

Reimagining Copyright Collective Management for Nigerian Creators: Learning from International Models

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Abstract. This paper examines the challenges hindering the effectiveness of collective management of copyright (CMO) in Nigeria and its impact on the nation's creative industry. It identifies key controversies, including allegations of corruption, lack of transparency, potential mismanagement of funds, and the debate surrounding a single CMO structure. By drawing on successful strategies implemented in other jurisdictions, the paper explores how Nigeria can address these issues and foster a more efficient and equitable CMO system. This analysis provides valuable insights and recommendations for policymakers, stakeholders, and creators seeking to strengthen copyright protection and ensure fair remuneration for Nigerian creators in the global marketplace.

Keywords: Collective Management Organisations (CMOs), Collective Management of Copyright, Collecting Societies, Creative Industry, Music, Nigerian Copyright Commission, Nigeria.

1. Introduction

1.1. HOW NIGERIA'S CREATIVE INDUSTRIES FUEL ECONOMIC PROSPERITY

Nigeria's vibrant and diverse creative economy encompasses music, film, fashion, literature, visual arts, and performing arts, among others.¹ Creators in Nigeria are increasingly gaining recognition both nationally and internationally.² Nigeria's creative industry is the second-largest employer. 'It has the potential to produce 2.7 million jobs by 2025 and is set to contribute 5 trillion Naira to the country's GDP.'³

¹ Kunle Ola, "Evolution and Future Trends of Copyright in Nigeria" in Brian Fitzgerald & John Gilchrist (eds) *Copyright Perspective: Past, Present and Prospect* (Springer, 2015) 97, 98.

² See generally, Okoroafor, E, 'Nigeria's Creative Economy: The Rise of the Creative Industry' (2020) 8(1) *African Journal of Economic Review* 1-14.

³ Victor Oluwole, New report shows Nigeria's creative industry is the country's second-largest employer and has the potential to produce 2.7million jobs by 2025, <https://africa.businessinsider.com/local/lifestyle/new-report-shows-nigerias-creative-industry-is-the-countrys-second-largest-employer/mky68v9> *Business Insider Africa*, (May 10, 2021)

Nigeria's music industry is particularly notable, with the country's unique musical genre including traditional African rhythms, Western pop, and hip-hop gaining widespread popularity across the continent and beyond. Nigerian musicians like Wizkid, Davido, and Burna Boy amongst many others have become international sensations, while the Afrobeats genre they helped popularize and which was pioneered by Nigeria's Fela Kuti has become a global phenomenon.⁴

Nollywood is a major player in Nigeria's creative economy.⁵ It is the second-largest film industry in the world in terms of the number of films produced annually, behind only India's Bollywood.⁶ Nigerian filmmakers have gained international acclaim for their ability to produce high-quality films on low budgets, with movies like 'King of Boys: The Return of the King', 'Lionheart' and 'The Wedding Party', receiving accolades and distribution deals with Netflix, a major streaming platform.⁷

Nigeria's fashion industry is also on the rise, with a growing number of designers gaining recognition for their unique styles and use of traditional African fabrics and techniques.⁸ Similarly, authors like Chimamanda Ngozi Adichie, Chinua Achebe, Wole Soyinka, Teju Cole

⁴ Adeola, B, 'Nigeria' s creative economy: An overview of its music, film, fashion, literature, visual arts, and performing arts industries' (2019) 31(3) *Journal of African Cultural Studies* 287-303.

⁵ Olufunmilayo Arewa, *The Rise of Nollywood: Creators, Entrepreneurs and Pirates*, (2012) *SSRN Electronic Journal*. 10.2139/ssrn.2011980.

⁶ Giwa, Elizabeth T., "Nollywood: A Case Study of the Rising Nigerian Film Industry-Content & Production" (2014). Research Papers. Paper 518. http://opensiuc.lib.siu.edu/g_s_rp/518. See also Rebecca Moudio, Nigeria's film industry: a potential gold mine?, <https://www.un.org/africarenewal/magazine/may-2013/nigeria%E2%80%99s-film-industry-potential-gold-mine> *United Nations Africa Renewal* (May 2013), See also Alyssa Maio, What is Nollywood and How did it become the 2nd largest Film industry?, <https://www.studiobinder.com/blog/what-is-nollywood/#:~:text=Nollywood%20is%20the%20film%20industry,second%20only%20to%20India's%20Bollywood>. *Studiobinder*, (December 5, 2019).

⁷ Jayne Augoye, 'Netflix Approves 'Citation', 'Òlòtùré', 'King of Boys 2', One Original Nigerian Series' <https://www.premiumtimesng.com/entertainment/416254-netflix-approves-citationoloture-king-of-boys-2-one-original-nigerian-series.html?tztc=1> *Premium Times* (September 21 2020); Alessandro Jediowski, What Netflix's involvement in Nigeria's massive film industry really means, <https://theconversation.com/what-netflixs-involvement-in-nigerias-massive-film-industry-really-means-108832> *The Conversation* (December 31 2018).

⁸ Panle Agwom Ruth, "Fiscal Aspects of the Fashion Industry: The Big Four Global Capitals and the Nigerian Equivalent" (2021) 9, *Open Journal of Social Sciences* 232, 232-233.

and Ben Okri, amongst many others have distinguished themselves in the literary sphere and are influencing the global literary canon.⁹

The International Federation of the Phonographic Industry (IFPI), an organization that represents the global recording industry, reported in its 2022 report that recorded music in Sub-Saharan Africa generated USD70.1 million in revenues in the preceding year.¹⁰ Additionally, Dataxis, a research firm, projects that Africa's music streaming revenues will grow from USD92.9 million in 2021 to USD314.6 million by 2026 and that Nigeria's music industry is projected to generate USD44 million in 2023.¹¹

Nigeria's creative industry is no doubt contributing to Nigeria's economy and making her a significant player on the global stage. It displays the potential to drive economic growth and development in the country. With the right support and investment, Nigeria's creative industries can make even greater contributions to the economy. However, systemic challenges including lack of funds, mismanagement, internal rivalry, legislative and policy deficiencies, ongoing CMO disputes, lawsuits and intellectual property protection related issues need to be addressed. This paper addresses some of these challenges (IP) and examines the prospects for development. It considers the collective management of copyrights in Nigeria and the various stakeholder interests involved. The paper draws on Edward Freeman's stakeholder philosophy that organisations arise to meet the needs of various stakeholders and discusses the CMO controversies from a stakeholder theory perspective. It adopts a mixed methodology (doctrinal and comparative) in laying out the arguments. The paper starts with an analysis of Nigeria's creative industries and their influence on Nigeria's economy. It then provides a primer to collective management organisations (CMO) and analyses the legal framework for CMOs in Nigeria. Afterwards,

⁹ Kunle Ola, The Quagmire of Open Access to Knowledge: Availability, Accessibility, and Impact in Ayoyemi Lawal-Arowolo & Kunle Ola (eds) *Nigerian Intellectual Property Law: Reform and Development* (Routledge, 2022) 137, 139, where he noted that "Nigerian authors are active contributors to the global library"; See also, Rebecca Jagoe, 'From Achebe to Adichie. Top Ten Nigerian Authors', (11 January 2018), <https://theculturetrip.com/africa/nigeria/articles/from-achebe-to-adichie-top-ten-nigerian-authors/>. It contains names of popular Nigerian fiction authors like Chinua Achebe, Wole Soyinka, Femi Osofisan, Ben Okri, Buchi Emecheta, Sefi Atta, Helon Habila, Teju Cole, Adaobi Nwaubani and Chimamanda Ngozi Adichie.

