

Copyright Collective Administration in Nigeria

Lessons for Africa

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Chapter 2

Tracing the Evolution of Collective Management Organisations in Nigeria

2.1 Introduction

This chapter seeks to trace the evolution of the concept of collective management as a phenomenon in copyright history and how it became an established norm in many jurisdictions today as a part and parcel of copyright administration and practice. It then examines the Nigerian history of collective administration which has become a notorious feature of its copyright system.

Tracing the evolution of Collective Management Organisations in Nigeria is akin to a man tracing his lineage. There is a main source, the beginning point from which it all grows out and the pattern appears coherent till a point where it begins to grow branches which in themselves grow other branches, and the process simply replicates itself with an intrinsic trait in each branch to be systematically traced back to the origin. This chapter wishes to trace a specific genealogical evolution, namely that of Nigeria's Copyright Collective Management Organizations.

2.2 The Origin

The evolutionary origin can be traced back to about 1777¹ and more specifically to the 3rd of July 1777, when Beaumarchais² gathered 22 authors, some of the most influential creative writers at that time.³ This gathering appears to have arisen from a complaint lodged by Beaumarchais expressing his displeasure regarding the remuneration from Comédie Française in respect of performances of his “Barbier de Séville”. In the writing, “A Field of Honor: Intermission”,⁴ it was noted as follows:

¹ <http://www.gutenberg-e.org/brg01/print/brg05.pdf> Date of use: 17 March 2012.

² Ibid. Pierre Augustin Caron de Beaumarchais was his full name.

³ See <http://www.gutenberg-e.org/brg01/print/brg05.pdf> Date of use: 17 March 2012 where it was noted that prior to the actions of Beaumarchais, Lonvay, Mercier, and Palissot had brought lawsuits whilst Cailhava, Renou, and Rutledge, printed the grievances, and challenges they had against the royal theater. These men were also writers and contemporaries of Beaumarchais.

⁴ Anon *A Field of Honor: Intermission* Available on line at <http://www.gutenberg-e.org/brg01/print/brg05.pdf> Date of use: 17 March 2012.

After years of delay, it had been first performed on February 23, 1775, and then substantially revised, before beginning a hugely successful run. By the end of 1776, it had been performed profitably 32 times and had generated a gross receipt of more than 93,000. However, when the troupe leaders wrote him, they did not use the respectful and courteous tone evident in their correspondence with established writers; instead, they violated royal regulations by asking Beaumarchais to 'make arrangements with us to lose your share of the proceeds from the work, but at least,... have the pleasure of seeing your play performed more often'.

Prior to the complaint lodged by Beaumarchais, other writers whose works had been performed and were dissatisfied had also made similar complaints, but they all fell on deaf ears.⁵ Beaumarchais's complaint could however not be ignored as he was a person of influence. In this regard it was noted of Beaumarchais that.

He possessed a combination of various forms of cultural capital that Lonvay, Mercier, and the others had not. Foremost, Beaumarchais was politically well-connected. The Minister of the Royal Household, Antoine Jean Amelot de Chaillou, and the Duke de Duras, one of the First Gentlemen, both instructed the troupe leaders to meet with Beaumarchais. Indeed, these courtiers and the Comédiens knew him to be a protégé of the Count de Maurepas, first minister to the newly ascendant Louis XVI. Thus Beaumarchais carried greater political weight than other playwrights who had previously negotiated with and even sued the Comédie Française. The Comédiens were therefore less certain of having a potential lawsuit by Beaumarchais dismissed from the courts.

Secondly, they knew that Beaumarchais had already demonstrated himself an able propagandist and astute manipulator of public opinion in his printed *Mémoires contre Goezmann* in the early 1770s.⁶

It was this peculiar influence which Beaumarchais had acquired that prompted the comedians⁷ to heed his complaint and enter negotiations with him, thereby suggesting a review of the Royal Theatre Regulation. It was in response to this that Beaumarchais invited twenty-two author playwrights to his residence at the corner of the rue vieille du Temple and the rue des Blancs Montaux.⁸ The meeting, which was held on the 3rd of July 1777 could be regarded as the birth of the first collective management organization, Société des Auteurs et Compositeurs Dramatiques (SACD),⁹ a professional association for creative writers domiciled in France.

