Chapter One

Introduction

1.1 Background to the Study.

With reported total revenues of US$39 million in 2016 and an expected increase to US$73 million by 2021 at a compound annual growth rate of 13.4%, the Nigerian music industry is arguably the most thriving in Africa[1]. Although this income amount is modest in comparison to more advanced economies outside of Africa, there is substantial room for expansion.

This unique fact has drawn the attention of major global music conglomerates[2] around the world, including Universal Music Group and Sony Corporation, some of which have taken unprecedented steps to establish a strong market presence in Nigeria's music industry by partnering with local record labels and signing recording contracts with a number of local artistes.

The literature has extensively explored the seeming difficulty of contract law to adequately describe and understand corporate contracts, particularly with relation to long-term partnerships. An important result has been the discovery of inconsistencies and differences that cannot be well explained by a conventional interpretation of contract law based on the classical model of contract.[3]An alternative theoretical approach that is mostly based on the concept of relational contracting and prioritizes interpersonal context above specific doctrinal principles has resulted

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[1]PwC, *The Business of Entertainment – Harnessing growth opportunities in entertainment, media, arts and lifestyle* https://www.scribd.com/document/396404457/The-Business-of-Entertainment-Finalaccessed 15 May 2022.

[2]Notably, Universal Music Group and Sony Corporation.

[3]S. Macaulay, 'Non-contractual Relations in Business'*American Sociological Review [*1963] (55) ; H Beale and T Dugdale, 'Contracts between Businessmen: Planning and the Use of Contractual Remedies'*British Journal of Law and Society [*1975] (45) and D Campbell and D Harris, 'Flexibility in Long-term Contractual Relationships: The Role of Cooperation' *Journal of Law and Society* [1993] (20) 166.

from this critique.[4]The entertainment sector, and in particular the music business, offers a rich environment for delving into some of the issues associated with incorporating contractual theory into business agreements.

Most rookie artistes dream of getting signed by a record label. This may only happen when the artist has spent a significant amount of time convincing multiple radio stations to play his music on the air and giving free performances at events in an effort to attract record labels. Finally, a reputable label notices his skills and is about to offer him a recording contract. This is like heaven on earth to the artist. His enthusiasm is obvious. He poses with a pen in hand, ready to sign any contract that is put in front of him as he drools at the prospect of experiencing the typical benefits that come with getting picked up by a reputable record company. The record contract's terms have no significance to the artist in this joyful condition.

But wait! The artist ought to be worried about what he is going to sign, right?

Any artist's music career may suffer if they didn't carefully study the record deal before signing on the dotted line. A record contract is more than just a piece of paper, and by signing it, an artist may be agreeing to conditions that might destroy his career or propel him to a worldwide stage.

The music scene in Nigeria is undoubtedly one of the most active on the continent, drawing in a broad variety of outstanding performers from different genres. Unfortunately, knowledge of Music Recording contracts cannot be boasted about in this way. Up-and-coming recording artistes sometimes sign record contracts without fully comprehending their legal ramifications, as do established artistes wishing to move record companies.

artistes frequently sign contracts without fully understanding them or negotiating the terms to their favor, despite the fact that record companies methodically incorporate contractual

[4] I. Macneil, 'The Many Futures of Contract'*Southern California Law Review* [1974] (47) 589; I Macneil, 'Relational Contract Theory: Challenges and Queries' *Northwestern University Law Review* [2000] 877. and P. Gudel, 'Relational Contract Theory and the Concept of Exchange' *Buffalo Law Review* [1998] 763.

stipulations to guarantee that their investment in the artist delivers the most profit. This is one of the factors contributing to the rise in conflicts between artistes and record labels in the Nigerian music industry. What fundamental aspects should artistes be aware of or watch out for when reading or negotiating record contracts?

Musicians are urged not to treat their record contracts lightly since, like other commercial agreements, record contracts are governed by the legal premise that parties are obliged by their agreements. The defaulting party will be liable for failing to perform its contractual obligations unless the other party waives the breach. The appropriate course of action is to cancel the contract in the way specified by the contract itself and/or seek legal remedies if one party to a record contract believes the other side is not abiding by the provisions of the contract.A good record deal should equitably divide up the parties' rights and liabilities (the artiste and the record label).In the Nigerian music industry, record labels frequently bring lawsuits for contract violations. Contrary to what is possible in other sectors, this is somewhat. For instance, the well-known male band Backstreet Boys filed a lawsuit against their record company, demanding roughly USD $100,000 and the termination of their record deal on the grounds that the company was not advancing their career. Similar to this, popular American singer Brandy sued her record label for breaking their record agreement by prohibiting the release of new songs. As a result, Nigerian artistes are informed that similar rights become theirs when record firms break their agreements, particularly when it comes to producing their music and making sure it is publicly distributed.

Understanding the Law of Contract[5]

A contract is an agreement between parties which is binding in law. This agreement between parties establishes certain rights and responsibilities that guide their relationship. Furthermore, the courts have the authority to uphold the rights and responsibilities of the parties to a contract. The courts may order the party in default to execute their contractual responsibilities, or, more frequently, they may grant damages for contract violation. Offer, acceptance, consideration, and the intention to create legal relations are the four fundamental components that must exist for a contract to be created. Typically, there is considerable discussion between the parties before an agreement is finalized and a contract is created. Therefore, it is crucial to pinpoint the precise instant a contract is established since at this point, the parties take on contractual responsibilities and the associated risk of responsibility if the contract's provisions are broken.

1.2 Statement of the Research Problem

Because of their legal complexity, recording contracts can be quite hard to decipher. They come in different shapes and sizes, and will often vary depending on the label, and the status of the artiste involved. Creative minds are the soul of the industry; it is thus disheartening to learn of how several talented artistes have entered into contracts perceived to be unfavourable, oppressive and unfair. This must be juxtaposed against the position of producers and record labels that these artistes not only entered into those contracts conscious of the implications, they also fail to recognize that investments made need to be recouped and returns on them maximized. This then leads inexorably to the inquiries that this thesis seeks to address. What considerations should guide contracting parties when entering into binding entertainment agreements? What are the red flags or grey areas? What fundamental terms should the parties look out for? When is it

[5]Prof. Itse Sagay, ***'Law of Contract'***, *(Sweet and Maxwell, 2007), 1.*

appropriate to just walk away? Do recording artistes need legal protection against unfairly drafted contractual relationships with record Labels and, if yes, how should they be protected? Guided by the responses to these concerns, it is hoped that all parties would be better equipped to deal seamlessly, going forward.

1.3 Aim and Objectives of the Research.

The aim of this research project is to look into the existing legal framework that protect music creatives in Nigeria in order to understand their institutions and shortcomings;

The specific Objectives of the study are to:

(i) examine the applicable laws relevant to music recording contracts.

(ii) succinctly analyze the nature of the terms of a music recording contract and how the presence and absence of these terms affect music recording contracts?

(iii) examine the status of third parties as regards music record label contracts and;

(iv)identify the laws protecting creatives in Nigeria and their impact on the Nigerian Entertainment Industry.

1.4 Research Questions

(i) What are the relevant and applicable laws to a music recording contract?

(ii) How does the presence or absence of standard contractual terms affect music recording contracts?

(iii) What is the status of third parties in music recording contracts?

(iv)What are the laws protecting creatives in Nigeria and how is their impact on the Nigerian Entertainment Industry.

1.5 Significance of the Study

It's never tough to put a signature on a contract. The frantic commotion is recognizing the contract's provisions. Before signing a definitive record deal, artistes should require that they sign a non-binding memorandum of understanding. This allows the artist the chance to get sufficiently familiar with the prospective agreement's provisions before entering into a formal commitment. This research is crucial to ensuring that artistes always make sure they are completely released from any former record contracts before signing a new one. When an agreement between two or more parties would involve the exchange of money and the creation of rights and liabilities, it is always advisable that each party seek independent professional advice on the proposed arrangement. If the artiste is still bound by an agreement, the artiste should disclose this information to the new record label, which may choose to purchase the artiste's obligations under such agreements. Therefore, it is essential that musicians and record companies use attorneys with knowledge and expertise in entertainment law and practice. It's crucial to only make commitments that can becomplied with. Artistes sometimes get carried away by the large sums of money record companies give them, leading them to pledge to release an excessive quantity of songs or albums. They realize they can't fulfill their recording promise halfway through the deal.

This puts them at the whim of the record companies, who could opt to hold them until the recording obligation is fulfilled by keeping them longer than allowed by the contract. Research is crucial, too. In order to determine if the record label can carry out its obligations under the proposed record deal, artistes need perform due diligence on the label. To determine whether the record label has the funds to support the artiste. If the record company is unwilling or unable to

record the music and properly market it, it would be useless for a creative to just be signed for the sake of it.

1.6 Research Methodology

This is a legal research that relies on qualitative method of analysis. This research work also relies on the primary and secondary source of Nigerian laws. The primary source includes statutes such as the Constitution of the Federal Republic of Nigeria, 1999[6] Copyrights Act[7], Patent and Design Act[8], Trade Marks Act[9], Companies and allied matters Act[10]. It also adopts some secondary sources of law relevant to the research work such as textbooks, Journals, articles, Newspapers.

1.7 Scope of the Study

This study focuses on the Nigerian Music Industry and the contracts that exist between a Record label and the artistes. This research will address the topic having regard to its operation in Lagos, Nigeria, being the centre for entertainment, especially the Nigeria music industry[11].

1.8 Limitation of the Study

Limitations in the course of the research could be the following stated below:

i. The cost of travelling around to find out the kind of relationships that exists between the record labels and artistes, including the kind of contracts they sign from other regions like Port-Harcourt, Abuja etc.

[6](as Amended) S. 251.
[7]Cap C28 LFN 2004 (the Act).
[8]Cap P2 LFN 2004.
[9]Cap T13 LFN 2004.
[10]CAMA 2020(the act).
[11]https://dailytrust.com/the-making-of-the-lagos-creative-entertainment-center/ accessed 12 July 2022.

ii. The main limitation to this study is the lack of prior research studies on the topic. The citing of prior research studies forms the basis of literature review and helps lay a foundation for understanding the research problem. However due to the novel nature of this research, it is a new area of research.

1.9 Operational Definition of Terms

i. **Obligations**: An act or course of action to which a person is morally or legally bound; a duty or commitment.

ii. **Right**s: A moral or legal entitlement to have or do something.

iii. **Creatives**: A person or group of people characterized by originality and expressiveness; imaginative.

iv. **Recording contract**: A legal agreement between a record label and a recording artiste (or group), where the artiste makes a record (or series of records) for the label to sell and promote.

v. **Music**: Vocal or instrumental sounds (or both) combined in such a way as to produce beauty of form, harmony, and expression of emotion

vi. **Record label**: A company that produces and sells records, CDs, and recordings.

vii. **Artiste**: A professional entertainer, especially a singer or dancer.

viii. **Offer[12]:** An offer is a statement of willingness by one party to enter into a contract and is comprised of specific and defined terms. The offer must be full, comprehensive, explicit, and open to acceptance. It must contain the essential provisions of the agreement with the premise that no further negotiations will be held. An offer can be "express" – for example if A tells B she will sell her

[12]Prof. Itse Sagay, ***'Law of Contract'***, *(Sweet and Maxwell, 2007).*

television set for N100. An offer can also be "implied" from conduct – for example when A brings goods to the supermarket cash desk.[13]

ix. **Acceptance:** When an offer is accepted, a completely binding contract is created. Acceptance signifies a complete and unequivocal agreement to all of the terms of the offer. The offer must be accepted without adding any further conditions. There is a counter-offer if all of the terms of the offer have not yet been accepted or additional terms have been added. The first offer is effectively rejected by a counter offer. But if the conditions of the counter offer are accepted, they become the conditions of the agreement.[14]

x. **An Intention to be bound by contract:** The courts will not deem an agreement to be a contract if the parties do not intend for it to be enforceable in any way. There is a presumption that the parties intend for a business agreement to be enforceable in court. A party must present convincing evidence to counter this inference.[15]

xi. **Consideration**: A party who seeks to enforce an obligation under a contract must have provided (or given up) or made a commitment in exchange for that enforcement. A contract must include consideration from each party, and if none has been given by a party, the contract may only be enforced if it is written in the form of a deed. The courts will often not be concerned with the fairness of the contract or the sufficiency of that consideration as long as the consideration offered has some value. The promise-maker must have given due attention and must have done, contributed, or promised something in

[13]Legal information institute https://www.law.cornell.edu/wex/contract accessed 15 December 2021.
[14]Ibid.
[15]Ibid.

return. For example – A cleans B's car and B gives A N500 in return. Consideration must not be past. Something that has been done, given or promised prior to the formation of the contract will not count as consideration.[16]

xii. **Capacity of parties:** An agreement may only be enforced by a court if all parties are competent to enter into contracts. To be competent, the parties must be of majority age and of sound mind and must not be disqualified from contracting by any law to which they are subject.[17]

xiii. **Free Consent:** The term "consent" means that both parties must have agreed on the same matter in the same way. Consent is insufficient to create a contract. It must also be free. . It is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation, or mistake.

xiv. **Lawful object:** The parties to an agreement must also agree on a legal transaction for the contract to be considered valid. The object must not be fraudulent or illegal or immoral or must not imply injury to the person or property of others.

xv. **Writing and Registration:** Typically, contracts can be either written or oral. However, it stipulates that in some circumstances, the agreement must be in writing or recorded in order to be legitimate.

xvi. **Certainty:** Any agreement that has a meaning that is clear or capable of being clear can be enforced; otherwise, the agreement is void. The terms of an agreement must be certain in order for it to be recognized as a binding

[16]Ibid.
[17]Ibid.

contract. This implies that it cannot be vague, ambiguous, or inadequate. If the contents of the agreement are not clear, then it cannot be recognized as a legally enforceable contract, even if there is a clear purpose to establish legal relations. Courts will occasionally make an effort to clarify ambiguous phrases by making reference to things like trade custom or prior dealings between the parties, but this will largely depend on the facts of the case.[18]

xvii. **Possibility of performance:** Along with being enforceable legally, the conditions of the agreement must also be physically enforceable.

xviii. **Not expressly declared void:** The contract must not have been specifically ruled void by the legislation. Certain kinds of contracts have been specifically declared to be invalid.

1.10 Structure

Chapter One contains the general background of the theses. It Introduces the background of the thesis, It states the Statement of Problem, Research question, Objectives of the study, Research methodology, Scope of the Study, Significance of the study, Limitations to the study, Operational definition of terms and the Structure. Chapter Two contains Literature review and theoretical framework. Chapter Three contains the Legal Framework and the nature of terms of a music recording contract. Chapter Four contains findings on notable breach of contracts by creatives in Nigeria as well as the legal protection of creatives and its impact on the Nigerian Entertainment Industry. Chapter Five provides the summary and conclusion of the research, findings, recommendations, contribution to knowledge and suggested areas for further research.

[18]Ibid.

Chapter Two

Literature Review and Theoretical Framework

2.1 Literature Review

Nigeria has a thriving popular music sector that through time has developed to represent the country's cultural diversity and has gained attention on a global scale. With a population of over 150 million, the nation has a local market sizable enough to support and guarantee the economic

success of the majority of artistic ventures; as a result, most well-known musicians tailor their music to domestic demands. This is mirrored in the use of language, where regional languages are prioritized along with the appropriation of indigenous and traditional musical genres while adhering to the usage of contemporary music production and performance technologies.

Servant J.C.,[19] based on her musical and cultural output, opined that Nigeria has once been described as '*the musical heartbeat of Africa*' while being perceived as a stronghold for African popular music. Franknel[20], in introducing Nigerian popular music in the "*Rough Guide to World Music"* asserts 'In terms of cultural output Nigeria is unrivalled in Africa, with hundreds of studios, thousands of performance venues of all sizes and countless artistes and performing groups throughout the country'. According to Falola and Heaton.[21]Modern popular music in Nigeria has strong roots in the existing traditional music practice and culture while its development and modernization has occurred through needs, contacts, foreign influence, religion, governance system, the economy as well as urbanization among other factors. These fusions illustrate how culture is dynamic and how Western ideas, beliefs, and lifestyles have been incorporated.

The urban centres (predominantly Lagos) provides an enabling environment for the conglomeration of all these factors resultant of which is the origination and conception of many popular music genres which now have become identity markers for the country. These include ; jùjú, afrobeat, fújì, gospel, reggae and hip hop among others, producing musical icons of international recognition like Fela Anikulapo-Kuti, King Sunny Ade, Osita Osadebe, Sikiru

[19]Servant, J.C. *Which way Nigeria?*" *Music under Threat: A Question of Money, Morality, Self-Censorship and Sharia*. (2003)

[20]Andrew Franknel *Rough Guide to World Music.*https://www.songlines.co.uk/the-rough-guide-to-world-music/the-rough-guide-to-world-music-nigeria accessed 11 August 2021.

[21] Falola, Toyin and Heaton, M. Michael. .'A History of Nigeria'*Cambridge University Press*[2008] (1).

Ayinde Barrister, Lagbaja! and Femi Kuti. Also the new and younger generation that has taken to hip hop genre like Fireboy, Rema, Oxlade, Ckay, Joeboy, Ayra Starr, Ruger as well as the contemporary Neo-soulartistes like Asa, Nneka and Bez among others.

