

Who owns the spotlight? Intellectual property challenges in today's entertainment industry

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Abstract

The entertainment industry prospers on intellectual property (IP) rights, yet creators often struggle with ownership disputes, copyright infringement and inequitable contracts that limit their control and earnings. This article examines the role of copyright, trademarks, and contractual frameworks in shaping the music, film, and digital sectors, highlighting key challenges such as streaming royalties, cross-border enforcement, and branding disputes. Using case studies from Nigeria, Canada, and the United States, including Taylor Swift's re-recordings, Afrobeats distribution issues, and Nollywood piracy, the paper underscores the tension between protecting creativity and maximizing commercial exploitation. It concludes with a call for stronger regulation, greater awareness, and professional guidance to ensure that creators fully benefit from their intellectual property in the digital era.

Keywords: Intellectual Property; Entertainment Industry; Copyright; Trademarks; Contracts; Piracy; Streaming; Afrobeats; Nollywood; Cross-Border Enforcement

1. Introduction

The surge in the creative economy of the world in recent times is shaping the legal framework and its involvement in industrial activities in no small way. There has been a gradual diversion from the trend of dependence on natural resources especially in Africa to the human capital resources embodied in her young minds. According to research, Africa is the youngest continent in the world with a great deal of her population in their relatively young age. Thus, the creative economy has evolved over the years with young minds engaging their creativity in birthing solutions. Notable among the industries which has been greatly influenced by this is the Arts and Entertainment Industry. The Entertainment industry is a wide ecosystem that houses all kinds of talents across various fields such as music, broadcasting, publishing, sports and so on.

The law in Roscoe Pounds' postulation being a tool for social engineering is important to regulate various aspects of the society. Thus, the area of law which is evolving to respond to this emergence of the entertainment industry and the creative economy as a whole is Intellectual Property. The set of laws known as intellectual property (IP) law gives inventors and creators the sole right to use their intangible works of art. In contrast to tangible property, intellectual property (IP) safeguard works of literature, music, movies, software, inventions, designs, and brand names. The main branches of IP are Copyright, Patents, Trademarks and Trade Secrets. The entertainment industry runs on IP as its currency. Every song, script, movie, or performance is an intellectual property asset.

In the entertainment sector, intellectual property law fulfills two conflicting functions. On the one hand, it is intended to safeguard creativity and innovation to guarantee that authors, singers, filmmakers, artists, and other creators continue to be acknowledged and have authority over their creations. However, IP rights can also be used for

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commercial exploitation, as they enable publishers, streaming services, record labels, and movie studios to make money off of creative works worldwide. The outcome is a fine balancing act: too much emphasis on commercial exploitation runs the risk of undermining the very creators whose brilliance drives the industry, while too much emphasis on protection may hinder innovation and restrict access. This explains why disagreements on the subject of royalties among other things persist in the entertainment industry.

Thus, this article hopes to critically examine the entertainment industry with a view to exposing the current lacuna in the Intellectual Property framework for its protection thereby advocating better regulations and adequate Intellectual Property protection for the creators and the industry as a whole.

2. Copyright in the digital era

Once original writing, music or any other creative work is expressed in a tangible form, they are protected by copyright which is a type of intellectual property protection. The Nigerian Copyright Act 2022 and the Canadian Copyright Act 1985 give credence to this fact. However, with the advent and growth of the digital era, the strength and the potency of copyright as a protection for creatives is being threatened in many regards. Myriads of digital platforms have evolved over the years with the intention to bridge the gap between creatives and their potential audience. Services like Spotify, Netflix, Apple Music, and YouTube come into this picture with the aim of putting creative work on the global stage. While these platforms have been beneficial in reaching this goal, it is important to consider the question of the degree of authority the creators still have on their creativity. In many regards, creators are left at the mercy services and platforms which raise questions as to fair dealing among other things.

Another issue with Copyright in this digital era is the ownership tussle. The question of who owns what dominate the creative or entertainment industries especially with respect to copyright. In the music industry for instance, when an artiste is signed by a record label there are a few things involved. The copyright over the lyrics and the melody of the song which is called "The Musical Work" or "Composition" is owned by the songwriter while that of the recorded performance called "The Sound Recording" or "Master Recording" is usually owned by the record label pushing the song. Due to the obsession for financial support and visibility granted by record labels most artists especially upcoming ones have been beguiled to signing contracts which tend to blur the line as to who owns what.

When Taylor Swift first signed with Big Machine Records as a teenager, the label owned the master recordings of her first six albums — meaning they controlled the original sound recordings and the profits from them. Years later, when Big Machine was sold to music executive Scooter Braun, Swift lost control over her early work. Thus, Taylor Swift's re-recorded her first six albums illustrates the ownership tussle in today's music industry, where labels often control master recordings while artists retain limited rights. By creating "Taylor's Version," she used copyright law to reclaim economic control and undermine the value of the originals owned by her former label.

