



Premier Record Limited RC: 3317

The Director General,

Nigerian Copyright Commission

Federal Secretariat Complex

Phase 1, Annex II

Shehu Shagari Way, Maitama

Abuja.

21st June, 2018

Attention: Mr. Afam Ezekudu

Dear Sir,

COLLECTIVE ADMINISTRATION OF RIGHTS IN MUSIC IN NIGERIA

As the chief Executive Officer of a company that has a huge repertoire of music acquired since it was incorporated in 1963, I am rather disturbed by the Collective Management ecosystem in Nigeria today. Our subsidiary (Premier Music Publishing Company Limited) is a member of COSON, and what goes on with regards to Collective Administration in Sound Recordings and Musical works is of great importance to us.

Attached to this letter is a write-up titled "**Is Collective Administration of Rights Working in the Music Industry in Nigeria, if so for whom?**" I implore you to study it dispassionately as I believe it would open your eyes to why we are in the sorry state we find ourselves.

I believe the Federal Government, of which your Commission is part, should take pragmatic and urgent steps to reverse the ugly slide to anarchy that is being foisted on the serious stakeholders in the Music industry. The potential for growth in the industry is enormous, and therefore the right environment for this to happen must be created.

I do appreciate the challenges that you face, but a clique of people should not be allowed to stunt the growth of Intellectual property, which can, and should, aid the diversification of the economy as touted by the current government.

Assurance of my highest regard

Toju Ejueyitchie

Managing Director.

IS COLLECTIVE ADMINISTRATION OF RIGHTS WORKING IN THE MUSIC INDUSTRY IN NIGERIA, IF SO FOR WHOM?

The slogan at COSON is "COSON is working". Indeed a lot of work has been, and is still being done, at COSON. However, we do need to ask the question, if it is indeed working, who is it working for?

INTRODUCTION

The evolution of Collective Management of rights in the Nigerian Music Industry has recently hit some headwinds. This is very sad when one considers the tremendous progress that was being made in moving from an era when users of musical content in a commercial setting considered the music to be free, to an era when a culture of acceptance that, when music is used in a commercial setting it should be paid for, was beginning to gain ground.

The headwinds can be categorized into two:

- a) A return to an era where, as a result of having two approved C.M.Os for Musical Works and Sound Recordings, users of music can revert to the same old excuse for not paying, and that is, that they really don't know who to pay.
- b) The rather sad, and self-inflicted, development at COSON where the NCC has had to suspend its license, and there is a possibility that the license can be withdrawn.

This brief is therefore a **WAKE UP CALL** for the **real stakeholders in the Music Industry** (Composers, Performers, Writers, and Music Publishers etc.) **to get interested and become involved in the collective administration of their rights.**

It is also a call for **stakeholders to put aside selfish interests and unite in order to ensure that the benefits derivable from setting up a Collective Management Organization is FULLY REALISED.**

SINGLE, OR MULTIPLE SOCIETIES

I would like to repeat my personal view that I believe that at this stage of development/evolution of Copyrights administration in Nigeria, **ONE Collective Management Origination for Musical Works and Sound Recordings is preferable and more beneficial for all rights owners.**

- When you have only one Society, users cannot claim not to know who to pay.
- Multiple Societies means a duplication of energy and administrative expenses (Salaries, Board entitlements, legal fees etc.) for the same pool of income.
- With unity of purpose, and the elimination of the divisiveness that has plagued the industry over the years, much more can be achieved by growing ONE efficient and effective Society for the Nigerian Music Industry.

HOW SHOULD WE MEASURE THE SUCCESS OF A CMO?

One of the ways to determine if a CMO is "working" is by analyzing its annual Financial Statements.

It really would be nice to analyze the financial statements of both MCSN & COSON. However, I don't have the MCSN statements. Also, it has not had the advantage COSON has had in the last seven years, as it did not have an operating license. I would however analyze the COSON Financial Statements for the year ended December 31, 2017.

My appraisal will focus on what the core mandate of a CMO is, and then, how COSON has delivered on these.

a) What is a CMO's core mandate?