However, the difference with this research work is that these authors talked about the traditional music industry, the roots of traditional music in Africa and how it has grown massively over the years while this research hopes to find a solution to the problem of lack of proper guidance, knowledge faced by artistes when a big record deal is on the table in order to ensure fairness and limit the amount of breach that we constantly hear of.

A. Harrisson[22] posits that it could be difficult for the artiste to even bring the record label close to the bargaining table.[23]It is crucial to recognize that every contractual framework benefits from the internal dynamics of the music business as a contextual backdrop. The music industry is high risk and is actually built on widespread failure, not just for the artistes but also for the investors and record labels. The great majority of commercially successful sound recordings rarely even make back their initial investment 'many are called but few are chosen'.[24]Accordingly, the percentage of musicians that are financially successful could be as low as 10% to 15%.[25]It is challenging to acquire independent verification, and it serves the industry's interests to present financial rewards as "rare" and vulnerable to market instability. The argument for a longer term of exploitation of those artistes who do generate a profit as well as a longer duration of copyright on sound recordings and other copyright protection may be advanced using a low success

[22] A. Harrison, 'Music: The Business', *Virgin Books, London*, [2005].
[23]D Passman, *All You Need to Know about the Music Business*, Penguin Books, London, [2004].
[24]*Silvertone Records v Mountfield* [1993] Entertainment and Media Law Reports 152 at 156.
[25] Hilary Rosen, President and Chief Executive Officer Recording Industry Association of America. *Statement to the Subcommittee on Courts and Intellectual Property Committee on the Judiciary US House of Representatives*, 25 May [2000].

rate.[26]The market's volatility may be one reason for the seeming difficulty in analyzing and profitably utilizing the market.[27]

> *The demand for pop records is to a high degree fickle and unpredictable, and there is virtually no 'brand loyalty' in the sense that a customer will prefer one label to another. Fashions tend to change with bewildering rapidity, and a product which is in high demand one month may suffer a catastrophic fall in demand in the next.*

This ambiguity has two outcomes. The artiste must either instantly release financially successful sound recordings or show the possibility for future financial success in order to survive. The only other choice is to convince the record company that maintaining the artistes roster would still be advantageous.[28]The uncertainty that comes with not knowing if an act will be financially lucrative has a big impact on the record company's bargaining tactics and the contractual conditions that are being offered. The company hires an artiste without knowing if their collaboration will last a long time. If artistes don't succeed, they will need to be replaced right away because the hunt for the elusive "recoupable artiste" is still going strong. The UK Competition Commission discovered in 1994 that, despite roster size fluctuations, there was a high and unpredictable rate of artiste turnover.[29]

The major labels often added and lost between 30% and 50% of their artistes each year.

For instance, Polygram had less than half of the 445 artistes under contract at any given moment throughout the years 1989 to 1992. This operational model, according to S Greenfield and G

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[26] *Sony Corp v Universal* 464 US 417 (1984), CBS v Amstrad [1988] 2 All ER 484.

[27] *Panayiotou v Sony Music Entertainment* (UK) Ltd [1994] Entertainment and Media Law Reports 229 at 348, hereafter the George Michael case.

[29] *The Supply of Recorded Music: A Report on the Supply in the UK of Pre-recorded Compact Discs, Vinyl Discs and Tapes Containing Music*[1994]The Competition Commission Cm 2599 p 94.

Osborn[30] demanding a constant supply of artistes, places record companies in a superior bargaining position with respect to the artiste, conferring upon them much greater leverage.[31]As a result, contracts frequently reflect the needs of the record business before any other party.[32]These needs must also be viewed in light of the latest technological obstacles, particularly those related to internet distribution, which could open up significant new sources of income if working procedures can be reconsidered. The contractual terms themselves may eventually be affected by these structural changes as well. Record labels have previously made some attempts to capitalize on a number of potentially profitable revenue sources outside of the basic business of sound recording, most notably with the so-called "penthouse suite" agreement of Robbie Williams. The term "penthouse suite" refers to a deal that will only be available to the most accomplished artistes. This also shows the potential for some artistes to have contractual leverage, which may already present or may develop over time. Despite this, it is still undeniably true that the record company is in a far better position than the individual musicians, particularly those who are unsigned and looking for their first contract.

According to S. Macaulay[33], this disparity in negotiating strength has a number of effects on the terms reached as well as how the negotiation process is conducted. . In any case, the recording contract is much more than just a piece of paper. A recording contract is extremely symbolic for the creative artiste in social and cultural aspects, signifying both a badge of honor and a chance at success in a cutthroat industry. It might be argued that the contract mostly functions at a

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[30] S. Greenfield and G. Osborn,'Contract and Control in the Entertainment Industry'*Dartmouth Press, Aldershot, [*1998].
[31]Ibid.
[32]D. Hesmondhalgh, 'The Cultural Industries'*Sage, London*, [2002] 169.
[33] S. Macaulay, *The Real and the Paper Deal: Empirical Pictures of Relationships, Complexity and the Urge for Transparent Simple Rules[*2003] 66 MLR 44.

symbolic level in studies that have looked at the gap between the written bargain and the actual relationship.[34]

M. Suchman thinks that the reward of receiving a recording contract serves as a signal to outsiders that the group has attained a new level in addition to serving as an internal confirmation of the "success" of going from "unsigned" to "signed."

The contract may hold less symbolism for the record label, but that doesn't mean the label doesn't appreciate how significant the occasion is—if only for the artiste—and that the occasion may in fact have ceremonial overtones.[35]The contract will be finalized once the negotiations are over; this will often be of an executory type since it relates to the creation of more sound recordings, though it may also contain some back catalogue of previous work. Contracts for recording are by nature potentially long-term agreements. However, as will be demonstrated below, the length of the contractual time will depend on a variety of variables and be determined at the record company's sole discretion.[36]

The fact that these contracts are in standard form is a significant feature. Contractual theory has long had issues with the idea of standard form contracts. The idea of free will in traditional contract theory is directly challenged in circumstances when one party can effectively impose their own standard (preferred) conditions on the other party.[37]They are a staple feature of business contracting and prevalent in the entertainment industry.[38]What is meant by the phrase 'standard form' is not so clear.

Lord Diplock in Schroeder's Case[39] classified these as being one of two types. First, those agreements that have evolved over a long period of time, or as he put it 'of very ancient origin'

[34]Ibid.
[35] M. Suchman,'The Contract as Social Artifact'*Law and Society Review[2003]* (91).
[36] Ibid.
[37]Ibid.
[38]Ibid.
[39]*Schroeder,s Case[*1974] All ER 616 at 624.

(such as bills of lading, charter parties, policies of insurance and contracts of sale in the commodity markets) and which have been evolved and been settled over this long period by a series of negotiations undertaken by relevant parties representing the various commercial interests.

> *These . . . have been widely adopted because experience has shown that they facilitate the conduct of trade . . . If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable*.[40]

Here, the use of standard form agreements has developed to speed up transactions and facilitate trade. The terms have been refined and renegotiated repeatedly to the point where everyone agrees that they are both necessary and desirable in the interests of efficiency. The second type presents more difficulties. The established precedent and presumption of fairness mentioned by Lord Diplock are absent from these contracts. They frequently occur in "newer" commercial sectors—record labels being one obvious example—and may serve to mask a lack of bargaining power.[41]However, the second type of standard form of contract does not fall under the same assumption that the terms are fair and reasonable. This is comparatively recent in its history. It results from the concentration of specific business kinds in a small number of people. The ticket cases in the 19th century provide what are probably the first examples. The terms of this kind of standard form of contract have not been the subject of negotiation between the parties to it, or approved by any organization representing the interests of the weaker party. They were established by the side whose bargaining power, whether used independently or in conjunction

[40]Ibid.
[41] Ibid.

with others providing similar goods or services, enables him to say: '*If you want these goods or services at all, these are the only terms on which they are obtainable. Take it or leave it'.*

Lord Diplock's "definition" of this supplementary type of standard form contract raises three distinct issues.

First, there are sectors of the entertainment industry where it may be argued that outside forces, such as groups that represent "the entertainer," have influenced the standard form. Examples of a framework for negotiating record contracts that gives room for outside input into the process and may help to produce more equal agreements may be seen in the sports industry. This moves these accords closer to Lord Diplock's first group in several aspects. Second, effective legal action offers a way to contest and change current contractual practice. Within the framework of the traditional contractual model, this is the most egregious violation of the sanctity of contract and exerts the most overt pressure on contract recording practice and behavior. Last but not least, it should be mentioned that we have already stated that the term "standard form contract" may be misleading, especially when used in the entertainment business.[42] What we can see is a set of common terms that evolve to deal with the same situation (obtaining the artiste's recording services) within different companies.

It is suggested that there are several reasons for this convergence. First, the subject of the contract is common. Second, changes to the common terms will evolve through the appearance of a new 'problem' which needs addressing; again this will often be universal. Third, those with greater bargaining power are able to extract concessions that then may filter down to other artistes. Finally, as noted earlier, negotiations are confined to a small group of experts.

[42]Ibid.

There will also be some room for negotiation over some terms, or even the minutiae of detail, dependent upon relative bargaining power and negotiating strength.[43] Therefore, a better terminology for our purposes might be that of the 'quasi' standard form contract—this denotes that the basic framework, or even whole terms may be common — but that some individual points may be subject to some negotiation.[44]

We have identified a number of contextual and economic factors that have a significant effect on the contractual process and the agreement. There are also a number of internal factors, including the often overwhelming desire of the artiste to sign, regardless of the terms offered. The very notion of trying to encapsulate, in paper terms, subjective ephemeral notions of 'pop stardom' is contractually problematic. A further feature that may often be present is the imbalance between the two parties in terms of negotiating experience. The type of advantage enjoyed by 'repeat players' has been subject to academic analysis.[45]

The aforementioned scholars delved into the contractual process and agreement, which is quite similar to this research in terms of issues like, the bargaining power and the urge for artistes to sign contracts without properly going through them, the imbalance in terms of supply (of artistes) and demand (for artistes) coupled with the poor commercial success rate that leaves the record company free to adopt a competitive bargaining strategy and adopt a 'take-it-or-leave-it' attitude to the negotiations, However, this research will focus more on the Nigerian problem, artistes and their approach to contractual obligations when they eventually have a taste of stardom and to tackle the take it or leave it attitude of record labels and recording contracts to ensure overall

[43] *Silvertone Records v Mountfield*(1993) Entertainment and Media Law Reports 152 at 159.
[44] Ibid.
[45] M. Galanter, 'Why the Haves Come Out Ahead: Speculations on the Limit of Legal Change' *Law and Society Review [1974]*(9)(95).

professionalism and fairness that would guarantee the further growth of the Nigerian music industry in its entirety.

Francis Ololuo[46] posits that collaborations are essential to the process of creating music.

A successful song that was entirely written, sung, and produced by one person is uncommon. The composer, singer, and producer are often the three parties with the authority to manage the copyright for a song. The writer(s), performer(s), and producer(s) are often distinct individuals.

As a result, partnerships may be described as the music's live-wire. The music industry has flourished due to the legal right to royalties for each song's collaborators. As a result, it is not unexpected to see disagreements and legal disputes between different collaborators regarding the ownership percentages, royalties to be distributed, and how the copyrighted works created via such partnerships should be used. A case in point is the ongoing argument between Blackface and 2face about who should be given the song writing credit for the song African Queen, which has received international fame.[47]Despite not receiving credit or money for the song or its performance by 2face, Blackface claims to have co-written it. It is crucial that collaborators on a song or musical project engage in specific written agreements regarding their individual rights, duties, and ownership shares in such songs or musical projects in order to avoid unpleasant conflicts like these. Every person who contributes to a song should sign the split sheet and the collaboration agreements in order to avoid later collaboration disputes that might harm their musical careers. The Nigerian Copyright Act[48]recognizes the musical work or composition and the sound recording as two separate copyrightable works in a song.[49]The copyright for the musical composition is often retained by the author(s), but the producer, songwriter, and singer

[46]Francis Ololuo *Understanding Split Sheets and Collaboration Agreements in the Music Business*https://www.mondaq.com/nigeria/copyright/984592/understanding-split-sheets-and-collaboration-agreements-in-the-music-businessaccessed 11 Augusr 2021.
[47]Ibid.
[48] C28 Laws of the Federation of Nigeria (LFN), 2004.
[49] Section 1(1) of the Copyright Act 2004.

of the song own the copyright for the sound recording. The Act also acknowledges situations when many parties have an interest in separate copyrights in a composite production, which is a production made up of two or more works, such as a song, or where multiple parties have a shared interest in all or a portion of a copyright.[50]In accordance with the Act, co-workers are referred to be co-authors and co-owners of the works' copyright.

If a piece of music has many songwriters, they would all be regarded as co-owners of the copyright on the piece. If more than one songwriter, performer, and producer contributed to the sound recording, they would be regarded as co-owners of the copyright in it. According to the Nigerian Copyright Act, co-owners of a copyrighted work may assign it to another party or grant a license to a third party, with the proceeds split equally among the co-owners absent a conflicting contractual arrangement. An action for infringement requested by a co-owner cannot proceed without the court's approval if the other rights holder is not joined as a co-plaintiff or co-defendant to the case.[51]They are each entitled to an equal part of any royalties generated by the works since they are co-owners of the copyright therein.[52]For example, in the case of a musical composition with two songwriters, each songwriter would be entitled to 50% of the royalties produced by using the copyright for the composition; in contrast, in the case of a sound recording, the royalties would be distributed equally among the songwriter, producer, and performer. It should be emphasized that this regulation is subject to a contractual agreement between these co-owners, which may provide for other provisions.

A split sheet is an agreement signed by the people who contributed to a music, outlining their individual ownership stakes in the song as well as their contact information. Its main purpose is to outline the percentage ownership stakes of each producer, composer, and performer in the

[50] Section 11 (6) (a) & (b) of the CA 2004.
[51] Section 16(2) CA 2004.
[52] Section 11(5) of the CA 2004.

song. Typically, it contains the song's title, the names of its contributors, their contact information (phone, email, publisher, dates, roles played, and contributions to the song), and their bios.[53]

When defining who owns what and who receives what, split sheets are very crucial. It simplifies the computations and distribution of royalties. Since it acts as some kind of proof of copyright ownership, it also ends any potential disputes.[54]Split sheets make sure that everyone who participated to the creative process is properly acknowledged and compensated for their efforts.[55] The regulations for distributing the ownership percentages are negotiated among the people who contribute to a song, thus they are not rigid. Ownership percentages are mostly based on the collaborators' agreement. The parties can agree on a percentage share depending on the time or cost of the contributions, or both. However, the overall proportion of ownership should not be greater than 100%.The collaboration agreement has a broader scope than a split sheet, which primarily specifies the ownership percentages of the collaborators of a song.It is a more thorough agreement between the music's collaborators and specifically outlines the conditions under which they intend to be held liable for the song. The contract outlines the collaborators' duties and rights with regard to the song. It contains language that relates to the numerous ways the music may be used for profit. It names the people who should receive credit for their contributions to the song. Furthermore, it specifies conditions regarding copyright ownership, licenses, collaboration length, song exploitation and administrative rights, costs associated with making a sound recording, royalties, ownership and control of Masters, and the procedure to be used in the event of a dispute among the collaborators. In the case that one co-owner (or their

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[54] Frances Katz, *Understanding Split Sheets and Lyric Sheets* (24th April, 2018) available on https://blog.songtrust.com/understanding-split-sheets-and-lyric-sheets accessed on 7th August, 2021.

[55] Rory PQ, "Everything You Need to Know About a Split Sheet"https://iconcollective.edu/songwriter-split-sheet/ accessed on 7th August, 2021.

publisher) licenses the work, a collaboration agreement stipulates how each co-owner should be compensated. It may also prohibit certain co-owners from licensing the work at all or set restrictions under which they may do so.[56]

It is advisable that song collaborators sign split sheets and/or collaboration agreements early in the song's creation process or as soon as it is finished, however there is no hard and fast rule about when to do so. Regardless of these two proposed alternatives, it is imperative to arrange these contracts before the music is released and starts to bring in royalties. Copies of these agreements should be distributed to the collaborators for record-keeping when they have been completed and signed. Music transcends the creative process. Additionally, the business is incredibly lucrative and able to provide royalties to the owners and their heirs for many years. Creatives frequently find the business side of the music industry boring or monotonous, but it is crucial that they recognize the commercial worth and financial potential that come with their music and that they take the music industry seriously.

As a result of the participants' failure to express their conditions and ownership holdings in a song properly, scandalous conflicts may develop that might be extremely detrimental to their rights to royalties and, eventually, their music careers. It's crucial for collaborators to sit down, discuss, and formalize ownership and royalty shares in writing in addition to becoming enthusiastic and enjoying the creative process of producing music. Additionally, it is essential to hire a lawyer to create and execute these agreements, ideally an entertainment lawyer. Split sheets and partnership agreements not only stop current problems but also foster respect among creatives.