¹⁰ Stephen Kenechi, Analysis: Nigeria's music revenue collecting societies are failing IP owners, <https://lifestyle.thecable.ng/nigerias-music-revenue-collecting-societies-are-failing-ip-owners/> *The Cable Lifestyle* (March 23 2023).

¹¹ Ibid.

the paper discusses the controversies surrounding and challenges facing CMOs in Nigeria and examines CMOs in other jurisdictions (United Kingdom (UK), United States (US) and Australia). The paper makes recommendations for improving the effectiveness and transparency of CMOs in Nigeria to create an enabling environment for the growth of Nigeria's creative industry.

2. Collective Management Organisations and the Creative Industries

Collective Management Organisations (CMOs), also known as collecting societies, are non-profit organizations that are established to manage the rights of creators and ensure that they receive fair compensation for the use of their works.¹² They are central to the collective management of copyright and play a crucial role in protecting the IP rights of creators.

The concept of collective management of copyright is an important legal and administrative mechanism for the effective management, protection, and enforcement of copyright. The reason for the development of a collective management system for copyright stems from the difficulties of each individual managing these activities on their own.¹³ CMOs offer a solution to the challenges faced by individual creators, particularly those who are not among the small group of popular and best-selling artists who often have their own management companies.¹⁴ Within a collective management framework, copyright owners grant CMOs the authority to monitor the use of their works, engage in negotiations with potential users, grant licenses for use against corresponding remuneration based on a tariff system and appropriate terms, collect the remuneration, and allocate it to copyright owners.¹⁵

The essence of CMOs can be understood through the lens of Freeman's stakeholder approach which posits that 'Stakeholder theory suggests that the way forward is [...] through the creation of institutions that encourage the collaborative management of stakeholder re-

¹² Gervais DJ "The landscape of collective management schemes" 2011 (34.4) *COLUM-VLA J.L & ARTS* 423-449.

¹³ Kunle Ola, *Copyright Collective Administration in Nigeria: Lesson for Africa* (Springer, 2013) 8.

¹⁴ Haunss, S, The Changing Role of Collecting Societies in the Internet (2013) 2(3) *Internet Policy Review*, <https://doi.org/10.14763/2013.3.199>.

¹⁵ Mihaly Ficsor, *Collective Management of Copyright and Related Rights* (World Intellectual Property Organisation, 2002) 17.

lationship'.¹⁶ CMOs are an example of the institutions Freeman speaks about, as they represent the interests of right owners and meet the needs of users. They are managers who seek to serve the interests of two stakeholders (owners and users), and it is imperative they provide this service in collaboration with the stakeholders.

They provide a vital link between creators and users of copyrighted works, ensuring that creators receive fair compensation for the use of their works. The collective management of authors' rights or copyrights provides numerous benefits and conveniences that are widely considered unmatched by any other means and are in the public interest.¹⁷ It enables the practical implementation of authors' rights and copyrights, making it a valuable tool for securing the future of culture and creativity while promoting the prosperity of both right owners and commercial users.¹⁸ CMOs serve as intermediaries, offering a convenient single point of contact for obtaining licenses to use a wide variety of copyrighted works, including those owned by both individuals and corporations.¹⁹ They function as gatekeepers, regulating access to such works.²⁰ This aligns with Freeman's stakeholder theory which argues that 'managers can no longer look at the firm as a separate entity, but must view the firm as embedded in a network of relationships with stakeholders'.²¹ This underscores the point that businesses, in this case CMOs, should consider the interest of all stakeholders (owners and users) when making decisions.

3. Legal Framework for Collective Management Organisations in Nigeria

The Copyright Act 2022²² and the Copyright (Collective Management Organisations) Regulations 2007²³ provide the current legal and regulatory framework for the administration of CMOs in Nigeria. Historically,

¹⁶ Freeman, R.E, "The Politics of Stakeholder Theory: Some Future Directions" (1994) 4(4) *Business Ethics Quarterly*, 409-421, 410.

¹⁷ CISAC, The Importance of Collective Management, https://www.cisac.org/sites/main/files/files/2020-11/CISACUniversity_The_Importance_of_Collective_Management_FINAL.pdf

¹⁸ Ibid.

¹⁹ Yu, PK, 'The Rise of the Fourth Sector: Collective Management of Copyright in the Digital Age' (2012) 28 *Santa Clara High Tech. L.J.* 155-173.

²⁰ Ibid.

²¹ Freeman (n 16).

²² *Nigerian Copyright Act* Cap C28 Laws of the Federation of Nigeria 2022.

²³ *Copyright (Collective Management Organization) Regulation 2007* issued in the Official Gazette on the (3rd of October 2007) as No.98 of Volume 94.

Nigeria's copyright legal framework did not include the administration of CMOs. It was not until 1992 when the 1988 Copyright Decree was amended that provisions on the regulation of CMOs were introduced in Nigeria with the inclusion of section 32B. The inclusion of section 32B marked the establishment of a robust legal framework for the collective management of copyright in Nigeria.²⁴ It introduced a government supervisory role over CMOs in Nigeria. It also prescribed by implication that CMOs shall be not-for-profit organizations and tilted the provisions of the law in favour of a single CMO model.²⁵ Furthermore, it allowed for a single CMO to administer multiple rights in each category of copyrighted work.²⁶ It must however be noted that the law did not and still does not forbid the operation of multiple CMOs for one category of work. All other amendments to the copyright law continued to build on the framework that was set in 1992.

In 1993, the Copyright (Collecting Societies) Regulations was enacted to provide further regulatory guidance for CMOs in Nigeria. The 1993 Regulations is no longer in force and has been replaced by the Copyright (Collective Management Organisations) Regulations 2007. The 2007 Regulation provides for the grant of operating licences to CMOs (including procedures for application, revocation, and renewal of licences); regulates membership and management of CMOs; provides regulatory guidance on the licensing of copyrights (including tariff setting) and distribution of royalties; and includes other miscellaneous provisions.²⁷

Section 88 of the Copyright Act 2022 allows copyright owners to form a CMO. The CMO must however obtain the approval of the Nigerian Copyright Commission (NCC) before it can perform the duties of a CMO.²⁸ The NCC may approve a CMO to operate if it is satisfied that (i) the CMO is incorporated as a company limited by guarantee (i.e. a non-profit company); (ii) the objects of the CMO are negotiation and granting of licences, and collection and distribution of royalties; (iii) the CMO represents a substantial number of copyright owners in any category of copyrighted works; and (iv) the CMO has complied with the CMO Regulations.²⁹ Only one CMO can be approved to represent copyright owners in any category of copyrighted works unless the existing approved CMO does not adequately protect the interests

²⁴ Copyright (Amendment) Decree No. 98 of 1992.

²⁵ Copyright (Amendment) Decree No. 98 of 1992, Section 32B (2)a & s32(3).

²⁶ Copyright (Amendment) Decree No. 98 of 1992, sections 32B (1).

²⁷ CMO Regulation 2007 (n 24) see parts 1-4 of the regulation.

²⁸ Nigerian Copyright Act (2022) (n 22) section 88(1) & (4).

