



Impact of Streaming Services on Music Copyright Laws

Introduction

In the 21st Century, streaming services have experienced rapid global expansion, reaching audiences in the most remote parts of the world. This growth is driven by improved internet connectivity, the proliferation of smart devices and the increasing demand for diverse content. For instance, Afrobeat a genre that originated in Nigeria, has gained immense international recognition, partly due to the accessibility provided by these streaming platforms. Artists like Ayra Starr and Tems have risen to global prominence, with Ayra Starr recently winning MOBO Award and Tems receiving a Grammy Award for Best African Music Performance.

According to the Live Streaming Global Market Report 2024, the global music streaming market value reached approximately USD 42.41 billion in 2024, with a compound annual growth rate of 14% between 2024 and 2032 and reaching USD 125.3 billion by 2032.¹

Streaming services have revolutionized music consumption, offering unparalleled access to vast catalogues. This shift has introduced complex challenges to copyright laws, copyright enforcement, royalty distribution, and the protection of artists' rights in a borderless digital marketplace.

In this article, we examine the potential impacts of the advancement in streaming services on copyright laws, the challenges involved in applying copyright laws in the digital age, and effective strategies that can be adopted by entities to ensure that these rights are adequately safeguarded.

Evolution of Music Copyright Laws

Traditional copyright frameworks before streaming (CDs, radio, downloads).

In pre-colonial Nigeria, music served a functional purpose, often performed during important ceremonies. Performers and singers were entertained and compensated with gifts after their performances.

Subsequently, during the colonial era, the application of the English Copyright Act of 1911 was extended to Nigeria by Order No. 12, of June 1912 (the “**1911 Act**”). Under the 1911 Act, only works first published in England or made by an author resident in English territory could be accorded protection. It granted protection for a period of 50 years after the author’s death.

The Copyright Act of 1970 (the “**1970 Act**”) repealed the 1911 Act, which was amended in 1988. Notably for music in Nigeria, the 1970 Act provided for collecting societies. This allowed musicians to collect royalties and have their rights enforced through these societies. Subsequently, the Copyright Act of 2022 (the “**Copyright Act**”) was introduced. The Copyright Act introduced some provisions relevant to creators of musical works, including: (a) extending the term “copy” to include digitally reproduced copies²; (b) providing that the creator of a musical work need only exert “some” effort, as opposed to the 1970 Act as amended³, which demanded that sufficient effort be exerted in making the work original; (c) provisions for Performers rights including the right to control the broadcast or communication of the performance⁴; and (d) express provisions for remuneration for the broadcast of works.

Key international copyright treaties

¹ Live Streaming Global Market Report 2024 “Music Streaming Forecast Report 2024: Global Market to Surpass \$125 Billion by 2032, Fueled by Shift Toward Subscription-based Models and Rise of Podcasts and Non-music Audio Content” January 14, 2025- <<https://www.globenewswire.com/news-release/2025/01/14/3009447/28124/en/Music-Streaming-Forecast-Report-2024-Global-Market-to-Surpass-125-Billion-by-2032-Fueled-by-Shift-Toward-Subscription-based-Models-and-Rise-of-Podcasts-and-Non-music-Audio-Content.html>> accessed on March 10, 2025.

² Section 108 of the Copyright Act, 2022

³ Section 2(2) of the Copyright Act 2022

⁴ Section 63(1) of the Copyright Act, 2022

The Berne Convention (1886)

With the evolution of copyright laws, international treaties such as the Berne Convention (the “**Convention**”) adopted in 1886 have played a key role in shaping copyright protection globally. The Convention deals with the protection of works and the rights of their authors. It provides musicians with the means to dictate the terms of use of their work. It is based on three basic principles; (a) Works originating in one of the contracting states (that is, works which the author is a national of such a state or works first published in such a state) must be given the same protection in each of the other contracting states as the latter grants to the works of its own nationals (principle of “**national treatment**”); (b) Protection must not be conditional upon compliance with any formality (principle of “**automatic protection**”); and (c) Protection is independent of the existence of protection in the country of origin of the work (principle of “**independence**” of protection).

If, however, a contracting state provides for a longer term of protection than the minimum prescribed by the Convention, and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases⁵.