[56] Dae Bogan, *Understanding The Difference Between a Split Sheet and Collaboration Agreement and Why You Should Have Both For Every Song Collaboration*https://www.tuneregistry.com/topic/industry-insightsaccessed on 7th August, 2021.

In comparison to my work, the scholars aforestated dealt more with understanding of split sheets and collaborative agreements as well as the Copyright provisions and entitlements of every contributor to the music which is quite similar to this work in areas of right of third parties in music recording contracts thereby ensuring the inclusion of split sheets to ensure that everyone that is involved in the music process is entitled to a dividend for the hard work and dedication put into it like the producers, composers, promoters. With each collaborator's legal right to royalties for their contributions to a song, the music industry has grown extremely rich, hence the need for collaborative agreements and split sheets. This research will further go deeper into the possibility of split-sheet like agreements added to the major music recording contracts in other to avoid a clash or conflict of contracts.

2.2 Theoretical Framework

2.2.1 Recording Contracts and Classical Contract Theory

The development of contract law at this time is described by classical contract law theory, which has its origins in the dominant natural law and laissez-faire economic theories of the 18th and 19th centuries.[57]The classic era of contract law in England is seen as spanning from the late 18th century to the later half of the 19th century. It was a moment of significant doctrinal advancements in substantive law that mirrored the "new" political ideologies and shifting financial landscape.[58]A legal concept that the law should not interfere with private agreements was a manifestation of the general laissez faire mentality. A focus on the parties' wishes prevailed over notions of objective fairness or justice. Only when one party was left unaided by the other's breach of the contract did the law enter the contractual realm. The principles of

[57] P. Atiyah,'The Rise and Fall of Freedom of Contract' *Clarendon Press, Oxford*, [1979]. Also, P.Atiyah, 'An Introduction to the Law of Contract' *Clarendon Press, Oxford,*[1995] (5). 'The Fundamentals of Classical Contract Law'P. Atiyah, [1979] 402–3.
[58]Ibid.

voluntariness, trade, free enterprise, and equal bargaining power served as the foundation for this contract law, which supported free will and protected the private agreement form (contract sanctity).In essence, this is contract law meant to support a free market economy.[59]The guiding principles of this traditional approach can thus be reduced to the idea of subjective free negotiation devoid of obligation, unjustified coercion, or deception.

Risks and duties are divided between the parties through agreement, and a breach of contract makes the offending party liable for damages. In essence, what we observe is the application of the preeminent political and economic theory to the law and the negotiation table. There is an emerging distinctive theoretical approach that calls for limited judicial action. Atiyah argues that within this framework the function of the courts is as: "*…the umpire to be appealed to when a foul is alleged but the Court has no substantive function beyond this"*.[60]He points out three factors, nevertheless, that limited the courts' ability to take a "hands off" stance. First, notwithstanding the theoretical perspective of actor autonomy, some judges may still be drawn to the concept of administering objective justice. Second, sometimes older ideas from an earlier theoretical age might still be used. Third, there was an increase in legislative involvement during this time.[61]The important function of "will" theory and the move from reliance to promises were crucial components of this development.

Applying the broad principles of this classical theory to recording contracts we would find the following. The parties would negotiate on equal terms according to their positioning in the market, despite their obvious inequality in terms of knowledge and leverage. This latter 'inequality' would not be a relevant consideration to justify any later attempt to nullify the agreement unless the inequality crosses the line into undue influence or duress. An initial offer

[59] L Mulcahy and J Tillotson, 'Contract Law in Perspective', *Cavendish, London*, [2004] (4) (304).
[60]Ibid.
[61]Ibid.

would be made by the record company, which might be followed by a series of counter-offers and amendments as part of the process of negotiation.

Eventually, when both parties are happy with the terms and consensus is reached, the contract is concluded. At any point up prior to the conclusion of the contract, either party is free to reject the offer and walk away from the negotiations. However, once the agreement has been reached and the contract has been signed, the parties would be bound by the terms of the contract. In addition, a classical contract reading would hold that all the terms are decided at the point the contract is concluded, including terms designed to respond to future contingencies.

The obvious places where classical theory falls short in explaining either the negotiation process or the final contractual arrangements have been noted. A logical place to begin negotiations is the overall imbalance that exists between the parties when they sit down to talk. According to traditional contract theory, inequality is a market issue rather than a legal one. As Atiyah argues: *If there is free competition in the market, mere size or skill should not in any case confer an undue advantage, since the forces of competition will ensure fairness in terms and prices*.[62]

The music business works against this balance because of its concentration in a small number of massive firms and the uniformity of the conditions offered:[63]

> *. . . in recent years, the negotiations of recording agreements tends to be concentrated in the hands of a small group of professionals who have become experts in this field . . . These professionals may act for record companies and for artistes, and the expertise and experience which they gain in the process is undoubtedly a factor tending towards similarity between the forms of contract negotiated with different record companies.*

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[62]Ibid.

[63] George Michael 'Understanding Commercial Music Contracts'*Entertainment and Media Law Reports* [1994](229)(350).

A better explanation of the deficiencies of classical contract theory is more complicated and diverse. First, there are relatively few players so common terms can be rapidly homogenized. It is not unknown for lawyers to act for artistes and record companies in different transactions, thus building up a bank of knowledge from competing perspectives. Aside from the limited number of personnel involved, there are a number of examples of contractual terms that have persisted even when no longer technically relevant. For example, deductions from royalties because of breakages (a term from the time when sound recordings were made from the more fragile shellac, or shellac compound) is a term that has persisted in contracts long after shellac was no longer used. The most often expressed maxim of will theory may be found in the phrase 'consensus ad idem'. However, here we see the lack of any real negotiation as a result of the imbalance in bargaining power, the use of standard form agreements, and the desire of the artiste to sign regardless of the terms on offer.

All these hint to an extremely flimsy idea of agreement.[64]

The contract is one-sided, yet the artiste 'agrees' to it anyhow; the only agreement reached is the signature of the document, regardless of what it says. Additionally, contracts that provide record companies the ability to keep, but more critically, terminate the contracts of artistes whose work is not economically successful are required by the current economic climate. This is accomplished by a lengthy contract that is, however, constrained by option periods that are exercisable at the company's discretion. The outcome is a potentially extremely long contract that is also filled with uncertainty and nothing in the way of positive duty on the company. The contractual option periods are tied to the delivery of the minimum commitment.[65]

[64]Ibid.
[65]Ibid.

When the future viability of the contract depends on so many unknowable and unforeseeable events that are outside the control of the artiste, it is challenging to claim that there can be any true agreement.

2.2.2 Recording Contracts and Neoclassical Contractual Theory

Aside from the specific points of criticism above, a classical contract analysis can be subject to more general objections. First and foremost, as Feinman asserted,

> . . . *the more classical contract law was placed in context, the less sense it made*."[66] Further, as Campbell and Harris note, "*a very substantial body of empirical and theoretical literature now exists which purports to show that the explanation of long term contracts by means of the classical law of contract is most problematic*.[67]

Fundamentally, such an analysis would be an abstraction-based exercise without consideration of context; it would not take into account things like the viewpoints of the parties or the agreement's subject matter.[68]Although remedies for breaches are emphasized in traditional contract theory, resort to remedies is uncommon outside of extraordinary circumstances in long-term contracting settings. If using remedies is uncommon, the contract's form is less significant and deals a blow to any attempt to map this territory using traditional contract theory. [69]Similar to this, classical contract theory fails to explain how the connection gets translated into paper form and even the purpose of the contract when the parties do not consider it as the focal point of their relationship. This is especially true when the contract is nearly viewed as incidental and the parties are willing to ignore rights under the contract or the finer points of the agreement.[70]

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[66]Ibid
[67]Ibid
[68] S. Macaulay, *The Real and the Paper Deal: Empirical Pictures of Relationships, Complexity and the Urge for Transparent Simple Rules[*2003] 66 MLR, n 22, at 48.
[69] Ibid..
[70]Steve Greenfield and Guy Osborn. Understanding Commercial MusicContracts: the Place of Contractual Theory.[2007] (vol23) (316).

This non-use of contracts turns on a rejection of the classical understanding of contract as a form of economic allocative mechanism. The classical law of contracts centrally turns on the goal of presentation, the goal of making a present decision about all including future aspects of a contractual relationship.

Long-term contractual relationships have to reject the goal of presentation which is at the heart of classical contract theory. An appreciation of the failings of the classical model to understand the intricacies of recording contracts necessitates a consideration of contextual frameworks. Long-term relationships are undoubtedly more open to a contextual analysis. As Campbell and Harris argue, the long-term contract cannot easily deal with the issue of presentation, and those wanting to utilize long-term contracts adopt instead an open-ended and undefined approach that

> *. . . awaits the circumstances to arise which will allow such definition. This is cooperation within the market which is analogous to the cooperation organized within the firm*.[71]

The adoption of neoclassical contractual procedures has, to some extent, solved the legal issues caused by adherence to rigorous classical philosophy. The existing framework of the classical model is adopted by neoclassical contractual theory and its ensuing legal application, but some of the harshness is mitigated by the use of a more equitable method, expanding the previous hegemony without shattering it. It successfully acknowledges that a classical approach falls short of fully capturing the core of contractual interactions in all circumstances and demonstrates the possibility of the need for equitable intervention. Neoclassical theory, however, overcomes the flaws in the classical model without presenting a new understanding of contract law. [72]

Neoclassical contract law is a helpful name for contemporary contract law. This phrase accurately places present-day contract law in its historical setting. The attempt to adapt classical

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[71]Ibid.
[72]Ibid

contract law and subsequent criticisms of it gave rise to neoclassical contract, which is its primary characteristic. The term "neoclassical" refers to the partial character of the accommodation, showing that the neoclassical contract has not completely strayed from classical law.

On first glance, a neoclassical theory of recording contract creation could resemble the traditional contract model. The difference would arise in the case of a breach; if the artiste decides to do nothing, the contract will still remain in effect, no matter how unfair or onerous its provisions may be. The neoclassical method, however, can be applicable when the artiste tries to break away from the agreement. Whilst the classical approach should hold that the contract is immune from challenge beyond very narrow exceptions, there are a number of key doctrines that have developed to alter the harsh effects of contract law based on classical contract theory. We can see, for example, how within the music industry, the doctrine of restraint of trade and, to a lesser extent, undue influence, have been developed and applied to form part of a neoclassical regime that allows contractual escape. The doctrine of restraint of trade is an interesting concept as a contract that acts in restraint of trade seems to attack the very concept of free trade. If through a lawful contract trade can be restricted, this seems an anathema to the political free trade concept on which classical contract theory is built. Courts were originally wary about contracts that sought to restrict trade, particularly those of a general nature. The idea that some trade-restricting contracts, such as those relating to the sale of firms and post-contractual prohibitions, might ultimately be advantageous as a safeguard for legitimate interests was gradually recognized by courts.

The entertainment industry is an area where it has found consistent application as the doctrine has been seen to embrace music publishing agreements, management contracts (both sporting

and musical), recording contracts, player contracts and Governing Body sanctions.[73] Decisions after Esso Petroleum Co Ltd v. Harper's Garage (Stourport) Ltd seemed to have been flowing in favour of the artistes, although the most recent decision, admittedly that of a court of first instance, bucked this trend. Courts have demonstrated a willingness to examine the agreements' terms and determine whether they are reasonable in light of the parties' interests and larger public policy considerations.[74]There are two linked themes that may be seen in the methods used in the case law. One is to limit the examination of the situation to a study of the phrases and an assessment of the level of constraint they generate.

This is a more focused strategy that could be seen as either a neoclassical attempt to soften the strictness of traditional contractual theory application or even a restatement of traditional contractual theory using restraint of trade as an established exception to the sanctity of contract that traditional contractual theory demands. The more comprehensive strategy, which is more accurately assessed as neoclassical, is that used by Lord Diplock in Schroeder, as discussed above. These methods have previously been classified as being primarily concerned with either the process (Lord Diplock) or the outcome (Lord Reid).[75] Unless one concludes that an unfair procedure may nonetheless result in fair terms, whether the focus is largely on terms or the framework of negotiating may not matter. However, the context (internal and external to the negotiation) is essential to comprehending the contractual ties for a number of reasons that we have mentioned. This emphasis on using context to understand negotiating behavior and

[73]S Greenfield and G Osborn, *'Complete Control? Judicial andPractical Approaches to the Negotiation of Commercial Music Contracts'* (1996) 24International Journal of the Sociology of Law 89.

[74] S. Greenfield and G Osborn, *Unconscionability and Contract: the Creeping Shoots of Bundy* (1992) 65.
[75]Ibid.

contractual results suggests that using relational contract theory to recording contracts might be fruitful, a theory Feinman has described as 'contextual with a vengeance'.[76]

2.2.3 The Possibilities of Relational Contractual Theory

The promise of relational contract theory may have been underutilized in the past, frequently because it was accommodated inside conventional thinking rather than being used as a challenge to the orthodoxy. As Feinman explains, "rather than being viewed as a fundamental challenge to neoclassical law, relational contract has been described in terms of scope method and substance that allow it to be comfortably accommodated within the mainstream." Relational theory can be used as a vehicle to provide insights into contractual behavior but from a resolutely neoclassical perspective.[77] All contracts are borne out of some sort of social relation and are based around relational patterns.[78] However, there are contracts that he labels 'as if discrete'. In contradistinction, relational contracts are incremental and unable to be fully articulated at the beginning of the contractual relationship.

According to neoclassical philosophy, some of the issues that badly negotiated recording contracts manifest can be resolved by incorporating the broader principles of restraint of commerce and undue influence into legal practice.

However, this does not address the underlying issues that such agreements typically result in.

Individual contracts that are litigated in court are viewed as minor deviations from the accepted norm. Apart from a very simple unilateral change to some of the terms to adjust the balance of reasonableness and perhaps allow an attempt at "judge proofing" future agreements, neither classical nor neoclassical contract theory can explain how such flawed contracts come into

[76]J Feinman *'Relational Theory inContext'* (2000) 94 Northwestern University Law Review 737.

[77]Ibid.
[78]Ibid.

existence or provide any guidance on how they might be avoided in the future. Some music publishing contracts made after Schroeder serve as an illustration of how contractual standards have changed.

The absence of any requirement to exploit the work in conjunction with unlimited ownership of the copyright was one of the sections that the House of Lords found objectionable.

The industry's response to the Schroeder ruling, which sided with the artistes, was to strive to conform their contracts to the guidelines provided by Schroeder and to make them "judge-proof."A music publisher's obligation to exploit is currently quite common, although a transfer of the copyright for the entire period is less typical. By limiting any analysis of context to within the pre-existing theoretical and legal boundaries, classical contract theory, in fact, makes it impossible to consider why and how these contracts came to be and why they are problematic. As a result, we are unable to properly understand and explain contractual behavior. The query is whether any other strategy presents a chance to offer understanding of this behavior. Considering if relational contract theory may provide any specific assistance can serve as a starting point for an explanation of other approaches.[79]Determine the nature of relational agreements and if recording contracts fall under this category is the first step in our intervention.

According to Stewart Macaulay, these agreements.[80]

> *Relational contracts, typically, are not specific and precise allocations of risk. They involve complex transactions, and often it is hard to determine when they begin and are to end. They are agreements to cooperate to achieve mutually desired goals.*

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[79]David Campbell 'Good Faith and Ubiquity of the Relational Contract'*the modern law review [2014] (77)(3).*
[80]S. Macaulay, 'Freedom From Contract: Solutions in Search of a Problem?' *Wisconsin L aw Review* [2004] (777)(801).

The recording industry provides a suitable setting for testing the limits and application of this idea, as recording contracts seem to exhibit many of the features of "relationality" that Macneil identifies. They appear to be complex transactions, although at the heart of each agreement is a rather straightforward goal: to provide paid exclusive recording services. However, factors like upcoming technology advancements generate "new" circumstances that the contract will attempt to prevent. This leads to a degree of complexity reflected in both the length and breadth of recording contracts whose precise details are uncertain at the time the contract is signed; they are vague and non-specific and may (ultimately) be built around the concept of a longer-term relationship.[81]The contract, to use Macneil's terminology, is an incremental entity that could change and becoming more complicated as the relationship progresses. To clarify the difference in ethos, Macaulay gives two excellent parallels that he credits to Macneil[82]

> *... classic contract law assumes a light switch. A light is either on or off; the parties have agreed to a contract or they haven't. Often however, in a long term continuing relationship, the situation resembles a rheostat. As more and more power is sent to the bulb, we get more and more light. It is hard to say when the light has been turned on. On and off are not useful terms. Similarly, in a relational contract often it is hard to say when the contract is formed. Moreover, it is not likely to be formed once and for all. Rather than a scene frozen in a still photograph, a relational contract is more like an ongoing motion picture.*

It is unclear if a recording contract demonstrates traits of one kind of partnership, or, curiously enough, both. The agreement appears to be more like the rheostat at one time but may actually be more like the light switch in the previous illustration.

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[81] . George Michael's Case [1994] *Entertainment and Media Law Reports* 229 at 355–6.
[82] S Macaulay,'Relational Contracts Floating on a Sea of Custom? Thoughts about the Ideas of Ian Macneil and Lisa Bernstein'*Northwestern University Law Review*[2000](94).