²⁹ Nigerian Copyright Act (2022) (n 22) section 88(2).

of copyright owners in that category.³⁰ The Act also enables the NCC to establish a CMO for any category of copyright works if it finds it necessary to do so.³¹

4. Collective Management Organisations in Nigeria

One of the primary functions of CMOs in Nigeria is the administration and licensing of copyrights on behalf of creators. This involves registering and collecting information about the works of creators, including their ownership, use, and distribution. CMOs then issue licenses for the use of these works, collect fees from users of the works, and distribute the collected royalties to the creators. This ensures that creators are properly compensated for the use of their works, even if they are unable to negotiate licenses and collect fees individually. CMOs also play a critical role in the enforcement of copyright laws in Nigeria. This involves monitoring the use of copyrighted works and taking legal action against those who infringe on the rights of creators. CMOs have the power to take legal actions on behalf of their members and are responsible for protecting their members' rights and interests.³²

There are currently three approved CMOs operating in Nigeria: the Reproduction Rights Society of Nigeria (REPRONIG) for literary works, Musical Copyright Society Nigeria (MCSN) for musical works, and Audio-Visual Rights Society of Nigeria (AVRS) for cinematograph films.³³ The Copyright Society of Nigeria (COSON) and the Performing and Mechanical Rights Society (PMRS) are organisations that have previously operated as CMOs in Nigeria. Whereas COSON's licence expired in 2019 and has not been re-approved,³⁴ PMRS metamorphosized into COSON in 2009.

REPRONIG: The Reproduction Rights Society of Nigeria (REPRONIG) is a non-profit organization established in 2000 and is responsible for managing and licensing the reproduction rights of various types of literary works, including books and journals.³⁵ REPRONIG also facilitates education and training programs for copyright owners,

³⁰ Nigerian Copyright Act 2022 (n 22) Section 88(3).

³¹ Nigerian Copyright Act 2022 (n 22) Section 88(8).

³² Nigerian Copyright Act Cap C28 Laws of the Federation of Nigeria 2022, section 37(1).

³³ NCC, Collective Management Organisation, [CollectiveManagementOrganisations--NCC\(copyright.gov.ng\)](https://ncccopyright.gov.ng)

³⁴ COSON not approved to operate as CMO-NCC, September 8, 2022, <https://tribuneonline.ng/coson-not-approved-to-operate-as-cmo-%E2%80%95-ncc/>

³⁵ REPRONIG, History of REPRONIG, <https://www.repronig.com/about/>

publishers, and other stakeholders to help them better understand copyright law and the importance of copyright protection.³⁶

MCSN: The Musical Copyright Society of Nigeria (MCSN) is a non-profit organization established in 1984 to protect the rights of music composers, authors, and publishers in Nigeria.³⁷ It collects and distributes royalties on behalf of its members, ensuring they are adequately compensated for the use of their works and providing incentives for the creation of new works.³⁸ On 3rd April, 2017, it was approved to operate as a CMO for musical works and sound recording in Nigeria.³⁹

MCSN has been at the forefront of several legal battles including with the NCC and COSON.⁴⁰ These legal battles have been centred around issues of copyright licensing and the collection of royalties on behalf of music creators.⁴¹ MCSN has argued that it is the only authorized body to collect royalties for its members, while other organizations have made similar claims.⁴² These legal battles have underscored the need for clearer legislation in the regulation of CMOs in Nigeria. Notably, MCSN is currently the only approved CMO for rightsholders of musical works and sound recordings.

AVRS: The Audiovisual Rights Society of Nigeria (AVRS) is the CMO for cinematograph works in Nigeria.⁴³ It is a non-profit organization established in 2014 to protect the rights of audiovisual works owners in Nigeria.⁴⁴ The organization is responsible for managing and licensing the rights to perform, reproduce, and distribute audio-visual works, including films, music videos, and television programs, on behalf of its members. The AVRS was established in response to the increasing demand for audiovisual content in Nigeria and the need to protect the rights of audiovisual works owners.⁴⁵

³⁶ REPRONIG, Our Mandates & Services, <https://www.repronig.com/mandate/>

³⁷ MCSN, About MCSN, <https://www.mcsnnigeria.org/aboutus/>

³⁸ Ibid.

³⁹ Collective Management Organisations – NCC (copyright.gov.ng)

⁴⁰ See for example, COSON v. MCSN & NCC Suit No: FHC/L/CS/1259/2017, see also MCSN v. Adeokin Records [2007] 13 NWLR (Pt. 1052), 616; MCSN v. Compact Disc Technology Ltd & 2 Ors. 30 (2018) LPELR-46353(SC)

⁴¹ See for example, MCSN v. Adeokin Records [2007] 13 NWLR (Pt. 1052), 616; MCSN v. Compact Disc Technology Ltd & 2 Ors. 30 (2018) LPELR-46353(SC).

⁴² Court Removes COSON's Name from Register of Companies, 7 April 2020, PressReader.com - Digital Newspaper & Magazine Subscriptions

⁴³ About Us, Audio Visual Rights Society of Nigeria | Audio Visual Rights Society of Nigeria (avrsnigeria.com)

⁴⁴ Collective Management Organisation, <https://copyright.gov.ng/collective-management-organizations/>

⁴⁵ About Us, Audio Visual Rights Society of Nigeria | Audio Visual Rights Society of Nigeria (avrsnigeria.com)

In Nigeria, CMOs play a crucial role in protecting the rights of creators and ensuring that they receive appropriate compensation for their works. Adewopo notes that CMOs are ‘important wealth creating institutions not only for right owners who are members but also for the larger economy, especially user of works who can have access to the works needed by them in a simple and fairly cheaper manner’.⁴⁶ CMOs are intentionally structured to create value for all stakeholders. As Freeman suggests, ‘firms that create value for stakeholders will be more likely to survive and prosper in the long term than firms that ignore their stakeholder’.⁴⁷ The challenge is to ensure that they remain true to the essence of their existence.

However, as with any system, there are challenges that must be addressed to ensure the effectiveness of CMOs. One of the main challenges facing CMOs in Nigeria is the issue of transparency and accountability, as there have been allegations of mismanagement and corruption leading to disruptions in the distributions of royalties within some CMOs. For instance, the eight-year tenure of COSON, the former sole CMO for musical works and sound recordings in Nigeria and one of the largest CMOs in Nigeria, was surrounded by controversies. There were allegations of financial impropriety, corporate governance violations, and lack of operational transparency.⁴⁸ In a petition to the NCC, COSON’s leadership was accused of mismanagement of funds and corruption.⁴⁹ As a result of these allegations and several other issues, the NCC declined to renew the operating licence of COSON as a CMO. COSON has instituted an action challenging the non-renewal of their licence.⁵⁰

These controversies have raised concerns about the transparency and accountability of CMOs in Nigeria because catering for the need of stakeholders require a broad-minded approach between the organisation and its multiple stakeholder groups.⁵¹ Unfortunately, allegations of

⁴⁶ Adebambo Adewopo, *Nigerian copyright system: Principles and Perspectives* (Odade Publishers, 2012) 82-83.

⁴⁷ Freeman R. E, Harrison J.S, Wicks A.C, *Managing for Stakeholders: Survival, Reputation, and Success* (2007, Yale University Press) 56.

⁴⁸ Adeite Bakare, “How Copyright battles hold back our entertainment industry and economy”, (May 30, 2019) (How copyright battles hold back our entertainment industry and economy - The ScoopNG (archive.org))

⁴⁹ Franklin Okeke and Titilade Adekun Ilesanmi, *COSON v MCSN: Let the Music Pay Who Exactly?* (29 September 2019) <https://www.lexology.com/library/detail.aspx?g=ad61897d-0a43-43bc-a333-0f1ba5106f98>

⁵⁰ *COSON v. MCSN & NCC* Suit No: FHC/L/CS/1259/2017.