The Convention also provides for degrees of minimum protection to be granted to works, subject, of course, to national laws. As they pertain to music, these rights include the right to perform dramatic, musical, or dramatic-musical performances in public. While Nigeria is a signatory to the Berne Convention, it has not yet domesticated the Convention. Section 12 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (the “**Constitution**”) mandates the domestication of international instruments before they can have any binding effect.

The International Convention for The Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961(The Rome Convention)

The Rome Convention protects creators in their performances, phonograms and broadcasts. These three rights are protected in the following manner: (a) Performers are protected against acts to which they have not consented, including the broadcasting and communication of their live performances to the public, the fixation of the live performance into a concrete form (e.g. a cassette or record) and the reproduction of the fixation if the original fixation was made without the performer's consent or if the reproduction was made for a purpose different from those for which consent was given; (b) Producers of Phonograms are granted the right to authorize or prohibit the reproduction of their phonograms; and (c) Broadcasting organizations have the right to authorize or prohibit the rebroadcasting of their broadcasts.

The World Intellectual Property Organization Copyright Treaty 1996 (the WIPO Copyright treaty)

The WIPO Copyright Treaty is a special agreement under the Berne Convention which deals with the protection of works and the rights of their authors as it regards digital works and works in the digital environment. The WIPO Copyright Treaty establishes that computer programs are protected as literary works and recognizes that databases can receive copyright protection. It creates a “**right of communication to the public**” that covers the transmission of works over the internet. Importantly, the treaty requires member states to provide legal protection against the circumvention of technological protection measures that authors use to protect their works. It also prohibits the removal or alteration of electronic rights management information.

⁵ World Intellectual Property Organization, “Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)” <https://www.wipo.int/treaties/en/ip/berne/summary_berne.html> accessed on March 11, 2025.

As the first international treaty to specifically address protection of copyrighted works in the digital environment, it acknowledges the challenges posed by the internet and digital technologies while attempting to balance the rights of creators with the public interest in accessing information.

Streaming Services and Copyright Challenges

The rise of streaming services has significantly revolutionised the way media is consumed, distributed, and monetised, presenting both opportunities and challenges for copyright law. Its ease of accessibility, affordability and growth of the market have posed major questions to copyright law. Some of which include:

Reproduction: Streaming services have transformed media consumption, delivering content directly to users without creating physical copies. This shift challenges traditional copyright laws, which primarily address the reproduction of tangible media like books or CDs. One of the major issues is whether streaming constitutes "reproduction" under copyright law, what constitutes an infringement and how it should be regulated.⁶

In Nigeria, the 1970 Act, also the Copyright Act, Cap C28, Laws of the Federation of Nigeria, 2004 lacked provisions that addressed the protection of copyrightable works in the digital space. However, the definition of "copy" under the Section 108 of the Copyright Act means a reproduction in any form, including a digital copy thereby extending copyright protection to digital formats. This broader definition acknowledges the evolving nature of content distribution and ensures that copyright owners retain control over their works in the digital space.⁷

Furthermore, the Act introduces provisions that specifically address online infringement, including unauthorized streaming and digital piracy.⁸ These provisions aim to close gaps that previously left copyright owners vulnerable to exploitation in the digital realm.

Despite these developments, enforcement remains a significant challenge. Cross-border digital piracy, compliance by international streaming platforms, and the adaptability of copyright regulations to new technologies are an ongoing concern.

Fair Use and User-Generated Content

There are certain exceptions to copyright infringement which include the use of copyrighted works for the purpose of fair use, such as setting or answering exam questions, when it is used for instruction at a non-profit institution, parody or satire, private use or non-commercial exploitation.⁹ The question here is, when does the use of an artist's work on streaming platforms exceed fair use and become copyright infringement?

Platforms like YouTube, TikTok, Instagram, Facebook ("**UGC platforms**") have revolutionized user-generated content creation and distribution, enabling users to share videos globally whilst utilizing copyrighted materials. Relatedly, this raises concerns for copyright holders, who are concerned that UGC platforms might lead to unauthorised usage of their works, reducing the value of their intellectual property. In the music and entertainment industries, UGC platforms containing copyrighted songs or video snippets can weaken the market for original works by offering free, unauthorised versions to consumers. Thus, copyright laws must strive to strike a balance between promoting creativity (freedom

⁶ Gauri Suresh Khandelot et al, "Copyright Law and User-Generated Content: Striking a Balance in the Digital Economy" (2023) 3(11) International Journal of Emerging Technologies and Innovative Research 163 <<https://iciset.in/Paper2623.pdf>> accessed on March 12, 2025.