⁵ Ibid.

⁶ Anon *A Field of Honor: Intermission*, Ibid.

⁷ Ibid at page 2. Duke de Duras was the First Gentleman primarily responsible for overseeing the Comédie Française in 1777. He decided to use Beaumarchais's complaint as an opportunity to revise the royal theater regulations. He thus wrote to Beaumarchais on the 15th of June 1777 requesting that he gather playwrights and other writers to express their opinions on how best to put an end to the incessant author-theater conflicts.

⁸ Ibid at page 11. The house still stands in the Marais, and the doors still bear Beaumarchais's monogram.

⁹ Anon "Introduction to Collective Management of Copyright and Related Rights" available online at <http://uatm.com.ua/laws/int/Introduction%20to%20Collective%20Management%20of%20Copyright%20and%20Related%20Rights.pdf> Date of use: 19 March 2012 noted that Société des auteurs et compositeurs dramatiques (SACD), was the first society dealing with the collective management of authors' rights.

Société des gens de lettres (SGDL) is said to have been the second collective management organization, in the field of literary works, and was constituted by French authors, amongst whom were notable names such as Honore' de Balzac, Alexandre Dumas, and Victor Hugo.¹⁰ The first meeting of its general assembly is said to have been held at the end of 1837.¹¹ About 10 years after this (1847), "the concept of modern collective administration of copyright"¹² came to the fore through a legal action instituted by two composers Paul Henrion and Victor Parizot and a writer, Ernest Bourget, supported by their publisher, against "Ambassadeurs", a "café-concert" in the Avenue des Champs-Élysées in Paris. These gentlemen went to this café and whilst there, they heard the public performance of their work and pondered why they should pay any fees to the café for their seats and meals seeing that the café did not pay them for the exploitation of their work through public performance.¹³ They, therefore, instituted an action in court to compel the café to pay them for the exploitation of their work. The court held in their favor and the café was obliged to pay a substantial amount of fees.¹⁴ This decision opened a vista of opportunities for composers and text writers of non-dramatic musical works. It, however, soon became clear that the newly identified rights could not be administered effectively by individual rights holders, hence the formation in 1850 of what Adewopo has referred to as "the concept of modern collective administration of copyright"¹⁵ a collecting agency which metamorphosized into the still-existing *Société des auteurs, compositeurs et éditeurs de musique* (SACEM).¹⁶

2.3 Transition

The late 1800s and early 1900s saw the formation of several collective management organizations, (particularly performing rights' societies) all around Europe and indeed other parts of the world.¹⁷ In the wake of these formations, the Performing

¹⁰ Fiscor *Collective Management of Copyright and Related Rights* 18.

¹¹ Ibid.

¹² Adewopo *Nigeria Copyright System Principles and Perspectives* 83.

¹³ Fiscor Op cit (footnote 10).

¹⁴ Fiscor *Collective Management of Copyright and Related Rights* 19.

¹⁵ Adewopo Op cit (footnote 12).

¹⁶ SACEM is still functioning till date.

