Copyright Administration
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AN OVERVIEW OF COLLECTIVE MANAGEMENT ORGANISATIONS IN NIGERIA

1. Introduction

1.1 Collective Management Organisations commonly referred to as CMOs are organizations formed by rights owners who may apply to the Commission for approval to operate in respect of any one or more categories of copyright works.[2] The term "Collective Management Organisation" means an organisation representing copyright owners, which has as its principal objectives the negotiating and granting of licences, collecting and distributing of royalties in respect of copyrighted works. The collective management organisation is a significant aspect of copyright administration in Nigeria and serve as representatives for their members, who willingly give up their authority to the collective. This allows them to engage in licensing agreements on behalf of members as assignees of protected works. The inception of the Collective Management Organisation (CMO) dates back to 1851 when the first CMO was established in France.[3]

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[2] Section 88 of the Nigeria Copyright Act 2022.

[3] As a result of the outcome of a lawsuit instituted by Paul Henrion, Victor Parizot and Ernest Bourget with the support of their publisher against a coffee concert in Paris. See, Desmond Osaretin Oriakhogba, 'Collective Management of Copyright in Nigeria: Should it Remain Voluntary, may it Be Mandatory or Extended?' available at <https://www.researchgate.net/publication/337741915_Collective_Management_of_Copyright_in_Nigeria_Should_it_Remain_Voluntary_may_it_Be_Mandatory_or_Extended> last accessed 23rd February 2025.

1.2 Several collecting societies have been licensed by the Nigerian Copyright Commission (NCC) to operate and collect royalties on behalf of their members. These include the Audio-Visual Rights Society (AVRS), (a collecting society for cinematograph films), the Musical Copyright Society of Nigeria (MCSN), (for Musical works and Sound Recordings) and the Reproduction Rights Organisations of Nigeria (REPRONIG) (for the Literary and Publishing Industry).

1.3 The Copyright Act does not place a limit on the number of CMO's that can be created and licensed by the NCC. However, Section 88(3)[4] appears to create a limitation by barring the Commission from approving another society in respect of any class of copyright owners, if it is satisfied that an existing CMO adequately protects the interests of that class of copyright owners. While this does not prohibit the NCC from approving multiple CMO's, it limits them to approving one for each class of rights, except where in the opinion of the NCC existing ones do not effectively protect the interest of members.

1.4 There have been calls to license more CMO's to promote competition, eliminate monopoly, liberalize administration of copyrights, and give authors the benefit of choice.[5] The formation of collecting societies is enshrined in the Copyright Act[6] and the body responsible for the approval of the operations of collecting society is the Nigerian Copyright Commission.

2. Evolution of Collective Management Organisations in Nigeria.

Prior to Nigeria's independence, many composers and authors were affiliated with the UK's Performing Rights Society (PRS) and Mechanical Copyright Protection Society (MCPS), which were responsible for collecting and distributing performing and mechanical rights. From the enactment of the Copyright Decree 1970,[7] the Musical Collective Society of Nigeria (MCSN) replaced the United Kingdom's Performing Rights Society as the sole manager of copyrights in the Nigerian music industry.[8] The MCSN evolved from the Performing and Mechanical Rights Society of Nigeria (PMRSN). PMRSN was initially established in the 1970s to manage the performance and mechanical rights of Nigerian music creators. However, it was later restructured

4 Copyright Act, 2022.

5 John Onyido, 'Administration of Collective Management Organisations in Nigeria: Lessons from United States, United Kingdom, Europe and Canada, *NIALS Journal of Intellectual Property'* Vol 6 (2019) pp 100-134.

6 Section 88(1) of the Copyright Act, 2022.

7 Copyright Decree (No 61) of 1970.

8 Ope Bakare, 'How Copyright Industry Battles Hold Back Nigeria's Entertainment Industry & Economy' available at <https://www.linkedin.com/pulse/how-copyright-industry-battles-hold-back-nigerias-economy-ope-bakare/ow Copyright Industry Battles Hold Back Nigeria's Entertainment Industry & Economy | LinkedIn> last accessed 23rd February, 2025.

and renamed as the MCSN in 1990 to better focus on the collective management of musical works, including both performance and mechanical rights.

