

Collecting Society in the Administration of Copyright Law in Nigeria: An Appraisal

Mary I. O. Nwogu

ABSTRACT

Infringement on copyright works has been on the increase in Nigeria, particularly, book, music, and film piracy. This has greatly militated against the rights of copyright owners depriving them of benefiting from the fruits of their labor and nothing to show in terms of return on investments. Consequently, there is the need to have a solid collective management structure in place as provided in S.39 of the copyright Act 2004. The establishment of collecting society also known as Collective Management Organization is very important and useful to right owners for the collection and sharing of royalties, granting of licenses, monitoring of users and taking steps to enforce rights where necessary. Having gone through textbooks, case laws, statutes, and internet materials, it is clear that collecting society is necessary in the administration of Copyright. Many collecting societies should be established for fair competition, effective and efficient management of the rights of Copyright owners. This will prevent the risk of monopoly to a collecting society.

Keywords: administration, collecting society, copyright, Nigeria copyright commission, non-governmental.

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M. I. O. Nwogu *

Phd Law, Fcarb, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria
(e-mail: ujn3333@yahoo.com)

**Corresponding Author*

I. INTRODUCTION

Collective management is a very important aspect of administration of copyright for monitoring of rights of owners, collection and sharing of royalties, and enforcement of Intellectual property rights. The Nigeria copyright commission (NCC) has the power to approve and register collecting societies to administer different categories of copyright works; and make regulations to compliment the Act (S.39 (4) & (7) of the Copyright Act). One of the said regulations made by the commission is Copyright (Collective Management Organizations (CMOs)) Regulations 2007. This CMOs Regulations has greatly enhanced the management, control and regulation of the activities of collecting societies vis-à-vis rights of copyright owners. The Collective Management Organization (CMO) used in the Regulations is the same as collecting society used by the Act.

Collecting society must be approved and registered and consequently provides a reasonable platform for copyright owners to supervise and safeguard their broad rights. Hence this paper examines collecting societies formation, approval, roles, and challenges in the administration of copyright in Nigeria.

II. WHAT IS COLLECTING SOCIETY

Several attempts have been made by many scholars to define and describe collecting society also known as collective management organization, some of which are: that, collecting society is a society for the protection of intellectual property or collection of royalties and similar considerations for the use of any intellectual property rights in any jurisdiction in the world (Law Insider, "Collecting society/ies Definition", Law insider.com, accessed 6/2/2023). It is also primarily private, non-profit membership organizations that manage copyrights. Their economic function is to collect and distribute royalties and monitor the use of copyrighted works on behalf of the right owners and holders (Concurrences Antitrust Publications and Events, "Collecting Society – Author Definition", <http://www.concurrences.com>, col...accessed on 6/2/2023).

Collecting society or collective management organization is a non-governmental body created by copyright law or private agreement which licenses copyrighted works on behalf of the authors and engages in collective rights management (Wikipedia, "copyright collective", <http://www.en.mrwikipedia.org>, accessed on 5/2/2023). To LexisNexis collecting societies, also referred to as licensing bodies and collective management organizations (CMOs) offer right holders a way of collectively licensing and enforcing their copyright in situations where it would be impractical for them to police use of their own works. Each collecting society operates in a different creative sector (Lexis/Nexis,

“Collecting Society Definition,” LexisNexis In-how Advisor expert, <http://www.lexisnexis.co.uk>, accessed on 6/2/2023).

Furthermore, a collecting society is an organization that licenses and manages copyrighted works on behalf of copyright owners. Song writers and composers become members of collecting societies to collect royalties from use of their works. Collecting societies monitor performances and distribution of the works, on radio, television, in public venues and online (Google, “About collecting societies”, <http://www.support.google.com>, accessed on 4/2/2023). The Copyright Act 2004 defines collecting society as 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 work (S.39(8) of the Copyright Act Cap C28 Laws of the Federation of Nigeria 2004).

Consequently, it is my considered opinion that collecting society is a non-governmental organization approved and registered by the Nigerian Copyright Commission for the protection of copyright works particularly, in the grant of licenses, collecting and distribution of royalties, and enforcement of copyright rights where need be.

