 - categories of users;
 - nature of uses or premises;
 - types of licensing schemes; and
 - geographical location.
9. CMOs must have a clear understanding of the business models of users, and how they operate and what rights are involved in their businesses.
10. CMOs must treat all potential users and/or licensees in a fair, professional and non-discriminatory manner.
11. CMOs licensing processes are usually broken down into four steps, as follows:
 - Conducting surveys of the user market and activating awareness campaigns through considered marketing and communication plans.
 - Accurately invoicing and ensuring proper parameters are taken into account when calculating tariffs.
 - Issuance of demand and infringement notices for payment of copyright licensing fees.
 - Enforcement, whether through the NCC tariff dispute resolution panel, the courts, or any other means permitted under Nigerian law.
12. Negotiation is a critical part of a CMO's copyright licensing activities. Officers charged with the task of licensing must be versed in the art of negotiation.
13. Negotiation in copyright licensing has been defined as "a dialogue between rights holders and users seeking to find common ground and possibly reach agreement to settle any applicable tariff with its licensing terms and conditions for their mutual interests".
14. Negotiation as to tariffs or licensing schemes is an important route to securing fair value for the use of a CMO's repertoire.
15. The goal of negotiation is to ensure the works and rights of CMO members and affiliates are properly remunerated, and to establish a management system that leads to a framework for collecting license fees in a time and at a cost that are both reasonable.

Chapter IV

Collective management of digital rights

A. Introduction

We are now in an era of digital distribution, with creative content such as music, film, literary and/or artistic works delivered or distributed through the Internet or on digital platforms.

Digital distributors such as FlareTechMusic, Boomplay, Jumamo and uduX are used either to aggregate or stream and download the singles and albums we love to hear and sing, Netflix and YouTube to watch the blockbuster movies, and Amazon to download the books we want to read.

This changing business model, occasioned by advances in digital technology, has created both challenges and opportunities for the copyright sector. Klobucnik and Campello put it thus vis-à-vis the music industry:

“The digital era of music consumption has created either challenges or unique opportunities for the music business. On the one hand, the surge of digital consumption of music has disrupted the music business, crashed the physical industry and changed the game. However, music consumption through digital service providers (DSPs) has created a wider access to millions of all kinds of musical works as well as musical works incorporated in other products, such as music in audiovisual products.”¹⁴⁵

Over the past decade, the copyright sector has evolved, developing new licensing models and industry standards to meet the changing copyright business models. But even as these standards emerge, there is confusion as to how, exactly, digital platforms are licensed, what rights are involved or implicated when copyright works are exploited, how tariffs are calculated and what the digital platforms must pay, and how payment for these works and rights is processed and distributed to interested parties, in this case the right holders within the value chain.

¹⁴⁵ Klobucnik, Lucius, and Daniel Campello. “The role of traditional CMOs in the digital era.” *eipininnovationsociety.org*. <<https://www.eipin-innovationsociety.org/wp-content/uploads/2019/07/Working-paper-Lucius-Klobucnik-19-05.pdf>>.

To deal with the impact on copyright protected works, the WIPO Internet Treaties – the WIPO Copyright Treaty (WCT) and WIPO Performance and Phonogram Treaty (WPPT) – were agreed in 1996. Hooijer and Baloyi summarized them thus:

“The Internet treaties aimed to improve the existing protection in relation to copyright and related rights by introducing new standards that are applicable in the digital environment and that serve to clarify existing protection.”¹⁴⁶

Regarding literary works, musical works, sound recordings and audiovisual works, and the rights involved in their exploitations, the following must be noted:

- Mechanical or reproduction rights are heavily implicated in digital downloads, and to a certain extent, even in streaming (broadcasters, simulcast, webcasters, CRBTs, etc.).
- All digital communications involve the communication to the public right, and digital interactive communication of works is covered by the making available right.

At this point it would be pertinent to take a quick look at the negative impact of digital technology on the Nigerian creative sector, and a potential solution.

As well as the menace of several pirate blogs and Internet sites allowing the illegal distribution and sales of copyright works, the popular Computer Village in Ikeja, the capital of Lagos State, has done much harm to the music, film and literary industries. With the growth of online and digital technology in Nigeria, physical piracy has slowly moved from the popular Alaba market¹⁴⁷ to the village,¹⁴⁸ where tens of hundreds of digital files – music, movies and books – are sold at ridiculously low prices without the permission or authorization of copyright owners.

The piracy in and around the market at Alaba, which is also in Lagos State, was audacious, and no effort or initiative was sufficient to bring any lasting solution. While creators were being robbed of their ‘sweats and labor’, the pirates were laughing all the way to the bank; the market became notorious as they resisted and fought back against every move by the NCC, the artists’ union and even the concerned Alaba market associations.

¹⁴⁶ Hooijer, Robert, and J. Joel Baloyi. “Collective Management Organizations: Tool Kit – Musical Works and Audio-visual Works.” *wipo.int*. World Intellectual Property Organization, Feb. 2016. <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_1.pdf>.

¹⁴⁷ Electronic market popular in West Africa. A section of the market has become a haven for the physical piracy of CDs containing copyright works.

¹⁴⁸ A computer and mobile phone market popular in West Africa that has also witnessed digital unauthorized sales and distribution of copyright works.

The narrative seems to have changed since the dawn of digital in Nigeria. Alaba market appears to be struggling, now playing second fiddle to Ikeja when it comes to copyright infringement. It is not uncommon at the Computer Village to see hundreds of young men and women, sitting under umbrellas of all shades and sizes, with laptops on small tables, selling a great deal of copyright content on flash drives to enthusiastic customers for an average price of ₦2,000.00 (approximately \$4). The business is so lucrative that even shop owners within the village are selling pirated contents. In most situations, these drives contain hundreds of copyright materials of different owners. And like it is in Ikeja, so it is across the country's major cities.

It is for such massive abuse of copyright works that the private copy levy was included in the Copyright Act, and Copyright (Levy of Materials) Order 2012 has since been made in 2012. One way that right holders can be compensated for this theft of their works and abuse of their rights is through the immediate implementation of this private copy levy. This is not, however, a substitute for commercial pirate reproduction.

