



'Slaying the Collective Rights Monster'- 2face Idibia

INTRODUCTION

There are a variety of means for music artistes to generate revenue off their work. These include record sales, royalties (both mechanical and otherwise), publishing/ licensing, performances, and touring all of which are related to their music. Other means for revenue generation include merchandising, [brand endorsements](#) and other engagements. However, due to the fractured nature of our industry here in Nigeria, we've been focusing on one or two of these means and forgetting the rest.

The good people at **The NET** have invited me to speak on the topic '*SLAYING THE COLLECTIVE RIGHTS MONSTER*' hence we will be focusing on the revenue accrual from the artist's work, the music. First of all, we should know what COLLECTIVE RIGHTS MANAGEMENT is. Collective Rights Management is the licensing of copyrights and related rights by organizations acting on behalf of rights owners. From that definition, the rights owners will be the music artists or songwriters and producers, seeing as the subject pertains to music and the organizations acting on their behalf are the collecting societies.

We all know the role played by the rights owners is to create the 'body of work', which is termed assets. The rights collection organizations are vested with the responsibility of granting rights to the use of the 'body of work' in exchange for financial returns. Some of these rights include:

The right of public performance (music played or performed in discotheques, restaurants and other public places);

The right of broadcasting (live and recorded performances on radio and television);

The mechanical reproduction rights in musical works (the reproduction of works in CDs, tapes, vinyl records, cassettes, mini-discs, or other forms of recordings);

The performing rights in dramatic works (theatre plays);

The right of reprographic reproduction of literary and musical works (photocopying);

Related rights (the rights of performers and producers of phonograms to obtain remuneration for broadcasting or the communication to the public of phonograms)

All of these fall under the economic rights. There is also the moral rights which is the owner's right to object to any distortion, mutilation or other modification of his work that might be prejudicial to his/ her honor or reputation.

WHAT IS THE COLLECTIVE RIGHTS MONSTER?

From the little I know and have learnt from research and just taking a 'siddon look' approach, the monster is more of a 'thing' than a 'person'. I have listed below some of the more common characteristics of the monster.

1. The mindset that music is free. A lot of active music users today grew up in the era of sharing and downloading. They grew up in the Napster years believing that music is free. Locally, most of the music consumers, even the ones that spend hours in a studio creating, honing their craft, paying their dues, have somewhat been conditioned into believing that their music costs nothing. It is this mindset that will cause a musician to pay to have his music on an Alaba or Computer Village mix CD because it can reach a larger audience. Rights owners need to work four times as hard to propagate the fact that music costs money. Personally, this is one of the reasons why we sold the initial batch of '[*The Unstoppable*](#)' for N1000: to spread that message that owning good music comes at a cost.

2. Commercial users, particularly within the broadcast sector, believe they are doing the rights owners a favor by deploying their intellectual property. They think the industry owes them for supporting the arts. The truth is while they do support, we rights owners should realize that our music is the content that forms the basis of the existence of these media houses. It is unfortunate that some play God expecting to be worshipped and will not hold a conversation about royalty payment. Yet, they pay salaries, they pay for diesel, quite a number are expanding. Not every artiste can do the number of shows that some of us are lucky to do. If every rights user pays royalties, every artiste will get something to better their lot.

3. There is a category of users who know that royalty payment is standard fare. This is a dangerous bunch. These will latch on to any excuse to avoid doing the needful. They do this knowing that they can probably get away with not paying their dues by playing all kinds of tricks to avoid making payment for music used. Most of the people in this category are exposed enough, or have done enough business locally and internationally, to know that they should, by law, pay a token for rights usage. But they would rather not if they can get away with it.

4. Truth be told, we have been put in this position by CMOs and operators who, for years, have not been able to articulate a response that puts the industry first. The response has always been about the individual organizations instead of the interest industry-at-large. These organizations spent more than two decades in this endless dispute that led the industry to its knees.