Before offering the contract, the record label will have learned information about the artistes through A&R and other talent scouts, and even during the first few months of the contract, we may observe the rheostat in action. Even at this early stage, the record business might spend time and money on the connection. If the parties work together and the option is exercised, the light will shine more brilliantly when the original term is over and the company decides to consider exercising the option periods. Alternately, the light could be put out. A record contract would seem to be extensively relational, at least based on the way it represents longevity. The record label expects that it will be a long-lasting partnership since it will be a sign of business success.

It should be viewed first as a relationship rather than just a business deal. The parties' relationship should be close and cooperative during the initial signing of the contract, which injects funds to finance the production and distribution of the sound recording. The contract will, however, have a number of options that can only be exercised at the company's request that authorizes termination. As a result, we have a concrete illustration of a relational contract with a get-out clause for the party with greater negotiating leverage: "sometimes the party with greater power wants a relationship based on trust and cooperation but also wants to reserve the power to hold the other to the letters of a written document which is to its advantage."[83]

While the artiste is profitable and the contract is in effect, it makes commercial sense to take a flexible and cooperative stance by, for instance, displaying a readiness to engage in re-negotiations.The provisions of the contract will be adhered to until the stronger party no longer sees the benefit of such an approach, usually because the partnership is about to come to an end commercially.[84]We might anticipate that negotiations in the recording industry will follow the following pattern from a relational perspective.

[83]Ibid.
[84]Ibid.

The record label extends a contract offer to the musician it wants to sign up for its roster.

The artiste seeks advice from a lawyer or other counselor, who suggests that the terms proposed are unfair and might limit the artiste's ability to practice his or her craft. The lawyer offers two options: rejecting the deal entirely or suggesting some changes. Due to neoclassical attacks on the idea of contract sanctity and what business standards allow, the recording company will want to make sure that their contracts are enforceable. This is accomplished by ensuring the acquisition of specialized, impartial legal counsel.

Additionally, in order to make the agreement completely "judge-proof," the record company makes an effort to confirm that a deal has been reached, with concrete evidence of negotiation, and that the terms ultimately agreed upon fall within the broad parameters of acceptability, as delineated by the legal cases that have framed the area. However, this is not possible due to the industry's environment and culture. If the artiste is not in high demand at the time of signing, the firm is not required to cooperate. It simply needs a few precautions during the negotiation process to feel certain that the contract is "secure" from legal challenge. It can give a take it or leave it option. The justification for this strategy is the knowledge of a likely commercial failure. There is nothing to keep because the relationship is very certainly going to end quickly.

The artiste is also unlikely to outright reject any proposal, so the business can offer a rigorous "take it or leave it" contract with the confidence that, with only minor discussion and adjustment, the artistes will enthusiastically accept it. The model provided by Palay, which arguably offers a potential solution to the challenge for documenting contracts, might be used here as an alternate strategy. Palay says that parties anticipating deep relationships do not give the terms of the arrangement much thought.[85]Record labels may now anticipate relational ties, thus adopting a relational strategy early on is in their best interests.

[85] T. Palay, 'A Contract Does not a Contract Make' *Wisconsin Law Review* [1985] 561.

In fact, Palay argues, when the situation genuinely calls for a "marriage," thorough contract negotiation may instead indicate mistrust. Again, the record business may support this. Recent changes in the music business as a whole, such as a move toward more transparency in some contracts, can be broadly characterized as relational. For instance, several record companies have recently tried to streamline contracts and make them more visible, especially when it comes to complicated royalties rules, to avoid having time bombs in the contract that go off when it's time for review.[86]In the past, this has been one of the key reasons for legal action, and when a contract doesn't appear to do what it says it will, money is frequently the factor that leads to a breakup. Similar to this, the recording industry's independent sector's methods support the idea that typical contracting methods are inappropriate for the cultural sector:[87]

> *At various independent record companies associated with punk in the late 1970s and 1980s, new ways of dealing with artistes were developed which challenged the standard arrangements in the music industry. Deals with musicians were often on a 50–50 basis, rather than the single figure percentage royalty rates usual at the time.Long-term contracts were rejected in favour of deals based on personal trust. The aim of such deals was to be as 'musician-centred' as possible. Contracts were avoided on the grounds that the standard contracts were loaded in favour of companies and that if the personal trust between musicians and companies broke down, there was no point in pursuing the relationships anyway.*

[86] S Greenfield and G Osborn, 'Spirits in the Material World. Musicians, Lawyers and the Scope and Legal Enforceability of Music Contractsin' *The Yearbook of Copyright and Media Law*, E Barendt, A Firth, S Bate, T Gibbons, J Palca and (eds), Sweet and Maxwell, London, [1999],149 at 171–4.
[87]Ibid.

Cooperation is typically regarded as vital in relation to relational contract theory, which is crucial here. With recording contracts, we face the peculiar paradox that, while cooperation is essential to sustaining a long-term relationship, it is unlikely that the stronger party will be aware of their desire for a long-term relationship at the time the agreement enters into force given their disparate bargaining power and positions.

This is a crucial difference between this and other long-term bargaining research since it emphasizes the explicit significance of collaboration in this paradigm. There are a few significant aspects of documenting contracts that highlight the challenges in determining the function and applicability of contractual theory. It's crucial to consider how long the relationship might last, whether that's the case or not. The partnership is likely to be brief with contracts designed to provide the corporation flexibility to terminate because the vast majority of groups are commercially unsuccessful. The technicalities of the contract, however, lose significance if it turns out that the band is commercially viable because the company will want to keep them around no matter what. For a variety of reasons, the organization will wish to take a cooperative approach. For instance, the business must maintain both contractual authority over the band and its artistic productivity. To achieve performance, the artiste must be kept "happy," but perhaps not entirely financially secure. Additionally, the artiste is less likely to produce work of a sufficient caliber if they are fighting over the contract's provisions. While the company often offers little during the initial discussions, a bargaining "about-turn" may occur once the negotiations are successful.

At this moment, the paper contract and its provisions are no longer relevant, and with them, traditional contract theory. Due to the endemic contextual elements that are active at the beginning of the discussion that we have identified, the initial contract will typically be quite

one-sided. This presents the risk that the contract may be declared unenforceable by a court, which would provide the artiste the freedom to freely pursue new business opportunities from a position of tremendous power, while it also entails certain dangers for the party relying on the contract.

Furthermore, there is no guarantee that a new contract will be significantly better than a renegotiated arrangement with the original company given the uniformity of conditions.

However, a renegotiating artiste is not in the same position as one who is not constrained by pre-existing contractual obligations. As Parker J observed:[88]

> *In a renegotiation an artiste cannot expect to be treated in exactly the same way as he would be if he were negotiating on the open market free from any contractual ties.There is bound to be a degree of discount to reflect the fact that the artiste is already bound by an existing recording agreement. What form that discount will take, and how great it will be, will depend on the circumstances of the particular renegotiation.*

The original company, however, cannot afford to take the chance that the artiste would leave or refuse to perform just when financial benefits are beginning to materialize. Therefore, depending solely on the written agreement at the expense of a mutually beneficial partnership may be exceedingly fruitless.[89]Additionally, the original reasonableness in compensation allows for the unavoidable renegotiation; this is a part of the culture of the sector. This disproves the traditional contractual approach, which prioritizes appearance. To keep the connection going, the label

[88] George Michael's Case [1994] *Entertainment and Media Law Reports* 229 at 351.
[89] Ibid.

consents to pay the artiste more. Of course, it is not fully altruistic because the business can also extend the contract by including further option periods or demanding other favorable clauses.

This illustrates an odd phenomenon: the more popular the artiste becomes, a built-in mechanism in these contracts may limit them (in terms of duration if not in terms of compensation). Renegotiation is a crucial step in ensuring the term's duration while also increasing the artiste's financial terms. Finally, cooperation is "forced" by the contracts' very terms and the dominant legal philosophy.

A contract for personal services is mostly unenforceable if an order for particular performance cannot be obtained.[90]Given that there is no way to enforce a direct legal penalty, the contract can only be fulfilled voluntarily. However, because income is derived from sales, the company will not realize its investment in the absence of any goods and risks the danger that, by the time any disagreements have been settled, the market's volatile nature has destroyed its position and any prospective profit. All of these elements work together to change the initial context for negotiation at the time of signing.

The artiste is now raised to the status of one of the "successful few," entering a new world of cooperative living. In reality, the paper contract is now largely symbolic in nature and simply needs to be regularly taken down from the shelf, dusted off, and the conditions amicably renegotiated.[91]The absence of contractual enforcement and its significance will only be felt if the partnership is still standing.

Additionally, it exposes the flaws in traditional contract law. Because the first "meeting of minds" was not contextually examined, it is assumed that the contract is valid and enforceable and that damages are a useful remedy. The absence or breakdown of the relationship causes

[90]Ibid.
[91]Ibid

attention to be placed on tainting elements that enable judicial correction of an obviously unfair situation. It is evident that relational theory can provide a relevant explanation provided there is something to grow, such as in a partnership for the exploitation of commercial skill. The connection could be destroyed by relying too heavily on the written terms, which is an interesting possibility.

In addition to providing an explanation, relational theory also offers a different approach to bargaining from the outset: one that depends on trust rather than a contractual grip over the artiste.. As Macaulay notes:[92]

> *. . the album notes to Ella Fitzgerald sings the Duke Ellington Song Book say: 'Ella and [Norman] Granz have become close friends; on the basis of a handshake and nocontract, he has been her personal manager for the last couple of years and has gradually steered her into the country's deluxe night clubs . . . '. I cannot imagine that when they shook hands Ella and Norman would even think about the transaction breaking down, and, as a result, they would not spend any time thinking about whether they wanted to have legal rights. Suppose that we could force Ella at the point of the handshake to consider whether she wanted to be able to sue Norman if something had happened. She might well say that she did not need a contract because she trusted Norman and a contract implied distrust. Often there are ways of achieving the relational bond and getting a document signed too.*

[92] S. Macaulay, 'Freedom From Contract: Solutions in Search of a Problem?' *Wisconsin L aw Review* [2004] (777)(801).

We now have a method that is miles apart from any rendition of the facts required by traditional contract law or any variation of it.

An arrangement that had previously functioned pretty well could be avoided by citing the need for clarity and a lack of form. Relational theory would help us comprehend the nature and scope of such an agreement, as well as why it came into effect. The mismatch between celebrity fantasies and economic reality and the imbalance between supply and demand, however, motivate record corporations to put off maintaining a relational attitude toward their contractual agreements until the fear of contractual failure has diminished. In fact, it's possible that the question that should be posed is whether the contract itself has a role at all if a meaningful relationship is to be created, rather than where contractual theory fits in.[93]

[93]Ibid.

Chapter Three

3.0 Legal Framework and the Nature of Terms of a Music Recording Contract

3.1 Laws Governing Entertainment Industry in Nigeria

Although Nigeria lacks a well-developed entertainment legislation, the industry is supported by other laws. These laws fall under the category of intellectual property law, and the terms "Entertainment Law" and "Intellectual Property" are commonly used interchangeably. However, the area of entertainment law that deals with intellectual property is minuscule. Nigeria lacks a robust legislative framework to support the entertainment sector despite its broad extent and favorable socioeconomic effects. Intellectual property laws are used since there are few legal and regulatory structures. These laws are:

1. ***Copyrights Act***[94]– The Copyrights Act covers the copyright in literary works, cinematography films, sound recordings, broadcast, and other ancillary concerns. It also covers its transfer, infringement, remedy, and penalty.

2. ***Patent and Design Act***[95]– The Patent and Design Act includes several provisions for the registration and administration of patents and designs. A patent in Nigeria is valid for twenty (20) years after the patent application is submitted. If the requisite annual fee is not paid within the specified time period and is still unpaid after the commission's grace period of six months, the patent will expire. Examples of interests that can be patented include novel business processes, computer software, games, advancements on the internet, perfumes, and magic acts.[96]

[94]Cap C28 LFN 2004 (the Act).
[95]Cap P2 LFN 2004.
[96]https://www.upcounsel.com/what-can-be-patented accessed 12 May 2022.

3. ***Trade Marks Act***[97]– The Trade Marks Act regulates and protects the registered trademarks' brand identities. In Nigeria, a trademark is originally valid for a term of seven years and is perpetually renewed for an additional fourteen years.

4. ***Companies and Allied Matters Act***[98]– The Corporate Affairs Commission is the regulatory agency in charge of company establishment, incorporated trustees, business name registration, and other Act-mandated operations. It was founded under the Companies and Allied Matters Act. The entertainment industry's commercial operations are primarily governed by this legislation. The record label, production, promotion, or management entities that are frequently used to sign artistes in the entertainment industry are typically corporations with legal personality that are subject to the requirements of the Companies and Allied Matters Act, including the ability to form a company, filing of returns, and other necessary compliance.

5. ***Companies Income Tax Act***[99]– The administration of corporate income tax, which is applied to businesses, is governed by the Company Income Tax Act. The Act specifies the current tax rate that a corporation in Nigeria must pay. Profits made in, derived from, imported into, or received in Nigeria are subject to this tax. Companies in the entertainment sector, including record labels and movie producers, are incorporated and so entitled to pay corporate income tax; failure to do so results in a penalty.

6. ***Personal Income Tax Act***[100]– Personal income tax administration is governed by the Personal Income Tax Act. Every participant in the entertainment industry is subject to income tax. Every individual involved in the entertainment business, including artistes, authors, and inventors of works, is required to pay personal income taxes; failure to do so results in a penalty.

[97]Cap T13 LFN 2004.
[98]CAMA 2020(the act).
[99]Cap C21 LFN 2004(as amended).
[100]Cap P8 LFN 2004.

3.1.2 Categories of Entertainment and Issues Affecting Them

Any company that adds value by giving customers something entertaining to do, listen to, or watch is considered to be in the entertainment industry. The phrase refers to experiences that are packaged for mass consumption and are vivid and exhilarating. Different facets of the entertainment business have their own own laws, rules and regulations, agreements, and other things. All of the legal difficulties and challenges that performers most frequently encounter are under the purview of entertainment law.

Several of these concerns and problems as they pertain to particular industries are;

1. ***Film*** – Includes contracts with artistes, labour negotiations with various union crews and employees, financial backing arrangements, distribution agreements, equipment and space rental, production liability issues, merchandising and product placement and copyright and trademark issues.

2. ***Theatre*** – Includes contracts with artistes and crew, rental and co-production agreements, producer agreements, production liability issues, ticket sale agreements, copyright and trademark issues.

3. ***Music*** – Includes contracts with record labels, managers, agents, concert promoters and concert producers; tour crew agreements and equipment rentals; recording studio rentals, music licensing and royalty agreements and copyright issues.

4. ***Digital*** – These expenses cover rent for the building and its equipment, staff contracts, talent contracts, music and picture usage agreements, licensing contracts, and copyright concerns.

5. ***Television and Radio*** – Includes contract with artiste and crew, production studio and network agreements, distribution agreements, broadcasting licensing and regulatory issues.

6. ***Publishing*** – Includes production contracts, author agreements, advertising and marketing agreements and copyright and trademark issues.

7. ***Multimedia*** – Theis includes software licensing issues, video game development and production, information technology law and general intellectual property issues.[101]

8. ***Internet*** – Includes censorship, copyright, freedom of information, information technology, privacy and telecommunications issues.

9. ***Visual Arts and Design*** – This range from fine arts to industrial design, including issues relating to the preservation of graphic design components in products, consignment of artworks to art dealers, and the moral rights of sculptors with relation to works in public spaces.[102]

3.1.3 Scope of Entertainment Law

Who is an Entertainment Lawyer? Let's look at it from this perspective, there are general doctors and specialist doctors. General Doctors cannot perform surgical operations while specialized doctors(surgeons) can. Also, if a lady goes to a doctor and the issues discovered are significantly related to her reproductive health, she is referred to a gynecologist. This is not because the doctor does not have a working knowledge of what to administer, but because the specialist has superior knowledge and that is their area of specialization. Same goes for a man with eye problem would be referred to an optician who is an expert in treatment of eyes and if a child, Pediatricians are experts in child treatment.

While lawyers have general knowledge of the issues, entertainment lawyers are the specialists in the field that can treat the issues more effectively and efficiently and it is advised they are contacted to handle all issues in the Entertainment Industry for higher success rate.

[101]Ibid.
[102]Ibid.

Only specialists can effectively and efficiently tackle the health issues discovered more than the general doctors. Same thing goes for lawyers and entertainment lawyers are specialists in intellectual property law, labour and commercial law which makes them specialists in tackling issues in the Entertainment Industry like Music Recording Contracts, rights and protection of creatives among other things.