B. Challenges and solutions, per type of rights

In the case of Ikeja Computer Village and other major Nigerian cities, massive downloading (reproduction) of copyright content is happening daily without any effective protection. With the Copyright (Levy of Materials) Order 2012 still not activated, there were attempts by CMOs to license users. But they never really got around the problem because, for example, in the music industry, digital distribution of sound recordings is mainly controlled by record labels, based on contractual agreements with the artists – it is not part of the rights assigned to the CMOs. This may vary depending on circumstances. However, music CMOs have had mechanical rights assigned to them by authors and composers and, where involved, music publishers.

It is the same in the film industry in Nigeria, where a producer exclusively controls the distribution of their movie content. That creates a challenge for the music CMO, as licensing the users for the underlying compositions may suggest subtle approval for digital piracy of the master recordings, and the audiovisual CMO cannot create any licensing arrangement without permission of the producers.

The introduction of interactive communications, a result of digital advances (and which makes it easier for users to select works to be delivered to their digital devices), has raised questions as to which of the exclusive rights granted to authors should cover this new exploitation.

It was in response to this that Article 8 of the WCT, and articles 10 and 14 of the WPPT, were agreed. Authors of literary and artistic works were granted the right to authorize the making available of their works to the public “in such a way that members of the public can access these works from a place and at a time individually chosen by them”. And performers and producers of phonograms were given the right to authorize the making available of their performances fixed in phonograms and phonograms, respectively, “by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them”.

Even though the making available right has not been specifically provided for under the Copyright Act, these uses have been covered by the communication to the public right.

A challenge facing CMOs in Nigeria (and some other parts of Africa) in the licensing of digital rights is the lack of capacity within their licensing set-up.

With new business models emerging, throwing up the problem of fragmentation of rights, and the need for DSPs to obtain licenses for the use of copyright contents across African territories, the demands on CMO licensing operatives have increased. They may not be well trained in online/digital licensing, yet have to determine how best to approach these exploitations, the scope of rights involved and suitable tariffs. Without understanding the nature and model of exploitation, licensing negotiations become more difficult for them.

Digital exploitation has no respect for borders. Licensing has to follow suit. Traditional licensing, which is territorial, has been rendered irrelevant, unable to follow use that is multi-territorial. To resolve the matter of African cross-border digital licensing, bundle the fragmented rights (mechanical and performing rights) and retrain CMO licensing personnel, the Pan African Digital Licensing Hub was established, led by CAPASSO, the South African CMO for mechanical rights.

Aided by the existing bilateral relationships between CAPASSO, SAMRO and 24 Pan African CMOs, the hub is the equivalent of Europe’s ICE and Armonia. Due to a different operating environment, the African version uses a hybrid model of bilateral and multi-territorial licensing.

It allows for a one-stop licensing shop, where CAPASSO facilitates digital licenses covering both mechanical and performing rights. Many international and local DSPs, including Apple Music, Spotify, Facebook, YouTube, TikTok, Boomplay, uduX, MusicTime and Mdundo, and MultiChoice DStv, Africa's biggest satellite service provider, have been licensed. Through their interaction with CAPASSO, CMO personnel are being exposed to the dynamics of digital licensing, though it should be stated that this model applies only to CMO mandates and the licensing of musical works.

Other solutions that would position the work of CMOs in the digital environment are, first, a centralized database with standardized coding to identify all rights holders in the value chain, and second, giving rights holders access to this database. Identifiers are needed for the works and the interested parties involved in their production and commercialization. For musical works, the International Standard Work Code (ISWC), the industry standard for the identification of musical works, and internal CMO codes are key to recognizing works from digital sales reports. The International Standard Musical Work Code (also ISWC) is a unique, permanent identifier for musical works.¹⁴⁹

Another suggestion is complete, clean and accurate metadata; without it, a database is useless. When in place, it becomes easier to locate rights holders and make payments to them for the exploitation of their works.

CAPASSO CEO Jotam Matariro had this to say on metadata, and why it matters:

“Setting up the hub and putting licences in place is only but the first part of the process. We now need to encourage all our composers across the continent to provide metadata, which is key to collections. Without metadata, we will not be able to benefit from the licences that we have put in place, as collections are based on the works’ information that we are able to identify from the massive reports that the DSPs provide to us on a regular basis. We therefore call upon all music authors and composers as well as publishers across the continent to notify their works so we can make this process beneficial to all.”¹⁵⁰

There are front office applications that can now be deployed to help create a trusted database, saving cost, time and human resources. But as the digital licensing landscape keeps

¹⁴⁹ ISWC Network. “What is an ISWC?” *iswc.org*. International Confederation of Societies of Authors and Composers. Web. Mar, 23, 2022. <<https://www.iswc.org/>>.

¹⁵⁰ Stassen, Murray. “Multi-territory digital licensing hub in Africa shows signs of success ahead of potential ‘streaming boom’.” *musicbusinessworldwide.com*. Dec. 11, 2019. Web. Nov. 29, 2021. <<https://www.musicbusinessworldwide.com/multi-territory-digital-licensing-hub-in-africa-shows-signs-of-success-ahead-of-potential-streaming-boom/>>.

expanding, collaboration between CMOs in Nigeria must improve, as it may be difficult to deal with these challenges alone.

C. Summary of Chapter IV

1. The digital environment has changed the way in which copyright and related rights contents are distributed and consumed, with significant impacts on the way rights are licensed and cleared.
2. Copyright and related rights are bundles of rights, and each fragment can be licensed independent of the other. However, these fragments of rights are becoming a challenge for users in the digital environment.
3. To license effectively in the digital environment, and due to the cross-border nature of the Internet, local CMOs should improve collaboration with others in their region or subregion, and grant single licensing fees to users who may need multiple rights fragments by bundling the rights.
4. Through this enhanced collaboration, Nigerian CMOs should build capacity among their licensing operatives.
5. Such collaboration is seen among the musical works CMOs in Africa who came together to form the Pan African Digital Licensing Hub. The hub has made it easier for users such as DSPs to exploit musical works on a Pan African basis and pay to a single source, whose responsibility it is to forward royalties to the affiliated CMOs.
6. To be efficient in the digital space, CMOs must acquire the rights they need to license digital uses of protected material and build or improve information systems to deal with ever more complex rights management and licensing tasks.¹⁵¹
7. As to digital rights, CMOs must be willing and quick to adapt to emerging technologies and new business models. They must have a clear understanding of how this impacts user businesses in order to develop tariffs that meet such changes.
8. For CMO licensing operatives, an understanding of the mechanics by which copyright and related rights are owned, transferred or licensed is important in fully comprehending the digital environment.
9. To be relevant in the digital market space, CMOs must have a centralized database of works with standardized coding so they can identify their respective right holders. Metadata held in the database must be clean and accurate.

