

THE WHITE COLLAR

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The Next Big Thing - Protecting the Entertainment Industry

Entertainment is Big Business

Daddy Showkey, Dr. Alban, King Sunny Ade, Majek Fashek, Sir Oliver De Coque and Fela- these are names of the pioneers of a long lost era in the Nigerian Music industry. A time before multi-million naira record labels existed and a time where musicians made music produced on shoestring budgets simply for the love of it. Today revenues from live Nigerian Music performances alone are reported to have reached some \$105 million in February 2015, with average record sales reaching 50 million copies in 2010 from 10 million in 2005. The larger Entertainment Industry comprising Music and Film Production is predictable to reach \$1 billion in 2016, a far cry from the days of Sir De Coque indeed.

Without a doubt entertainment is big business in Nigeria, and with this dramatic rise in productivity and profitability has come comparable risk and loss since everyday the industry is churning out new talents, artists and actors whose meteoric rise is only as stunning as their equally sudden fade-away into obscurity and financial difficulty.

Where Are the Entertainment Lawyers?

What is surprising though, is the notable absence of any corresponding growth in the Legal Profession to cater to the increasing need for adequate legal representation in the Entertainment Industry. Apart from a handful of entertainers with particular knowledge or exposure to the Legal Industry, the Entertainment Industry is largely unrepresented. The big Record Labels will have Legal Departments full of proficient legal advisers safeguarding the Label's interests, sure, but the same won't be said of the small up-starts, Film Production or the individual talents, actors and artists themselves. Also, by comparison to the major business sectors of the Law- Corporate and Commercial, Banking and Finance, Energy and Natural Resources etc. Entertainment Law is practically non-existent for Fee Earning work.

"Why are lawyers necessary in the industry? What can lawyers do to improve the craft of entertainers and artists?" are the natural questions that follow the realisation, and the simple answer is 'structure' and 'certainty'. In an industry where people are evaluated by their transient creativity and ability to produce performances that thrill and entertain, lawyers protect the interests of their clients beyond their ability to hold an audience. Lawyers provide the certainty to make a business out



of a 'performance' and secure earnings for clients long after the performance is past and the applause fades.

If we take a moment to consider the following real life situations, they will help to make clear exactly how much more Legal Representation can enhance performance and productivity in the Entertainment Industry.

Blurred Lines

In March 2015 the Hit Song 'Blurred Lines' released in 2013 by Robin Thicke, Pharrell Williams and Rapper T.I was found to be an unauthorised copy of late Marvin Gaye's 1977 song 'Got to Give it Up'. The Court awarded \$7.4 million in Compensation for the unauthorised copyright infringement since 2013 and may yet rule that going forward the Royalties accruing from the song 'Blurred Lines' be distributed between the estate of late Marvin Gaye and Robin Thicke's group. The song sold 6.5 million copies in the US alone in 2013, the highest selling song of the year and continues to be popular, not least because of the controversy it is concerned with.

Songwriters are a particularly vulnerable group within the Music Industry especially where they are not mainstream artists/performers. The value of a composition of words put together by an artist in many ways is subjective, and that subjectivity is incredibly difficult to quantify especially regarding the effect of time on such works.

Most songwriters in the industry sell off the rights to their songs in exchange for full and final payment upfront, which essentially fixes the value of the song to whatever sums

the songwriter is able to negotiate, often even before the song is produced and the Nigerian audience can react to it. This is where the value of Legal Expertise rings through because a lawyer versed in the business can properly negotiate either a contracted sale by way of Royalties or a combined payment of an upfront fee in addition to percentage earnings- which at every point in time is based on the sale or reproduction of the songwriter's work. The Blurred Lines situation is another example of what lawyers do so well day-in-day-out, it would be a lawyer who sees the value of a song which probably took Mr. Gaye a couple of days to write, 36 years on.

The Curse of the Entertainer- 'Mushin to Mo'Hits'

In 2012 Nigeria's biggest Music duo Dapo 'Dbanj' OyeBanjo and Michael 'Don Jazzy' Collins of **Mo'Hits Records** split. The split between the Artist D'banj and Producer Don Jazzy rocked the Music Industry in Nigeria, as it had not known before then. The fallout spawned two new Record Labels and continues to be the subject of great controversy surrounding the issues of Ownership and Proprietary Rights in a Record Label and its assets. Music Royalties for songs, for instance are usually distributed between artists and the Record Label by percentage, a fact that may be insignificant in good times but quickly become insurmountable hurdles during controversial splits.

Other issues that arise in the wider Entertainment Industry for actors may be the use of their personal imagery in conjunction with brand associations. Popular actor Hafiz 'Saka'

Oyetoro shocked mobile subscribers in 2013 when he stopped being the central face in Mobile Operator Etisalat's Television Adverts and moved instead to rival network MTN. The move itself is capable of triggering non-competition clauses in any ordinary contract considering the positive associations it can be argued MTN began to enjoy when Saka began appearing for MTN. The control of a public personality's image is also an issue applicable to Sports Athletes in agreements with their respective club and international sides.