This spanned for at least two decades before the amendment of the Copyright Act in 1992, mandating the copyright societies to obtain licenses from the Nigerian Copyright Commission. This opened up the scene to other players, and it was during this period that the Performing and Mechanical Rights Society (PMRS) came into the limelight.

2.1 PMRS was formed in 1994 as a collective society to handle the performing rights (public performances, broadcasting) and mechanical rights (reproduction of music in physical or digital formats) of Nigerian artists. However, it faced operational challenges such as lack of government recognition, limited enforcement capabilities, and internal disputes. These issues hindered effectiveness, prompting the NCC to review operating licenses and approve a single Collective Management Organization (CMO). In its effort to create a more structured and legally recognized CMO for improved royalty collection and distribution, the NCC officially rebranded and reorganised PMRS as COSON in 2010. COSON became the first government-approved collective management organisation and sole legal rights manager for Nigerian entertainment professionals, including composers, performers, publishers, and owners of music and sound recordings.[9]

3 What led to the Suspension of COSON?

3.1 In 2017, COSON had a meeting of the management board and removed its chairman. Subsequently, the ousted chairman was reinstated during a general meeting and several members were allegedly aggrieved by the outcome of the proceedings and the manner the resolutions reached were conducted. These members petitioned the statutory copyright sector regulator, the NCC, reporting *inter alia* the perceived irregularities in the conduct of the meeting.[10] The NCC issued a directive to COSON directing it to refrain from giving effect to the resolution reached at the meeting and instead, to convene another meeting at which new directors are to be elected as per COSON'S articles of association. Following widespread allegations of mismanagement, financial misappropriation, and failure to comply with NCC directives,

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9 Section 39 of the Copyright Act, Cap 28, Laws of the Federal Republic of Nigeria, 2004. See John Onyido, 'Issues and Perspectives on Collecting Societies and The Management of Musical Works and Sound Recordings in Nigeria' The Gravitas Review of Business and Property Law (2018) Available at https://www.academia.edu/38564265/ accessed 4th March 2025.

10 Afam Ezekude 'Text of press briefing by the Director General, Nigerian Copyright Commission, Mr. Afam Ezekude, on the dispute in the Governing Board of Copyright Society of Nigeria (COSON)', (Nigerian Copyright Commission, 19 April 2018).

the NCC issued a notice pursuant to the Regulation 20(2)[11] suspending COSON's approval to operate.[12]

3.2 From the above, it is evident that COSON cannot institute actions for infringement of copyright unless and until its license is restored by the NCC to act as a CMO. However, for rights obtained prior to the amendment of the Act in 1999, COSON may enforce such rights as owner, assignee and exclusive licensee, relying on the *Adeokin v. Compact Disk* decision.[13] It should be noted that Section 88(4) of the Copyright Act makes it an offence to purport to perform the duties of a copyright society without approval by NCC.

However, after MCSN won the long legal battle brought against COSON,[14] the then Attorney General of the Federation, Abubakar Malami, in 2017 directed the NCC to reinstate MCSN as a lawful collecting society having met all the criteria under Article 2 of the 2007 Regulations[15] and has since remained the only approved collective management organization in Nigeria for musical works and sound recordings, with the subsequent withdrawal of COSON's operating license.

4. Condition Precedent for Commencing an Action for Infringement of Copyright by a Collecting Society.

4.1 Section 39[16] expressly restrains any person carrying on activities as a CMO or exercising any of its functions, including negotiating or granting licenses or collecting and distributing royalties in respect of copyright works or representing more than 50 copyright owners from instituting any action for infringement of copyright unless approved by the NCC as a collective society. Section 39 has been interpreted as introducing a condition precedent, which must be fulfilled by any person or body carrying on as a CMO or exercising any of its functions before commencing an action for copyright infringement.