¹⁵¹ Gervais, Daniel J. ed. *Collective Management of Copyright and Related Rights*. 3rd edition. Netherlands: Kluwer Law International, 2016.

10. CMOs must endeavor to make their licensing processes easier, faster and simpler for all users interested in deploying copyright contents on their services.

Chapter V

Getting it right: good practice in collective management

A. Introduction

The critical role that CMOs play in the copyright and creative space has been established. They provide valuable services to authors and rights holders, and to people or businesses that may want to publicly or commercially deploy copyright works in their premises, facilities or platforms. As a consequence, there have been calls for CMOs to be open and transparent about their practices in such a way that stakeholders understand how they operate and what rules govern their operations, particularly their obligations to members and licensees.

In the last five years, CMOs have come under serious scrutiny for their conduct and the behavior of their operatives. The demand for good practices within the collective management system has never been more important to the success of a CMO and its operations than it is today.

Operating as a private fiefdom, unfortunately a familiar sight, is no longer an option for a generation of enlightened, committed stakeholders who demand transparency, accountability and good governance in the way their CMOs are run. It is not unusual for users of copyright works to ask CMOs – particularly in the current business climate – for proof of who they have paid before making any financial commitments or responding positively to their demands.

Getting it right in every area of operation is no longer an option for CMOs but a duty and a commitment, as agreed in their code of practice.

Taking it further, and to enhance good practice, the NCC expects CMOs to meet the following obligations, as provided under the Copyright (Collective Management Organisations) Regulations, 2007 and for ease of reference, the provision is hereunder reproduced:

- (1) Collective Management Organizations shall within 30 days of occurrence notify and furnish the Commission with information in respect of:
 - a. alteration to the Memorandum or Articles of Association or any internal rules;

- b. adoption of tariffs and any alteration thereof;
- c. reciprocal representation agreements with foreign collecting societies;
- d. any alteration to the standard membership agreement;
- e. any decisions in judicial or official proceedings to which the society is a party, where the Commission so requires; and
- f. any documentation, report or information that the Commission may require.

(2) Collective Management Organization shall, not later than the 1st day of July in each year prepare and submit to the Commission the following documents in respect of its operation for the preceding year:

- a. a general report of its activities; and
- b. annual audited financial report, which shall show among others
 - (i) total revenue during the period of the report;
 - (ii) total sum and general nature of expenses; and
 - (iii) payment of royalties to members in accordance with the organization's distribution policy.

(3) Collective Management Organizations shall provide users of copyright works, or any member of the public, upon a written request, reasonable information on their services. Such information shall include the following:

- a. description of the rights or class(es) of rights it administers;
- b. its current licensing arrangements, including tariff, terms and conditions of license for all categories of users; and
- c. such other relevant information that may be necessary.¹⁵²

To further address stakeholder concerns, CMOs are now mandated to not just develop and adopt policies contained in their codes of conduct, or practice, or internal rules, but to ensure such policies are seen to be implemented for the overall good of the CMOs, their members and licensees.

Membership-based organizations handle a lot of money on behalf of their members, and to remain relevant in the copyright business environment it is essential CMOs retain the confidence of these members and their licensees. While CMOs may expend huge budgets on building an image, their reputations can only be earned.

Stokkmo said of CMO image and reputation:

¹⁵² See Paragraph 8 of the Copyright (Collective Management Organisations) Regulations of 2007.

“A CMO can build its image. That does not automatically lead to a good reputation. Trust and reputation need to be earned! And this in turn is based on the CMO’s real operation and how it is viewed by others. Building the reputation involves the corporate culture; the managing and management of the CMO; its products and services, and how they are delivered. The way they handle this will be reflected in the public image of the CMO.”¹⁵³

CMOs are usually members or affiliates of one or more of the international federations, such as CISAC, SCAPR,¹⁵⁴ IFRRO and IFPI, and expected to be bound by their professional rules and codes of conduct. In this case, it is mandatory for CMOs to tailor their practices to a federation’s rules and codes.

To provide a guide for CMOs and support efforts to establish good practice in their relationships with both members and users, in September 2021 WIPO updated its good practice toolkit for CMOs. Based on official consultations with Member States and stakeholders, the toolkit brings together examples of legislation, regulation and codes of conduct in collective management from around the world. CMOs in Member States, Nigeria inclusive, could adopt any part of the toolkit in designing and developing their good practice tools, adapting them to suit their particular environment and situation.¹⁵⁵

The toolkit is made up of 13 chapters as follows:

1. Providing information about the CMO and its operations.
2. Membership: information, adherence and withdrawal.
3. Members’ right to fair treatment: their position in the CMO.
4. Particular issues concerning the CMO: member relationship.
5. Governance.
6. Financial administration, distribution of revenue and deductions.
7. Relationship between CMOs.
8. Relationship between CMO and user/licensee.
9. Processing of members’ and users/licensees’ data.
10. Importance of IT infrastructure.

¹⁵³ Stokkmo, Olav. “Transparency, Accountability, Good Governance of CMOs.” *wipo.int*. World Intellectual Property Organization, Nov. 4, 2015.

<https://www.wipo.int/edocs/mdocs/africa/en/ompi_pi_dak_15/ompi_pi_dak_15_cluster_ii_10.pdf>.

¹⁵⁴ SCAPR. “Code of conduct.” *scapr.org*. Societies’ Council for the Collective Management of Performers’ Rights, Oct. 2020. <<https://www.scapr.org/wp-content/uploads/2021/10/SCAPR-Code-of-Conduct-2020-10.pdf>>.

¹⁵⁵ WIPO. “Good Practice Toolkit for Collective Management Organizations (The Toolkit): A Bridge between Rightholders and Users.” *wipo.int*. World Intellectual Property Organization, Sept. 15, 2021. Web. Nov. 9, 2021. <<https://www.wipo.int/publications/en/series/index.jsp?id=180>>.

11. Development of staff skills and awareness.
12. Complaints and disputes resolution procedures.
13. Supervision and monitoring of CMOs.