¹⁷ Performing rights societies are societies meant to represent owners of copyright in respect of their right to public performances of musical works. Fiscor noted in his work *Introduction to Collective Management of copyright and Related Rights* 6 that [t]he first full collective management systems...were established for the management of certain rights in certain categories of musical works. The musical works concerned were the so-called 'small rights' works and the rights involved were the so-called 'small rights' or, in other words, the so-called 'performing rights'. Small rights refer to those rights which are administered collectively, while grand rights are those generally administered individually. Some examples of performing rights

Right Society¹⁸ (PRS) based in London, United Kingdom was established in 1914. The British Empire was at the time the largest empire in the world, controlling over a quarter of the Earth's land mass covering 33,700,000 km² (13,012,000 sq mi), and boasted of over some 458 million people, which amounted to approximately one-fifth of the world's population at the time.¹⁹ Nigeria was at the time a colony of the British Empire and by virtue of the reception²⁰ and application of English laws²¹ which had been extended²² to all British territories, Nigeria's Copyright System became governed by the recently passed Copyright Act of 1911.²³ It was shortly after the passage of this Act that the PRS²⁴ was formed to cater for the needs of right owners within the British Empire and as was the case with other countries under the British Administrative structure, the PRS became responsible for the collective administration of Copyright and related rights in Nigeria. At about 1940, royalties were paid by the old Nigerian Broadcast Service (NBS) to PRS for the use of music.²⁵ However after independence in 1960, and the subsequent enactment of the first indigenous Copyright Act in 1970,²⁶ which was also partly attributable to the need to build a strong political and economic structure free from colonial supervision,²⁷ the direct control and administration of Copyright and related rights by PRS had to give way to some other structure.

(Footnote 17 continued)

societies are the Performing Rights Society (PRS) 1914 (UK), The American Society of Composers Authors and Publishers (ASCAP) 1914 (USA), TONO 1928 (Norway), SESAC 1930 (USA), BMI 1939 (USA), SUIA 1942 (Switzerland).

¹⁸ See Okoroji *Copyright Neighbouring Rights and the New Millionaires* 189 where the organization was described as "one of the oldest and most successful collecting societies in the world". He noted further that "with respect to licensing of music for broadcasting and public performances within its territory, it is a virtual monopoly".

¹⁹ Ferguson, *Empire* 15.

²⁰ See Park *The Sources of Nigerian Law* 15 where he opined that "the reception of laws, that is to say, the introduction into one territory of the legal rules of another, is a phenomenon by no means unique to the British possessions in Africa in the nineteenth century. There have in fact been many other examples, of which perhaps the best known is the reception in the Middle Ages of Roman law upon the continent of Europe".

²¹ Park *supra* at 93. The English Laws introduced into Nigeria comprised the Common law of England, Doctrine of Equity and Statutes of General Application that were in force in England on the 1st day of January 1900.

²² By Order-in-Council No. 912 of 24th June 1912 The Copyright Act of 1911 was extended, in 1912, to the territory of Nigeria.

²³ Copyright Act, 1911. [1 & 2 GEO. 5. CH. 46.].

²⁴ "The PRS is a company limited by Guarantee with no share capital and operating primarily in the U.K, but with agencies in countries of the Commonwealth where there are no indigenous collecting societies. Its membership consists of composers and publishers of musical works and the rights administered are essentially the public performing rights" See footnote 12.

²⁵ Okoroji *Op Cit* (footnote 18).

²⁶ Copyright Decree No. 61 of 1970.

²⁷ Ndongko *Africa Spectrum* 53.

2.4 CMOs in Nigeria Become Indigenous

Shortly after the Nigerian civil war,²⁸ precisely in 1971, PRS was approached by a law firm in Nigeria²⁹ seeking to be appointed as its agent in Nigeria.