5 Locus Standi of Unapproved CMO to Maintain Copyright Action.[17]

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11 Copyright (Collective Management Organisations) Regulations 2007.

12 Since that time, COSON's operating license has expired. See 'NCC suspends operating license of COSON' (*The Nation newspaper,2019*) available at <https://thenationonlineng.net/ncc-suspends-operating-license-of-coson/last> accessed 23 February 2025.

13 (2007) 13 NWLR (Pt. 1052), 616.

14 COSON v. MCSN and NCC, Suit No: FHC/L/CS/1259/2017

15 *Supra*, (n10).

16 Copyright Act, 2022

17 David Ojukwu, 'Locus Standi of Unauthorised CMO: A review of the Supreme Court Decisions in Adeokin Records v. MCSN and MCSN v. Compact Disc Technologies' (2019) *NIALS Journal of Intellectual Property*, Vol 6, pp 141-154.

5.1 While the position of the law is clear on the right of approved CMO to sue for infringement of rights in its repertoire, the issue of locus standi of an organisation which is formed with the object to operate as a CMO has been an issue that has given rise to conflicting judicial decisions at the high courts and courts of appeal and opinions from scholars and practitioners.[18] This issue stems mainly from the survival strategy of Musical Copyright Society of Nigeria.[19] For more than 20 years, it did not have the approval of NCC to operate as CMO but maintained its repertoire of rights.[20]

5.2 Within this period, MCSN had no approval to operate as a CMO, MCSN's argument which it maintained in the courts is that its actions for infringement of the works in its repertoire were commenced by MCSN as the *owner*, *assignee* or an *exclusive licensee* under section 37[21] and not as a CMO as stipulated under section 39. Therefore, the requirement of approval or certificate of exemption from NCC does not arise nor negate its right to enforcement of its members copyrights. The MCSN argument is made plausible by the general practice of CMOs of obtaining assignments or exclusive licenses from copyright owners. As such, they may sue for copyright infringement under section 37 as 'owner', 'assignee' or 'exclusive licensee'.

5.3 In *MCSN v. Adeokin Records*,[22] an action for infringement of copyright against the respondent, the respondent raised an objection on the grounds that the appellant lacked the locus-standi to sue as it is not approved by the NCC as a CMO. In response, the appellant argued that it instituted the matter as *owner*, *assignee* and *exclusive licensee* of the work. The Federal High Court agreed with the respondent, holding that failure to obtain approval from the NCC to act as a CMO, incapacitates the appellant from commencing an action for infringement. However, on appeal the Court of Appeal set aside the decision of the trial court holding that the appellant instituted the action as *owner*, *assignee* and *exclusive licensee* of the works. The Court of Appeal considered Section 15 of the 1992 Decree (now section 37 of the Act). Under the said section, the owner, assignee and exclusive licensee of copyright has proprietary right to institute an action for infringement. The Supreme Court upheld the position taken by the Court of Appeal. The court, however, noted that MCSN, in its capacity as an owner,

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18 See, MCSN v Adeokin Records (2007) 13 NWLR (Pt 1052) 616 (CA).

19 Kunle Ola, 'Copyright Collective Administration in Nigeria: Regulatory challenges' (2004) *NIALS journals of intellectual property,* pp 84-122.

20 MCSN was incorporated in 1984 with an object of acting as a collecting society but had no valid license to operate as such between the periods of 1994 when the requirement of approval by Nigerian Copyright Commission was introduced by the amendment of the Copyright Act through 2017, when its operating license was issued.

21 Copyright Act, 2022.

22 (Appeal No: SC.336/2008).

assignee, and exclusive licensee of the copyright, was distinct from a collecting society and, therefore, did not need NCC approval to enforce its rights.

The ruling underscores the principle that entities holding exclusive rights to copyrighted works have the legal standing to protect those rights in court, independent of their status as collecting society.