The current Copyright (Collective Management Organisations) Regulations 2007 already capture major parts of the recommendations provided by the WIPO toolkit.

However, owing to increasing demands from right holders, users and other stakeholders for improvements in practices to capture the new realities, it is believed current regulations are due for review.

Developing and/or adopting codes of practice based on the British Copyright Council (BCC) principles, adapted to the Nigerian legal environment, would help enhance good practice amongst CMOs. The principles are:

- identify rules on governance structure, licensing arrangements, royalty collection and distribution practices, and administration charges;
- clarify service levels for members and licensees;
- set out requirements for rates based on contractual negotiations to be fair and consistent across all users;
- provide for transparency in access to license tariffs;
- explain implications of a member's mandate to a CMO; and
- clarify complaints/disputes procedures for members and licensees.¹⁵⁶

B. Ethics for CMO employees

The concept of workplace ethics is about doing what is right in terms of the CMO's relationship with stakeholders – the authors, rights holders and licensees – as well as the effects of its services on these stakeholders.

Regarding licensing and sales, part of doing what is 'right' is having the staff and personnel who will drive licensing operations that assist the CMO in achieving its mandate and goals.

¹⁵⁶ British Copyright Council. "British Copyright Council launches Principles for Collective Management Organisations' Codes of Conduct." *britishcopyright.org*. British Copyright Council, Dec 5, 2012. <<https://www.britishcopyright.org/british-copyright-council-launches-principles-for-collective-management-organisations-codes-of-conduct/>>.

How a CMO recruits its personnel is therefore important; it will likely determine the CMO's success or failure in generating revenue for its members and affiliates. To ensure the process is carried out effectively, the CMO must have a recruitment policy that reflects its licensing and sales strategy. This will guide the CMO on how to hire, to put square pegs in square holes as it were; a considered recruitment policy will ensure the right licensing staff and personnel are selected for the right jobs.

The business of CMOs is a tough one, particularly in Nigeria, where some companies are striving to stay afloat amid economic challenges. To deal with this demanding business terrain, CMOs must be creative and acquire personnel who are confident, passionate, self-driven, goal oriented, teachable and hardworking from day one.

As part of the process, it is important that due diligence and background checks are carried out on potential personnel. CMOs deal with money, and plenty of it, and all employees must be trustworthy. The first step is planning, which involves determining all specifications of the role.

To provide context, one CMO's job description for a head of licensing/licensing coordinator specified the successful applicant would be responsible for developing and maintaining effective professional relationships with users, clients and customers through a variety of methods, identifying unlicensed premises, facilities and platforms, and ensuring the need for a license is understood and all payments are agreed.

C. Licensing functions

One of the key roles of CMOs, is to provide the necessary mechanism through which users of copyright works could obtain appropriate authorisation commonly referred to as licence before such works could be deployed or used on their facilities or platforms. To properly execute this role, the licensing operatives must understand their functions, which are:

1. Implementing licensing deals, including arranging invoicing, monitoring royalty flows and coordinating annual adjustments in tariffs.
2. Negotiating with licensees, and invoicing and collecting payments.
3. Conducting investigations, analysis and research to inform key licensing projects.
4. Establishing deliverables and timelines for licensing projects and ensuring these are managed effectively.

5. Providing support on team workloads and related matters on an ad hoc basis, such as producing presentation/reports, and assisting in the acquisition and management of mandates from affiliated CMOs and partner federations.
6. Directing monthly/quarterly invoicing for all licenses managed by the licensing team. Includes taking responsibility for invoicing and pursuing payment collections for all accounts across the country.
7. Managing the quarterly agency returns to ensure agent-reported revenue and costs reconcile, and resolving any discrepancies.
8. Providing support to the monthly and quarterly licensing activity and revenue reports, including population of data and production of reports.
9. Ensuring the team's revenue is correct in weekly and monthly departmental revenue reports and liaising with the head of finance and finance teams as required.
10. Keeping a schedule of license renewal, and coordinating, developing and organizing the team's toolkits and resources, and documenting and mapping team processes.
11. Ensuring the licensing team complies with licensing policy and procedure.

D. Policies and manuals for licensing operation, field supervision and inspection

Licensing policies set expectations for the conduct of licensing operatives, and the procedure manual outlines the steps to achieving such behavior. This ensures consistency in practice, and maintains a quality output and outcome.

Policies and procedure manuals are designed to regulate all major decisions, actions and principles of an organization. They provide authority and necessary guidance to a company or departments on topics such as hiring practices, licensing procedures, distribution methods, bank accounts and dress code.¹⁵⁷ Together, constructive policies and procedures ensure a decision by management is translated into steps that result in effective working and communication.¹⁵⁸

A CMO's main policy is the granting of licenses to prospective users, provided the users are prepared to enter into standard form license contracts or agreements and pay applicable fees. The onus is on the user to obtain the copyright owner's (or their representative's) permission

¹⁵⁷ BIT.AI. "Policy and procedure manual: What is it and how to create it?" Published 2019 *blog.bit.ai*. Bit. Web. March. 1, 2022 <<https://blog.bit.ai/writing-a-policy-and-procedure-manual/>>.

¹⁵⁸ *Ibid.*

for the exploitation of the works, prior to this commencing. Unfortunately, this is not widely appreciated, and the CMO is obliged to maintain a staff of full-time licensing officers in the field. Their task is to explain the requirements to unlicensed users of copyright works and issue them with the necessary licenses. Users who do not obtain a copyright license before the use begins run the risk of being assessed at a premium tariff rate.

A CMO takes reasonable steps to ensure users are fully aware of their obligations; after this, if a user refuses to comply and take out a copyright license, the CMO will have no hesitation in instituting legal proceedings, or bringing the matter to the copyright dispute resolution panel. An infringement of copyright action is brought against the user, seeking an injunction restraining them from using any work in the CMO repertoire, as well as claiming damages and costs.

Apart from civil remedies, the Copyright Act in section 20 affords the copyright owner the right to bring criminal charges against the person or business that uses his or her work without permission. The Copyright Act in section 24 also permits both criminal and civil actions to be taken simultaneously in respect of the same infringement.