⁷ David Ekanem, "Artificial Intelligence and Copyright Protection in Nigeria: Legal Impact and Challenges" (28 December 2023) <https://www.mondaq.com/pdf/1473138.pdf> accessed on March 12 2025.

⁸ ss. 55 and 61 Copyright Act

⁹ See section 20 and 21 of the Copyright Act.

of expression) and ensuring adequate protection for copyright holders.¹⁰ The necessity of a more balanced and adaptable approach to copyright law has become increasingly evident as digital platforms continue to develop.

Challenges in differentiating fair use from infringement: One primary challenge lies in assessing the purpose and character of the use, especially concerning transformative applications. While transformative uses, those that add new expression or meaning to the original work, are more likely to be deemed fair, the subjective nature of what constitutes "transformative" leads to inconsistent interpretations. For instance, incorporating a music track into a podcast for commentary purposes might be considered fair use, whereas using the same track as background music could be viewed as infringing, depending on the context and the extent of transformation.

Another complexity arises when evaluating the amount and substantiality of the portion used. Music streaming often involves the reproduction of entire songs, which weighs against a fair use finding. However, in certain contexts, such as educational or critical analysis, using an entire work may be justified. The subjective nature of determining what constitutes the "heart" of a work further complicates this assessment, leading to varied judicial interpretations.

The impact of the use on the market value of the original work is perhaps the most contentious factor. In the music streaming industry, unauthorized use of copyrighted material can directly affect revenue streams for artists and rights holders. Yet, some argue that certain unauthorized uses, like user-generated content or remixes, can serve as promotional tools, potentially enhancing the market value of the original work. This dichotomy underscores the difficulty in uniformly applying the fair use doctrine within the music streaming landscape.¹¹

The Role of Collective Management Organizations (CMO) In Royalty Collection

The Act defines Collective Management Organizations (CMO) as an organization representing copyright owners, which principal objectives are negotiating and granting of licenses, collecting and distributing of royalties in respect of copyrighted work¹².

While copyright can be managed through individual contracts between the creators and users, in many cases it is impossible to negotiate individual licenses or permissions for dissemination of works. Our continued use of the internet and social media means the proliferation of musical work in many jurisdictions. CMO helps manage the rights between users of these works and the authors.

Rights holders authorize CMO to administer their rights. This includes monitoring the use of the works concerned, negotiating with prospective users, issuing licences with fees and terms and conditions, collecting such fees and distributing them among the owners of rights. This can be considered as the definition of collective administration.

Through CMO, parties are able to enter into agreements with organizations in foreign countries and offer their music for licensing in other countries. CMO also manages performance and phonogram rights of authors, and collects royalties on public performances, broadcasts, and reproductions of musical works.

The Act permits CMO to issue licenses for works whose owners 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 licences; (b) the owners of copyright in such works are not otherwise represented by any other CMO ; (c) there is

¹⁰ Gauri Suresh Khandelot et al, "Copyright Law and User-Generated Content: Striking a Balance in the Digital Economy" (2023) 3(11) International Journal of Emerging Technologies and Innovative Research 163 <<https://iciset.in/Paper2623.pdf>> accessed on March 12, 2025.

¹¹ Anshika Agarwal, "Music Copyright and Streaming Services: Analyzing Legal Challenges and Solutions" (Law Jurist, January 12 2025) <https://lawjurist.com/index.php/2025/01/12/music-copyright-and-streaming-services-analyzing-legal-challenges-and-solutions/> accessed on March 12, 2025.

¹² Section 88(7) of the Copyright Act, 2022.

not more than one CMO approved to operate in the particular category of works concerned ; (d) the owners of copyright in such works have not by written notice to the CMO, opted out of collective management of their rights and ; (e) the CMO does not discriminate against such owners in terms of the tariffs for the use of their works and the payment of royalties to such owners¹³.