III. FORMATION, APPROVAL AND REGISTRATION OF COLLECTING SOCIETY

The formation of the collecting society is enshrined in Section 39 of the copyright Act 2004. Section 39(1) provides that a collecting society may be formed in respect of any one or more rights of copyright owners for the benefit of such owner, and the society may apply to the commission for approval to operate as a collecting society. The Copyright Act in showing the importance and necessity of the Nigerian Copyright Commission to approve any collecting society provides in S. 39(4) thus:

“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. Failure to comply with the relevant provisions of the law regarding collecting societies, whether by individuals or corporate bodies constitutes a crime punishable by imprisonment or fine.”
(S.39(5) and (6) of the Copyright Act 2004).

Section 17 of the Copyright Act also provides that:

“Notwithstanding the provisions of this Act or any other law, no action for infringement of copyright or any right under this Act shall be commenced or maintained by any person –
a) *Carrying on the business of negotiating and granting of licence;*
b) *Collecting and distribution royalties in respect of copyright works or representing more than fifty owners of copyright in any category or works protected by this Act.*
Unless it is approved under Section 39 of this Act to operate as a collecting society or is otherwise issued a certificate of exemption by the commission.”

See also *Multichoice Nig Ltd v MSCN Nig Ltd/Gte (2020)*

The community reading of sections 17 and 39 of the Copyright Act 2004 is to the effect that a collecting society is formed in respect of rights of copyright owners and for their benefit and this society requires approval or certificate of exemption by the Nigerian Copyright Commission.

In *Nigerian Copyright Commission & Ors v Musical Copyright Society of Nigeria Ltd & Ors (2017)*, the Court of Appeal per B.A. Georgewill held that:

“...In my finding the 1st Respondent and its Officers, Staff and or Agent, undoubtedly carrying on the functions of a collecting society required the approval of the Appellant to so operate as a collecting society in Nigeria, failing which their activities thereto are illegal. See Sections 16, 17 and 39 of the Copyright Act 2004. In law therefore, an Association of Copyright Owners, referred to as Collecting Society, which may be formed upon the satisfaction of the conditions provided for under the Act, require by law by virtue of Sections 17 and 39 of the Copyright Act the approval of the Copyright Commission to operate as Collecting Society in the first place, in which capacity only they could sue under the Copy Right Act and therefore, the approval of the Nigeria Copyright Commission is a condition precedent to their operation as Collecting Society and without which they would lack the legal standing to sue under the Copy Right Act 2004, of which the 1st Respondent is undoubtedly a collecting society.

See Section 39 of the Copyright Act 2004. See *Compact Disc Technologies Ltd v. MCSN Ltd/Gte (2010) LPELR (CA).”*

Also the Court in *Performing and Mechanical Right Society Ltd/Gte v Skye Bank & Ors (2017)* in adumbration and support of the above, stated that the community purport of the provisions Sections 17

and 39 of the Copyright Act is that a collecting society in respect of a copyright of a work protected by the Act, cannot lawfully purport to perform its duties without approval or exemption by the NCC and cannot initiate or commence a legal action in a Court of law for the infringement of the copyright or any other right under the Act. (Per GARBA, J.C.A)

Suffice it to state, that collecting society can be formed by owners of the protected works themselves or by establishment of independent company by independent individuals. Babafemi in his book stated that collecting society can be formed by owners of protected works who can come together under an umbrella organization and constitute some of their members into a committee that will assume administrative responsibility for collecting appropriate royalties on behalf of such members. Or in the alternative a company will be independently established with the primary aim of negotiating with many copyrights owner to manage their rights (Babafemi, 2007).

However, following the formation of collecting society, is its approval by the Nigerian Copyright Commission (NCC). The process of approval commences with an application to the Commission (NCC) (S. 39(1) copyright Act). The following laid down requirements must be complied with for this application to be approved by the commission. The collecting society:

- 1) Is incorporated as a company limited by guarantee.
- 2) Objects are to carry out the general duty of negotiating and granting copyright licences and royalties on behalf of copyright owners and distributing same to them.
- 3) Represents a substantial number of owners of copyright in any category of works protected by the Act including owners of performers' right.
- 4) Complies with the terms and conditions prescribed by regulations made by the commission pursuant to the Act (S.39(2)(a)-(d) of the copyright act 2004).