Empire Mates Entertain but Starboy Entertainment 'Wiz the Kid'

It would seem that 2013 was an incredibly eventful year for the Music Industry in Nigeria because also in the same year Nigerian Music Prodigy and one of the country's most promising music exports Ayodeji 'WizKid' Balogun left the Record Label **Empire Mates Entertain** (EME) founded by fellow artist and Label Head Olubankole 'Banky W' Wellington for **Starboy Entertainment**.

In the spate of the signings and exits to and from Record Labels, it is easy see the artists as underdogs and to assume that Record Labels have large sway in the negotiations of the agreements made between the artist and the Label, and they likely do 9 out of 10 times. However there are situations when superstar artists or other times International Record Labels have greater negotiating powers, and it is in these circumstances that Record Labels need Legal Representation that fully secures the investments they have made in artists and their music brand.

For instance take the rough estimation of significant investments and expenses the Record Label will make to produce the artists music- between 3 to 10 studio sessions priced at about N40, 000 each, a Label Producer to develop the music to its finished state which will cost between N15, 000 to N100, 000 depending on the superstar status of the Producer. Add in the design and packaging of the physical CD at N50 per CD for 10, 000 copies, 6 months worth of promotion on Radio, Touring and other Marketing activities at N1, 000, 000, Video Casting and Production of another N1, 000, 000 to N5, 000, 000 and we begin to see the true picture of things. The sizeable investments undertaken by the Labels are a huge risk taken on an artist that at the start is often an unproven commodity.

Les Roses Rouge and Reminisce Sing All the Way to the Bank

Of course the same goes for the profitability side of the risk/profit equation. Take the Rapper **Reminisce's** record-breaking album **'Baba Hafusa'** debuting at No. 12 on the Billboard World Album Chart, retailing on the online music store iTunes for \$9.99. If Baba Hafusa only manages to go gold it will have sold 500, 000 copies- earning **Les Roses Rouge** Record Label (which Reminisce Heads) a whopping \$5 million.

In the midst of all this the artist, producer, record label, songwriters all have varying interests contending, more often than not, with the others to secure the most profitable circumstances possible for the present and in the future sales of the finished product. The parties negotiate, fight and sometimes war over these issues to protect their interests, but whose job is it to protect those interests? The simple answer is Entertainment Lawyer's. And where are they in the industry? That answer, however, is not so simple as it appears that Law Firms in Nigeria are yet to see the benefits of developing Legal Service Packages designed specifically for this fast growing Industry. Nonetheless, we hope for our sake and the sake of the Entertainment Industry's underrepresented millions, we realise the huge potential for work in this area before its "CUT!" for lawyers in Nigerian show business.

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corporate entities in Nigeria. Therefore, only laws enacted by the National Assembly or the States' Houses of Assembly, or treaties ratified by the National Assembly pursuant to Section 12 of the Constitution are valid in Nigeria, and this includes tax laws and laws which regulate the financial institutions in Nigeria.

Generally under Common Law, banks owe a duty of secrecy to their customer. They are prohibited from disclosing the details of their customers' accounts to a third party. And according to the dictum of Niki Tobi JCA (as he then was) in *Onagoruwa v IGP* (1991) 5NWLR (PT 193)593, the duty can only be disturbed if a special and strong case is made. The Chartered Institute of Bankers of Nigeria (CIBN), while reiterating this duty, stated in Paragraph 3 of the General Standards Expected of Bankers & Banking Institutions, as contained in The Code of Conduct, that the duty may be disturbed where one of the following exists:

1. where a bank is legally compelled to do so;
2. where there is a duty to the public to disclose;
3. where the interests of the bank require disclosure; and
4. where disclosure is made at the request, or with the consent, (expressed or implied) of the customer.

It is within the context of this principle of banking law in Nigeria that compliance with the FATCA would likely prove to be difficult. The situation is unpredictable for Nigerian Banks considering their business exposure to the US market. At the moment, there is no Inter-Governmental Agreement between Nigeria and the US. This thereby leaves the Nigerian banks with the option of entering into agreement with the US to avoid the imposition of the 30% withholding tax on them. However, the recent directive of the Central Bank of Nigeria (CBN) provides some respite to the dilemma of Nigerian banks. By a circular dated January 22, 2015,

the CBN directed all banks, discount houses and other financial institutions to comply with the FATCA. The Securities Exchange Regulator has also published a similar circular. The CBN nevertheless added that compliance with the FATCA should be against the backdrop of the banks' duty of care and confidentiality to their customers.

It is my opinion that the CBN Directive does not offer succour to the financial institutions, as the directive did not waive the banks' duty of secrecy to its customers. As such, the banks and other financial institutions may incur liability where they effect the required disclosure without the consent of the account holder. Consequently, the appropriate route for the financial institutions to take may be to obtain the consent of their customers to make the disclosures under the FATCA.

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