The license issued by the Nigerian CMOs is usually a blanket license authorizing the use of all the works in their repertoire, which the CMOs control on behalf of both their rights holder members and affiliates worldwide. The license is usually in the form of an annual contract that runs from year to year. Due to the multifarious nature of the exploitation, the fees payable under CMO licenses vary. Every CMO license contains a standard condition, whereby the licensee is expected to submit regular returns of the works (known as a log or cue sheet) used on the licensed premises, platforms or service. With the help of digital technologies, music or audiovisual works used by broadcasters are now digitally tracked and logged, which makes it easier for CMOs to identify and pay rights holders.

By virtue of the contractual nature of the CMO license, the payment of license fees is a legally enforceable obligation. While most licensees pay promptly, those who fail to meet their obligations on time are sued in the courts as commercial debtors, and CMOs reserve the right to claim interest and the cost of collection.

In certain instances, a CMO issues short-term licenses, called Letters of Authority, for the use of copyright works at facilities not licensed for a specific function. This is common among music CMOs.

When a group or chain of stores or restaurants seek a license covering the performance of music on all their premises, the music CMOs normally issue a single comprehensive/group license to the owner of the establishments. The license fee payable is assessed annually, based on the nature and scope of music usage on the premises and the number of premises involved. This prevents having to issue and cancel licenses when new outlets are opened, and others closed or sold. Such licensees are obliged to make an annual declaration to the CMO, giving details of the premises where music is currently being used and the nature and frequency of the performances. This enables the CMO to calculate the appropriate license fees.

License fees are calculated through a series of specially designed tariffs that take account of the circumstances in which the copyright work is used. Many CMO tariffs have been set based on various classes of users, and also by considering the economic environment in Nigeria.

With galloping inflation and rising costs hitting living standards, and to void shortchanging themselves, CMOs have had to link their tariff reviews to movements in the Nigerian CPI. Reviews are subject to an increase or a decrease relative to any rise or fall in the weighted average figure of the index. This has been done to take account of both the dwindling value of money and the relative improvement or deterioration in the country's general standard of living.

E. Template for a CMO licensing manual

This section will review how a CMO licensing manual should look, and the key items to capture.

1. Categories of payment mode

Payments to the CMO will be by cheque, made out to the CMO and paid into a dedicated account, as advised in the invoice issued to the user. Payments can also be made through electronic, mobile or web transfers.

Cash payment is prohibited, and licensing operatives and agents are barred from making cash transactions.

As approved by the board, there may be rebates and discounts for companies, establishments and associations, and any organized group making payments in bulk.

2. Installment payments

Installment payments of license fees will be on a case-by-case basis, as approved by the head of licensing, subject to the following:

- written formal request or application to pay the license fee by installments;
- payment plan, with clear distinct timelines and duration of payment obligations;
- payments to be made directly to dedicated accounts, as advised in the invoice;
- monthly administration fee equal to 10 per cent of the license fee to be imposed for every installment month as approved by the head of licensing;
- any breach of the terms of the installment payment will render it void and any payments made will be forfeited and considered to have covered that period for which payments were made; and
- a copyright license will be issued only upon completion of final payment.

Management creates a standard policy approved by the board to cover the most frequent occurrences.

3. Consumer Price Index (inflation)

All license fees are subject to movement or changes in the CPI. These increments will apply for the licenses due and to any new licensees for the duration of the license year.

4. Incentives and penalties

Incentives and penalties are regulated as follows (all are annual):

- payments made up to 14 days before the due (as per invoice) date will be entitled to a 10 per cent discount;
- payments made up to 7 days after the due (as per invoice) date will pay only the actual license fee as per the invoice;
- payments made after 7 days of the due date (as per the invoice) but within the month of the due date will attract a penalty of 10 per cent; and
- payments made a month after the due date (as per the invoice) will attract a penalty of 25 per cent.

5. Reporting format

Monthly licensing reports from the sector licensing heads (by the third day of the new month) to include a comprehensive list of:

- licensees for the period falling due;
- invoices prepared and delivered;
- users inspected during that month; and
- users licensed in that specific month.

A comprehensive licensing list will entail:

- name of premises/facilities/platforms/service;
- name of the contact person at premises/facilities/platforms/service;
- location of premises/facilities/platforms/service;
- date of expiry of license and its value;
- date of issuance of license and amounts received;
- usage report; and
- issuing officer.

6. Monthly inspection reports from sector heads

The sector heads will submit a detailed inspection report as follows:

- name of state;
- officer in charge of the state;
- database of the users in the state;
- cities in the state covered during the inspection; and
- comprehensive list of licensees visited during the inspection;

A comprehensive inspection list will entail:

- name of premises/facilities/platforms/service;
- name of contact person at premises/facilities/platforms/service;
- location of premises/facilities/platforms/service;
- date of expiry of license and its value;
- date of issuance of license and amounts received;
- usage report;

- level of understanding of the role of the CMO, its mandate/authority from members and sister CMOs, scope of its controlled repertoire and obligations under the Copyright Act, by the licensee inspected, gauged as a percentage;
- feedback from licensees visited; and
- recommendations.

7. Daily licensing reports from the sector heads

For proper documentation of tasks carried out by CMOs' licensing sector heads and their team, it is required of the sector heads, to prepare proper reports showing activities carried out by their team during the day. At the end of the week, these reports from the sector heads are collated and transmitted to the licensing manager.

- Awareness
 - route map; and
 - feedback of awareness exercise with a comprehensive list.
- Invoicing
 - preparation (accounts department) of invoices (comprehensive list of licensees and invoice numbers);
 - delivery of invoices (comprehensive list of licensees, due date on invoices, amounts due on invoices and mode of delivery); and
 - feedback on invoicing activities with comprehensive list.
- Follow-ups
 - comprehensive list of licensees and mode of making follow-up;
 - penalty invoice with reminder letter;
 - demand letter for invoiced amounts (license fee plus penalty);
 - notice of infringement; and
 - feedback on follow-up activities with comprehensive list.
- Licensing/enforcement operations: a comprehensive list of infringing users
 - name of premises/facilities/platforms;
 - name of contact person at premises/facilities/platforms;
 - location and contacts of infringer;
 - date of awareness/expiry of license;
 - date of filling out of application form and assessment;
 - date of invoicing plus value of license;
 - administration fee plus penalty per invoice;
 - dates and modes of follow-up;

- repertoire of CMO infringed and the dates of infringement;
- police station (normally application is made to the Inspector General of Police, who directs the Zonal Commander where the enforcement would take place to liaise with the CMO heads (name and contact of police officer leading the enforcement); and
- feedback of operation activities, with a comprehensive list, including full IDs of police officers in the operation.