⁵¹ Amis, J, Barney, J, Mahoney, JT & Wang, H ‘From the Editors—Why we need a theory of stakeholder governance—And why this is a hard problem’ (2020) 45 (3) *Academy of Management Review*, 499-503. <https://doi.org/10.5465/amr.2020.0181>.

lack of transparency, accountability and mismanagement are indicative of the fact that these CMOs have not put the interests of stakeholders first, and have not adopted Freeman's broad-minded approach to management.⁵² It is, therefore, no surprise why many creators have expressed frustration over the lack of transparency in the distribution of royalties and the difficulty in accessing information about how their works are being used and how much they are being paid.⁵³ This has led to calls for greater regulation and oversight of CMOs to ensure that they operate in a fair and transparent manner and protect the interests of creators.⁵⁴

Despite the challenges militating against the effectiveness of CMOs in Nigeria, collective management of copyright remains a vital tool for the protection and enforcement of copyright and access to copyrighted works. It is therefore essential that stakeholders work together to address these issues and ensure the effective operation of CMOs in Nigeria and beyond.

Using the framework of collective administration of rights in the music industry as an example, the controversies and challenges facing CMOs in Nigeria are discussed in the next section.

5. Controversies and Challenges Facing CMOs In Nigeria

Central to the challenges and controversies facing CMOs in Nigeria are the issues of transparency, corruption, and high-handedness. Other issues include whether a single or multiple CMO structure is best suited for the creative industries and whether organisations that are owners, assignees and exclusive licensees can represent the interest of owners.

Transparency, Corruption, and High-handedness: CMOs are responsible for negotiating and granting licences for the use of owners' works, collecting fees/tariffs, and distributing royalties.⁵⁵ CMOs have the legal right to use some of the funds collected on behalf of copyright

⁵² Freeman (n 16).

⁵³ Bakare (n 48).

⁵⁴ Aibee Abidoye, Nigeria's Music Streaming Services Continue to Grow Despite COSON Chaos, Regulatory Barriers, and Etisalat Crash, <https://allafrica.com/stories/201810100551.html>.

⁵⁵ Nigerian Copyright Act Cap C28 Laws of the Federation of Nigeria 2022, Section 88(2)b. See generally for the discussion on the functions of collective administration with particular reference to tariff setting, accountability, and transparency as an essential function, Adebambo Adewopo, Developments in Collective Administration of Copyright, Licensing and Tariff Setting under Nigerian Copyright Law and Regulation' in *Jos Book of Readings on Critical Legal Issues*, (Dakas C J Dakas & Ors. (eds.), University of Jos @ 40 Special Faculty of Law Publication, 2016, 677-700.

owners to run the organisation. Regulation 11 of the 2007 CMO Regulation permits CMOs to withhold funds collected to a maximum limit of 30 percent of the total royalties and fees received in the year when the deduction is made.⁵⁶ In fact, CMOs may withhold more than 30 percent if they are approved to do so by the NCC.⁵⁷ Ordinarily, the use of a part of the royalties received for the administration of the CMO should not be the cause of any dispute or controversy if stakeholder interests are carefully considered and daily activities are run transparently and responsibly.⁵⁸

The powers to receive funds on behalf of others can be easily abused and it appears that those at the helm of affairs of CMOs in Nigeria are serving personal interests rather than those of the right owners. Yet, within the CMO context, stakeholders should not be treated as means to an end but should rather be seen as ends in themselves.⁵⁹ The Director of NCC emphasised the need for CMOs to ‘change the way rights are managed in order to ensure that right owners, and not managers, are the ones enriched’.⁶⁰ In 2018, it was reported that whilst the South African Music Rights Organisation (SAMRO) distributed USD22.6 million, COSON distributed only USD335,000.⁶¹ Considering Nigeria’s thriving music industry, this is disappointing. It has also been reported that during an impromptu meeting of the COSON, the Chairman of COSON refused to accept the decision of the board meeting to replace him. It noted that ‘Tony Okoroji has bluntly refused to accept the vote of no confidence passed by his colleagues on the board. Tony Okoroji has instead, maintained a stranglehold on the reins at COSON and launching a legal and media war against any and every dissenting voice using the apparatus and of course, funds of right owners, whose royalties the directors are duty bound to protect’.⁶² The high-handedness, lack of transparency and recklessness demonstrated by some CMO managers deprive right owners of the opportunity to

⁵⁶ Copyright (Collective Management Organization) Regulation 2007, regulation 11(1).

⁵⁷ Copyright (Collective Management Organization) Regulation 2007, regulation 11(2).

⁵⁸ Freeman, R.E, *Strategic Management: A Stakeholder Approach* (2010, Cambridge University Press) 41,

⁵⁹ Mansell, Samuel. “Shareholder Theory and Kant’s ‘Duty of Beneficence.’” *Journal of Business Ethics*, vol. 117, no. 3, 2013, pp. 583–99.

⁶⁰ Gregory Austin Nwakunor, AFD study on CMOs to assist copyright commission, 24 June 2020, <https://guardian.ng/art/afd-study-on-cmos-to-assist-copyright-commission/>.

⁶¹ Bakare (n 48).

⁶² Abidoye (n 54).

receive adequate royalties, thereby reducing the contribution of the creative sector to the national economy.

Nigeria's creative industries play a major role in the economy.⁶³ This is evident considering that the Q4 GDP 2022 indicates that growth in Nigeria's GDP was mainly driven by the entertainment service sector at 5.69% and a 56.27% contribution to the aggregate GDP.⁶⁴ The creative sector is poised to do even more, but corruption, mismanagement, and poor governance by CMO managers will continue to raise issues of reliability, integrity and transparency and can only exacerbate the ongoing challenges and controversies among CMOs. For the creative sector to realise its potential to make enormous contributions to the Nigerian economy, CMOs must play their pivotal role in the entertainment service sector and must properly position themselves to operate with transparency and demonstrate the ethos of best practices.

Owners, Assignees and Exclusive Licensees Another controversy has been around the ability of owners, assignees, and exclusive licensees to bring action on behalf of the copyright owners they represent. When the copyright act was amended in 1999, it limited the ability of organisations that are owners, assignees, and exclusive licensees of copyrights and who are technically operating as CMOs though without the operating licence of the NCC to take legal action for copyright infringement. This amendment required such organisations to represent at least 50 copyright owners and receive approval from the NCC before commencing legal proceedings on behalf of right owners.⁶⁵ The 1999 amendment reinforced the provisions made in the 1992 amendment, which required prior approval for collecting societies to operate. The requirement of approval to commence legal proceedings affected entities like MCSN that were already in the business of representing musical work right owners, but did not receive approval to operate as CMOs when the amendment came into force., In the case of MCSN, the concept of representing right owners in the capacity of 'owner, assignee and exclusive licensee' was therefore drawn upon by the organisation to give it some form of legitimacy. In the case of *Musical Copyright Society Nigeria Ltd v Details Nigeria Limited*,⁶⁶ the plaintiff had obtained an ex-parte order against the defendant, who argued that the plaintiff was functioning as a CMO and required approval to operate as

⁶³ See generally, Oyewunmi, A, "Towards sustainable development of Nigeria's entertainment industry in the digital age: Role of copyright law and administration" (2011) 1 *NIALS Journal of Intellectual Property* 74-102.