3.1.4 Contract Law in Entertainment Law[103]

Music producers and other professionals in the entertainment sector are required to abide by the contractual legal requirements that regulate their trade. The rules and legal customs that apply to the entertainment sector are distinct and encompass the most extensive facets of the protection of intellectual property rights. The entertainment sector's economics is incredibly erratic and volatile. The unpredictability is increased by the ongoing formation, reformation, merger, and frequently dissolution of entertainment enterprises. Consumer tastes are a variable that may either propel certain artistic works and artistes to the pinnacle of success or cast them into the darkest oblivion. The entertainment sector mainly relies on contracts to address the volatility and safeguard everyone's commercial interests. Contract law makes up a sizable portion of entertainment law. In the entertainment industry, some contracts are for many years while others are only for a single occasion. In the entertainment sector, contracts may contain extremely significant financial commitments. A crucial aspect of entertainment law is the creation and negotiation of contracts. In order to construct contracts that are advantageous to their clients, attorneys must exercise great caution. They need to be aware of things like contract enforceability and damages in the case of a breach. Contract laws have been at the forefront of the entertainment and media industries because parties must be aware of the laws and

[103] https://www.mondaq.com/nigeria/media-entertainment-law/569396/an-exposition-of-entertainment-law-in-nigeria accessed 12 May 2022.

conventions governing each entertainment activity in order to avoid entering into void or unenforceable contracts. The principles of contract, employment and labour law come in handy to spell out the obligations of each party to the contract and bind them.[104]

The entertainment sector depends on intricate contracts that were created to shield the entertainment corporations from financial danger. Artistes may find certain clauses in their contracts to be overly complicated or biased. Record corporations calculate the amount of royalties to pay them using complicated contractual formulae. The recording agreements contain a variety of provisions that can be utilized to lower royalty rates, lower the number of units for which royalties are paid, and postpone payments. Advances, which are payments provided to artistes before any actual money is collected by the business that makes or provides the artiste's goods or services, are a common component of entertainment contracts. Personal service agreements are frequently the topic of litigation in the entertainment industry because they restrict artistes' freedom to perform or produce for parties other than the business with whom they have a contract. In order to tie musicians for a certain period of time, record labels utilize personal service contracts. During this time, the producers try to recoup their investment in the artiste, turn a profit, and make up for losses from less successful performers.

In some entertainment industries, personal service agreements are structured using options contract that provide a producer, the right to extend an agreement for several periods.[105] For example, a record company may contract with a musician to provide one album during the first year of the agreement, with an option to extend the contract. After one year, if the record company feels that it would be economically wise to release a second album by the musician, the record company may exercise its option and require the musician to provide the second album.

[104]Ibid.
[105]Ibid.

Under option contracts such as this, Record companies may retain musicians on their roster for a long time or for as long as they continue to generate revenue. When badly written, option contracts may hurt artistes. Before signing an option contract, it is recommended for an artiste to consult with a lawyer. Musicians sometimes sign option contracts without making sure to include the exit provision, which enables them to walk away from the arrangement if the record label does not release their work despite keeping them bound to work exclusively for that label. Contracts for rights are another common sort of agreement in the entertainment sector. This contract is applicable for using a certain creative property like photo or song by way of transfer of license or copyright ownership. Often the contract for rights comes along with the personal service agreement. The contract confers the right to the company to use the work of the artiste as a commodity for hire and automatically enjoys the ownership of copyright.

3.1.5 Intellectual Property , Entertainment Law and Music Contracts[106]

The procedures for acquiring and protecting legal rights to innovations, designs, and creative works are covered under intellectual property law. The law also safeguards the exclusive control of intangible assets, just as it does with the ownership of physical property and real estate. These regulations are meant to encourage people to produce creative products without worrying about others stealing them. There are numerous moving aspects in intellectual property law, such as trademarks, copyright infringement, and the right of publicity. Every artiste has the right to restrict how their identity is used for commercial purposes. This is known as the right of publicity. The artiste's publicity rights have been breached when the right has been infringed. The right of privacy is the right to not have artiste's name or likeness appropriated by another without his permission.

[106]Micheal Dugeri 'Entertainment law in Nigeria: A foundational analysis of the emerging trends, sources, practice, and precedents' *University of ottawa press [2021].*

Copyright Act is the most central to the entertainment industry. It aims to protect literary works, dramatic works, art and music. It seeks to address and protect the different aspects of intellectual property including origin, term and recognition of copyright, fair and private use of copyrights, protection in the event of reproduction of sound, images and/or circulation of printed material among other issues.

The Nigerian Copyright Commission (NCC) is empowered to regulate the music, publishing, artistic and literary societies in Nigeria, while the Nigerian Broadcasting Service (NBC) regulates the award of broadcasting rights, licenses and assignments.[107]

3.1.6 Litigation in Entertainment Law

The legal issues affecting musicians, authors, screenwriters, producers, TV networks, and publishers are in different folds sitting right at the heart of their conflicts. All facets of entertainment, including film, television, music, digital media, sports, radio, theater, and publishing, are covered under the entertainment litigation practice. An artiste can be represented in entertainment disputes ranging from intellectual property and contract disputes to complex commercial matters, including litigating claims in all areas of intellectual property law, litigating and resolving complex copyright infringement matters, preventing the infringement of trademarks, copyrights, and artiste brands, litigating claims of artiste defamation, defending right of privacy and publicity claims, and litigating and resolving contract claims of all types.[108]

Entertainment legal disputes may arise from contracts. People and organizations in the entertainment sector resort to litigation when there are disagreements.

Contract issues, tort claims, employment conflicts, and other wrongs or disagreements may be settled by litigation. In order to assist their clients in obtaining favorable outcomes when

[107]Ibid.

[108]https://www.resolutionlawng.com/sports-entertainment-law/ accessed 12 may 2022.

entertainment results in a dispute, attorneys who handle entertainment litigation must be proficient in civil process, trial advocacy, and alternative dispute resolution.[109]

3.1.7 Labour and Employment Considerations in Entertainment Law

The labor and employment regulations that are specific to the entertainment sector must be known to entertainment attorneys. Entertainment attorneys who hire talent and production workers must be careful to abide by all labour and employment regulations, regardless of whether they are set down in writing by a federal or state agency or in a negotiated union contract.

Where the arrangement is not for an independent contract, the labour and employment laws that are relevant to the sector may be related to safety rules, maximum hours of work, workers compensation, or fair hiring practices.[110]

3.2 Terms of a Music Contract of Employment

A Music Recording Contract is a type of employment that exists between the Record Label as the employer and the artiste as the employee. The terms of a music recording contract have some general provisions that aligns with the terms of a general contract of employment.

Two fundamental aspects of the connection between the employer and the employee set it apart from all other types of contracts. It is first and foremost an authority relationship.

Under the direction of the employer, the employee provides his services in a subordinate or dependent role.[111] Secondly, it is a relationship of reciprocal rights and duties.[112] There are certain duties which the employee owes to the employer on the one hand and the employer owes to the employee on the other hand with correlative rights. These rights and duties flow from the

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[109]Ibid.
[110]https://primeraal.com/news/entertainment-and-life-story-rights-in-nigeria/ accessed 12 May 2022.
[111] I.N .E. Worugji, 'Introduction to Individual Employment Law in Nigeria'*Adorable Press*[1999](11).
[112] Tom Harrison, 'Employment Law'*Business Education Publishers Ltd [*l990](37).

terms which may be expressly provided in the contract of employment, collective agreements and legislations or implied by the courts. The terms of employment are the mutual promises and obligations of the parties to it.[113] They are the stipulations in a contract which define the rights and obligations of the parties in the first place and their liabilities in the event of a breach by any of the parties.

A contract's terms can be classified as express terms and implied terms.

3.2.1 Express Terms[114]

Express terms are those that have been stipulated by the parties in their contract.

The agreement between the parties, and consequently the conditions of their contract, may be documented in more than one document. Those conditions might be referenced in the contract; (for example, where a contract is made subject to standard terms drawn up by a relevant trading association).Or, even if one document does not specifically refer to the other, a contract may be contained in more than one of them.The issue of interpretation comes once the explicit words have been determined. The document outlining the parties' agreement must be viewed objectively; it is not necessary to determine what each party actually intended or what the other party believed to have been intended, but rather what a logical person in the parties' shoes would have understood the wording to imply. The parties' language serves as the foundation for determining the objective meaning.

Unless there is evidence that suggests that the reasonable person would have understood them otherwise, these are construed in accordance with their meaning in common usage. Thus, the

[113] Ibid.

[114]Contracts interpretation- express terms in contracts https://www.lexisnexis.co.uk/legal/guidance/contract-interpretation-express-terms-in-contracts accessed 12 May 2022.

terms of the contract must be read against the "factual matrix"; that is, the body of facts reasonably available to both parties when they entered the contract.[115]

The "parol evidence" rule provides that a written document cannot be amended, changed, or contradicted by evidence.

3.2.2 Implied Terms

A contract may include implied conditions that are not expressly stated but are there nonetheless for a variety of reasons, including the parties' intent, the operation of the law, or tradition or practice. Implied terms are those that are considered to be present from the beginning of the contract even though they are not clearly stated in the contract. The parties are bound by the written terms and any implicit provisions that are combined to form those obligations. Only in specific circumstances may the courts imply terms into a contract, as they are hesitant to do so.

To lessen the danger of commercial contract litigation regarding the meaning of the contract and implied conditions, it is crucial to discuss what words should be included in the written contract.[116]

3.2.3 Terms Implied in Law and by Statute[117]

Whether the parties intended for them to be included or not, words implied in law are terms that are imported by operation of law. For instance, it is an implicit provision in a contract for the sale of commodities that the items will be of a specified quality and, if supplied for a specific purpose, will be suitable for that use. The legislation attempts to regulate some contracts by imposing a set of uniform terms. Numerous phrases that are inferred by the law have legislative

[115] *ICS Ltd v West Bromwich [*1998] 1 WLR 896.
[116] Harper James; Express and implied contracts https://harperjames.co.uk/article/contracts-express-and-implied-terms/ accessed 15 May 2022.
[117] Ibid.

definitions. For example, a number of important terms are implied into contracts for the sale of goods.[118]

The nature of the relationship between the parties may also imply other significant terms. For instance, contracts for professional services require the professional to act in accordance with reasonable standards of competence, a lawyer must act in the best interests of his clients, and a doctor has a duty of confidentiality to his patients.

3.2.4 Terms Implied by Custom or Usage

A formal contract may be supplemented by evidence of custom, but it may not be contested. Terms may also be suggested by local custom or business practice.[119]

3.3 What is a Music Recording Contract?

Contracts come in as many different forms as there are industries. A machinist, a professor, and a director of a non-profit organization will all have particular contracts that are related to their lines of work. Furthermore, all contracts are built on a foundation of general provisions which should include terms on the "scope of work,""remuneration,""term," and "termination". Others are those that relate to issues on non-competition, works-for-hire, and confidentiality covenants ;are examples of protective measures.[120] Other crucial employment contract clauses are as follows:

3.3.1 Descriptive Provisions

Provision No. 1: Scope of employment. A job description that outlines the employee's responsibilities should be included in every employment contract. If the employee can be

[118]Section 12-15 Sale of goods Act 1979.
[119]Ibid.
[120]https://www.cose.org/en/Mind-Your-Business/HR/13-Takeaways-from-GCPs-Panel-Discussion-on-Retaining-Millennial-Workers accessed 15 May 2022.

demoted, transferred to a position with new responsibilities, or have their existing responsibilities altered or increased, it should be made clear in this section. Talking about relocating and traveling is also essential.

Provision No. 2: Compensation. Basic salaries, signing and production incentives, as well as base benefits like pension plans and health, life, vision, and dental insurance, will all be listed in the compensation provision. It will also include the situations in which a worker's wage may be decreased, such as when a professional license is suspended or terminated or when a firm experiences qualified financial trouble.[121]

Provision No. 3: Term and termination. Even though no contract is everlasting, companies would rather keep the great employees and let the bad ones go over the long term. If an organization does not hire at-will, it should indulge in term-based contract with renewal terms. Extensions may be voluntarily agreed upon by the parties or may be automatically given with the option to terminate them.[122]

Additional reasons for termination, such as the cancellation of a practicing license, might be added based on activities that are detrimental to the company. Criminal action on the part of the employee or a violation of the job contract are typical reasons for termination. [123]

Provision No. 4: Probationary period. Before offering a candidate the benefits of a long-term contract, some employment starts with a trial period to see if the prospect matches the company.

[121]Employee compensation, incentives,, and benefit strategies https://courses.lumenlearning.com/wm-principlesofmanagement/chapter/employee-compensation-incentive-and-benefits-strategies/ accessed 15 May 2022.
[122]Termination of employment by julia kagan https://www.investopedia.com/terms/t/termination-employment.asp accessed 15 May 2022.
[123] ibid

If the company decides to hire someone based on this, they should be careful to follow all probationary rules and criteria. These include the length of the probationary term, the training specifications, and the evaluation standards. To avoid giving the impression that the candidate has (or has not) been kept long-term, inform the applicant of the outcomes at the conclusion of the probationary period.[124]

3.3.2 Protective Provisions

Keeping and preserving the value that employees offer to the company is at the heart of many of these clauses. Protective clauses make guarantee that the business keeps control of the investment it makes in an employee.

Provision No. 5: Non-competition. "Non-compete" provisions, which are quite frequent in employment contracts, forbid an employee from working for an employer's rival company, investing in one, or starting a rival company while they are employed there and for a specific period of time following. In order for the non-compete to be legally enforceable, it must be reasonable in both its duration and its geographic reach. For example, a conservative non-compete would last for two years after employment and forbid competition within five miles of the employer's place(s) of business. [125]

[124] https://www.indeed.com/recruitment/c/info/probationary-periods-for-new-employees accessed 15 May 2022.
[125] Abubakri Yekini & Tanimola Anjorin 'Non compete clauses in contracts of employment in Nigeria' *Journal of Law, Policy and Globalization [2016] (56).*

Provision No. 6: Non-solicitation. The non-compete clause is expanded upon by the non-solicitation clause. It forbids a worker from approaching another employer agent or worker about working for a rival company or accepting employment from them.[126]

Provision No. 7: Work for hire. According to this clause, all intellectual property rights in any goods, processes, or other works created by an employee while they are working for the company are immediately assigned to the employer. In this approach, the creation and the underlying intellectual property are first owned by the employer.[127]

Provision No. 8: Assignment. In addition to the work for hire clause, an assignment agreement serves as a generalized catch-all. Additionally, it indicates that the employee consents to assign any original works they may have produced that are not covered by the work for hire clause. This clause is especially important if a personal product was created using resources, funds, or time from a company.[128]

Provision No. 9: Best efforts. An employee's commitment to helping the company and giving job tasks their full attention during working hours is reaffirmed by a "best efforts" clause.

Provision No. 10: Confidentiality. In order to do their duties, employees frequently need to be briefed on sensitive or classified issues. The employee is required under a confidentiality agreement to keep this information confidential and to take reasonable measures to prevent unintentional disclosure. Unless and until the information itself ceases to be confidential, this

[126] https://www.sec.gov/Archives/edgar/data/1385187/000119312509013575/dex104.htm accessed 15 May 2022.
[127] https://www.lawinsider.com/dictionary/works-made-for-hire accessed 15 May 2022.
[128] https://www.lawinsider.com/clause/employee-and-contractor-assignments accessed 15 May 2022.

sort of agreement typically exists long beyond the employment itself and continues in perpetuity.[129]

Provision No. 11: Alternative dispute resolution. Employers frequently demand mediation if there is a dispute over the employment agreement before either side may file a lawsuit. This may save a lot of time and money by encouraging an open dialogue outside of court. If mediation is unsuccessful, some contracts stipulate that the dispute shall be resolved through binding arbitration as opposed to litigation in order to achieve a quicker and more affordable resolution.[130]

3.3.3 Incentive Provisions

Provision No. 12: Employee benefits. Benefits make a job offer more enticing and can persuade candidates in ways that money alone cannot. Companies may give high-level employees stock options or full ownership in addition to insurance and pensions. The stock may be issued as part of a "golden handcuff" with a vesting schedule or as a fixed-price option. In most incentive plans, the employee must wait one year before they may start to get any fair benefits. [131]

Provision No. 13: Employee Liability Protection. When one employee needs to make crucial decisions that will have an impact on the entire firm, extending a limited liability corporation's protection to them eases their burden. A manager or director must be able to make difficult decisions without jeopardizing their personal safety in order to perform their job effectively.

[129] https://www.sec.gov/Archives/edgar/data/1065246/000119312509046323/dex99e8.htm accessed 20 May 2022.
[130] ibid
[131] https://blog.vantagecircle.com/employee-benefits-compensation-ideas/ accessed 20 May 2022.

3.4 Music Industry Defined

The music industry, which includes, among others, musicians, composers, managers and talent development, the media, promoters and distributors of live music, and other organizations and groups, essentially handles all part of the music business."Industry" refers to the economic exploitation of a good or service, which frequently follows the standard manufacturing, marketing, distribution, and consumption chains. The music business serves as the mechanism that coordinates the responsibility and facilitation of music creation, sale, and consumption across a range of mediums, including physical, digital, live, and other multimedia forms.

According to Wikstrom[132] 'the musical industry consists of those companies concerned with developing musical content and personalities which can be communicated across multiple multimedia' while the industry strongly relies on the models of creativity, reproduction, distribution and consumption in order to function. Khaleque-Abdul[133] believes the music industry is a relatively new modern concept denoting the "...non-physical aspect of music... where sophisticated communication technology of the modern age is now being used for recreating and preserving all kinds of music... It is in this context that... music as an industry... was developed where the potential of modern technology can now be fully exploited by persons engaged in the... industry". Negus[134] situates the music industry as functional within the culture and entertainment industries and encompassing components of professionals working towards co-modification of music within the paraphernalia of multimedia like 'recordings, video, films,

[132]*Patrick Wikstrom the music industry in an age of digital distribution*https://www.bbvaopenmind.com/en/articles/the-music-industry-in-an-age-of-digital-distribution/ accessed 20 May 2022.