8. Update of the database

The database must contain full details of the users and licensees, and their status with regard to having a copyright license. With front office applications now available, CMOs can easily capture and store necessary data as it concerns their licensees, both physically and digitally.

9. The day's licensing activities (report) to be placed in each licensing officer's file

There are applications that allow this reporting to be conducted digitally, and CMOs are encouraged to take advantage of them. Licensing operatives can file their daily reports from any location without having to physically visit the office. The report will be filed digitally in the name of the operative, and the head of licensing and CEO will have access to the files.

10. Licensing procedures

(a) Awareness/survey/marketing/public relations

This is the first stage of the licensing procedure. The CMO licensing officers visit a user(s) premises and facility to inform, educate and sensitize them directly, or to provide them with a brochure on the CMO. The following happens during this stage:

- The CMO licensing officers call at the user's premises to create a rapport with the user(s) and help them understand the importance of taking out a license when using copyrighted works in the CMO repertoire.
- The brochure highlights the CMO's history, its mandate and relevant sections of the Copyright Act and associated CMO regulations of 2007 on the rights of copyright owners, important terms, copyright infringement, criminality and punishment, and a brief on the collective management of copyright and related rights. If any aspect of the brochure is unclear, the user can seek clarification from the CMO office or the licensing officer they are dealing with.

- Once the user has understood and recognized the function of the CMO, and copyright and copyright law, the CMO licensing officer should assess the premises or facilities to establish the value of the copyright license. In situations where they are unable to do this, they may rely on any communication material related to those facilities and make a reasonable assessment based on that.
- In premises or facilities where it is established that works in the CMO repertoire are used, a license application form is filled out by the operator of the facility and possibly signed (although this is usually done by the licensing officer) indicating the name of the facility, contact person, location, nature of the establishment/business, seat capacity/floor space, type/category of copyright usage, applicable tariff and amount payable per annum.
- Premises that do not use copyright works are also visited to establish their value and also why they do not use copyright works. This is for any follow-up, and for recommendations to management on the best way to increase the CMO's user coverage.
- Regarding digital services, monthly reports are forwarded to the CMO based on the licensing agreement. More recently, DSPs are granting rights holders and the CMOs access to their back-ends.

(b) Invoicing

In a licensing procedure, once a premises or facility has been assessed, it is issued with an invoice. This is mandatory, irrespective of the amount. There is no valid reason invoices should not be issued to new or already licensed premises and facilities. In the case of DSPs, invoices are issued for the payment of a minimum guarantee or advance, which is recoupable from the royalty payment. The invoicing protocol is as follows:

- New premises or facilities are issued with invoices and given an agreed time frame in which to pay and acquire the CMO copyright license, so as to legalize and make regular their exploitation of copyright works in the CMO repertoire.
- Premises or facilities with current copyright licenses are issued with invoices at least one month prior to their license expiring so they can enjoy the 10 per cent early payment discount approved by the CMO board.
- Licensed premises or facilities whose license has expired but have not yet been invoiced are issued with an invoice to pay within three days from the date they receive the invoice.

(c) Demand notice/notice of infringement

When the payment deadline expires on the invoice, a demand notice and notice of infringement are issued, as follows:

- The demand notice and notice of infringement are for seven days.
- The demand notice and notice of infringement are specific on the consequences of failure to pay. Both civil and criminal charges can be made against the infringer.
- Without prejudice to the option of starting civil and criminal charges, the user who decides to pay is charged double the tariff as a penalty.
- Service of the demand notice may be done through registered post, courier or delivered by an office assistant or CMO licensing officer.
- The last stage of the licensing procedure is after the seven days on the demand notice have lapsed. A list is prepared of all premises or facilities that have failed to comply, for a decision on enforcement action to be taken. The action, which may be civil or criminal, or any other enforcement action allowed under the law, will be determined by
 - documentation (such as evidence of infringement) collected during the licensing procedure forms a strong basis under which the prosecution may extract warrants of arrest;
 - the last stage will be heavily reliant on a good working relationship between the CMO, police and the officer in charge of the enforcement; and
 - all the hard copy used to gather the data will be placed in each licensing officer's personal file, and a soft copy will be prepared for digital storage and sharing with management.

(d) Adherence to procedure

Strict adherence to the licensing procedure is essential, along with ensuring documentation for all the steps taken is retained, including:

- Data collection from premises or facilities.
- Issuance of brochures.
- Filling out license application form.
- Service or delivery of the invoice.
- Issuance or service of a demand notice and notice of infringement.
- Evidence of infringement of rights (details, scope and nature).
- Launching of a formal complaint, zonal police command.
- Seeking arrest warrants for defaulting users (eliminates allegations of harassment, intimidation and/or ambushing leveled against CMO licensing officers). Licensing

operatives must be civil and mindful of discharging their responsibilities in accordance with the law.

(e) Clear action timelines

The licensing procedure stipulates clear timelines in which licensing officers can make follow-ups, and has organized, professional methodology for relating with users.

(f) Compliance

Data collected are important to the management, documentation and distribution department, finance department, field officers and other relevant stakeholders, to ensure compliance in enforcing the provisions of the Copyright Act.

Beyond the sales manual, CMOs are expected to generate other helpful manuals like enforcement manual and training manual which are both discussed briefly in this licensing manual.

F. Enforcement manual

Enforcement is one of the three pillars of a successful copyright system. Without consequences, users will not think that acquiring a copyright license is a priority and it may be tougher for CMOs to convince them otherwise.

Enforcement is a critical tool available to CMOs, to ensure users of copyright works comply with the law. In carrying out enforcement activities, CMOs must be strategic in their approach and establish a procedure or process that can be condensed into a work manual. This is important. Irrespective of the mode of enforcement, a CMO must operate within the law. It must also ensure that its licensing operatives and legal officers acquaint themselves with such procedures.

G. Training manual

The importance of training and retraining of new and current CMO staff, particularly those charged with licensing responsibilities, cannot be stressed enough.

It is necessary for CMOs to have a structured training manual for all staff. Such an instruction book should cover the following subjects and be updated regularly in response to changing business models in the creative industries:

- copyright and collective management of copyright and related rights;
- impact of digital technology on CMOs;
- negotiation, communications, sales and licensing;
- tariff development and licensing procedures;
- the field of works covered by the CMO; and
- good governance.