As stated in COSON's financial statement, under "PRINCIPAL ACTIVITY":

'The principal activity of the society is the LICENCING of musical works and sound recordings vested in it by its members and the COLLECTION and DISTRIBUTION of resultant royalties'.

b) How has COSON faired in these areas?

1) LICENCING

Based on the COSON Financial Statements, it collects every kobo of royalties for which it has issued licenses. This means that no one is owing royalties for which licenses have been issued. **The Society has grown royalty income from just =N=20 million in the year 2010, to =N= 480 million in 2017. Given the Nigerian environment, this is tremendous progress. All those who contributed to this phenomenal growth should be commended.**

But then, we should also situate the collection in the light of what is being achieved elsewhere.

Using the published Financial Statements of PRS (Performing Rights Society-UK), SAMRO (South African Music Rights Organization), and MCSK (Music Copyright Society of Kenya), the following analysis shows how well COSON has done in relation to other Collecting Societies.

Country	Society	Year	Royalty Income Millions	Exchange rate	=N= Millions
U.K	PRS	2016	£ 621	478.52	302,749.92
S.A	SAMRO	2016	R 509	26.92	13,702.23
Kenya	MCSK	2016	Ks 444	3.55	1,576.20
Nigeria	COSON	2017			480.00

Note :- £- British Pounds, R- South African Rand, Ks- Kenyan Shillings.

With the above statistics it is clear that in a nation like Nigeria, with the number of TV/Radio Stations, Hotels, Event Centers etc. where music is used commercially, we have not scratched the surface of Collective Management of rights for Musical Works and Sound Recordings .Let us ignore the United Kingdom where Copyright Administration is an age-old tradition. **How have we found ourselves in a situation where Kenya is achieving a collection rate some three times as much as Nigeria, and South Africa about thirty times more?**

Without doubt a major reason for this sorry situation is the lack of unity in the Nigerian Music Industry. It therefore behoves on all serious stakeholders in the Music Industry to bury all that

divides us and forge a united front so that the full potential of Collective Management of rights in Musical Works and Sound Recordings may be actualized.

2) DISTRIBUTION OF ROYALTIES

If a CMO is effective and efficient in collecting royalties, and composers, writers, performers, publishers don't receive the royalties, then that CMO cannot be said to be a success. The real reason for setting up CMOs is so that writers, composers, publishers etc. will benefit from their creation/investment.

COSON may have fared well in growing licensing income over the years, but actual payment of royalties has been dismal. This can be attested to by the following table which has been compiled from COSON's audited financial statements.

Year	Total royalty earned N mill	Total paid to owners N mill	%	Amount approved N mill	Actual paid N mill	%
2012	157	20	12.74	100	20	20.00
2013	116	35	30.17	50	35	70.00
2014	143	37	25.87	90	37	41.11
2015	238	55	23.10	140	55	39.28
2016	387	89	23.00	200	89	44.50
2017	480	81	16.88	206	81	39.32
Total	1,521	317	20.84	786	317	40.33

What do these figures indicate?

- The actual payment of royalties in the last six (6) years was =N= 317 million. This represents only 20.84% of all the royalties earned by the society during those years.
- The total amount approved for distribution during the six (6) years under review was =N= 786 million. The actual sum paid, which amounted to =N= 317 million, is just 40.33% of royalties approved for payment over the last six (6) years.
- Given that the **CMO Regulations** allow a **MAXIMUM OF 30 %** of Royalties earned by CMOs for administrative expenses, rights owners should have received =N= 1,064.7 million (i.e. 70% of =N= 1,521 million) over the six years from 2012 to 2017. This amounts to a **shortfall of =N= 747.7 million.**
- Even if we go by the royalties approved for payment, there is still a **huge shortfall of =N= 469 million** (=N= 786-317 million) which needs to be explained.

How does this performance compare with the two African CMOs (SAMRO & MCSK)?

	SAMRO			MCSK		
	Royalties Earned	Total paid	%	Royalties earned	Total paid	%
	Rand 'mill	Rand 'mill		Ksh 'mill	Ksh 'mill	
2015	494	305	61.74	348	114	32.76
2016	509	327	64.24	444	162	36.49
Total	1,003	632	63.30	792	276	34.85

Not only do SAMRO and MCSK beat COSON on licensing/collection, they are doing better on the more important parameter of the proportion of royalties earned that actually gets to the rights owner. Again, it would have been nice to see how MCSN has fared in this regard.