[133]Khaleque, Abdul. 'The Role and Contribution of Folk Song in Bangladesh Music Industry. UNCTAD Youth Forum Music Industry Workshop'*New York and Geneva: United Nations*[2003] 4(1) (47).

[134]Negus Keith,. 'Producing Pop Culture and Conflict in the Popular Music Industry' *University of London* [1992] (14).

televisions, magazines, books, and via advertising, product endorsement, and sponsorship over a range of consumer merchandise'

"It's all about fairness. It's about companies treating artistes fairly. It's an age-old debate and, unfortunately, it will probably continue into the distant future" Jared Leto, 30 Seconds To Mars[135]

Jared Leto and his band, 30 Seconds To Mars, and their commercial relationship with EMI serve as an excellent illustration of a subject that periodically gets brought up, scandalized, and then put to rest without any resolution. It concerns the lines that can be blurred between contract freedom and misuse of authority. It concerns public policy and how many sacrifices society may let individuals to demand in exchange for renown. It even raises issues related to a whole industry's mindset and, of course, huge quantities of money. Do recording artistes require legal protection against unethical dealings with record labels, and if so, how should they be protected? The music industry is unique in many ways. Millions of bands and musicians share the desire of making it big by writing, playing, and recording music. It is sufficient justification for many people to make whatever required sacrifices in order to pursue a career in music.*"I'm going to swap this existence for fame and wealth."*

In the popular song "Rockstar" by the Canadian band "Nickelback," the line "I'd even chop my hair and alter my name" is used.[136], is illustrating how artistes are prepared to part up not only their natural rights under contracts, but also other facets of their life, even their identities.

Along with this unmatched desire to sign a recording contract, an oligopolistic structure with globally active big labels that collectively control more than 75 percent of the global market

[135] Chris Harris, *30 Seconds To Mars In 'Good Spirits' Despite $30 Million Lawsuit* http://www.mtv.com/news/articles/1600420/20081201/30_seconds_to_mars.jhtml. accessed 20 May 2022.
[136] Nickelback, Rockstar, *All the Right Reasons*, Roadrunner, 2005.https://en.wikipedia.org/wiki/All_the_Right_Reasons accessed 20 May 2022.

gives the firms a significant advantage in bargaining power. This has led to contracts that have been accompanied by criticism and complaints as part of the overall business strategy.

It has been the subject of parliamentary hearings and led to litigation. George Harrison addressed this problem, for instance, when he composed a protest song against the Beatles' music publishing company.[137]or by the former "Artiste previously known as Prince," who performed for years while wearing the word "slave" inscribed on his face.[138]

A recording contract is like "indentured slavery," according to performers Don Henley, LeAnn Rimes, and Courtney Love who complained about contract terms at a California State Senate hearing.[139]. This problem has always been brought up and debated, but it gradually lost significance without a solution. A fantastic illustration of this phenomenon is the case of "30 Seconds to Mars."After being signed for more than nine years with Virgin, a label run by EMI, the band decided to unilaterally end their agreement in 2008.Later, EMI filed a lawsuit against the group seeking $30 million in damages for albums that the group was supposed to have created but didn't. The band argued that under Californian law, creative artistes cannot be committed to a contract for more than seven years, despite the label's insistence that it be fully performed. By that point, the band had been signed to the label for more than nine years. Courts never reached a conclusion in this case since the parties settled the lawsuit in April 2009.[140].

The overall validity of industry-standard recording contracts is called into question in cases like these. Settlements like the one in the aforementioned case stop a judge from reviewing standard industry contracts for things like illegality, unconscionability, or just a lack of thought. This casts

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[137] Brian Southall, 'Northern Songs, The True Story Of The Beatles*' Publishing Empire*,[2007](216).

[138]Philipp W. Hall Jr., Note, Smells like Slavery: *Unconscionability in Recording Industry Contracts* 25 Hastings Comm. & Ent. L.J., 189, 190 (2002).

[139]*Music stars argue contract freedom*http://news.bbc.co.uk/2/hi/entertainment/1528112.stmaccessed 20 May 2022.

[140] August Brown, *30 Seconds to Mars soars*, LOS ANGELES TIMEShttps://www.latimes.com/entertainment-arts accessed 29 May 2022.

doubt on recording contracts, and by extension, the entire business. But more significantly, in the absence of any precedents or other norms, artistes will still be bound by contracts whose terms are not clearly defined as legal.

The components of a typical recording contract are covered in this chapter, along with the question of whether or not these contracts are actually deserving of the criticism they now receive. Additionally, procedures and policies must be put on display to safeguard artistes from actions that could be in conflict with public policy and to avoid contracts that might contain unconscionable clauses. In order to achieve this, a brief overview of the contents of a standard recording contract is provided first. The standards upon which contract terms must be legally reviewed are then explained. These standards are then applied to the most dubious provisions of an industry standard contract. Finally, strategies for effectively protecting artistes are presented, taking into account foreign cases and other protection regimes.

The following are some additional clauses peculiar to music recording contracts that artistes need to be aware of:

Advances, Expenses and Recoupment: The promise of an upfront monetary payout, known as a "advance," is typically the initial incentive for artistes to sign a record deal. In order to make sure that the musician is in a financially stable mental state to produce "commercially" acceptable music, record labels occasionally provide advances to artistes. But just as a record deal is more than simply a piece of paper, an advance is not a gift. Technically speaking, it is a payment in advance of future royalties. artistes must be aware that the record company will recover the advance payment from sales of the artistes' songs unless something different is agreed upon. Recoupment is the procedure used to achieve this. To determine the "net revenue" from which

the artiste will receive a cut, in the form of royalties, as specified in the record contract, other expenses, such as rent for homes, cars, and wardrobes, as well as costs related to producing and promoting the artiste's music, may also be subtracted from the total revenue from the artiste's music. Advances and other expenses incurred by the artiste will often be covered by the record label before the artiste begins to receive royalties from the label. As a result, it is always advised that the artiste is aware of the advances and costs that are recoverable under a record deal and how that can affect the payment of his royalties. Since large advances are considered "risk money," they often only generate limited royalties.

This is due to the possibility that if an artiste's song does not sell well, the record company may not be able to recuperate all of its advances to or expenditures for the artiste, leading to a loss.

By making such a sizable advance, the record label significantly increases its risk and, as a result, would want to feel secure knowing that it would receive a larger portion of whatever earnings the artiste's song generates. Negotiating a lower advance, on the other hand, would allow the artiste to get larger royalties and lessen the pressure of becoming an instant success, which the record label would anticipate if it provided a large advance. A recoupment of advances clause could be phrased as follows: – *"No royalties shall be due and payable to the artiste until all advances and all sums given to the artiste or on his behalf or to any third party in connection with this contract have been recouped by or repaid to the record label."*

Royalties:In general, royalties are payments provided to artistes for the usage or commercial exploitation of their music's copyright. In addition to managing the creation and promotion of the artiste's music, the record label typically has control over a wide range of activities, including the reproduction and distribution of the music, public performance of the music by playing it on

radio, television, or in clubs, integration of the music in advertisements or motion pictures, digital sale of the music through downloads, ringtones, live streaming, etc.

The record label is able to commercially exploit the copyright in the music produced because the artiste would have given up his copyright in the music to the record label under the record contract in exchange for making and marketing the artiste's music as well as payment of royalties. After all loans and associated costs have been paid back, the record label and the artiste divide the royalties it makes from commercially utilizing the copyright in the artiste's song in accordance with the percentages that were previously agreed upon. Commercial use of an artiste's copyright can generate a variety of income streams, including mechanical royalties from the sale of the artiste's recording on CDs, cassettes, or tapes, synchronization royalties from the use of the music in commercials, films, and other audiovisual productions, and performance royalties. Digital royalties from internet streaming and royalties from merchandising (revenue from the sale of goods branded with the artiste's name, image, or likeness) are examples of additional royalties. Along with knowing the matrix used to calculate royalties, it's critical to make sure that all applicable royalties are paid, since doing so will assist to guarantee that the artiste receives compensation for the use of the copyright in the recorded music.

In general, the music business lacks a set royalty rate because prices greatly depend on factors including years of expertise, amount of renown, and the kind of royalty in question.

When compared to mechanical or digital royalties, which may not be generated until the record label has spent a fortune, an artiste frequently benefits from relatively higher rates for performance and synchronization royalties. This is because the record label typically spends little to nothing for these royalties to be generated. Making sure the record contract has a "accounting and auditing" clause that requires the record label to release statements at certain

intervals outlining all money produced from the artiste's music and outlining any recoupment made and/or royalties due to the artiste is also vital. The provision should also let the artiste to designate a third party to examine the record label's books and finances. This provision gives an artiste the opportunity to make sure that his record company is not underpaying him and that the right royalties are paid.

Rights**:** As earlier noted, because the copyright to an artiste's song was assigned to record companies, they are able to financially exploit it. For this and other reasons, it is crucial that the artiste fully comprehends the type and scope of rights that would be given or transferred to the record label while examining a record deal. In this approach, the musician is fully aware of the record label's rights about the music that has been recorded and for how long. Some record agreements may provide that the record label will have the copyright to all songs, albums, and master recordings for an indefinite amount of time. Yes, forever!

It is important to note that the copyright in a music recording does not always belong to the record company when music is created under a record contract. According to Nigerian copyright law, a musical work's copyright belongs to the artiste who created it unless there is a formal agreement specifying that the copyright should belong to another individual. Therefore, record contract assignment terms are necessary. Artistes are generally encouraged to negotiate the insertion of copyright re-assignment provisions stating that the copyright and other related rights transferred to the record label shall back to them after a specific length of time into the record contract. The artiste will benefit from having a "release commitment" clause in the record contract, which mandates that the music produced must be publicly released commercially by the record label within a certain period of time following delivery. The artiste should be able to end the agreement and/or buy the master record from the record company for a specified amount if

this provision isn't there. The record label assignment of rights clause is typically fairly wide and may look something like this:

> *In consideration of this agreement, and without further payment than as herein provided for the artiste, the artiste hereby grants and assigns to the record label all rights of every kind and the complete, unconditional, exclusive, perpetual, unencumbered title throughout the universe in and all results and products of artiste's services and performances hereunder, any and all master records, tapes, sound recordings, music videos, long form videos, and other material of every kind made or authorized by the record label hereunder or otherwise produced during the initial period and option period and which include the voice, instrumental or other sound and/or visual effects, services, or performances of the artiste, including without limitation the right to record, reproduce, manufacture, broadcast, transmit, publish, sell, exhibit, distribute, advertise, exploit, lease, licence, perform, and use the same separately or in combination with any other material for any purpose in any manner, under any label, trademark, or other identification and by any means or method, whether known or not now known, invented, used or contemplated, and to refrain from all or any part thereof. The artiste further grants the record label the right to use his name and image if desired, in connection with the exploitation of the recordings.*

Exclusivity:It is challenging to find a record deal without an exclusive clause. The "exclusive arrangement" that limits the artiste's ability to accept specific engagements without the record

label's approval is often defined by the exclusivity clause. A musician bound by an exclusive contract frequently cannot record for another label, work with another artiste, or even make certain economic agreements without the record company's approval. Additionally, the artiste would have to be readily available for all recording sessions and promotional activities. If an artiste feels that these restrictions are too restrictive, he may always demand that the contract be non-exclusive or, at the absolute least, bargain for the right to collaborate with other artistes as a Sideman/Side-Artiste. A clause of exclusivity might be written as follows:

During the term of this Agreement, the artiste shall furnish, exclusively to the record label, artiste's services as a recording artiste for the purpose of making master recordings, throughout the universe, and as otherwise set forth herein, and artiste shall not render services as a recording artiste for any other entity whatsoever. The artiste will, at mutually convenient times, come to and perform at the record label's recording studio or at a separate studio, mutually agreed by the parties for the purpose of recording songs. It is mutually agreed that the artiste will not – (a) perform for the purpose of making records, for anyone other than the record label, and (b) authorize or permit the use of artiste's name, likeness, or other identification for the purpose of distributing, selling, advertising, or exploiting new original songs for anyone other than the record label. Furthermore, the artiste shall make no other new sound recording available to the public.

3.4.1 Categories of Negotiable Artiste's Agreements

Young musicians eager for their next big break are abundant in the music industry. The majority of these young musicians are employed while practicing their skill "underground" in the pursuit of greater degrees of national or international recognition. The most common evidence of these

artistes' potential mainstream success is when major record labels find or sign them. For instance, Scott Braun, who found pop singer Justin Bieber on YouTube, brought the 13-year-old to Atlanta to record a demo. Usher then gave him a recording contract in 2008. [141]Wizkid, a globally recognized Afrobeats performer from Nigeria, was first discovered as a part of the group "The Glorious Five" before signing a record deal with Empire Mates Entertainment in 2009.[142]Most of these artistes saw their record label signings as fast tracks to becoming well-known performers. While there may be some validity to this claim, many signees often fail to carefully study the provisions of these elaborate contracts because they are too enamored with their good fortune. They sign contracts that may pay little or no regard to the preservation of their advantages since they are largely uninformed of their alternatives and desperate for money and fame. artistes expecting their next big break have access to many kinds of record deals.

The responsibilities that the artiste must fulfill under each agreement are what set these arrangements apart from one another. On the surface, some may appear to be better than others, but it's crucial for artistes to think about their objectives and future plans before committing to a contract that will best support their success story. The record deals that artistes can discuss with potential record labels are shown in the examples below.

1. *The Traditional Record Deal*

When a record label contracts an artiste, they typically provide them a sizeable advance in return for master ownership. The record label will typically be entitled to roughly 80% of the artiste's revenues, leaving the artiste with about 20% of same. Since investing in artistes entails a

[141]Britannica, '***Biography of Justin Bieber***': https://www.britannica.com/biography/Justin-Bieberaccessed 20 September 2021.
[142]Wikipedia, ***'Wikzid'***: https://en.wikipedia.org/wiki/Wizkid#:~:text=Wizkid%20signed%20a%20record%20deal,album%2C%20Superstar%20(2011) accessed 20 September 2021.

financial risk for record companies, they withhold payments from musicians until they have settled the advance as well as any additional production and distribution costs that promoting such an artiste may have entailed. [143]When music fans still purchased physical LPs, the economics of these partnerships were more realistic.[144]In essence, a standard record agreement serves to safeguard the interests of the record company at the expense of the artiste.

2. *The Production Deal*

It may appear to be a record contract, but it is not. These contracts, which are exclusive to the artiste and the production business, might be confusing for artistes. A production agreement may be mistaken for a record deal, which would be bad for the artiste.[145]In a production agreement, a production company finances the creation of a few of an artiste's albums with the goal of pitching the musician to a large record label. This type of agreement has a problem since the template that most labels provide is too similar to record label contracts. This results in complex agreements that effectively bind both the artiste's future and the producing company's desire to sell the talent.[146]

3. *The Distribution Deal*

These kind of agreements are becoming more and more common, and some people believe they are the least exploitative for independent artistes. These agreements are typically employed by established musicians who can already afford to pay for writing their own songs. The label only

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[144]Jaron Lewis, '*10 Types of Record Deals Every Musician Needs to know*': https://www.omarimc.com/10-types-of-record-deals-every-musician-needs-to-know/ accessed 20 September 2021.

[146]Karl Fowlkes, *Management Deal vs Production Deal*, *Medium, https://medium.com/the-courtroom/management-deal-vs-production-deal-4e909915236c*accessed 20 September 2021.

makes investments in the artiste's marketing and sales. Distributors concentrate on sending the completed product to physical CD plates and Digital Service Providers (DSPs).They manage interactions with DSP personnel in order to assist with play listing pitches.[147]Importantly, distribution agreements let the artiste to keep the copyright for their works.

Artistes like Birdman and Master P are examples of those that chose distribution arrangements over traditional record label partnerships, but their strategies were most successful because they had a thorough grasp of the industry and music distribution in general.[148] It is best to opt for a distribution deal without an advance so the artiste does not risk incurring debt.

4. *Work for Hire Deal*

In a work for hire agreement, the artiste stipulates that for the term of the work's copyright, they will cede complete ownership and management rights. The general rule that the individual who creates a work is also its legally acknowledged author does not apply to this approach.[149] A work for hire deal[150] is employed mostly when there is a division of labour to reach the song's or record's objective. For instance, a producer is needed for supporting vocals and rhythms when a musician wishes to construct a song. If he chooses not to share ownership of the copyright, he can pay one-time fees for such services.

5. *Profit-Split Deal*

An alternative to the conventional record deal is this.