⁶⁴ National Bureau of Statistics, Nigerian Gross Domestic Product Report Q4 2022, Reports | National Bureau of Statistics (nigerianstat.gov.ng)

⁶⁵ Copyright (Amendment) Decree No. 42 of 1999, section 15A.

⁶⁶ *Musical Copyright Society Nigeria Ltd/Gte V Details* FHC/L/CS/934/95.

such. The plaintiff denied this and claimed to be acting as an ‘owner, assignee, and exclusive licensee’. After considering evidence such as the deed of assignments executed in favour of the plaintiff, the court concluded that the plaintiff was, in fact, acting as a CMO and could not operate without registration. The court in arriving at its decision noted, ‘I have come to the inexorable conclusion . . . that the plaintiff is a collecting society. Not having been registered pursuant to Section 32B (4) of the Copyright Act, it cannot be permitted to operate as such a body. To do so would be tantamount to subverting not only the letter but also the spirit of the copyright laws of this country’.⁶⁷ In a twist of judgement, the Supreme Court of Nigeria decided in *MCSN v Compact Disc Technology*⁶⁸, that the status of the appellant as owner, assignee, and exclusive licensee, vests it with the requisite *locus standi* to bring an action on behalf of the right owners it represents. On the strength of this judgement and several other petitions, the Attorney General of the Federation (AGF) issued the directive for MCSN to be approved as a CMO.⁶⁹ The decision meant that Nigeria had two CMOs licensed for musical and recording rights. Dissatisfied with this decision, COSON lodged an action seeking the withdrawal of this approval.⁷⁰ The approval of MCSN as a second CMO for music and sound recording is evidence that two CMOs for the same category of works can be approved and raises the question of whether a multiple CMO structure better serves the interest of the Nigerian creative industry? The issue of a single/multiple structure is addressed next.

Single or Multiple CMO Structure: Another controversial issue within the landscape of collective administration in Nigeria is whether a single or multiple CMO structure would best serve the interest of Nigerian right-owners. The legal framework for CMOs in Nigeria clearly favours a single CMO structure.⁷¹ Section 88(3) forbids the NCC from approving another CMO in respect of the same category of copyright works if it is satisfied that an existing CMO adequately protects the interests of copyright owners in that category of works. It is however noteworthy that the legal framework does not forbid the existence of two CMOs for one right. In fact, when MCSN was approved following the directive of the AGF, Nigeria operated a two-CMO structure until

⁶⁷ Ibid.

⁶⁸ *MCSN v. Compact Disc Technology Ltd & 2 Ors.* 30 (2018) LPELR-46353(SC).

⁶⁹ Bertram Nwannekanma, Attorney general resolves collective rights’ rift between NCC, MCSN, 7 April 2017, <https://guardian.ng/news/attorney-general-resolves-collective-rights-rift-between-ncc-mcsn/>

⁷⁰ *COSON v. MCSN & NCC* Suit No: FHC/L/CS/1259/2017.

⁷¹ Nigerian Copyright Act Cap C28 Laws of the Federation of Nigeria 2022, Section, 88(3).

COSON's licence expired and was not approved in 2019.⁷² There has therefore been clamour as to why Nigeria cannot emulate other jurisdictions such as the US and UK that adopt a multiple CMO structure.⁷³ Another rationale for the consideration of a multiple CMO structure can be seen from the lenses of the rules of competition that promote open markets, prohibit anti-competitive behaviours and encourage the presences of multiple CMOs to forestall monopolies and encourage fair competition among entities involved in copyright administration.⁷⁴

CMO controversies within the Nigerian music industry have been mainly centred around two key figures, Mayo Ayilaran (CEO, MCSN) and Tony Okoroji (Chairman, COSON). These two individuals have contributed immensely to the development of CMOs in Nigeria.⁷⁵ At the same time, they have become the albatross of the industry.⁷⁶ Pitched on two opposite sides of the fence, they have been unable to pull their geniuses together to fully build the industry. Instead, they throw stones in the form of petitions and legal battles against each other.⁷⁷ As these legal battles persist, right owners bear the brunt as their funds become the weapon of war, echoing the age-old African proverb that 'when elephants fight, the grass suffers'.⁷⁸

⁷² COSON not approved to operate as CMO-NCC, (September 8, 2022), <https://tribuneonlineng.com/coson-not-approved-to-operate-as-cmo-%E2%80%95-ncc/>

⁷³ Uche Nwokocha & Segun Aluko, "A Case for Multiple Collecting Societies For the Nigerian Entertainment Industry" (7 July 2010) <https://www.mondaq.com/nigeria/copyright/102580/a-case-for-multiple-collecting-societies-for-the-nigerian-entertainment-industry>, See also Olajide Oyewole, "Collection Societies in Nigeria's Music Industry: The case for Change" <https://www.mondaq.com/nigeria/music-and-the-arts/1104488/collection-societies-in-nigerias-music-industry-the-case-for-change>, See also "Copyright Owners Petition AG, Want Collection of Societies Liberalized" (2 October 2014) <https://allafrica.com/stories/201410030439.html>

⁷⁴ The Sherman Antitrust Act, Sherman Act 26 Stat. 209, 15 U.S.C. §§ 1–7; See also, The Clayton Antitrust Act of 1914, Pub.L. 63–212, 38 Stat. 730, codified at 15 U.S.C. §§ 12–27, 29 U.S.C. §§ 52–53.

⁷⁵ See generally, Ola, *Copyright Collective Administration in Nigeria* (n 13).

⁷⁶ Nigerian Tribune, "The creative industry lost N5bn to COSON/MCSN legal tussles-Ayilaran" (14 September 2019) <https://tribuneonlineng.com/the-creative-industry-lost-n5-bn-to-coson-mcsn-legal-tussles-ayilaran/>

⁷⁷ See for example, Musical Copyright Society Nigeria Ltd/Gte V Nigerian Copyright Commission: - FHC/L/CS/35/2008, See also, Performing Mechanical Rights Society Ltd/Gte V Nigerian Copyright Commission: - Suit No: FHC/L/CS/61/2007; see also COSON v. MCSN & NCC Suit No: FHC/L/CS/1259/2017; See also NCC v. Tony Okoroji & Ors. Charge No: FHC/L/338C/18.

⁷⁸ Alaba Onajin, "When elephants fight, the grass suffers", (3 March 2013) <https://thealabaonajinproject.wordpress.com/2013/03/03/when-elephants-fightthe-grass-suffers/>

MCSN was the first CMO to be established in Nigeria. MCSN's establishment in 1984, predates the regulatory oversight of NCC over CMOs in Nigeria. When NCC took on the regulatory and supervisory roles on CMO issues, MCSN applied for approval to operate as a collecting society, but their application was denied. Ola explained that their denial was amongst other things because 'the structural composition of the organisation did not represent a nationalistic interest, in view of the dominant position that the PRS and Mechanical Copyright Protection Society (MCPS), both of the United Kingdom, had in MCSN'.⁷⁹ At about the same time, the PMRS, now defunct but which has metamorphized into the COSON, was registered and granted approval by NCC when it applied to operate as a CMO. The implication was that Nigeria had two CMOs for musical works and sound recordings, one approved and the other not approved. At the time, there was, therefore, a *de facto* CMO in MCSN as it had been in existence and was already actively involved in representing right owners nationally and internationally, and a *de jure* CMO in PMRS as it was the organisation with the formal approval of the NCC. This was and still remains the bane of the single or multiple CMO structure controversy in Nigeria.