The Act mandates that no person or corporate body shall perform the duties of a CMO without the approval of the Nigerian Copyright Commission (the “**Commission**”). This is accompanied with the following sanction; any person or corporate body who functions or acts in the capacity of a CMO without the approval of the NCC shall be liable on conviction in the case of an individual, to a fine of at least ₦1,000,000 or imprisonment for a term of at least five years or both ; and a body corporate, to a fine of at least ₦5,000,000.¹⁴

The Future of Music Copyright in the Streaming Era

The role of Artificial Intelligence (AI) and blockchain in copyright enforcement

Blockchain is a digital system for recording information in a way that makes it difficult or impossible to change, hack, or cheat the system. It is essentially a digital ledger of transactions that is duplicated and distributed across the entire network of computer systems on the blockchain. Once data is added to the blockchain, it cannot be altered, making it an excellent tool for tracking and protecting content.¹⁵

Blockchain has the potential to provide solutions for the monitoring and protection of digital content; however, it also poses new concerns regarding the enforcement of rights and ownership in a decentralised environment.¹⁶

As technology advances, one's digital identity and ownership of digital assets will become even more significant. As more individuals move their companies and lifestyles online, owners of copyrighted works will understand they can authenticate ownership of their material using digital assets on the blockchain. Non-fungible tokens (NFTs) can be used to validate the provenance of numerous types of material, including photos, texts, videos, and music.¹⁷

Artificial Intelligence

AI enables streaming media to provide appropriate audio and video suggestions. For example, Spotify uses AI technology in its recommendation engine. It has excellent understanding of digital consumption behaviours and creates a DJ playlist according to your music genre and favourite artists.¹⁸

Furthermore, Sony Music's recent removal of over 75,000 AI-generated fake recordings featuring artists like Harry Styles underscores the growing need for such technological interventions.¹⁹

AI's ability to analyze vast amounts of data rapidly makes it an effective tool for monitoring and enforcing copyright. Regulatory bodies can make use of machine learning algorithms to detect unauthorized use of copyrighted material by scanning digital platforms for content that matches or

¹³ Section 88(9) of the Copyright Act, 2022.

¹⁴ Section 88(5) of the Copyright Act, 2022.

¹⁵ “Is blockchain the next big thing for insurance companies?” (Reuters, 9 October 2024) <https://www.reuters.com/legal/legalindustry/is-blockchain-next-big-thing-insurance-companies-2024-10-09/> accessed on March 13 2025.

¹⁶ O. M. Atoyebi, SAN FCI Arb. (U.K), “Intellectual Rights Infringement in the 21st Century” December 17, 2024 <<https://omaplex.com.ng/intellectual-rights-infringement-in-the-21st-century/>> accessed on March 12, 2025.

¹⁷ David Ekanem, “Artificial Intelligence and Copyright Protection in Nigeria: Legal Impact and Challenges” (28 December 2023) <https://www.mondaq.com/pdf/1473138.pdf> accessed on March 12 2025.

¹⁸ Cubet, “AI in Online Streaming Service” (Cubet Blog, 26 April 2022) <https://cubetech.com/resources/blog/ai-in-online-streaming-service/> accessed on March 12, 2025.

¹⁹ Far Out Magazine, 'Sony Music removes over 75,000 items in AI deepfake battle' (Far Out Magazine, 10 March 2025) <https://faroutmagazine.co.uk/sony-music-75000-items-removed-ai-deepfakes/> accessed on March 12 2025.

closely resembles protected works. For instance, AI-driven systems can identify fake audio or video content that infringes on an artist's rights.

Conclusion

The legal system in Nigeria is still trying to catch up with digital advancements. The evolution of streaming services has redefined how music is consumed, shared, and monetized, necessitating a revision of traditional copyright laws. The Act has made commendable strides in extending protection to digital formats and addressing online infringement.

However, enforcement mechanisms and cross-border cooperation remain critical hurdles. As technology outpaces regulation, the legal framework must evolve to strike a fair balance between protecting creators' rights and embracing the innovation that digital platforms offer. Ensuring that artists and rights holders are compensated while allowing for creative expression and transformative works is key to fostering a vibrant digital music ecosystem.

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