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[147]Jake Standley, *5 Types of Record Deals*, *Steak Worldwide*https://www.steakworldwide.com/blog/5-types-of-record-dealsaccessed 16 September 2022.
[148]Dan Runcie, *What Hip-Hop Gets Wrong About Master P and No Limit*, *Trapital* https://trapital.co/2019/03/26/what-hip-hop-gets-wrong-about-master-p-and-no-limit/accessed 16 September 2022.
[149]Songtrust, *What Does it Mean When a Song is a "Work For Hire "?*https://help.songtrust.com/knowledge/what-does-it-mean-when-a-song-is-a-work-for-hireaccessed 15 September 2022.
[150]Section 10(1)(b) CA.

Most of them include well-known performers. The artiste receives an equal share of the net proceeds from record sales after all marketing expenses have been paid. Labels are drawn to profit split agreements because they are under no obligation to make any payments to the artiste until all outstanding obligations have been settled.[151] These sorts of deal can be territorial.

6. *A Multiple rights deal*

The 360 deal, another name for this approach, is an alternative to the conventional record deal. The negative effects of piracy, digital sales, and the abundance of artistes on record sales revenues led to the development of this sort of arrangement. In a multiple rights agreement, the label pays the artiste a sizeable advance and also retains the right to earnings from merchandise sales, tours, concerts, royalties from song writing and publishing, digital or streaming sales, endorsement deals, and song writing royalties. In exchange, the label promises to actively market the artiste and make every effort to open up new doors for them.[152]

Young, upcoming non-mainstream artistes are frequently advised to sign a 360 deal. These agreements cannot be written in a uniform way. It is flexible and organic. The amount of the upfront payment, the duration and duties of the contract, and the exclusive ownership rights of the data created during that duration are the most crucial aspects to negotiate in a 360 deal.[153]

7. *A Joint Venture (JV) Deal*

The conventional record deal has an option in the form of a JV agreement.

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[151]Siccness, ' "*Profit Split Deals": A Recent Alternative to the Traditional Record Deal'*https://www.mondaq.com/nigeria/copyright/1118816/sounds-and-songs-evaluating-the-balance-of-rights-in-artistes-and-record-label-arrangementsaccessed 16 September 2022.
[152]*Gemtracks, Music 101: 360 Record Deal Explained*https://www.gemtracks.com/guides/view.php?title=what-is-a-360-record-deal&id=127accessed 16 September 2022.
[153]Ibid.

Therein, a major record label might work with an independent artiste or label, sharing the tasks of album development, marketing, and promotion. The parties to the JV agreements decide how they will function. The major labels often pay for the deal. Following the recovery of the record labels' fees and expenses, the net earnings are divided equally between the label and the artiste.[154]

3.4.2 Copyright Act

The Copyright Act defined many types of intellectual property that can be eligible for copyright protection. There are several categories, including broadcasts, sound recordings, creative, musical, and cinematic works.[155]Regarding their distinctive characteristics, it is crucial to this discussion to distinguish between sound recordings and musical works. Strangely, sound recordings have nothing to do with the intricate compositional framework of music, which is composed of rhythms, song lyrics, and harmonies. They connect to sound instead. Any type of sound, no matter how simple, can be fixed in a sound recording, skipping the rhythmic nature of musical compositions. Because they have a direct influence on people, who are the ultimate consumers of copyrights, musical compositions have consistently remained the most generic of all eligible works.[156]Such copyright protection is made up for by the musical works' uniqueness and emphasis on rhythm when the lyrics of the song are included. As a result, there are two classifications for musical compositions: instrumentals without vocals and finished musical works with words, harmonies, and voices. Both of these are deserving of copyright defense.

Contrary to common belief, song lyrics are not the same as this and are protected as literary works. There is still another separation between the composer of the music and the musician who

[154]Christopher Knab and Bartley F. Day, *Deals That Await Successful Independent Music Labels,* http://www.musicbizacademy.com/knab/articles/deals.htmaccessed 16 September 2022.
[155]Section 1(1) CA.
[156]S. Sylvester et al'Intellectual Property Law and Practice in Nigeria' *Jos University Press[2016](55).*

performs it (who delivers the song lyrics, harmonies and vocals). Although we are yet to witness Nigerian judicial distinction of these mediums; A Ghanaian court decided, in *CFA v. Archibong,* that copyright rests in the composer of the music.[157] However, in the United Kingdom,[158] the copyright rests in the artiste who is associated with the song; but there is recognition that those who contributed secondary activities in the making of a musical work qualify as co-authors of the copyright.[159]

It is noteworthy that in Nigeria, the ownership of copyright is not automatic. Copyright ownership is conferred on every work eligible for copyright of which the author or in a joint authorship, any of the authors is a qualified person; a Nigerian citizen or one domiciled in Nigeria or a body corporate incorporated under the laws of Nigeria.[160] In *MCSN Ltd/Gte v. CDT Limited*,[161]*Peter-Odili, JSC* defined the owner of a copyright as one who held exclusive rights to the copyrighted material. Ownership rights are general, permanent and heritable.

The exclusive rights of copyright owners are outlined in the Copyrights Act[162], and they include the ability to reproduce, publish, perform, distribute, create any cinematographic work based on, broadcast, alter, and translate the musical work. It essentially grants the copyright holder exclusive rights in that copyright. It is significant to remember that while the creator of the copyright initially has ownership of the work, he or she may choose to transfer those rights to another person or legal entity.

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[157](2020)LCN/14878(CA).
[158]*Bamgboye v. Reed (2004) EMLR (5) 61, Hadley v. Kemp (1999) EMLR 389* .
[159]Cornish and Llewelyn, 'Intellectual Property: Patents, Trademarks and Allied Rights'*Sweet and Maxwell [2007], 426.*
[160]Section 2(1)(i)&(ii) CA.

[161]*MCSN Ltd/Gte v. CDT Limited(*2019)4 NWLR (Pt. 1661), 1 at 24A-C**.**
[162]Section 6 CA.

Once a musical composition is maintained in a particular medium and is used in several contexts, the "masters" of the work are subject to severe protection. The initial recording of a song, sound, or performance is what is used to create all subsequently released versions of the piece. When a song becomes extremely successful or "goes mainstream," owning the masters enables the artiste to maximize all revenue and sales generated by the work. With the masters, the owner can grant permission for the recording to be used for TV, film, samples, advertising, etc.[163] Although there are many benefits to owning one's masters, non-independent artistes (artistes signed to record companies) rarely come by this right of ownership naturally. A consideration of the secondary activities' principle for joint authorship in *Hadley v. Kemp*[164]and the Copyrights Act allowance for transmission of copyright in the course of employment to the employer,[165] there are instances where an artiste may not own their masters. These situations are incredibly unfavorable, causing a great dent to the artiste's earnings incommensurate to the artiste's hard work and skill. In the words of the late pop icon, *Prince*, *"if you don't own your masters, your masters owns you"*[166]

2. Personal rights

In addition to copyright ownership, most record deals include clauses allowing the business to use an artiste's name, likeness, or biographical information as well as the rights to images, all of which are necessary for promotional reasons. However, the artiste is frequently given the opportunity to authorize any imagery or biographical information utilized by the business before

[163]MixButton, '***What is the Master Recording*?':**https://mixbutton.com/mastering-articles/what-is-the-master-recording/ (last accessed 21.09.2021).
[164][1999] EMLR 589.
[165]Section 10(3) CA.
[166]Prince had an 18 year battle with his record label, *Warner Bros Records* over the excessive restriction of his contract with them and ownership of the masters to a catalogue of songs performed by him. The dispute ended in 2014 with Prince negotiating a new deal with *Warner Bros*, after having accused them of treating him like a 'slave' in the 1990s.

its publication. In the event of rejection, the artiste must tell the business as soon as possible, say five days after being told. Additionally, this time frame is stipulated in the contract.[167].

3. Exclusivity

Personal exclusivity agreements prohibit the artiste from making a commitment to a third party that would conflict with the artiste's obligations under the contract.

Most significantly, the performer is only permitted to appear at events hosted by the corporation.[168]. With rare exclusions, the artiste may, however, perform for a third party with the company's approval. The two most frequent exceptions are "side person performances" and works associated to film or television soundtracks."[169]. The willingness to grant such exceptions varies from company to company and frequently calls for special requirements, such as caps on the number of appearances and contributions to the work, "courtesy credits" being given to the company, and a promise that the other work won't have a negative impact on the artiste's performance of the contract.[170]

[167]Ibid.
[168] Strand, ibid note 12, at 15.
[169] INGENDAAY, ibid note 8, at 276.
[170] see PASSMAN, ibid note 14, at 135-36.

Chapter Four

Legal Status of Third Parties and the Laws Protecting Creatives in Nigeria

4.1. Contract for the Benefit of Third Persons

Roman law generally did not accept that contracting parties might lead the obligation to the other party to a third party to the right of the party to claim the contract of work obligation, even though the contract figure in favor of a third person was created and is present in all modern legal systems of civil law.[171]In addition to what was already said, Roman law, at least in a purely practical sense, avoided third parties by accepting the employment of certain legal processes that grant access to a plethora of new resources. For instance, the inclusion of a provision mandating punishment (*stipulatio poenae*) in the case that the promisor did not supply the service promised may be interpreted in favor of the third party.

The *Alteri stipulari nemo potest* rule, according to Justinian's Institutes[172], means that it is impossible to stipulate in favor of a third party. According to this criterion, a contract of this nature is meaningless. It appears from other texts in the *Corpus Iuris Civilis* that this principle applied to other contracts, pacts, and provisions in favor of an absent beneficiary in addition to the verbal contract of stipulation. The Institutes do, however, recognize two exceptions:

1. When the stipulator has a financial stake in the third party's performance, the agreement in their favor is enforceable.
2. The second exception is that the *stipulatio alteri* becomes applicable when a penalty clause is included. In both situations, only the stipulator has the authority to enforce the agreement, and the third party is not granted a right. These two main principles are founded on an even

[171]H. Honsell. Die Haftung für Gutachten und Auskunft unter besonderer Berücksichtigung von Drittinteressen. – V. Beuthien (Hrsg.). Fest-schrift für Dieter Medicus Zum 70. Geburtstag. Köln, Berlin, Bonn, München: Heymanns 1999, p. 211.
[172]https://en.wikipedia.org/wiki/Institutes_of_Justinian accessed 16 September 2022.

more fundamental premise of Roman contract law, which is that a contract creates a personal relationship between the parties, similar to the privity of contract that dominated English common law from the nineteenth century until recently. There are a few unique instances in the *Corpus Iuris* when the third party has the right to compel the performance that was agreed upon in his favor.

4.1.1 Common Law

According to the normal conventional Common Law criteria, the contract for the benefit of a third party was not understood in accordance with the concept of contract, which represent the rights, obligations, and benefits obtained from it towards the contractual parties. Although recent legal advancements in this field are ongoing, in "Common Law" countries, a number of contract modifications and exclusions for the advantage of a third party are still unusual. A person who is not a party to a contract but has legal standing to have the contractual rights enforced or to take a share of the profits generated as a consequence of the contract for the benefit of the third party is known as a third-party beneficiary under English law. An example of a concrete case to illustrate what was said the following:

> *A person signs a contract with a car company to buy a nephew a gift car for his graduation, after which the company after a delay in payment refuses to proceed with the sale of the item. So, the nephew at this moment is entitled to file a lawsuit for breach of contract for the benefit of a third person by the company.*[173]

A contract formed between the two parties is a contract for the benefit of the third party if the third party is not a party to the standard contractual duties where the parties have rights and obligations. A life insurance policy is created to help a third party who is still alive. In real estate,

[173]Privity of Contract; The law commission.[item 1 of the sixth programme of law reform: The law of contract. [July 1966](no 242).

this idea of a contract for the benefit of third parties frequently appears as an effort by the parties who have been wronged to assert that they are the beneficiaries of a contract between property owners, observers, assessors, or distributors as a third party. Therefore, permission to file a claim for breach of contract is provided to the third party.

4.1.2 Features of Contract for the Benefit of a Third Person

To summarize the general contractual characteristics for the benefit of the third person we would distinguish:

1. The third party must be a foreigner and cannot be a party to the agreement or a representative of any of the parties to the agreement.
2. When the parties executed a contract for the benefit of the third party, they should have intended for the third party to exercise an independent right of access to the debtor. The fact that the third party is capable of acting is irrelevant because participation in the contract or demonstration of the willingness to do participate is of no consequence. Instead, the third party just benefits from the contract's rights. Therefore, even a minor has the potential to obtain the benefits of rights established in a contract, although being incapable of acting.
3. The contract's grant of a right to a third party is not subject to that party's acknowledgment. The right that was provided to the third party by the parties to the contract does not thereafter inevitably pass to them since the third party has the choice to renounce it. As of the contract's conclusion, the Recipient receives a direct and independent right based on the terms of the agreement, but this right doesn't become final until the third party gives their consent to the acceptance of the right.[174]

According to Albanian legislation, the third party will acquire the rights outlined in the contract as of the date it notifies one of the parties that it is willing to profit from such rights.

[174]M. Tutulani-Semini, “E drejta e detyrimeve dhe e kontratave, Real Stamp, Tirana 2006, p. 66.(Non-English)

It's crucial to remember that when a third party has waived a contractually recognized right, the obligation continues even after the creditor acquires the right to use the information; in this case, the creditor must fulfill the obligation for his own benefit if doing so does not go against the intent of the contract. The approval of a third party or the surrender of his right need not be expressed in writing.[175]

4. Before the third party has stated that he would exercise the right to profit from the contract, the creditor has the right to renegotiate the terms of the agreement or make any modifications that might affect, restrict, or limit that party's rights. If the beneficiary signals that he accepts to profit from the agreement made, the contract completed in his favor cannot be withdrawn, unless the contract's proposer specifically reserves this right in the contract in his favor. [176]

4.1.3 The Beneficiary's Legal Status

A contract that has been reached for a third party's benefit does not include the beneficiary as a contracting party. He can only realize the benefits of this contract to him; he has no legal ability to affect the outcome of that deal. As a result, when it comes to the benefit itself, the outcome of the legal agreement for a third party's benefit rests with the parties to that agreement, particularly the stipulent (third party). Therefore, the third party benefit may be canceled or changed unless the third party states that he accepts what is contracted for his benefit. If the contract for a third party's benefit does not define the conditions under which a third party may revoke the benefit of a third party, a unilateral declaration of will is always a possibility.[177]The beneficiary is unable to retract his unilateral declaration of his will following that acceptance. A contract is an agreement formed in the course of a transaction

[175]Art. 672, Albanian Civil Code.
[176]Subparagrapgh 3, Art. 694 of Albanian Civil Code.
[177]Clearinghouse Review. *Use Contract Law To Enforce Third-Party Beneficiary Claims Against Vendors And Agencies*, [2008], pg 42.

between two parties, and in the event that its terms are violated, only those parties have the power to hold the other party accountable. Despite being favorable, third parties are unable to enforce such contract clauses.

To some extent, this philosophy has been altered to accommodate corporate effectiveness.

A third party should be allowed to enforce a contract's terms in his or her own name, the English Law Revision Committee advised in its sixth interim report of 1937, provided that the third party's right to benefit from the enforcement is more prominent and serves the interests of better business practices. This is provided that the right of the third party shall be subject to cancellation of the contract by the mutual consent of the contracting parties at any time before the third party has adopted it either expressly or by conduct. Without taking into account the impacts business and commercial efficacy have on third parties to a contract, especially if such contracts give a benefit or right to the third party, it is impossible to implement the modern contract concept, which is centered on just and public principles.

In 1995 in the Court of Appeal in *Darlington Borough Council v Wiltshier Northern Ltd*[178]'

Steyn LJ, in criticising the present law, said the following;

> *The case for recognising a contract for the benefit of a third party is simple and straightforward. The autonomy of the will of the parties should be respected. The law of contract should give effect to the reasonable expectations of contracting parties. Principle certainly requires that a burden should not be imposed on a third party without his consent. But there is no doctrinal, logical, or policy reason why the law should deny effectiveness to a contract for the benefit of a third party where that is the expressed intention of the parties. Moreover, often the parties, and particularly third parties,*

[178]*Darlington Borough Council v Wiltshier Northern Ltd(*1995) 1 WLR68.

organize their affairs on the faith of the contract. They rely on the contract. It is therefore unjust to deny effectiveness to such a contract. I will not struggle with the point further since nobody seriously asserts the contrary.[179]

It is generally agreed that the modern third party rule was conclusively established in1861 in *Tweddle v Atkinson*[180]**.** *In Drive Yourself Hire Co (London) Ltd v Strutt*[181]Denning LJ said:

It is often said to be a fundamental principle of our law that only a person who is a party to a contract can sue on it. I wish to assert, as distinctly as I can, that the common law in its original setting knew no such principle. Indeed, it said quite the contrary. For the 200 years before 1861 it was settled law that, if a promise in a simple contract was made expressly for the benefit of a third person in such circumstances that it was intended to be enforceable by him, then the common law would enforce the promise at his instance, although he was not a party to the contract.[182]

Denning LJ cited several cases to support his view. In *Dutton*v. Poole[183],

a son promised his father that, in return for his father not selling a wood, he would pay $l000 to his sister. The father refrained from selling the wood, but the son did not pay. It was held that the sister could sue, on the ground that the consideration and promise to the father may well have extended to her on account of the tie of blood between them

[184] In *Murchington* v Vernon[185]," Buller J said that,

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[179]*Supra,* at p *76.*

[180]*Tweddle v Atkinson*(1861) 1 B &S 393; 121 ER 762.