H. Summary of Chapter V

1. CMOs getting it right in every area of their operation is no longer an option but a duty and a commitment, as agreed in their codes of practice.
2. As members or affiliates of international federations, CMOs should tailor or align their practices with the framework of rules/codes established by the federations.
3. It is important CMOs continue to earn the trust of their members and licensees in order to remain relevant in the copyright business environment.
4. A CMO's recruitment policy must be designed in a manner that reflects their licensing and sales strategy.
5. Apart from the licensing or sales manual, CMOs must develop enforcement and training manuals to help licensing operatives do their job.
6. CMOs should make available to users, on non-discriminatory terms, the complete repertoire of works they represent.
7. CMOs must draw up tariffs for the remuneration they demand for uses of copyright works they administer.
8. CMOs should make information about the license schemes they are offering available to licensees and users, including their terms and conditions.
9. CMOs should take steps to ensure the licenses they offer are easy for licensees to understand and accompanied by practical and suitable explanatory material.
10. In setting tariffs, CMOs should note the following factors:
 - monetary advantage obtained from the exploitation;
 - value of the copyright material;
 - purpose for which, and context in which, the copyright material is used;
 - manner or kind of use of the copyright material;

- proportion of a work used in the context of exploitation;
 - any relevant decisions of the courts or dispute resolution panel; and
 - any other relevant matter
11. CMOs may enter agreements with representative trade associations concerning the use of their repertoire by association members. This speeds up negotiations and makes them less expensive.
 12. CMOs must notify the NCC of any tariff scale accepted under agreements with representative trade associations concerning the use of its repertoire by members.
 13. CMOs will ensure their licensees are treated fairly, honestly, impartially and courteously, in accordance with their rules and any license agreement.
 14. The CMOs will ensure their dealings with users and licensees are transparent.
 15. The CMOs will upon reasonable request by users or licensees, make the following information available:
 - method for calculating the license fees applicable to that licensee or user; and
 - factors considered in determining the license fee as long as the information is not confidential. The request from the licensee or user and the response from the CMOs must be reasonable.
 16. CMOs may not needlessly refuse a request from a licensee or user to engage in the NCC dispute resolution panel as an alternative process for a licensing dispute.

Conclusion

One of a CMO's most important tasks is developing tariffs that adequately reflect market conditions, while ensuring proper and fair remuneration of right holders.¹⁵⁹ The importance of this cannot be overemphasized.

Tariffs are standard charges that users must pay to CMOs to use certain copyrighted works in their repertoire.

To make it easy for users to conclude licensing agreements with CMOs, tariffs and their conditions must be reasonable and scientifically constructed.

CMOs should be committed and ready to explain and provide accessible information on their licensing schemes. For better transparency, and to facilitate the acceptance of tariffs, they should be based on objective and non-discriminatory criteria. Users should be informed of all criteria used in the setting of tariffs.

In proposing new or significant amendments to their tariffs or licensing schemes, CMOs should conduct fair, reasonable and proportionate consultations and negotiations.

A copyright user who objects to a royalty rate set by a CMO should be free to apply to the NCC for a review. At the time of the application, the user should also submit written reasons for the objection and other related materials.

The concept of collective management is built on the premise that license fees collected from users and licensees through an effective licensing process go back to the right holders – the true owners of the CMOs – as royalties.

It does not matter how effective and efficient a CMO's licensing process is if royalties are not paid when due and in the right proportion. Having deducted reasonable administrative costs,

¹⁵⁹ Hooijer, Robert, and J. Joel Baloyi. "Collective Management Organizations: Tool Kit – Musical Works and Audio-visual Works." *wipo.int*. World Intellectual Property Organization, Feb. 2016. <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_1.pdf>.

the CMO might as well be serving itself and not the right holders if it does not pay on time and in full, and such a CMO cannot be regarded as being successful.

Licensing is a huge task and it will serve the interests of Nigerian CMOs and their members if CMOs find common ground. Such collaboration and cooperation will help reduce the cost of licensing, increase efficiency and make more income available for distribution. A collaborative operating system, and where possible the issuance of a single invoice to common users, may be something CMOs want to consider.

With the right technology, these are possibilities, and CMOs are encouraged to think in this way. The goal is for the CMO licensing process to put more money in the bank accounts of its members and affiliates, for a reduced administrative cost.

The WIPO good practice toolkit captured it thus:

“CMOs may voluntarily decide to cooperate with other CMOs, with a view to increasing efficiency, reducing costs and to simplify the acquisition of licenses.”¹⁶⁰

Finally, a CMO's policy would be to grant a license to any prospective user requiring one, provided the user is prepared to enter into a standard form license contract and pay the applicable fees. The onus is on the user to obtain the CMO's permission for the use of works and rights assigned to the CMO.

¹⁶⁰ WIPO. “Good Practice Toolkit for Collective Management Organizations (The Toolkit): A Bridge between Rightholders and Users.” *wipo.int*. World Intellectual Property Organization, Sept. 15, 2021. Web. Nov. 9, 2021. <<https://www.wipo.int/publications/en/series/index.jsp?id=180>>.

Annex 1



Request for WIPO mediation

1. Parties

Please provide the following contact information

Initiating party in the dispute	Responding party in the dispute
Name : _____	Name : _____
Country of domicile : _____	Country of domicile : _____
Tel. : _____	Tel. : _____
Email : _____	Email : _____
address : _____	address : _____
Represented by : _____	Represented by : _____
Tel. : _____	Tel. : _____
Email : _____	Email : _____
address : _____	address : _____

2. Dispute

Please provide a brief description of the dispute

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3. Time period for mediation

The following period will be set aside for mediation, as may be extended upon agreement:

- 30 days
- 60 days
- 90 days

4. Submission to WIPO mediation

Initiating party in the dispute	Responding party in the dispute
The initiating party in the dispute agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.	The responding party in the dispute agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

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<p>Please sign this form and submit to arbiter.mail@wipo.int and to adr@copyright.gov.ng</p> <p>Signature : _____</p> <p>Place and date : _____</p>	<p>Please sign this form and submit to arbiter.mail@wipo.int and to adr@copyright.gov.ng</p> <p>Signature : _____</p> <p>Place and date : _____</p>
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Annex 2