As MCSN was not approved and PMRS got the approval, MCSN kept pushing for a multiple CMO structure as this would grant it legal status. PMRS, however, kept pushing for a single society to maintain its monopoly status. In 2009, the NCC had the opportunity to revisit the single/multiple CMO structure when a call for CMO applications was made.⁸⁰ At the time, PMRS was the only approved organisation for musical works. As PMRS had changed its name to COSON, its application was lodged in this new name. In addition to COSON, applications were received from MCSN and Wireless Application Service Providers Association of Nigeria (WASP) for approval to operate as CMOs. At the end of the process, only COSON was approved.⁸¹ Once again, preference for a single CMO structure was confirmed. In 2017, an interesting policy decision twist changed the single CMO structure when the supervisory Minister over NCC (the Minister of Justice) ordered that MCSN be granted a licence.⁸² NCC had to comply with this

⁷⁹ Ola, *Copyright Collective Administration in Nigeria* (n 13).

⁸⁰ See Public Notice issued by the Nigerian Copyright Commission in the Guardian Newspaper of, Monday, December 29th 2008. It is also noteworthy that applications were called for vide a public notice issued by the Nigerian Copyright Commission in the Guardian Newspaper on Wednesday, June 24th 2009.

⁸¹ Kunle Ola, Copyright Collective Administration in Nigeria: Regulatory Challenges, (2013) 2(1) *NIALS Journal of Intellectual Property* 109.

⁸² Olatunji, O.A., Etudaiye, M.A. & Olapade, S.O. "The Legality and Signification of the AGF's Directive Approving a Second Musical CMO in Nigeria" (2019) *IIC* 50, 223–244 <https://doi.org/10.1007/s40319-018-0771-6>.

order in line with the powers of the Minister to give directives and the duty of the commission to comply with such directives.⁸³ It did not however last for long as NCC denied COSON's application for renewal of its operating licence. This means that Nigeria is back to the single CMO structure with MCSN as the only approved CMO in Nigeria. Top of Form

6. CMOs in other jurisdictions: UK, US, and Australia

The arts, inclusive of music, have been an integral part of human culture throughout history.⁸⁴ It is one of those things we do spontaneously.⁸⁵ The ability to create and share music has always been a driving force in the arts.⁸⁶ However, the advent of digital technology has transformed the music industry, bringing new challenges for those who create, own, and manage music rights.⁸⁷

Prior to the digital age, music rights were mainly managed by individual copyright owners. As the use of musical works grew, the ability to manage uses of these works individually became complicated, hence the need for CMOs. The first CMO, Société des auteurs, compositeurs et éditeurs de musique (SACEM), was established in France in 1851.⁸⁸ SACEM was formed when it became apparent that individual creators could not effectively manage their rights. Its success led to the establishment of similar organizations in other countries, ultimately culminating in the widespread adoption of CMOs across the world. Today, CMOs play a critical role in managing music rights globally, including in the UK, US, and Australia. Each jurisdiction has its unique approach to copyright management. The next section provides a brief analysis of CMOs in the UK, US, and Australia.

United Kingdom: In the UK, CMOs are responsible for the collection and distribution of royalties on behalf of copyright owners. The

⁸³ Nigerian Copyright Act Cap C28 Laws of the Federation of Nigeria 2022, Section, 99. See Section 50 for the equivalent provision in the old legislation.

⁸⁴ Welch GF, Biasutti M, MacRitchie J, McPherson GE and Himonides E "The Impact of Music on Human Development and Well-Being" (2020) *Front. Psychol* 11:1246. doi: 10.3389/fpsyg.2020.01246

⁸⁵ Schulkin J and Raglan GB "The evolution of music and human social capability" (2014) *Front. Neurosci* 8:292. doi: 10.3389/fnins.2014.00292.

⁸⁶ Welch, G.F., and McPherson, G. E., (eds.). "Commentary: Music education and the role of music in people's lives," in *Music and Music Education in People's Lives: An Oxford Handbook of Music Education* (New York, NY: Oxford University Press, 2018), 3–18.

⁸⁷ Yu, Peter K. (2004) "The Escalating Copyright Wars," *Hofstra Law Review*: (2004) 32(3), 907-951, 908.

⁸⁸ Ola, *Copyright Collective Administration in Nigeria* (n 13).

Copyright, Design and Patents Act 1988,⁸⁹ specifically provides for licensing schemes and licensing bodies, including CMOs.⁹⁰ The UK has several CMOs, including the Performing Rights Society (PRS), the Mechanical Copyright Protection Society (MCPS), Authors' Licensing and Collecting Society (ALCS), Copyright Licensing Agency (CLA), and Design and Artists Copyright Society (DACS). There are concerns about the operations of CMOs in the UK. Atkinson and Fitzgerald identified some of these concerns to include transparency, accountability, governance, dispute resolution and allocation of royalties to members.⁹¹ Professor Ian Hargreaves, in an independent report, noted the need to 'examine how best to ensure that UK digital markets for copyright works are transparent, contestable and supportive to innovative, so that transaction costs are minimised and investment signals clarified'.⁹² Haunss expressed concerns as to how collecting societies try to 'extract overblown rates from users of its repertoire and to block technological change'.⁹³ These concerns on the effectiveness of the current CMO model and whether a more decentralized system could be more effective in ensuring fair distribution of royalties are important issues in the UK.⁹⁴ To address these issues, CMOs in the UK are subject to the Collective Management of Copyright Regulations 2016, which transposed the EU Collective Rights Management Directive into UK law.⁹⁵ The regulations set out rules for the governance, transparency, and accountability of CMOs, and requires them to operate in a fair, efficient, and non-discriminatory manner.⁹⁶

⁸⁹ Copyright Design and Patent Act 1988 c48.

⁹⁰ Copyright Design and Patent Act 1988, Section 116(2).

⁹¹ Benedict Atkinson & Brian Fitzgerald, *Collecting Societies Codes of Conduct*, an independent report commissioned by the Intellectual Property Office, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/310172/ipresearch-collecting-071212.pdf

⁹² Ian Hargreaves, *Digital Opportunity, Review of Intellectual Property and Growth*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/32563/ipreview-finalreport.pdf

⁹³ Haunss, S, *The Changing Role of Collecting Societies in the Internet*. *Internet Policy Review*, (2013) 2(3). <https://doi.org/10.14763/2013.3.199>.

⁹⁴ Neil W. Netanel, "Copyright Collectives: Good Solution, Bad Solution, or No Solution?," in *The Oxford Handbook of Intellectual Property Law*, ed. Rochelle C. Dreyfuss and Justine Pila (Oxford: Oxford University Press, 2018), 889-890.

⁹⁵ *The Collective Management of Copyright (EU Directive) Regulation 2016*. It is noteworthy that due to BREXIT, CMOs in European Economic Areas are no longer required to represent UK right holders or the catalogues of UK CMOs. Nonetheless, the EU and UK under their Trade and Cooperation Agreement (TCA) seek to promote cooperation and non-discriminatory treatment between their respective CMOs..

