

In this Issue:-

1. Legal Alert ? November 2013 ? **Music, Copyright, Collecting Societies Licensing and Royalties Management**

2. Disclaimer Notice.

3. Copyright Notice.

What is a Copyright?

A copyright to an original artistic or other intellectual work is the exclusive proprietary right that the owner to such an original work has to exclusively control the commercial exploitation of such a work, by members of the public.

Where a copyright to an original work is used for commercial purposes, whether directly or indirectly, without the authorisation, permission or licence of the owner of the copyright to the work, liability for the copyright infringement arises at the instance of the owner, his/her/its assignee or exclusive licensee who can claim for, among other reliefs, damages, injunction, an account of the use and the profits derived from the unlawful use of the copyrighted original work or works.

Copyright Society Registration.

As it would be administratively very unwieldy and too expensive for each individual copyright owner, assignee or exclusive licensee to administer licences to public users of copyrighted works, the Nigerian Copyright Act provides that where any person or group of persons representing more than fifty (50) owners of copyrighted works, carry on the business of negotiating and granting licences to members of the public for the use of their original copyrighted works; or where such a person or group of persons or an association of persons collects and distributes royalties in respect of their copyrighted works, such a person or group of persons must be granted approval by the Nigerian Copyright Commission ("NCC") to operate as a not-for-profit Collecting Society. See Sections 17 and 39 of the Nigerian Copyright Act, CAP C28, Laws of the Federation of Nigeria, 2004.

Collective Management Organisations.

The Copyright (Collective Management Organisations) Regulations, 2007 ("CMO Regulations, 2007") provides for some further criteria that must be furnished before a group of persons or an association of persons can be licensed by NCC to operate as a Collective Management Organisation ("CMO") in Nigeria. Note that CMOs are more commonly known as Copyright Collecting Societies.

Some of the key licensing requirements include evidence that the applicant association of persons represent not less than one hundred (100) copyright owners of the class or category of copyright

works in which the association seeks the licence to operate as a CMO or as they are more commonly known, as a Copyright Collecting Society.

Licensing Fees and Royalties.

The CMO Regulations, 2007 requires all CMOs to draw up tariffs in respect of the Licensing Fees that they will demand for, from the usage of the copyrighted works administered by the CMOs.

In setting the tariff/rate for the royalty to be charged for copyrighted works, a CMO is required to have regard to, among other things, the monetary advantage to be obtained by the user from the exploitation of the copyrighted work, the value of the copyrighted work, its purpose, the manner or kind of its use, the proportion of the utilisation of the work, any other relevant decision of a Court or such other dispute resolution panel on the matter of copyright tariff, etc.

Collective Management Agreements.

A CMO is also empowered by the CMO Regulations, 2007 to elect to enter into a Collective Management Agreement with a representative trade association on the use and the tariff structure of its repertoire to the members of such a trade association. The CMO must however notify NCC of any tariff scale that is agreed to by a CMO with a representative trade association.

Royalty Distribution Plan.

A Collecting Society is required to establish a royalty distribution plan; and to distribute the royalties or the licence fees collected to its members in a manner that reflects as nearly as possible, and as equitably as possible, the actual usage of the works covered by the copyrighted works, which the CMO administers.

Dispute Resolution.

Whenever there is any dispute regarding a CMO/Collecting Society and the collective management of royalties in Nigeria, such a dispute is required to be referred to NCC, and NCC is in turn required to establish a Dispute Resolution Panel to settle the dispute.

On appeal, the final decision of the Dispute Resolution Panel can be reviewed, set aside or amended by a competent Court of Law.

Unethical Practices.

A CMO will be deemed to have been involved in an unethical practice or practices where it, among other things, grants licences, collects and distributes royalties for works that it does not have the authority to administer; or makes false representation knowing such representation to be false; or inhibits or impedes another approved CMO from carrying out its functions under the CMO Regulations, 2007.

Conclusion.

As commendable as the approval of the Collective Management regime is for copyrighted works

in Nigeria, the non-publication of the CMO tariff structure, and the methodology for quantifying the use of the copyrighted works, is expected to lead to a plethora of otherwise avoidable high rate of defaults and expensive litigation to the prejudice of the owners of the copyrighted works.

Related to the above concern is the absence of the technology required to measure what copyrighted work is used, and for what duration such a work was used. Such technology, though expensive, removes arbitrariness and nepotism from the collective management of copyrighted works in Nigeria. The assistance of NCC and registered CMOs in Nigeria, collaborating with foreign CMOs with whom the Nigerian CMOs have some of their foreign repertoire under their management, to acquire and operate such copyright management technology in Nigeria, will optimise the licensing and royalty administration in Nigeria, to the benefit of all the stakeholders concerned.

DISCLAIMER NOTICE. This Legal Alert is a free educational material, for your general information and enlightenment purpose ONLY. This Alert, by itself, does not create a Client/Attorney relationship between yourself and our Law Firm. Recipients are therefore advised to seek professional legal advice and counselling to their specific situations when they do arise.

COPYRIGHT NOTICE. This Legal Alert is protected by International Intellectual Property Law and Regulations. It may however be shared with other parties provided that our Authorship is always acknowledged and this Disclaimer Notice is attached.