Thankfully, starting from [World Music Day](#) September 1 2009, a few well-meaning industry practitioners were able to start the process for change. Shortly afterwards, music bodies, which had hitherto not seen eye-to-eye, formed the Nigerian Music Coalition and sponsored a bid to register one collecting society. It is on record that overtures were made to both [MCSN](#) and [PMRS](#), both legally registered collecting societies at the time, to form the one body that would collect on behalf of rights owners. The board of MCSN unfortunately declined to join. [COSON](#), which includes [PMAN](#), [NARI](#), [MORAN](#), [AMB-PRO](#), [MULOAN](#), [PMRS](#) and several other music bodies, was registered by the [NCC](#) in 2010.

THE LIFE AND TIMES OF THE COLLECTIVE RIGHTS MONSTER

The problem of collective rights management in Nigeria has multiple layers and at the bottom lies the issue of ignorance or rather, a lack of understanding of the subject. Artists and music executives/ administrators have to take time out to learn about the in and out of the subject so as to understand what they are getting into.

On another level, some might argue that there is nothing wrong with having multiple CMOs. But then again, how has having multiple CMOs impacted the subject of royalties and the owners of the rights in Nigeria? One thing is for sure, having more than one CMO operating within the industry has not helped further our cause as rights owners because, being a developing nation, everyone is busy looking out for their own interests. More importantly though, the law clearly states that Nigeria will, at this time, have only one society tasked with collective management responsibilities. That CMO is called COSON.

Section 39 of the Copyright Act 2004 provides at subsection 1 as follows: *‘A Collecting Society (in this section referred to as ‘a society’) may be formed in respect of anyone or more rights of copyrights owners for the benefit of such owners, and the society may apply to the Commission for approval to operate as a collecting society for the purpose of this Act.’* It further provides in subsection (4) that *‘It shall be unlawful for any group of persons to purport to perform the duties of a society without the approval of the Commission as required under this section of this Act.’*

The Copyright Act identifies the NCC as the government body responsible for monitoring and controlling the collection of royalty. The combined effect of these provisions is that the approval by the Nigerian Copyright Commission is a prerequisite to the operation of any society performing or desirous of performing the functions of a collecting society.

To this end, if the NCC, in accordance with the provision of the Copyright Act has chosen to approve only one of the organizations that have applied for license to operate as CMOs, what's stopping all the other organizations coming together with this one organization, in this case COSON, to achieve the collective goal which is to see rights users pay rights owners for the exploitation of their works? The lack of compromise by these organizations, to put the interest of the collective ahead of their individual interests, has provided rights users an excuse not to pay royalties.

The biggest users of rights will be the organizations in the broadcasting sector. [The refusal of the organizations within this sector to pay royalties](#) on the use of rights dates as far back as the 70s. It put the broadcasters and the late Abami Eda, **Fela Anikulapo Kuti** on collision course. That was way before the excuse for non-compliance became the situation where they started to claim that they didn't know exactly who to pay to.

Not too long ago, BON/ IBAN, the bodies representing broadcasters, placed a ban on music from artists represented by COSON in a bid to arm twist the artists, including myself, into giving up their rights to earn from the exploitation of their works. Thankfully, the NBC has since waded in and I have been informed that progress has been made towards a resolution which we can only hope is fair and enduring.

From the foregoing, it is apparent that the biggest problem hindering the smooth operation of collective rights in Nigeria is our individualistic nature where everyone is looking out for their personal interest while neglecting the interest of the collective. If we can put our individual interests aside, it won't be hard to figure out how to make rights collection work in Nigeria.

For the sake of enlightenment, the following are some of the conditions for setting up and operating a CMO as contained in the Copyrights Act:

(1) A Collecting Society (in this section referred to as 'a society') may be formed in respect of any one or more rights of copyrights owners for the benefit of such owners, and the society may apply to the Commission for approval to operate as a collecting society for the purpose of this Act.