The first indigenous Copyright Act had been passed just a year before this and on the heels of the end of the war, there was the apparent need for the economy to be strategically refocused for national development. It is, therefore, not surprising why the law firm made such a request. The outcome of the request made to PRS by the law firm was aptly captured in the words of Okoroji when he said “Giwa and Atilade and Co who seemed to be the only Nigerian lawyers with any interest in the business of copyright, had little problem securing the PRS agency in the country”.³⁰ Thus, the PRS-licensed agency Giwa and Atilade and Co could be regarded as the first indigenous organization to be responsible for collective administration of copyright and related rights in Nigeria. The agency had two major tasks to accomplish. The first was to get a good number of Nigerian composers to join the membership of PRS, and the second was to commence extensive licensing of users in Nigeria.³¹ Considerable success was achieved on the first task with several popular names³² joining the membership of PRS. The second task was vigorously pursued but despite the entreaties and efforts of Alhaji Giwa, most users simply refused to pay.³³ In fact the task was not accomplished.³⁴ In Okoroji’s view, the lack of willingness to pay by users was based on the pretext that the number of Nigerians in the PRS membership was too small and that users would rather deal with a Nigerian institution.³⁵ To satisfy the aspiration of users who would rather deal with a Nigerian Institution, Alhaji Giwa set up the musical copyright society of Nigeria (MCSN), a company limited by guarantee, to administer the public performance right of musicians in Nigeria. The company was registered³⁶ on the 20 July 1984 and this marked the formation of the first full-fledged collective management organization in Nigeria.

²⁸ Also referred to as the “Nigerian-Biafran War” 6 July 1967–15 January 1970.

²⁹ The name of the Law firm was Giwa and Atilade and Co. It was a Lagos-based law firm with Fatai Oladele Giwa as the Principal partner of the firm.

³⁰ Okoroji *Copyright Neighbouring Rights and the New Millionaires* 192.

³¹ Ibid.

³² Ibid. The likes of Chief Ebenezer Obey, Victor Uwaifo, Rex Jim Lawson, Sonny Okosun, Sunny Ade and others were examples of Nigerian artist that joined the membership of PRS.

³³ Ibid.

³⁴ Okoroji Op cit (footnote 30).

³⁵ Ibid.

³⁶ Registration of companies is as provided under the Companies and Allied Matters Act (CAMA), Laws of the Federation of Nigeria 2004.

2.5 Musical Copyright Society of Nigeria

After the registration of Musical Copyright Society of Nigeria (MCSN), a contract of reciprocal representation was signed between PRS and MCSN in 1986 thereby terminating the earlier agency agreement between PRS and Giwa and Atilade and Co.³⁷ MCSN exists to the present day but not without several challenges. (These challenges shall be discussed in the next chapter in depth.)

The formation and subsequent operations of MCSN apparently did not satisfy the yearnings of all right owners in the music industry and hence there was the clamor³⁸

For the establishment of a broad-based national collecting society that will provide opportunity for them to decide how their rights would be managed and to reflect the overall nationalistic aspirations of the creative community.³⁹

2.6 Performing and Mechanical Rights Society of Nigeria (PMRS) and Copyright Society of Nigeria (COSON)

In response to the various agitations and taking advantage of the recently amended Nigerian Copyright Act⁴⁰ which now made provisions for the administration and regulation of collecting societies, a group of right owners consisting of performers, composers of music, and phonogram producers registered the Performing and Mechanical Rights Society of Nigeria (PMRS).⁴¹ The organization was registered as a company limited by guarantee and upon request for approval to the Nigerian Copyright Commission; PMRS was approved,⁴² marking the birth of the second collective management organization in Nigeria. Prior to this time, MCSN had applied⁴³ to the Nigerian Copyright Commission for approval to operate as a collecting society, in line with the Copyright (Amendment) Decree. The approval was, after due consideration, denied based on the refusal of MCSN to provide the

³⁷ Adewopo *Nigerian Copyright System Principles and Perspectives* 86.

³⁸ Okoroji Op Cit (footnote 30).

³⁹ Adewopo Op Cit (footnote 37) at 87.

⁴⁰ Copyright (Amendment) Decree No.98 of 1992. The amendments are now consolidated in Cap C28 of the Laws of the Federation of Nigeria, 2004.

⁴¹ Okoroji Op cit (footnote 30) at 201 where he noted that “The many lessons learnt from several years of internal wrangling led to the adoption of the model which groups song writers, composers, publishers, performers and record producers in one collecting society.