WHY IS COSON NOT PERFORMING WELL ON ITS KEY MANDATE?

In my view, it is the very wide gulf between the **MOTIVE for what gets done, versus what really needs to be done**. When you read the Financial Statements in detail you can get a sense of this. I will like to point out a few.

COSON HOUSE- No doubt, a lot of work went into the conceptualization, construction and completion of COSON House. That the Society owns a property from which it can function efficiently is commendable. However, as detailed in the Financial Statements for the year ended 31st December, 2017, =N= 174,644,225 had been spent on the building and in the year 2017 alone, =N= 34.8 million was spent on office equipment and furniture/fittings. In total this amounts to =N= 209.4 million. As earlier stated, the Society has only paid =N=317 million to rights owners in the last six (6) years. It is left for all those whose works earned the royalties to judge which is more important to them.

So much noise has been made about COSON House. We need to understand that **if there is any hero that deserves praise for COSON House, it is the hard working artists who have sacrificed their royalties in order that the house may be built**. Were they told how much it would cost? Did they have a chance to really decide how much they would be giving up in order that "their" house may be built?

COSON WEEK- The energy and resources put into this "project" on the surface appears to be altruistic, but this cannot be the case if one of the directors of the society has become the sole contractor engaged for the project. It is immoral. Moreover, it has been a drain on the society's resources, and has reduced the amount available to pay rights owners their royalties.

CONSULTANTS- COSON paid consultants =N= 41.9 million in 2016, and another =N= 35.5 million in 2017. In two years, consultants have been paid =N= 77.4 million. Stakeholders have demanded for a forensic audit of the COSON accounts. This is one area that needs to be addressed.

- a) All the consultants should be named, and the contracts of engagement examined.

- b) The Society needs to provide the details of the exact license each Consultant contracted for the Society, how much it was worth, and the fee he/she received.
- c) It is said that one or more directors act as "consultants". If this is true, then a forensic audit is imperative in order to authenticate the veracity of this claim, and the amount which each director has earned disclosed. Directors were voted to manage the Society on behalf of members, and not to feather their nests.
- d) **The amount paid to these consultants is about 45% respectively of the amounts paid as royalties to artists in 2016 and 2017. Royalties paid to members in 2016 amounted to =N=89 million and consultants were paid =N=42 million, whilst in 2017 members were paid =N= 81 million and consultants received =N= 36 million. Who is more important, the members of the society or the consultants?**

LEGAL FEES- COSON spent =N= 17 million in 2017, and =N= 8 million in 2016 on legal fees. Given what has transpired so far in 2018 the figures might skyrocket this year. The legal battles have been **against a competitor society, against recalcitrant users who don't want to pay for the use of music, against the regulator, against persons who are members of the society** etc. If the Music Industry practitioners were united, the only legal expense that would be needed would be for those who don't want to pay. This waste of rights owners' resources is totally unnecessary. **This myriad of legal cases diverts energy from growing Collective Management and stunts its growth and development.**

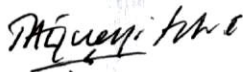
There are several other issues with the COSON Financial Statements which will be addressed separately.

CONCLUSION

The rather fractious nature of the Music Industry in Nigeria is preventing it from reaching its full potential. Major Stakeholders have for too long only had a passive interest in Collective Management of rights, probably because they don't understand its full potential. Therefore, a few persons, for rather selfish interests, have tried to make it their personal fiefdom.

This is a call to all serious COMPOSERS, PERFORMERS, MUSIC PUBLISHERS, etc. to get informed, and involved in how Collective Administration of rights in the Music Industry is run, and unite in order to actualize its full potential.

It is a call for the Industry Regulators to look deeply at the nuances that plague the Collective Administration of rights in Musical Works and Sound Recordings and ensure that an environment for the full potential in this area is created.



Toju Ejuéyitchie
Premier Music Publishing Company Limited