⁹⁶ *The Collective Management of Copyright (EU Directive) Regulation 2016*. Regulation 5(2)a

Under the regulations, CMOs owe ‘general and particular’ obligations to right holders.⁹⁷ They must provide regular reports on their activities and finances.⁹⁸ The regulations also establish a framework for the supervision and oversight of CMOs, including the power to investigate and sanction CMOs that fail to comply with the rules.⁹⁹

The Intellectual Property Office (IPO) and the Copyright Tribunal provide the regulatory oversight for CMOs in the UK.¹⁰⁰ The IPO is a government agency responsible for the administration of IP rights, including copyright. It provides guidance on the rules and regulations for CMOs, as well as monitoring their activities to ensure compliance with the law.¹⁰¹ The Copyright Tribunal is an independent judicial body that hears disputes between CMOs and their licensees or members. The Tribunal has the power to make legally binding decisions on a wide range of issues, including licensing terms, royalty rates, and distribution of royalties.¹⁰²

The UK also has a system of self-regulation for CMOs, with the Collective Rights Management Code of Conduct developed by the British Copyright Council.¹⁰³ The Code sets out best practices for CMOs, including transparency in their operations, fair distribution of royalties, and accountability to their members. The code is intended to complement the regulatory framework and promote good practice among CMOs.¹⁰⁴

The UK’s regulatory framework for CMOs places high emphasis on the need for CMOs to operate fairly, transparently, efficiently and in a manner that benefits both the rights holders and licensees.

⁹⁷ The Collective Management of Copyright (EU Directive) Regulation 2016, Regulations 3 & 4.

⁹⁸ The Collective Management of Copyright (EU Directive) Regulation 2016, Regulation 21(1)

⁹⁹ The Collective Management of Copyright (EU Directive) Regulation 2016, Regulations 34-38.

¹⁰⁰ Intellectual Property Office, How the IPO regulates licensing bodies, 18 November 2019, <https://www.gov.uk/government/publications/how-the-ipo-regulates-licensing-bodies/how-the-ipo-regulates-licensing-bodiesHow>

¹⁰¹ Intellectual Property Office, How the IPO regulates licensing bodies, 18 November 2019, <https://www.gov.uk/government/publications/how-the-ipo-regulates-licensing-bodies/how-the-ipo-regulates-licensing-bodiesHow>

¹⁰² Ibid

¹⁰³ British Copyright Council, Principles of Good Practice for Collective Management Organisation-Policy Framework, https://www.britishcopyright.org/wp-content/uploads/Principles_of_Good_Practice_for_CMOs_091111.pdf

¹⁰⁴ Ibid.

United States: In the United States of America (US), CMOs operate in various fields such as music, film, and publishing. CMOs include the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music Inc (BMI), Christian Copyright Licensing International (CCLI), Harry Fox Agency, Mechanical Licensing Collective (MLC), Motion Picture Licensing Corporation (MPLC), SESAC and SoundExchange. The US Copyright Office recently approved the Mechanical Licensing Collective (MLC) as a CMO to administer mechanical licenses for digital music services.¹⁰⁵ The establishment of MLC is predicated on the Music Modernization Act (MMA) of 2018, which has introduced significant changes to the regulatory framework for CMOs in the US music industry, in that it provides a streamlined process for digital services to obtain licenses from the MLC.¹⁰⁶ ASCAP and BMI are the two major CMOs responsible for collecting royalties for music performances.¹⁰⁷

The Copyright Act of 1976 provides the primary regulatory framework for administering CMOs in the US. The US Copyright Office is the agency responsible for providing some regulatory oversight over CMOs. The Department of Justice's Antitrust Division also has regulatory oversight on CMOs to ensure they do not engage in anti-competitive behaviour or violate antitrust laws. The Antitrust Division investigates and takes enforcement action against CMOs that engage in unlawful practices, such as price-fixing or collusion.¹⁰⁸

The regulatory framework for CMOs in the US is designed to ensure that CMOs operate in compliance with copyright law and antitrust regulations, and to promote a fair and efficient licensing system for the benefit of rights holders and users alike. Notwithstanding, there have been legal disputes around the pricing of licenses and allegations of antitrust violations.¹⁰⁹ The challenge of balancing the interests of

¹⁰⁵ US Copyright Office, Designation of Mechanical Licensing Collective and Digital Licensee Coordinator, July 8, 2019 <https://www.copyright.gov/rulemaking/mma-designations/>

¹⁰⁶ Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018).

¹⁰⁷ Indie Music Academy, "Music Royalties Explained: The Ultimate Guide for 2023" <https://www.indiemusicacademy.com/blog/music-royalties-explained>

¹⁰⁸ The U.S. Department of Justice's review of ASCAP and BMI: United States Department of Justice, Antitrust Division, ' Press Release: Justice Department Announces Review of ASCAP and BMI Consent Decrees', <https://www.justice.gov/opa/pr/departement-justice-opens-review-ascap-and-bmi-consent-decrees>;

¹⁰⁹ See for example, *Radio Music License Comm., Inc. v. Global Music Rights, LLC*, CIVIL ACTION NO. 16-6076 (E.D. Pa. Mar. 29, 2019); *Radio Music License Comm., Inc. v. SESAC Inc, SESAC LLC, and SESAC Holdings Inc*, CIVIL ACTION NO. 2:12-ev-05807-CDJ-LAS (E.D. Pa. Feb. 23, 2015).

copyright owners and users is an important issue in the US, resulting in legal battles between CMOs and users of copyrighted materials.¹¹⁰

Australia: CMOs in Australia play a significant role in the collection and distribution of royalties in various fields, including music, visual arts, and literature. The major CMOs in Australia include the Australasian Performing Right Association (APRA), Australian Mechanical Copyright Owners Society (AMCOS), Australian Recording Industry Association (ARIA), Screenrights, Phonographic Performance Company of Australia (PPCA), Copyright Agency Limited (CAL) and Christian Copyright Licensing International (CCLI), which are all responsible for collecting and distributing royalties to their members.

Similar complaints about the lack of transparency in CMOs' operations and the need for greater accountability to members raised in the UK and US, have also been raised in Australia.¹¹¹ In a review of the code of conduct for collecting societies in Australia, Universities Australia raised concerns about the lack of transparency by Copyright Agency Limited and their high-handedness in determining how right holders' funds will be used.¹¹² The debates around copyright law reform in Australia have highlighted the need for greater transparency and accountability in CMOs' operations.¹¹³

Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC) and the Attorney – General's Department (AGD) play significant roles in the regulatory framework for administering collective management organizations (CMOs) in Australia. These three agencies/departments collaborate to ensure that CMOs operate in compliance with corporate, competition, and consumer protection laws. Additionally, the Copyright Act 1968 sets out requirements and rules for the formation, governance, transparency, and accountability of CMOs, and requires CMOs

¹¹⁰ Pamela Samuelson, "Collective Administration of Copyrights," in *Copyright Law: A Practitioner's Guide*, ed. Bruce P. Keller and Jeffrey P. Cunard (New York: Practising Law Institute, 2021), 8-20.

¹¹¹ Benedict Atkinson & Brian Fitzgerald, *Collecting Societies Codes of Conduct*, an independent report commissioned by the Intellectual Property Office, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/310172/ipresearch-collecting-071212.pdf

¹¹² Universities Australia Submission, *Review of the Code of Conduct for Copyright Collecting Societies*, September 2017, <https://www.universitiesaustralia.edu.au/wp-content/uploads/2019/05/Review-of-the-Code-of-Conduct-Collecting-Societies-Submission-290917.pdf>

¹¹³ Rebecca Giblin, "Copyright Collectives and Collecting Societies: Are They Still Relevant?," *Melbourne University Law Review* 43, no. 2 (2019): 454-487.

to operate in a fair, efficient, and non-discriminatory manner.¹¹⁴ The Act also provides for the establishment of a Copyright Tribunal, which can hear disputes between CMOs and their licensees or members.¹¹⁵

ASIC is responsible for the registration of CMOs as limited by guarantee companies and oversees their compliance with the Corporations Act 2001.¹¹⁶ For CMOs to operate in Australia, they must be registered with ASIC as limited by guarantee companies and must comply with ongoing reporting and disclosure obligations, including annual financial reporting.¹¹⁷

ACCC is responsible for enforcing anti-competition rules and has regulatory oversight over CMOs to ensure they operate in compliance with the Competition and Consumer Act 2010.¹¹⁸ The ACCC can investigate and take enforcement action against CMOs that engage in anti-competitive conduct or violate consumer protection laws.