5.4 It is pertinent to note that the Court of Appeal decision in the aforementioned case was decided under the Copyright (Amendment) Act 1992. As earlier indicated, the amendment of the Copyright Act in 1999 introduced section 15A (now section 39), which clearly states that NCC's approval or exemption certificate would be a condition precedent to instituting infringement action where a person or society represents more than 50 rights holders.[23] Despite the amendment, which was probably intended to settle the issue of locus standi of CMO, the issue has remained unresolved as the courts have continued to give inconsistent and contradictory decisions on the locus standi of unapproved CMO.

5.5 In *Musical Copyright Society of Nigeria Limited (MCSN) v Compact Disc Technology Limited and 2 Others*,[24] MCSN instituted an action at the Federal High Court for infringement of copyright against the defendant. The defendant objected on the ground that MCSN is not approved by the NCC as a CMO, accordingly, it lacked the locus to institute the action. MCSN countered that it did not sue as a CMO, but as the owner, assignee and exclusive assignee of the infringed work. The Federal High Court agreed with MCSN and dismissed the defendant's contentions. The Court of Appeal set aside the decision of the trial court, holding that Section 39 imposes a condition precedent on MCSN to fulfill before it may have the right to sue. The Court of Appeal examined the Statement of Claim to reach a conclusion that though not expressly mentioned, MCSN operates as a CMO. However, the Supreme Court reversed the decision of the Court of Appeal holding that the 1999 amendment to the Copyright Act, which required NCC approval for collecting societies could not be applied retroactively to MCSN because the society had acquired its rights prior to the amendment.[25]

6 Requirements for the Establishment of CMOs in Nigeria.

6.1 Section 88[26] provides for collective administration of copyrighted works in Nigeria. The section enumerates requirements which must be fulfilled by individuals or organisations who wish to establish a CMO. The Act specifically provides that the Commission may approve a CMO, if it is satisfied that the proposed body is registered

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23 Section 39 of the Copyright Act, 2022.
24 (2018) Lagos Law Journal Reports.
25 *Ibid*.
26 Nigeria Copyright Act 2022.

under the Companies and Allied Matters Act, (CAMA) as a company limited by Guarantee having the sole aim of negotiating and granting copyright licences to intended licensees as well as collecting and distributing royalties on behalf of copyright owners. Furthermore, the CMO must represent a substantial number of owners of copyright in any category of works protected by the Act; and is ready to comply with the terms and conditions prescribed by regulations made by the Commission under the Act.

7 Application for Licence to operate as CMO.

A company may apply to the Commission upon payment of the prescribed fees, for a grant of licence to operate as a Collective Management Organisation. Every Company applying for a licence to operate as a Collective Management Organisation shall furnish the Commission with the following documents:[27]

i. a Certificate of registration in respect of the company issued under the Companies and Allied Matters Act;
ii. the Memorandum of Association of the Company;
iii. the Articles of Association of the Company
iv. a Statement indicating the class of rights or category of right owners in which the society owns rights, or intends to represent or act for;
v. membership list of not less than 100 right owners representing the class(es) of right to which the company is seeking a licence to operate as a Collective Management Organisation. The list shall indicate the signed consent of such persons to belong to the Organisation, or where the Organisation has been in existence, that they are members of the society;
vi. Undertakings by at least 5 (five) Directors including the Chairman of the Company that the Company shall comply with provisions of the Copyright Act and the Regulations in respect of the operations of the Organisation;
vii. membership agreement used by the organisation;
viii. such other documents as may be required by the Commission.

8 **Revocation of Licence**

i. The Regulation allows the Commission, either on its own initiative or upon request by any interested party, to revoke the licence of a Collective Management Organisation if it determines that the organisation has violated or failed to comply with any provision of the Act, the Regulations, or any directive or order issued under the Regulation;

ii. If the Collective Management Organisation no longer represents the copyright owners of the specific class(es) of works for which it was licensed;

[27] Regulation 2(2) Copyright (Collective Management Organizations) Regulations 2007.

iii. If the organisation withheld or failed to disclose material information that, if known during the licence application process, would have led to the rejection of its application;

iv. If the Commission discovers new facts, either unknown during the initial licence review or arising later, which would have justified denying the licence; and

v. On any other reasonable grounds that would warrant the refusal of a licence to operate as a Collective Management Organisation.

