

## Legal Alert July 2007 **Entertainment Distribution Framework/Regulations**

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Business Quote for the Month

Every new vision is a joke until one man accomplishes the vision.

Legal News

Central Bank of Nigeria (Amendment) Act

Continuing economic and regulatory reforms in Nigeria have led to the enactment of the Central Bank of Nigeria (Amendment) Act, 2007. This new CBN Law among other things have re-enforced the role of the Central Bank of Nigeria (CBN) as the Banker to the Federal Government of Nigeria (FGN), the exclusive Manager of the country's external reserves and also as the government's economic and financial Adviser. Other emphasised role for the CBN under this new legislation include the responsibility of independently formulating and implementing monetary and banking policies for the country.

To guarantee the independence of the CBN, this amended legislation provides that the appointment and removal of the Governor and the Deputy Governors of the CBN can only be effected on the recommendation of the President after the ratification of the recommendation by two third majority votes of the members of the Nigerian National Assembly.

All manner of abuse of any Nigerian currency whether in the form of hawking currency notes, spraying currency notes at social occasions and stepping on them, etc is now prohibited with monetary and penitentiary sanctions for violation.

One of the other very exciting provisions of this Law is the statutory power granted to the CBN to license and regulate the activities of credit bureaus in Nigeria. Although there is presently only one licensed credit bureau in Nigeria, the future of these bureaus is very important to the Nigerian Financial Sector.

Technology Tax

The National Information Technology Development Agency Act (NITDA Law) signed into law in May 2007. This Law primarily imposes a one percent technology tax on the gross income of all Nigerian registered Companies that utilise telecommunication machinery to deliver their products

and services and have an annual turnover of over One Hundred Million Naira. Companies that would be affected by this tax include Mobile Telephone Operators, other Telecommunication Companies, Internet Service Providers, Cyber Companies, all Financial Institutions including Banks, Pension Managers, etc.

Learned senior Law lecturer and writer on Tax Law, Abiola Sanni, has rightly criticised this tax which he described as a "Quadruple Tax" that would hamper economic growth. This is in the light of the fact that telecommunication companies in Nigeria are already being made to pay 30% of their net profit as companies income tax, 2% of their accessible profit as education tax, 2½% of gross profit as telecommunication regulator NCC levy/fee/tax; these are in addition to Local Government taxes that are too numerous to enumerate and are mostly unknown to law.

Legal Alert July 2007 Distribution Frame Work For Films and Movies In Nigeria

Humanity continues to enjoy tremendous benefits from the intellectual capital of inventors, entertainers and producers of ideas and products. To encourage the production of more intellectual capital, National and International Laws and conventions protect the Inventors of new and existing ideas, in a world that is now based on knowledge and information.

The non-respect for and the non-protection of intellectual capital or intellectual property rights in many countries of the world have unfortunately led to retrogression and non advancement in private capital investments in intellectual property. This abnormality has led to the failure of a functional legal, institutional and distributional frame work to the disadvantage of all stakeholders and citizens of the world at large.

The attempt in Nigeria to change the attitudes and practices by institutionalising a comprehensive distribution frame work for movies and films by the Nigerian Films and Video Censors Board (Distribution Framework) have met with resistance and litigation by the primary Stakeholders of this industry.

It is alleged that Nigeria has the third largest movie industry after Hollywood in the United States and Bollywood in India. Investments in the Nigerian entertainment industry by Banks and Investors have however been hampered by piracy concerns and the lack of auditable data/statistics on the existing and possible future products and services of the entertainment industry. The Distribution Framework is therefore a comprehensive policy on distribution, exhibition and marketing of films and video works in Nigeria.

This Alert is a succinct summary of what the distribution framework provides for and the benefits that would result from its collective and complete implementation.

Objectives of the Distribution Framework

The Distribution Framework seeks to achieve the following things:-

- a. Standardise the Nigerian film and video industry.
- b. Compel parties to execute written contracts which guarantee property rights and remuneration to all beneficiaries.
- c. Provide data/statistics by ensuring that all practitioners are registered and that only registered Distributors, and not Producers or others, are allowed to submit movies for classification after obtaining copyright notification from the Nigerian Copyright Commission (now under Nigerian Intellectual Property Commission).
- d. Enhancement of the culture of data collection through the Distributors. This will effectively neutralise piracy and other illegal activities in the entertainment industry.
- e. The framework will also lead to specialisation of practitioners and increase in employment and tax revenues to the government.

#### Categories and Types of Distributors

All Distributors must apply for registration and be licensed by NFVCB after meeting the registration and licensing requirements.

Distributors of movies and videos in Nigeria are categorised by type and by location. Distributors by location are those that are either national distributors, regional distributors, state distributors, local government distributors or community distributors.

Distributors by type are the majors who are called chain distributors; and the minor players who are called independent distributors or stand-alones.

#### Classified Distribution Rights Under Distribution Framework

There are three primary distribution rights that a Copyright owner can assign to a licensed Distributor. They are rental rights only which permits the rental of products but forbids the sale and purchase of entertainment products; rental and sale rights, and the comprehensive distributors rights which is the all inclusive right to sell, exhibit, hire and broadcast movies including internet/gsm downloads.

All distribution contracts must be in writing with a minimum duration of 6 months and a maximum duration of 5 years. Evidence of the consideration for the distribution agreement with the copyright owner must be shown by the Distributor.

#### Distribution Procedures Under Framework

The essence of the Distribution Framework is to bring about discipline and auditable statistics. To guarantee this objective, only licensed national distributors, who have registered the copyright to the film with NCC, can submit a film to NFVCB for censoring and classification. According to the Distribution Framework, "The application to distribute and or exhibit shall be accompanied by a valid distribution agreement with a brief marketing plan".

It is mandatory for all licenced Distributors to submit to NFVCB a statutory distribution report which must capture the films and video products within the licenced distributor's distribution chain for the period of the report.

#### Anti-Piracy & Other Framework Protection

The following securities for the Framework are provided in the distribution framework:

1. All licensed distributors are given a separate security code which must be reflected in all the films and video works within their distribution chain.
2. All licensed distributors must affix the registration seal or classification symbol for each movie, film and video title approved for distribution.
3. All licensed chain distributors are responsible for the actions or inactions of their subsidiary distribution outlets.

#### Shortcomings of Framework

- a. No provision for review of the distribution framework after an implementation period of two or three years.
- b. The tenure of the distribution licenses and the possible grounds under which they may be revoked are not stated in the framework.
- c. The procedures for Lender stakeholders to access the data/statistics collated by NFVCB is not stated. It is recommended that there should be a transparent procedure in order for producers to access necessary funding.

#### Conclusion

There is no perfect document. All stakeholders should in the interest of the entertainment industry collaborate with the NFVCB in the implementation of the new distribution framework for films and video in Nigeria. This cooperation is required especially in the area of fighting piracy by ensuring that all entertainment products have affixed to them the necessary security seals and unlicensed professionals are barred from the entertainment industry.

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