In *MTN Communication Nigeria Ltd v Musical Society of Nig Ltd/Gte* (2017) the court of appeal reiterated the provisions of the Act in its decision thus:

"...and finally, for the purposes of this appeal, in Section 39 of the Act it is provided that:
(1) A Collecting 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 Commission for approval to operate as Collecting Society for the purpose of this Act
(2) The Commission may approve of a Society if it is satisfied that.
a) It is incorporated as a Company Limited by Guarantee
b) Its objective is to carry out the general duty of negotiating and granting copyright license and collecting royalties on behalf of copyright owners and distributing same to them.
c) It represents the substantial numbers 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 performers' rights.
d) It complies with the terms and conditions prescribed by regulations made by the Commission under this section."
"And it is 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." (Per GEORGEWILL, J.C.A)

According to Ayewunmi, the regulations made pursuant to the copyright Act 2004 provides more details about diverse issues relating to the requirements for the grant of licenses, membership and management of collecting societies, licensing and distribution of royalties and other relevant provisions.

The copyright (Collective Management Organizations) Regulations 2007 in paragraph 2 provide for documents which shall be furnished by any collecting society applying for licence to operate and they are:

- 1) A certificate of registration in respect of the company issued under the company and Allied Matters Act.
- 2) The Memorandum of Association of the Company.
- 3) The Articles of Association of the company.
- 4) A statement indicating the class of right or category of right owners in which the society owns rights or intends to represent or act for.
- 5) Membership list of not less than 100 right owners, representing the class(es) of right to which the company is seeking a license to operate as Collective Management Organization (CMO), which list shall indicate the signed consent of such persons to belong to the organization, or where the organization has been in existence, that they are members of the organization.
- 6) Undertaking by at least five Directors, including the Chairman that the company shall comply with the Copyright Act and the Regulations.
- 7) Membership agreement used by the organization.
- 8) Evidence of payment of prescribed fees.

- 9) Such other documents as may be required by the commission.
(para 2 of (CMO Regulations 2007).

The commission may accept an application from a company if it is satisfied that all the provisions of the Act and the regulations have been complied with (Para 3 of CMO Regulations 2007). Furthermore, the commission where it deems it necessary may require the applicant to advertise its application in designated national Newspaper(s) (Para 4 of CMO Regulations and Ayewunmi 2015). The commission may thereafter communicate acceptance of an application to the applicant (para 4 of CMO Regulations). Upon approval of an application, the commission shall issue the applicant with a certificate as evidence of its license to operate as a collective Management Organization (Collecting Society) (para 5 of Copyright (CMOs) Regulations, 2007).

The requirement and procedure for approval and registration of collecting society under the Law in my opinion is ad rem and will definitely check the operation of illegal societies, particularly at the point of enforcement of owners' rights; and make the registered collecting societies to work hard to deliver on their assignment. If weak requirements and procedure are allowed, they will be subject to abuse and the formation of substandard collecting societies.

Importantly, a collecting society that has not been approved and registered by the copyright commission of Nigeria cannot exercise the duties and powers of a collecting society. It cannot bring an action on behalf of its members (s. 39(4) of the Copyright Act, and Babafemi 2007). In *musical copyright Society Nig. Ltd v Ade Okin Records and Anor*; *Musical copyright Society Nig. Ltd v Detail Nig Ltd*; *Musical Copyright Society v. Nigerian Copyright Commission*, the courts because of non- approval and non-registration of the societies by the commission, declined jurisdiction for lack of *locus standi* by the Plaintiffs. In *Performing and Mechanical Right Society Ltd/Gte v Skye Bank & Ors* (2017) the court Per GARBA, J.C.A also held that a collecting society cannot initiate or commence a legal action in a Court of Law for the infringement of the copyright or any other right under the Act without the approval or exemption by NCC.