9 Renewal of Licence

9.1 A CMO may apply for the renewal of its licence using the prescribed form at any time within six months before the licence expires. The application must include an updated list of its members and the current catalogue of works managed by the organisation, specifying each work's title and its rights owner.

If satisfied with the operations of the Collective Management Organisation, the Commission may grant a renewed licence for an additional two years under conditions it considers appropriate. Similarly, the Commission may deny an application for renewal if it determines that the Collective Management Organisation no longer meets the requirements for obtaining a licence.

10 **Membership of Collective Management Organisations**

10.1 Membership in a Collective Management Organisation (CMO) is open to all copyright owners whose works or rights fall within the categories the organisation is licensed to manage or is seeking a licence. However, CMOs cannot require members to appoint them as the exclusive collecting agent or for any other purpose beyond managing the member's rights covered by the organisation's licence. Any CMO that violates this provision in the Act may receive a written warning and be required to correct the breach within a specified timeframe. Failure to comply may result in a fine of N50,000.00.

11 Withdrawal of Membership

A member of a society shall, upon reasonable notice of his/her intention to do so, have the right to withdraw such membership of a Collective Management Organisation or the rights assigned to the Organisation in respect of any affected works.[28]

12 **Settlement of Dispute**

[28] *Ibid*.

Where there is a dispute arising from any matter that falls within the purview of the Act and the regulation, such dispute shall be referred to the Commission, which may set up a Dispute Resolution Panel to resolve issues arising from (a) payment of royalties; (b) terms of a license or (c) any matter in respect of which a determination by the Commission is required.[29]

Any person dissatisfied with a decision of the Panel may apply to the Federal High Court for a review of the decision.

13 Roles of Collective Management Societies in Nigeria[30]

Collective management societies in Nigeria by virtue of their role as intermediaries between users and owners of copyrighted works are saddled with several responsibilities. The basic duties of CMOs include, granting licenses to users as well as collecting payment from such users and distributing royalties to the copyright owners.

They perform other roles such as:

i. **Enforcement of copyright**: Collecting societies monitor and detect unauthorized uses of copyrighted works and take appropriate action to prevent unappropriated uses by taking legal actions against infringers.

ii. **Discussing usage terms with prospective licensees**: Collecting societies negotiate with licensees, allowing them to legally use copyrighted works on agreed terms.

iii. **Overseeing usage of copyrighted works**: Collecting societies manage the rights of creators, ensuring that their works are legally used and that they also receive reasonable compensation for use of their works.

iv. **Awareness and Advocacy**: Through various initiatives, collecting societies educate users, copyright owners and the general public on the value of intellectual property and the need to obtain proper licenses for use. Hence, they advocate for the need to respect owners' rights.

14 Conclusion

[29] Section 90(1) of the Copyright Act, 2022.

[30] Uninni Chioma, 'The Roles of Collecting Societies in the Administration of Copyright in Nigeria', available at <https://thenigerialawyer.com/the-roles-of-collecting-societies-in-the-administration-of-copyright-in-nigeria/>, last accessed 23 February 2025.

In conclusion, it is important to note that, Collective management of rights is an important but controversial and contested area in copyright administration in Nigeria. Because of this, intended members must satisfy a few requirements prior to their registration by the Commission. For a group of Individuals or organisation to set up a CMO, they have to apply to the Commission for approval to operate in respect of any one or more categories of works, as refusal to register will deny owners the right to commence or maintain an action against any person or organisation unless it is approved under section 88 of the Act. Where a person or group of persons perform the duties of a CMO without the approval of the Commission as required under the Act, such persons would be deemed to have committed an offence and will be liable on conviction in the case of an individual, to a fine of at least N1,000,000 or imprisonment for a term of at least five years or both; and for a body corporate, it will be liable to a fine of at least N5,000,000.

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