⁴² The said approval was given on the 22nd of December 1994. See Okoroji Op Cit (footnote 30) at 201.

⁴³ This application was dated the 25th of August 1993. See Okoroji Op Cit (footnote 30) at 200.

documents⁴⁴ requested by the Nigerian Copyright Commission and the fact that the structural composition of the organization did not represent a nationalistic interest, in view of the dominant position that the PRS and the Mechanical Copyright Protection Society (MCPS), both of the United Kingdom, had in MCSN. The Commission was consequently not convinced that the organization would cater for the interest of National creators.⁴⁵

The combined effect of the denial of the application by MCSN for approval to function as a collecting society and the subsequent approval of PMRS was that the approval given PMRS had given it legal backing to operate as a collecting society, whilst the denial to MCSN had removed the legality behind a thriving structure. The reality was that PMRS neither had the infrastructure, nor the needed foreign co-operation⁴⁶ to enable it to negotiate reciprocal representation agreements.⁴⁷ Despite this shortcoming, the PMRS made efforts at issuing licenses locally,⁴⁸ but continued to struggle with regard to the licensing of international repertoire. MCSN, operating first as the “Giwa Agency” (and subsequently as MCSN after been duly registered), had already signed a reciprocal representation agreement⁴⁹ giving it the right to use PRS’ repertoire in Nigeria. This situation resulted in MCSN becoming the de facto collecting society while PMRS was the de jure collecting society. It was, therefore, no surprise when agitations were made for the recognition of MCSN, especially to cater for the interest of its members, who were not represented, and were not willing to surrender their rights to PMRS, the approved society.

In its continued efforts to find a lasting solution to the agitations, and to liberalize collective administration, in May 2005 the Nigerian Copyright Commission granted approval to the MCSN to operate as a collecting society in

⁴⁴ Okoroji in his work opined that the documents which MCSN refused to provide were the membership and financial records of the organization. See Op Cit (footnote 30) at 200.

⁴⁵ The governing board of MCSN was comprised four members elected by the general meeting and four persons nominated by PRS and MCPS. Article 23(d) of the Articles of Association of the organization provided that “no resolution (at any general meeting) shall be deemed to have been carried, whether on a show of hands or on a poll, if the PRS or MCPS has voted against it”.

⁴⁶ Okoroji Op cit (footnote 30) at 202.

⁴⁷ See Uchtenhagen *The Setting-up of New Copyright Societies* 19 where he noted the importance of new societies having the cooperation of foreign sister societies but also observed that “most established societies are not prepared to give “advance confidence” by the speedy signing of reciprocal agreement. They tend more to adopt the approach of entering into a contractual relationship only after the young copyright society has been accepted as a member of CISAC. However, CISAC makes conditional, understandably, on a degree of proven evidence, which in itself is very difficult to establish without demonstrated competence for managing the foreign repertoire”.

⁴⁸ See Okoroji *Copyright, Neighbouring Rights and The New Millionaires* 201 where it was noted that the first ever license issued by PMRS was that issued to the organizers of a Benson and Hedges concert which held in Lagos on the 13th of December 1997.

⁴⁹ PRS_MCSN Contract of Reciprocal Representation Agreement signed on the 17th day of March 1986 in Lagos and on the 14th day of April 1986 in London. This agreement gave MCSN the right amongst other things to use the repertoire of PRS.

the music industry, alongside the existing PMRS. This action triggered a lot of protests from PMRS, who made representation to the government to withdraw the approval, leading to the subsequent withdrawal of the approval granted to the MCSN.⁵⁰ This generated a lot of controversy and eventually laid the ground for the reform of collective administration in Nigeria. The reform brought about the Copyright (collective management organization) Regulation 2007, in terms of which a call for applications from interested organizations to operate collective management organizations was made. Three applications were received in this respect for music and sound recording and after a thorough process the commission granted approval to the Copyright Society of Nigeria (COSON)⁵¹ to cover the rights involving music and sound recording.