Furthermore, the Nigerian Copyright Commission would hardly approve two societies in respect of any class of copyright owners, if it is satisfied that one effectively protects the interest of owners of rights in that particular class of works. But then this will cause so much hardship to right owners, because there will be monopoly right and consequent over centralization of power; and the available works and spate of infringement will make control and management of the copyright work too enormous for a society. The NCC should with due diligence consider more societies for effectiveness and efficiency.

However, the Copyright (Collective Management Organizations) Regulations 2007 also provides for membership and management of CMOs (para 5-10), licensing and distribution of royalties (para 14–15) and compensation of licensees who are unable to utilize the license issued to it by the CMO, which situation arose as a result of the negligence, misrepresentation or other faults traceable to or caused by the CMO (para 16 and Oyewunmi 2015).

In addition para 17 of the Regulations also prohibit unethical practices by a CMO, such as granting licenses and collecting and/or distributing royalties in respect of works for which it is not authorized to administer; making of false representation; acts of unjustifiable discrimination in the provision of licenses or differential tariff rates; inducing a user who is in the process of negotiating for a license with another society or right owner to refrain from completing the licensing process; withholding of information reasonably required by other CMOs such as that relating to repertoire of an author, the computation and equitable distribution of royalties and information on the existing reciprocal representation agreement, if any, of a CMO; unauthorized use of information obtained from another CMO; and doing anything or acting in a manner that has the effect of preventing any other Collective Management Organization, from carrying its functions as approved under these Regulations Para 17 and Oyewunmi 2015).

IV. FUNCTIONS/ROLES OF COLLECTING SOCIETY

Collecting Society serves the following functions to copyright owners.

- 1) Monitoring of the use of work of copyright owners.
- 2) Negotiating with prospective users of such works
- 3) Granting licenses on the basis of pre-arranged fees
- 4) Collecting of such fees and apportioning the fees among the owners of such rights. (Babafemi, 2007)
- 5) Provides a reasonable recourse for copyright owners to safeguard the broad rights conferred on each work, as collecting bodies, grant licenses, collect royalties, monitor users to ensure compliance with license terms, and take steps in enforcing rights where necessary.
- 6) Serves the interest of copyright owners by presenting a united front in dealings with diverse users and exploiters of their works, thereby serving as platform for manageable administration and

enforcement of large number of copyrights works due to the advantage of economic of large-scale dealings. (Ayewunmi, 2015).

V. CHALLENGES

Collecting Society in the administration of copyright is not without challenges, some of which are:

- 1) Legal recognition of only one society in a class of work, that is, monopoly CMO, may in the absence of due diligence present over centralization of power and the possibility of abuse. Whereby the CMO may become complacent and less interested in the needs of individual right owners, who have no other option than the monopoly society.
- 2) Enforcement of rights of owners against infringers are sometimes stalled with the issue of *locus standi* to institute action on behalf of right owners. The decided cases of *Compact Disc Technologies & Ors v Musical Copyright Society*; and *Musical Copyright Society Nig v Details Nig Ltd* are instructive.

VI. CONCLUSION

Collecting Society, also known as Collective Management Organization (CMO) is an important and useful company and organization to copyright owners. This society is formed and must be approved and registered by the Nigerian copyright commission for it to operate legally, otherwise they cannot enforce their rights and that of copyright owners.

This non-governmental organization makes the collection of royalties and sharing of same to right owners easy. Its function assists in the reduction of the spate of copyright infringement and protects copyright works. However, a collecting society is registered for one type of work. A collecting society like any other organization is also faced with challenges.

RECOMMENDATION

The copyright Act provides for registration of one collecting society for a particular type of work. It is my recommendation that the copyright Act 2004 be amended for formation of as many collecting society as necessary in respect of any class of copyright work for easy access to right owners. Also, for efficient and effective management of the rights of owners and for coordination of their functions. There should be many collecting societies that spread over different genres of copyright works, this encourages competition and hard work among the societies.

It is also recommended that those who want to form any collecting society should do the needful, apply and present necessary documents to NCC for approval and registration.

Right owners should ensure that any collecting society they want to engage, is registered with NCC or if they want to form themselves, they must comply with the provisions of the Law.

There should be public enlightenment by the NCC on the requirement to be complied with for any collecting society to function legally.

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