Copyright Infringement continues to be one of the biggest dangers to the entertainment sector, even with improvements in digital distribution and copyright legislation. Unauthorized copying and distribution have become simpler, quicker, and more widespread as a result of the transition from physical media to internet platforms. Peer-to-peer file sharing, torrent websites, and illicit streaming platforms enable millions of consumers to obtain music, movies, and video games without paying for them, so undercutting both legitimate distributors and artists. It is a common practice in Nigeria for instance to find Netflix movies pirated and redistributed across some other social media platforms thereby affecting the effort of creatives despite their creativity and copyright protection. Until there is an intentional, comprehensive and calculated approach to enforce copyright laws and strengthen same to curb this menace, creative may not get the most of Copyright.

The Copyright Commission in Nigeria battles with pervasive music and Nollywood piracy, which lowers creators' profits. While the U.S. Music Modernization Act (2018) established blanket licensing to guarantee more equitable songwriter compensation, Canada's Society of Composers Authors and Music Publishers (SOCAM) modified its royalty system to accommodate digital streaming. These instances demonstrate both the advancements and continuous difficulties in updating copyright legislation for the digital age.

3. Contracts and IP ownership

As powerful as IP protection is in the entertainment industry in that it prevents the creative from being exploited of their own creativity, there are underlying nuances which must be considered to ensure that creative get the most of it and a major one is the subject of contract. Contract by definition simpliciter means an agreement between two parties

which the law will enforce. The general rule in contract law which is definitely of interest to the subject of IP ownership is the doctrine of "pacta sunt servanda" this means that "the agreement of contracting parties must be performed". This means literally that parties are free to enter into any kind of contract and in the absence of duress or undue influence, the law will always give effect to the contract no matter how controversial it is.

Thus, artists and creative can thus make their IP ownership of non-effect by entering into certain contracts which stands prejudicial to their IP rights. Most music, film, and publishing contracts revolve around the ownership and control of intellectual property. These rights are often divided into;

- Publishing rights – linked to the composition (lyrics and melody).
- Master rights – ownership of the original sound recordings.
- Royalty provisions – the share of income from sales, streams, or licensing.

The way most of these contracts are couched and the fact that many of the artists do not fully understand the implication of what they are signing makes them enter into certain pitfalls that conflicts with their IP ownership. They can give up their publishing and master rights indefinitely in return for temporary publicity or funding. Even if their works become extremely popular, this leaves them with little control and minimal long-term revenue. Contracts with intricate legal jargon frequently give producers, labels, and studios additional negotiating leverage.

This has produced notable ownership battles within the industry. Prince's conflict with Warner Bros. Records in the 1990s is among the most prominent. Prince famously performed with the word "slave" written on his face and changed his name to an unpronounceable symbol because he was frustrated by restrictive contracts that prevented him from owning his master recordings. He finally reclaimed control of his masters after years of struggle, a difficult triumph that highlighted the need of ownership for artistic freedom.

However, the necessity of contractual relation in the entertainment industry cannot still be overemphasized. This is because doing away with contracts altogether will undoubtedly do more harm than good. Thus, the issue is not with contracts but with the fact that creatives must engage the services of lawyers who are trained to read and interpret the implications of these contracts to the artists before they sign. This shows that regulatory power of IP laws also depends on trained specialists most especially lawyers and IP consultants to be able to guide their clients in making decisions that can preserve their IP rights. Among other things, the artists should be made to understand the contract's position on the following terms;

- The duration of rights assignments.

The duration of time which a contract gives the record label authority to the recording of an artiste matters a lot in determining whether or not such a contract is prejudicial to the artiste. Where the term for instance states that the right to the recordings is assigned to the record label "for the life of the copyright", it means the record label could do as it so wish with the recordings of the artiste leaving the creative with little or no autonomy. The duration of right assignment should be short to afford the creative the privilege to have the right reversed back to him after a short while and to give room for renegotiation. Creatives should focus more on proving their worth during a short-term agreement with record labels than gunning for long term contracts which put them in "captivity"

- The scope of licenses granted (e.g., global vs. local distribution).

The scope of licenses granted in a music contract defines the extent to which an artist allows another party—such as a record label, distributor, or streaming platform—to use, market, or distribute their work. This clause determines whether the license covers global distribution (allowing the music to be sold and streamed worldwide) or is limited to specific territories (such as only within Nigeria or Africa). Understanding this term is crucial for artists because it directly affects their control over where and how their intellectual property is exploited, as well as the royalties and exposure they receive. If an artist grants overly broad rights without proper compensation or time limits, they may lose significant economic and creative control over their work across multiple markets.

- Royalty splits and payment schedules.