(2) The Commission may approve a society if it is satisfied that-

(a) it is incorporated as a company limited by guarantee;

(b) its objects are to carry out the general duty of negotiating and granting copyright licenses and collecting royalties on behalf of copyright owners and distributing same to them;

(c) it represents a substantial number of owners of copyright in any category of works protected by this Act; in this paragraph of this subsection, 'owners of copyright' includes owners of performers' rights;

(d) it complies with the terms and conditions prescribed by regulations made by the Commission under this section.

(3) The Commission shall not approve another society in respect of any class of copyright owners if it is satisfied that an existing approved society adequately protects the interest of that class of copyright owners.

(4) It shall be unlawful for any group of persons to purport to perform the duties of a society without the approval of the Commission as required under this section of this Act.

(7) The Commission shall have power to make regulations specifying the conditions necessary to give effect to the purposes of this section of this Act.

(8) For the purposes of this section 'collecting society' means an association of copyright owners which has as its principal objectives the negotiating and granting of licenses, collecting and distributing of royalties in respect of copyright works; 'group of persons' includes a corporate body.

(9) The Commission may, where it finds it expedient, assist in establishing a collecting society for any class of copyright owners.'

As straightforward as this is, practical application in Nigeria has for decades been fraught with drama and intrigue.

SLAYING THE COLLECTIVE RIGHTS MONSTER

As with any problems man will face, the monster as to be tackled and wrestled to the ground. While I am certainly no technocrat, I have a few common-sensical approaches that I am certain can solve this problem (hopefully) once and for all.

Before we get to that point though, we must admit there is a problem. A wise man once said that once we do that, we are halfway to finding a solution. Thankfully, with the title of this paper, we have solved half of the problem. The other half is a task that has been 'bestowed' upon me. Please permit me to put on my thinking cap.

Going by the analogy that has been handed to me, the first thing to do would be to arm ourselves. A monster situated in our compound is intent on destroying our property and feeding fat on our produce cannot be greeted with open arms. In real terms, all rights owners need to arm themselves properly because only then can they see clearly. 2014 is not the time for 'he said, she said'. We need to be able to protect ourselves and our wealth. Ammunition in this case is getting

an education. Read up on what constitutes your rights. Find out how those rights are protected under the laws of the land. Do not rely on hearsay. In fact, do not believe a word I have just said. I found this information. You can too.

Plan. Now that we have arms, what are we going to do? We need to bell the cat/chain the dog; if you know what I mean. If you don't, what I mean is now that we are brimming with all this knowledge, what then? One thing I know for sure is that like the January 2012 Ojota protests, it would be impossible to sit still and not force change once we have a clear idea of where we are and where we should be. If, as rights owners, we find that the approved CMO has not done well enough, we will be in a good place to push for positive change.

That said, the reset button has been hit. As such, the system has to be developed. It has to be grown. Collective management has only just started in earnest in Nigeria. All hands need to be on deck to make sure it works this time around.

COSON is the single collecting society recognized by the law of the land. The body needs to do its job satisfactorily and ensure that its 'wards' are well taken care of and protected. It is also as important to ensure accountability in all her dealings.

The NCC holds the responsibility of enforcement of laws as couched in the Constitution. In addition, the government body needs to be updated re the best present day standards, which will in turn ensure that the interests of the rights owners are adequately protected.

The NBC needs to ensure compliance by radio and TV. No media house is, or should be seen to be, bigger than the government.

The IP owners need to be enlightened and actively involved in building the structure to make rights collection work.

The issue of logging can be overcome if technology is deployed. All parties concerned should work together towards ensuring that the logs are authentic and up to date. That way, royalties paid would go to deserving rights owners as opposed to the present situation where the lack of logs forces the collecting society to commit a chunk of monies collected to general distribution amongst all registered members.

A world-class collective management system will not fall on our laps. All stakeholders will need to roll up their sleeves and get their hands dirty in a bid to grow, nurture and sustain it. Is this possible? Obviously. We have started the journey and I'm optimistic we shall succeed.

Thank You.

This speech was delivered at the second edition of the Nigerian Entertainment Conference held on Wednesday, April 23, 2013 at the Grand Ball Room of the Eko Hotel and Suites, Lagos, Nigeria