IFPI: The public performance alphabet

- Aerobic centers
- Airplanes
- Airports
- Amusement arcades
- Art galleries
- Ballet classes
- Banks, financial and insurance institutions
- Bars
- Beauticians
- Bistros
- Bowling centers
- Breweries and distilleries
- Building and construction sites and industry
- Business accommodations
- Cafés
- Camping and caravan sites
- Canteens
- Sport
- Casinos
- Cinemas
- Community centers
- Concert venues
- Crematoriums
- Dancing
- Dancing groups amateur
- Dancing groups professional
- Dancing schools
- Dancing teachers
- Day care centers
- Defence activities – army, navy, air force

- Department stores
- Discotheques
- Do-it-yourself stores
- Elevators
- Events
- Exhibitions
- Factories /manufacturing – food, textiles, chemicals, electronics
- Fairs
- Farms and agriculture
- Ferry boats
- Ferry terminals
- Firefighter stations
- Fitness centers
- Galleries
- Gymnastic clubs
- Hairdressers
- Healthcare – doctors, dentists
- Homes for the elderly
- Hotel rooms
- Hotels, hostels and refuges
- Industry – mining, oil and gas extraction
- Jubilee
- Music festivals
- Museums
- Nightclubs
- Nursing homes
- Offices
- On hold systems
- Parks, recreational facilities and botanical gardens
- Parking garages
- Pedicure
- Public transport – road, rail, sea and air operators
- Police stations
- Post offices
- Railway stations

- Receptions
- Recycling and refuse collection
- Rental facilities – equipment, vehicles etc.
- Research and development facilities, science parks
- Restaurants/commercial
- Restaurants/company
- Retail shops
- Roadside service stations
- Round-trip boats
- Saunas
- Schools primary
- Schools secondary
- Shopping mall
- Shopping street
- Skating rinks
- Snack bar sport parks/accommodation
- Stadiums
- Street performances
- Supermarkets
- Swimming pools
- Taxis telephone line – commercial
- Telephone line – on hold
- Theatres
- Touring cars
- Trains
- Universities
- Waiting facilities – medical
- Waiting rooms
- Warehouses and storage facilities
- Wedding ceremonies and venues
- Youth centers

Annex 3

User's self-assessment form

Hotels and similar establishments

Music, sound recording and audiovisual copyright self-assessment form

Pursuant to Section 15(1)(f)(g) of the Copyright Act Cap C28 LFN 2004, the Copyright (Collective Management Organisations) Regulations 2007, please fill in this form to enable us to issue you with a music copyright license. This form should be filled in duplicate; a copy to be sent to CMO and a copy kept for your company records.

1. Name of
hotel:.....

2. Address:.....

3. Telephone:.....Email:.....

4. Website:.....

5. Name(s) of contact
person(s):.....

6. Telephone of contact
person(s):.....

7. Email of contact
person(s):.....

8. Classification (please tick appropriate classification):

a. International b. National c. Urban

9. Total number of lodging rooms:

.....

10. Total number of event/function halls:

.....

Please name the event/function halls

a.Capacity.....

.....

b.Capacity.....

.....

c.Capacity.....

.....

d.Capacity.....

.....

11. Total number of restaurant(s):

.....

Please name the restaurants

a.Capacity.....

b.Capacity.....

c.Capacity.....

d.Capacity.....

12. Total number of bar(s):

.....

Please name the bars

a.Capacity.....

b.Capacity.....

c.Capacity.....

d.Capacity.....

13. Do you run nightclub services?..... If yes, please name the club(s):.....

For office use

Name/designation of authorized officer:

.....

Telephone and email:

.....

Remarks:

Signature:

NB: CMO reserves the right to verify all information made available.

Note: Section 15(1)(f)(g) of the Copyright Act Cap C28 LFN: "Copyright is infringed by any person who without the license or authorization of the owner of the copyright (f) permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright; (g) performs or causes to be performed for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists."

Annex 4

Sample Post-Licensing Training Feedback

Dear Participant,

Thank you for taking part in this post-training feedback session.

Please take a moment to evaluate today's training session. Your honest feedback is important as it will help improve the remainder of the training program.

Name of participant (optional): _____

Part 1: Overall evaluation of day 1

1.1 What is your assessment of the training?

1.2 What aspect of the training interested you the most and why?

1.3 Is there any part of the training for which you require further clarification or help? If yes, please feel free to mention them.

1.4 Do you think the time allocated to each aspect of the training was sufficient? Would you prefer less or more time?

1.5 Did the round-table discussions, group work and mock negotiations meet your expectations? If yes, what can be done to make them more enriching and impactful?

1.6 Do you think the training has equipped you for your role as a CMO licensing officer? If not, please explain.

1.7 Do you consider the training materials used very relevant?

1.8 Do you think the training facilitators were practical in their presentations?

Part 2: How well did you understand these subjects and to what extent did they build your confidence?

Licensing tariff structures and scenarios		Not at all	Not well	Neutral	Well	Very well
2.1	The role of CMO in copyright and related rights licensing					
2.2	Principle and parameters of developing tariffs					
2.3	Identifying rights in copyright exploitations and tariffs applicable to such exploitations					

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2.4	Establishment of hierarchy of value and attaching such values to copyright works					
2.5	Digital copyright licensing of literary works, musical works, sound recordings and audiovisual works					
2.6	Strategies in engaging users and closing copyright licensing deals					
2.7	Negotiation and the goal of negotiations					
2.8	Documentation and user reporting as basis for distribution					
2.9	Enforcement					

Part 3: Please share your opinion on the facilitation of the training

How would you assess the facilitation?		Poor	Average	Good	Very good	Excellent
3.1	The facilitator is very conversant with the subject matter					
3.2	The facilitator used a lot of practical examples					
3.3	The facilitator encouraged feedback					
3.4	The speed of the facilitation was appropriate					
3.5	The breakaway sessions were helpful					
3.6	What is your opinion of the evaluation of the previous day's training?					

Part 4: What is your overall ranking of the training?

Excellent Very good Good Average Poor Very poor

Any final words on the training and what you would like to see added at the next training program.

Note: During the training for CMO licensing operatives, it is important the facilitator create different practical scenarios for participants. The facilitator should observe participants and their responses and participation in each of the practical sessions.