2.7 Repronig

The reach of collective administration in Nigeria spreads beyond just the music industry, covering also the literary sector. In this sector, right owners are represented by the Reproduction Right Society of Nigeria (REPRONIG).⁵²

REPRONIG is a company limited by guarantee with its main object as negotiating and granting of licenses, as well as collecting, and distribution of royalties to right owners. It represents copyright owners in the literary sector and seeks to ensure that the reprographic rights of its members are protected and that members are adequately remunerated for the use of their works.

The organization was approved by the Nigerian Copyright Commission in 2001⁵³ and commenced operations on the 3rd of November 2003. Its approval has been renewed twice, first in 2004 and subsequently in 2007. It receives technical, financial, and international support for its operations from the Norwegian Reprographic Society, KOPINOR, who encouraged the formation of the society and has since inception supported its growth.⁵⁴ NORCODE is the agency that now plays the role of KOPINOR.⁵⁵ In recent times, REPRONIG has received indications from its development partners that the sponsorship it has so far enjoyed may

⁵⁰ See Adewopo *Nigerian Copyright System: Principles and Perspectives* 105; where it was noted that the Commission's decision elicited petitions from PMRS who sent a formal petition through the Honourable Minister of Culture and Tourism to the President. This petition led to a presidential directive withdrawing the approval granted to MCSN.

⁵¹ PMRS vide a special resolution dated 29 September 2009 changed its name to COSON during the collective administration reform process.

⁵² <http://www.ifrro.org/members/reproduction-rights-society-nigeria> Date of use: 21 March 2012 REPRONIG is a member of the international federation of reproduction rights organizations (IFRRO)

⁵³ Ibid. Where it indicated that REPRONIG was incorporated December 2000.

⁵⁴ Adewopo *Nigerian Copyright System Principles and Perspective* 88.

⁵⁵ <http://www.norcode.no/en/links/> Date of use: 21st March 2012.

cease at any time. The reasons given were that it was expected that by now REPRONIG ought to be able to stand on its own and support itself.⁵⁶

2.8 Tabulated Illustration

In a nutshell, the evolution of Copyright Collective Management Organizations can be traced in chronological order as seen from the tabulated diagram analyzed below (Table 2.1).

Table 2.1 Evolution of copyright collective management organizations

S/N	Name of organization	Name of prominent authors/facilitators	Year of formation	Comments
1.	Société des auteurs et compositeurs dramatiques (SACD)	Beaumarchais	1777	In France
2.	Société des gens de letters (SGDL)	1. Honore' de Balzac 2. Alexandre Dumas 3. Victor Hugo 4. and other French Writers	1837	In France
3.	Société des auteurs, compositeurs et éditeurs de musique (SACEM)	1. Paul Henriam 2. Victor Parizot 3. Ernest Bourget	1847	In France

In the late 1800s and early 1900s many collecting societies were formed all over Europe and other parts of the world. These include PRS (1914, UK), ASCAP (1914, USA), MCPS (1924, UK), TONO (1928, Norway), SESAC (1930, US), BMI (1939, US), SUIA (1942, Switzerland), SAMRO (1961, South Africa) etc. In Nigeria the evolution took the following form:

4.	Performing Rights Society (PRS)		1914	United Kingdom
5.	Giwa and Atilade and Co. (Giwa Agency)	Alhaji Giwa	1971	Nigeria
6.	Musical Copyright Society of Nigeria (MCSN)	Alhaji Giwa	1984	Nigeria
7.	Performing and Mechanical Rights Society of Nigeria (PMRS)	Tony Okoroji	1994	Nigeria
8.	Reproduction Rights Society of Nigeria (REPRONIG)	Dr Ekanem Inyang	2000	Nigeria
9.	Copyright Society of Nigeria (COSON)	Tony Okoroji	2010	Nigeria

⁵⁶ Op cit (footnote at 52).