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EXPLORING THE LEGAL AND REGULATORY FRAMEWORK FOR NIGERIA'S CREATIVE INDUSTRY

INTRODUCTION

Nigeria, renowned for its cultural diversity and rich heritage is currently experiencing an exceptional growth in its creative industry. Music, visual arts, fashion, film, architecture, computer software and programmes development are the major drivers of this growth. The growth in the industry can be attributed to the innovative nature of the sector and the advancement of information and communication technology.

As a testament, the PWC Global Entertainment and Media Outlook for 2022-2026 highlighted Nigeria's media and entertainment industry as one of the fastest-growing creative industries in the world. It noted the potential of Nigeria's media and entertainment industry to become one of the country's exports, with a projected annual consumer growth of 8.8 (CAGR). Also, the country's television and video industry was projected to earn about \$900 million in 2023.

Notably, Nigeria is now reckoned as a powerhouse of Africa's music industry and Nigerian artistes like Wizkid, Burna Boy, Davido, Asake, Tiwa Savage, Rema, and Tems, to name a few, have gained global recognition, thereby boosting Nigeria's image and making significant contributions to Nigeria's economy. The music industry is reported to have generated circa \$8 billion for the Nigerian economy in 2021.

Visual arts, including painting, sculpture, and photography have flourished in Nigeria.

¹ [Global Entertainment & Media Outlook 2022-2026 \(pwc.com\)](#) Accessed December 2, 2023.

² International Trade Administration, 'Country Commercial Guide' (media and Entertainment, 06 June 2023) [Nigeria - Media and Entertainment \(trade.gov\)](#) Accessed December 2, 2023.

³ The Copyright Act, s 2(1)

Artists like Ben Enwonwu, Peju Alatise and Njideka Akunyili Crosby have also gained international recognition, contributing to Nigeria socio-economically.

Thus, the impact of the creative industry extends beyond direct financial gains as it also acts as a catalyst for tourism.

LEGAL FRAMEWORK FOR THE CREATIVE INDUSTRY IN NIGERIA

The creative industry is governed by an assortment of laws cutting across the law of contract, company law, intellectual property, tax, and employment laws. Since virtually all activities in this industry are predominantly intellectual property-related, the Copyright Act, Trademark Act, and Patent and Design Act play important roles in regulating the sector and are briefly discussed herein. Contract laws applicable to the industry, as with other sectors, are a potpourri of legislations and case laws.

• The Copyright Act, 2022

The Copyright Act, 2022 (“the Act”) protects creative works that fall within the categories of works eligible for copyright protection under the Act. These are literary works, musical works, artistic works, audio-visuals, sound recordings, and broadcasts.

Copyright is the exclusive right granted to the originator of a creative work to reproduce, publish, include in audiovisuals, broadcast, and communicate to the public for a specified period. The Act aims to protect the rights of creatives by ensuring that they are appropriately rewarded and recognised for their intellectual effort.

It is important to note that copyright under Nigerian law is achieved by the expression of original works of art, literature, music, cinema, sound and broadcast, in a fixed medium through which it can be communicated directly or indirectly.

• The Trademarks Act, 2004

In Nigeria, the law that regulates trademarks is the Trademarks Act, 2004 and it seeks to protect a sign, word, mark, logo, symbol, pattern, or colour that distinguishes the brand of a creative or business from unauthorised use. The Business Facilitation Act 2023 (“BFA”) amends Section 67 of the Trademarks Act by including ‘Services’ in the definition of goods. The BFA also provides a unique definition of trademark encompassing services, the shape of goods, their packaging, and the combination of colours.

⁴ Ibid, s 10.

⁵ Trademark Act CAP. T13 L.F.N 2004, s 3.

⁶ Ibid, s 23 (1)

⁷ Patents and Designs Act CAP. P2 L.F.N 2004.

Trademark helps to protect the goodwill of brands from exploitation by unauthorised users or competitors. The Trademarks Act mandates the registration of a mark in order to attract protection, however, an unregistered mark may be protected if it qualifies as a well-known mark.