The terms on royalty and payment schedule is very important because the end point of the whole process for the creative and the record label is financial benefits. Thus, it is important that the way profits is going to be shared is well spelt out and thoroughly understood before the contract takes off. This enhances financial transparency and accountability between both parties.

- Termination clauses that allow artists to reclaim rights after a certain period.

Termination clauses that allow artists to reclaim rights after a certain period are provisions in music contracts that give artists the opportunity to regain ownership or control of their intellectual property—such as master recordings or publishing rights—once a specified time or condition is met. These clauses are crucial because they prevent record labels or publishers from holding an artist's rights indefinitely, ensuring that creative control and future earnings eventually return to the original creator. By understanding and negotiating favorable termination terms, artists can protect their long-term economic and moral rights, enabling them to relicense, re-release, or monetize their works independently once the contractual period expires.

4. Global outlook: cross border challenges

The impact of technology making the world a global village has extremely affected the proliferation in the entertainment industry. Thus, there is a level of global outlook and visibility that creatives are exposed to while leveraging on the interconnectedness of the world. However, with this global relevance comes certain issues majorly with the IP rights of creatives over their creation. A major reason for this is that IP right is territorial, thus, a music for instance which is Copyright in Nigeria cannot claim the Copyright in another territory outside Nigeria. What then happens when there is undue exploitation on the song by audience on platforms with people from different countries of the world? These are questions that the evolution of IP rights must gear up to answer.

Afrobeats artists such as Burna Boy, Wizkid, and Davido now sign international distribution and licensing deals with major U.S. and European labels. The fact that IP rights territorial results to situations where music generate substantial revenue overseas, while the creators struggle to receive fair royalties because of weak or unfavorable contracts.

The issue of piracy in its cross-border dimensions can even worsen the enforcement of IP rights. While we still battle internal enforcement of IP rights on piracy within Nigeria, it is possible for the copyright infringement to take international dimensions. Such practices undermine the revenue home & abroad and it may also give wide publicity to the creativity without acknowledging the creator.

The remedy to this menace will seem to be found in Internal law cum international relations via treaties and agreements. Thus, International agreements like Berne Convention and WIPO treaties are designed to harmonize protections, requiring member states (including Nigeria) to give foreign works the same protection as local ones. However, while this helps in theory to surmount the hurdle identified above, substantial bottlenecks still exist for creators across borders. This is partly because international treaties and agreements are soft laws rather than hardcore laws, they are regarded as gentleman's agreement which most times is not effectively given legal effect.

5. Conclusion

The focal point of this discourse remains the fact IP is still the lifeline of the entertainment industry and for the industry to thrive in operation at its best, there must be effective use of IP. The protection that IP right offers among other things protect and preserves the industry by ensuring that the talent of the creatives is protected and that the fans of the industry continue to get the value they deserve.

The call therefore is first for more awareness of the vast array of benefits that IP rights especially Copyright offer to the industry and the career of creatives. A simulation of the concept of Intellectual Property should incorporated into the basic general education system in a country like Nigeria. This is important because it is often seen that persons across several fields end up in the entertainment industry. Thus, a basic educational foundation in this area will help a lot when people begin to pursue their passion in the entertainment industry.

Also, the burden of awareness should also be laid on the Federal Ministry of Art, Culture, Tourism and the Creative Economy being the ministry directly responsible for the entertainment industry in Nigeria. They should in addition to their regulatory work, partner with agencies of government like the National Orientation Agency (NAO) in driving home the awareness about the need for Copyright protection in the industry.

In addendum to this awareness, it is essential as discussed above to emphasize the need for creatives to employ the services of trained professionals in getting their IP protection. Thus, services of Lawyers and IP consultants are necessary to the growth of IP in the entertainment industry. If this is not done, there are still loopholes which can be exploited to make the "protection" of non-effect.

In conclusion, the creative sector over the world is the growing major aspect of the economy in recent times. Thus, there must be concerted efforts in seeing to its efficiency and efficacy continually. This article has revealed most of the common issues in the entertainment industry while putting the spotlight on IP and its effective usage as the major way out of these issues.

References

- [1] Creative Economy (2022), 16(2). <https://doi.org/10.18334/ce.16.2>
- [2] Revenue statistics in Africa (2022). Revenue statistics in Africa. <https://doi.org/10.1787/ea66fbde-en-fr>
- [3] Thomas, R. (2022). Advocacy journalism. Communication. <https://doi.org/10.1093/obo/9780199756841-0281>
- [4] Pila, J. (2022). Enforcement of intellectual property rights. Seville's EU Intellectual Property Law and Policy, 644-669. <https://doi.org/10.4337/9781788976404.00016>
- [5] Digital enablers of the global economy. (2022). OECD Digital Economy Papers. <https://doi.org/10.1787/f0a7baaf-en>