The Attorney-General's Department (AGD) is responsible for advising the government on copyright law and policy, including matters related to CMOs. It also provides administrative support to the Copyright Tribunal, which hears disputes between CMOs and their licensees or members. In addition, the AGD is responsible for implementing the government's international copyright obligations, including its commitments under the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty. These treaties provide for the protection of copyright in the digital environment.

Australia regulates its CMOs by pulling together resources from different agencies to ensure that CMOs operate in compliance with corporate, competition, and copyright law. The goal is to promote fair and efficient licensing for the benefit of rights holders and users alike.

7. Lessons from the Regulation of CMOs in the UK, US, and Australia

This sub-section acknowledges that Nigeria already has a reasonably strong regulatory framework in place for CMOs. However, there are still valuable lessons that can be learned from other jurisdiction where they have established effective mechanisms for promoting transparency and

¹¹⁴ *Copyright Act 1968* (Cth), See section 113W on requirements for declaration of collecting society.

¹¹⁵ *Copyright Act 1968* (Cth), Part VI.

¹¹⁶ *Corporations Act 2001* (Cth) s112(1).

¹¹⁷ *Copyright Act 1968* (Cth) s113Z.

¹¹⁸ *Competition and Consumer Act 2010* (Cth).

accountability in operations, implementing a multiple CMO structure, regulating CMOs to prevent abuse of power, and promoting collaboration between CMOs and other stakeholders.

A robust regulatory framework is necessary to ensure the effective operation of CMOs: In all three jurisdictions, there are multiple regulatory bodies responsible for overseeing the activities of CMOs. These regulatory oversights help to ensure that CMOs operate in the best interests of their members and the public.

CMOs should be run democratically and transparently: The UK, US, and Australia all require CMOs to be run democratically, with members having a say in the management of the organisation. CMOs are required to be transparent in their operations, with financial records available for members and the public to view.

CMOs should represent a broad range of rights holders: In the UK, US, and Australia, CMOs represent a wide range of rights holders, including creators, performers, and publishers. This ensures that the interests of all rights holders are represented and protected.

Dispute resolution mechanisms should be in place: All three countries have mechanisms in place for resolving disputes between CMOs and rights holders, including mediation and arbitration. These mechanisms help to ensure that disputes are resolved fairly and efficiently.

Effective enforcement mechanisms are crucial: In all three jurisdictions, CMOs have the power to sue infringers on behalf of their members. This provides an effective enforcement mechanism that can help to deter infringement and protect the rights of rights holders.

Collaboration between CMOs and other stakeholders is important: In all three jurisdictions, CMOs work closely with other stakeholders, such as the government and the music industry, to ensure that the interests of all parties are considered. This collaborative approach can help to promote a healthy and sustainable creative economy.

Multiple CMO Structure: All three jurisdictions adopt a multiple CMO structure thereby providing a democratized system and stemming anti-competitive tendencies in the industry.

There are several lessons that Nigeria can learn from the regulation of CMOs in the UK, US, and Australia. These include the importance of transparency and accountability in CMO operations, consideration of a multiple CMO structure, the need for effective regulation to prevent abuse of power, the value of collaboration between CMOs and other stakeholders in the copyright industry, the significance of technology in improving CMO operations, the need to address conflicts of interest among CMO board members and management, and the importance of promoting the interests of all stakeholders, including creators, users and the general public. By applying these lessons, Nigeria can

strengthen its collective management system and foster a more vibrant and sustainable creative industry.

8. Recommendations

Based on the discussions on the regulatory framework and operational practices of CMOs in Nigeria, the following recommendations could be implemented to improve their effectiveness:

Strengthen the Regulatory Framework: Nigeria already has a strong regulatory framework for CMOs, but there is the need to further strengthen the regulatory framework for CMOs in Nigeria by reviewing and amending existing laws where necessary. The Nigerian Copyright Commission (NCC) should take a more active role in regulating and monitoring the activities of CMOs to ensure compliance with regulations and transparency in their operations. NCC in collaboration with all the CMOs in Nigeria should develop a code of conduct for CMOs. The codes of conduct for CMOs in Australia and the UK can be used as working references to develop Nigeria's code of conduct for CMOs.

Improve Transparency: CMOs should be more transparent in their operations, particularly in the collection and distribution of royalties. They should provide clear and accurate information on the collection and distribution of royalties to members and the public. This will build trust and credibility in the system.

Capacity Building: There should be capacity-building training for CMOs to enhance their operational and managerial skills. This should be done in collaboration with relevant stakeholders, including the Nigerian Copyright Commission, international organizations, and professional bodies.

Collaboration: CMOs should collaborate more with other stakeholders in the creative industry, including artists, music producers, and distributors. This will foster a better understanding of the challenges and needs of the industry and help in creating a more effective system for the protection of creative works.

Technology: CMOs should leverage technology to improve their operations. They should invest in digital platforms and tools that can help in the efficient collection, distribution, and monitoring of royalties. This will reduce administrative costs, improve accuracy, and enhance transparency.

Research and Data Collection: There is a need for more research and data collection on the creative industry in Nigeria, particularly on the collection and distribution of royalties. This will help in identifying

gaps and challenges in the system and provide a basis for evidence-based policy making.

Single or Multiple CMO Structure: NCC should reconsider the single CMO structure preference that it currently has.¹¹⁹ Competition laws in the UK, US and Australia favour the operation of multiple CMO structures and Nigeria should have an open mind to the structure that would work best for the nation. The national interest should take priority, but this can only be attained when the regulators come to the table with an open rather than a biased mind.

By implementing these recommendations, CMOs in Nigeria can become more effective in protecting the rights of creators and promoting the growth of the creative industry in the country.

9. Conclusion

The contribution of Nigeria's creative industry to the national and global economy is significant. Even more significant is the potential contribution it can make to national development if given the opportunity to flourish. An efficient and effective CMO system in Nigeria is pivotal to the development of Nigeria's creative industry. With the right CMO system in place, Nigeria can harness the power of its creative talents to drive national development and make a meaningful impact on the global economy. However, in recent times, the controversies and challenges associated with the operations of these organizations, have resulted in disruptions in the distribution of royalties and have raised concerns about the transparency and accountability of these organizations. To address these challenges, there is a need for an improved regulatory framework, consideration of a multiple CMO structure, greater transparency and accountability, increased cooperation among CMOs, capacity building initiatives, and increased awareness among creators about the role of CMOs in protecting their intellectual property rights.

¹¹⁹ For more discussion on why Nigeria should revisit its single CMO option for the music industry, see OA Olatunji, KI Adam, and FO Aboyeji, 'Collective Management of Rights in Musical Works and Sound Recordings: A Critique of the Copyright Society of Nigeria' (2017) 48(7) *IIC International Review of Intellectual Property and Competition Law* 838, 857-859.