A trademark once registered is valid for an initial period of seven (7) years, and subject to renewal for a subsequent period of 14 years.

- **The Patents and Designs Act, 2004**

The Patents and Designs Act is an industrial property law which affords inventors and owners of industrial designs and processes legal protection by safeguarding their rights over scientific/technological inventions as well as industrial designs.

A patent grants an inventor the exclusive right to preclude others from making, using, importing, selling, or reproducing an invention without the inventor's consent. A patent is valid for a period of 20 years from the date of filing.

On the other hand, industrial design right protects the aesthetic features or appearance of a product, encompassing features such as lines, colours of the product or its ornamentation. This should not be confused with a patent, as the concept of industrial design focuses on the appearance of a product and not its technicality or functionality.

The right to a registered design lasts for 5 (five) years but may be extended for two further periods of 5 (five) years each.

- **Companies and Allied Matters Act, 2020**

The Companies and Allied Matters Act, 2020 ("CAMA") regulates the formation and operation of businesses in Nigeria including the creative and entertainment industry. To commence business operations such as record labels, film production companies, modelling agencies, photography studio etc, the business would have to be registered either as a business name or a limited liability company with the Corporate Affairs Commission.

- **The National Broadcasting Commission Act, 2004**

The National Broadcasting Commission Act, 2004 ("NBC Act") establishes the National Broadcasting Commission ("NBC"), which is the body vested with the responsibility of

regulating and controlling broadcasting in Nigeria. The NBC regulates all forms of broadcasting by issuing operating licenses to radio and television stations.

REGULATORY AGENCIES IN THE CREATIVE INDUSTRY

● National Broadcasting Commission (NBC)

The NBC is a parastatal of the federal government empowered to regulate the broadcasting industry. The functions of the NBC include:

- receiving, processing, and considering applications for the ownership of radio and television stations including cable TV services, direct satellite broadcasts, etc;
- regulating and controlling the broadcasting industry;
- receiving, considering and investigating complaints from individuals and bodies regarding the content of a broadcast or conduct of a station;
- upholding the principles of equity and fairness in broadcasting;
- establishing and disseminating a national broadcasting code and setting standards with regards to contents and quality of broadcasting;
- regulating ethical standards and technical excellence;
- promoting Nigerian indigenous cultures, moral and community life through broadcasting;
- determining and applying sanctions, including revocation of licenses of defaulting stations;
- ensuring quality manpower development in the broadcasting industry by accrediting curricula and programmes for all tertiary institutions that offer Mass Communication in relation to broadcasting;

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⁸ The National Broadcasting Commission Act 2004, s 9

⁹ Ibid, s 1.

- intervening and arbitrating in conflicts in the broadcasting industry;
- advising the federal government on the implementation of the national mass communication policy;
- upholding the principle of fairness and equity in broadcasting; and
- ensuring strict adherence to laws and regulations etc.

● Nigerian Copyrights Commission

The Nigerian Copyrights Commission (“NCC”) was established by section 77 of the Copyright Act. Its functions include:

- administration, regulation and enforcement of all matters relating to copyright;
- enlightening and informing the public on matters relating to copyright;
- creating and maintaining a register and database on copyright works; and
- monitoring and advising the Government on Nigeria’s position in relation to bilateral and multilateral agreements between Nigeria and any other country etc.

● National Film and Video Censors Board

The National Film Video Censors Board was set up by the National Film and Video Censors Boards Act CAP N40 L.F.N 2004 (“NFVCB Act”) to regulate the film and video industry in Nigeria. The functions of the NFVCB include:

- issuing of licenses to a person to exhibit films and video works;
- licensing premises for the purpose of exhibiting films and video works;
- censoring films and video works;
- regulating and prescribing safety precautions to be observed in licensed premises;

¹⁰ The Copyright Act, s. 78

¹¹ National Film and Video Censors Board, s 1-2.

- regulating and controlling cinematographic exhibitions; and
- performing such other functions as are necessary or expedient for the full discharge of all or any of the functions conferred on it by this Act.

• **Corporate Affairs Commission**

The Corporate Affairs Commission was established by the Companies and Allied Matters Act, 1990 (“CAMA”) which was re-enacted in 2020 to administer the CAMA, establish and maintain companies’ registry including the registration, regulation and supervision of the formation, incorporation, management of companies, business names, partnerships and charitable organisations as well as their dissolution. Its functions also include arranging or conducting investigations into the affairs of any company or business name, and ensuring compliance with the provisions of the CAMA, etc.

• **National Council for Arts and Culture**

The National Council for Arts and Culture (“NCAC”) is a Federal Government agency established by the National Council for Arts and Culture Act, CAP. N25 L.F.N 2004. It is charged with the responsibility of coordination, development and promotion of arts and cultures in Nigeria. The NCAC coordinates cultural activities towards fostering the development of literary, visual, and performing arts in Nigeria.

• **Nigerian Film Corporation**

The Nigerian Film Corporation (“NFC”) was created under the Nigerian Film Corporation Act, 2004 to aid the development of the film industry. The NFC provides training facilities, financial and other forms of assistance to encourage the production of films and cinematograph theatres by Nigerians.

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- **Collecting Societies**

Collecting societies are organisations responsible for collecting and distributing royalties on behalf of copyright owners for the use of their works. These organisations ensure that creators receive fair compensation for the use of their works.

The collecting societies operating in Nigeria include the Musical Copyright Society of Nigeria (“MCSN”), Performing and Mechanical Rights Society (PMRS), Reprographic Rights Organisation of Nigeria (REPRONIG), and the Audio-Visual Rights Society (AVRS).

- **OPPORTUNITIES AVAILABLE FOR LAWYERS**

Lawyers play a crucial role in safeguarding the intellectual property rights of creators. Here are a few opportunities available for legal practitioners in the creative industry:

- **Contract Drafting and Negotiation**
Lawyers play a crucial role in drafting and negotiating contracts for creatives. Usually, agreements are required for collaboration, licensing, distribution, and performance of contracts. As such, lawyers must ensure that these agreements are fair, comprehensive, and protect the interests of their clients.
- **Intellectual Property Protection**
Lawyers can assist creatives in securing patents for technological inventions, trademarks for brand protection and copyright for various copyrightable works.
- **Advisory Services**
Lawyers can provide advisory services to clients in the creative industry. This involves keeping them informed about the provisions of the laws, changes in laws and regulations and guiding them on the legal implications of business decisions.
- **Dispute Resolution**
This could range from resolving disputes through negotiations, mediation or arbitration to representing creatives in court to defend their rights such as in cases of intellectual property infringement.
- **Publishing and Distribution**
Lawyers with an interest in the entertainment industry can double as publishing and distribution experts, through facilitating the production, promotion, and dissemination of creative works.

- Tax and Private Wealth Advisory
Lawyers can help to establish trusts, manage inheritance and handle tax matters, and advise on estate planning.

It is quite evident that the opportunities available for lawyers in the creative industry extend far beyond traditional legal services. Lawyers can contribute significantly to the sector's growth and sustainability due to their expertise.

CONCLUSION

Nigeria's creative industry holds a remarkable potential to unlock Nigeria's economy and increase employment opportunities, particularly for young people. The film industry's contribution of 2.3% (239 billion Naira) to Nigeria's GDP in 2021, combined with the motion picture and music industry's contribution of about 730 billion Naira to the country's GDP in 2020 underscores the economic significance of the industry.

As the industry continues to gain global importance, collaboration between legal professionals and industry stakeholders is crucial for protecting the rights of creatives, fostering fair business practices, and ensuring a secure environment that propels sustainable growth.

For any comments and additional information on the issues discussed, please contact any of the under-listed persons:



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¹² International Trade Administration, 'Country Commercial Guide' (media and Entertainment, 06 June 2023) Nigeria - Media and Entertainment (trade.gov) Accessed December 2, 2023.