[181]*Drive Yourself Hire Co (London) Ltd v Strutt*(1954) 1 QB 250.

[182]Ibid.

[183]*Dutten v Poole*(1678) 2 Lev 210; 83 ER 523. This decision was supported, obiter, by Lord Mansfield in *Martyn* v *Hind* (1776) 2 Cowp 437,443; 98 ER 1174, 1177.

[184]Ibid.

independently of the rules prevailing in mercantile transaction. If one person makes a promise to another for the benefit of a third, the third may maintain an action upon it. In Carnegie v Waugh[186], the tutors and curators of an infant, C, executed an agreement for a lease with A, for an annual rent to be paid to C. It was held that C could sue on the instrument, even though he was not a party to it. In addition, there is a respectable line of 16th and 17th century authority allowing an intended beneficiary a right of action.[187] These cases often involved similar facts. The fathers of a potential bride and groom would agree to pay a sum of money to the groom if he married, the bride's father subsequently reneging on the agreement. In several of these cases it was held that, not only could the groom sue to recover the amount promised, but that his father, the promisee, could not sue because he had no interest in performance.[188]

The third party rule was not wholly a 19th century invention, despite the fact that these instances favored actions by third party beneficiaries. Other actions by third parties were rejected in the 16th and 17th centuries on the justification that the promisee was the only one authorized to file them.[189]There have also been instances when the third party was told that he could not sue because he was not a party to the consideration, meaning that he had not provided anything in exchange for the promise.[190]The following facts were frequently present in these situations.

B owed C money. In exchange for B performing anything for A, like working or moving a home, A and B would agree to pay C. If A refused to pay, C would sue A. Due to the fact that C offered

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[185]*Phill$s* v *Bateman* (1 8 12) 16 East 356, 37 1; 104 ER 1124, 1129.

[186]*Carnegie v Waugh*(1823) 1 LJ (OS) KB 89.
[187]A Simpson, *A History of the Common Law of Contract* (1975),.pp 477-478. See also V Palmer, "*The History of Privity - The Formative Period"* (1500-1680) (1989) 33 *Am* J Leg Hist 3.
[188]*Provender v Wood* Het 30; 124 ER 3 18; *Hadves v Levit* Het 176; 124 ER 433.
[189]*Jordan v Jordan* (1594) Cro Eliz 369; 78 ER 616; *Taylor* v Foster (1600) Cro Eliz 776; 78 ER 1034.
[190]*Bourne v Mason* (1 669) 1 Ventr 6; 86 ER 5; *Crow v* Rogers (1724) 1 St 592; 93 ER 7 19; *f i c ev Easton* (1 833) 4 B & Ad 433; 1 10 ER 5 18.

nothing in exchange for A's guarantee, C would lose. Thus, by the mid-19th century there appeared to be no firm rule either way in English law. The position was to be clarified in *Tweddle v Atkinson*[191] The facts involved an agreement by the fathers of a bride and groom to pay the groom a sum of money. When the bride's father failed to pay, the groom sued unsuccessfully. Wighunan J said that no stranger to the consideration could take advantage of a contract though made for his benefit. Crompton J said that consideration must move from the promisee.[192]

The authority of *Tweddle v Atkinson*[193] was soon generally acknowledged. In Gandy v Gandy[194], Bowen LJ said that, in spite of earlier cases to the contrary, Tweddle v Atkinson[195] had laid down "the true common law doctrine". In Dunlop Pneumatic Tyre CO Ltd v Seljiidge&CO Ltd[196]*,"* the House of Lords accepted that it was a fundamental principle of English law that only a party to a contract who had provided consideration could sue on it. Despite several attempts by Denning LJ to allow rights of suit by third party beneficiaries,[197] The House of Lords reaffirmed the general rule in *Midland Silicones Ltd v Scruttons Ltd.*[198] Viscount Simonds said:

> *Heterodoxy, or, as some might say, heresy, is not the more attractive because it is dignified by the name of reform. ... If the principle of jus* ***quaesitum tertio*** *is to be introduced into our law, it must be done by Parliament after a due consideration of its merits and demerit.*[199]

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[191] Supra.
[192] *Dutton v Poole* (1678) T Rap-302; 83 ER 156.
[193] Supra
[194] *Gandy v Gandy*(1885) 30 ChD 57, 69.
[195] Supra

[196] *Dunlop Pneumatic Tyre CO Ltd v Seljiidge &CO Ltd*(1915) AC 847.
[197] *Smith and Snipes Hall Farm Ltd v River Douglas Catchment Board* [1949] 2 KB 500.

[198] *Midland Silicones Ltd v Scruttons Ltd(*1962) AC 446 (Lord Denning dissenting).
[199] Supra.

Although the House of Lords has subsequently strongly criticized the rule[200], it has refrained from any judicial abrogation of it. Thus the general rule remains that a third party cannot enforce a contract made for its benefit.

(a) Existing Exceptions to, or Circumventions of the Third Party Rule[201]

(b) Trusts of the Promise[202]

A chose in action may be the subject matter of a trust. As a result, if A promises to B that he would pay C a certain amount of money, B may be considered to be A's trustee for C. If so, C (the trust's beneficiary) may bring a lawsuit to make good on the promise. Therefore, when a contract may be seen as generating a fully formed trust in a third party's favor, equity permits that third party to enforce the contract. Therefore, the third party is not just relying on a contract that was established by others. The instances show that the idea of a faith in the promise is constrained within specific parameters, nonetheless.[203]The promisee's intention to form a trust must be proven, which is extremely significant. The courts used to be willing to draw this conclusion from the straightforward desire to help a third party.[204], an approach which reached its high water mark in *Les Affrkteurs Rkunis SA vLeopold Walford (London) Ltd.*[205]But since then, they have generally refrained from making that assumption and have demanded a definite proof that a trust was intended.[206]As a result, in more recent times, this exception has rarely been useful to a third party.

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[200]*Beswick* v *Beswick* [1968] AC 58, 72; *Woodar Investment Developments Ltd v Wimpey Construction UK Ltd* [1980] 1 WLR 277, 291, 297-298, 300. See also dicta of Lord Diplockin *Swain v Law Society* [1983] 1 AC 598,611; and of Lord Goff in *The Pioneer Container* [1994]2 AC 324, 335 and *White vJones* [1995] 2 AC 207, 262-263.

[201]*Sunderland Marine Insurance CO v 'kearney* (1 85 1) 16 QB 925; 1 17 ER 1136; *Norton on Deeds* (2nd ed, 1928) p 27 ff.

[202] J Hornby, *Covenants in Favour of Volunteers* (1962) 78 LQR 228.

[203]*Southern Water Authority v Carey (*1985) 2 All ER 1077, 1083.

[204]Eg *Tomlinsun v Gill* (1756) Amb 330, 27 ER 221.

[205] [1919] AC 801. See M MacIntyre, *Third Party Rights in Canadian and Enghsh Lawyy*(1965) 2 UBCL Rev 103, 104-105.

[206]*Re Engelbach* [1924] 2 Ch 348; *Vandepitte v Preferred Accident Insurance Corpn of New York* [1933] AC 70.

4.2 Privity of Contract

The privity of contract rule states that a third party cannot make a claim based on a contract to which he is not a party. This custom has recently come under intense criticism, particularly when the contract benefits a third party. Indeed, the civil law systems of EU nations accept and uphold such transactions. Despite proposals for statutory revision, the English Law principle that prohibits a third party from enforcing contractual provisions formed in their benefit remains in place. Collateral warranties are being used more frequently as a result of the rule's existence.

By adding distinct, separate contracts as collateral to the consulting or building contract, collateral warranties get around the restriction. Future developers' owners will be able to sue advisors or builders for poor design or construction thanks to the collateral that serves as a warranty. On the basis of the initial consulting or building contract, there would be no cause of action. Another important concept is that the assessment of damages for contract breach is intended to compensate for any hurt, loss, or damage brought on by the violation. As a result, it permits the contractual party to bring a claim for its own losses but for losses brought on by other parties, it does not.

Two decisions establish an exception to these principles. The first of two court decisions to examine these principles was *St. Martin's Corporation Ltd v Sir Robert McAlpine*[207]McAlpine was the contractor for a development for the Corporation. Following completion, the Corporation transferred investments to the development to a sister company. The Corporation also assigned the full benefit of the construction contract to Investments, with the intent that Investments could sue McAlpine should any defects occur. Defects were found after the assignments which were alleged to be due to breaches of contract by McAlpine under the construction contract. It cost

[207]*St Martins Corporation v Sir Robert McAlpine*(1994) 1 AC 85.

Investment £800,000 to put right the defects. Investment sued under the above action. The House of Lords held that the action failed. The assignment of the benefit under the contract had no effect because McAlpine's consent to the assignment had not been obtained as required under the contract with the Corporation. It was considered that the reason for including the contractual prohibition from the contractor's point of view was that the contractor wished to ensure that he dealt, and dealt only, with the particular employer with whom he has chosen to enter into a contract.

Building contracts are pregnant with disputes: some employers are much more reasonable than others in dealing with such disputes.

The case failed on the first of the aforementioned requirements because of the privity of contract between the Corporation and McAlpine, which prevented Investments from suing on the contract.

However, the Corporation was also a party to the conflict. The Corporation argued that because the assignment had failed, McAlpine was liable for any contractual violations and was thus entitled to damages. The issue the Corporation was facing was that they had sold the property for the full value and were therefore exempt from liability to their sister firm for any flaws. Consequently, where was their loss? According to the second principle mentioned above, the Corporation was barred from suing for a loss sustained by a third party, in this case Investments, who suffered a loss of £800,000. The Corporation was therefore entitled only to nominal damages under the above principles.

Some answers are found in the Court of Appeal decision on 28 June 1994 in *Darlington Borough Council v Wiltshier Northern Ltd*[208]**.** On property it possessed, Darlington wanted to build a recreation area. Instead of borrowing money and in order to secure private funding for the project, Darlington had Morgan Grenfell and Wiltshier engage into a construction agreement. Darlington agreed to reimburse Morgan Grenfell any money spent on the building contract as part of a collateral covenant with the company. It was therefore evident that the building contract benefited the interests of a third party. Additionally, the covenant stipulated that Morgan Grenfell would transfer to Darlington any claims against Wiltshier. When Darlington filed a lawsuit in this instance, the assignment was not an issue. But they had to deal with the two overarching ideas. In other words, Morgan Grenfell, the party bound by Wiltshier's contract, had not experienced a loss and had no transferable claim for significant damages. However, the privity rule prevented Darlington, the party that experienced the loss, from pursuing its claim for damages. Therefore, the concepts came together to let a contract violator off the hook.

The exception in *St. Martin's Corporation Ltd v Sir Robert McAlpine*[209] was applied and Darlington was held to be entitled to recover. In a significant decision, the broader exception—according to which the contractual party suffers a loss of bargain if a contractor is hired but fails to complete the task at hand—was acknowledged. The expense of correcting the flaws allows for the recovery of that loss. It was decided that using the awarded damages to make the required repairs was not a requirement before receiving compensation for serious damages.

It followed that if the party were to be sued for damages before the assignment, the party would keep any awards made on behalf of the third party and would be responsible for paying them

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[208]*Darlington Borough Council v Wiltshier Northern Ltd*(1995) 1 WLR 68.
[209] Supra.

back. Insofar as the determination of damages is concerned, these decisions show a relaxation of the rigorous norms of contract. The exclusion applies to construction contracts; however its full reach has not yet been established. According to the aforementioned decisions, even in the absence of collateral promises, a consultant or contractor may be held responsible for damages for a third party's loss caused by a design or construction defect.

4.3 Music Licensing in the Nigerian Music Industry

The music industry in Nigeria has developed substantially. From being a "bad" job for some parents or a hobby for many artistes, the music business has developed into a successful career. In a recent study,[210] the Nigerian music industry was projected to generate a revenue of over $50 million[211] for the Nigerian economy by 2022.[212]The industry has been quickly growing over the last ten years, giving artistes and other stakeholders a wide range of opportunities to make money from their work. One of these opportunities, which gives the copyright owner more control over a song, is the licensing of music. In reaction to the recent decline in physical record sales and the emergence of digitally mediated forms of music like Caller Ring-Back Tunes (CRBT) and digital music streaming, Nigerians' appetite for digital music has substantially grown. [213] making licensing (rather than an outright assignment) the preferred option for the commercial exploitation of their music for many creatives.

[210] The 'Nigerian Recorded Music Industry Report (2015 – 2020)', published by the Disruptive Creative Economy Meeting (DCEM) grouphttps://africanvibes.com/dcem-projects-50-million-revenue-for-nigeria-music-industry-by-2020/ accessed 16 September 2022.
[211] Approximately N19,250,000,000 using the extant Central Bank of Nigeria (CBN) foreign exchange rate.
[212] Abishek Singh, "Nigerian Music Industry Revenue to Hit 50 Million Dollars by 2022 https://www.premiumtimesng.com/entertainment/music/336689-nigerias-music-industry-revenue-to-hit-50-million-by-2020-report.html accessed 16 September 2022.
[213] As of December 2018, BoomPlay who entered the Nigerian market in 2015 had about 40 million users and millions of mobile App downloadshttps://filterfree.ng/features/5-of-the-best-music-streaming-apps-in-nigeria/ accessed 16 September 2022.

Many times, there are usually four parties involved in negotiating music licenses in the Nigerian music industry apart from the licensee:

a) The record labels

b) The artiste/performer

c) The songwriter; and/or

d) The publisher

Unfortunately, processes for music publishing, distribution, and licensing company's services have been frequently used by artistes and record labels to manage, exploit, and collect royalties on song collections due to the complicated nature of music licensing procedures. Other strange practices are that music publishers issue licenses on behalf of owners.

Nonetheless,[214] music publishing companies help music copyright owners distribute and recoup royalties for their works on digital music streaming platforms like Apple Music, BoomPlay, Spotify, Deezer, etc. Pursuant to the recent decision of the Supreme Court in *MCSN v. Compact Disk Technology,*[215] *"music publishing companies, as assignees or exclusive licensees do not require the approval of the NCC*[216] *to sue for the enforcement of copyright in the musical works or sound recordings of their clients"* Some popular publishing companies in Nigeria include Universal Music Nigeria (UMG), Replete Publishing, Premier Music, Green Light Music

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[214] Keith Holzman, *The Role of the Music Publisher* http://www.musicbizacademy.com/articles/kh_musicpublisher.htm accessed 16 September 2022.

[215] *MCSN v. Compact Disk Technology*(2018) 12 SC (Pt.1) 136, *Adeokin Records Ltd v. MCSN* (2018) 7 SC (Pt. II) 40.

[216] Nigerian Copyright Commission.

Publishing, and Hypertek Digital. In 2017, the Music Publishers Association of Nigeria (MPAN) was established.[217]

Outside decent agreements and contracts to raise obligations and liabilities, the mechanical rights and performance rights in songs or sound recordings when managed by third parties can be exploited with the aid of CMOs like COSON and MCSN. Licensing is hence advised as a preferable option against commercial exploitations of rights in a song or sound recording.

In the first instance and in response to the above, the Disruptive Creative Economy Meeting (DCEM) group's "Nigerian Recorded Music Industry Report (2015 - 2020)" states that although the Nigerian music industry might have earned over $500,000 in revenue in 2019,[218] it is crucial that music licensing agreements be in writing and that an entertainment lawyer and other necessary specialists be retained when drafting a music licensing deal because of the complexity of music licensing. As a result of these issues, it is also essential to hire an IP/entertainment attorney to communicate with publishing companies, collecting organizations, and record labels and to assist rights holders understand the legalese.

In the light of the above, this work takes a course into the state of events in the Nigerian system, with the purpose of describing the law vis a vis the licensing and protection of Music artistes.

4.3.1 Laws , Licensing and Types of Licenses for Music artistes[219]

According to the *Black's Law Dictionary*[220], the granting of license is defined by "*The permission by competent authority to do an act which without such permission, would be illegal,*

[217] Lami Mustapha, "What Does Music Publishing Mean in Nigeria"https://www.linkedin.com/pulse/what-does-music-publishing-mean-nigeria-lumi-mustapha-esq- accessed 12 September 2022.

[218] The 'Nigerian Recorded Music Industry Report (2015 – 2020)', published by the Disruptive Creative Economy Meeting (DCEM) grouphttps://africanvibes.com/dcem-projects-50-million-revenue-for-nigeria-music-industry-by-2020/ accessed 12 September 2022.

[219] Francis Ololuo, "Understanding Split Sheets and Collaboration Agreements in the Music Business", available on https://spaajibade.com/understanding-split-sheets-and-collaboration-agreements-in-the-music-business-francis-ololuo/ accessed 16 September 2022.

[220]Black's Law Dictionary.

a trespass, a tort, or otherwise would not allowable." Music licensing is the licensed use of copyrighted music.[221] Music licensing is intended to ensure that the owners of copyrights on musical works are compensated for certain uses of their work. A purchaser has limited rights to use the work without a separate agreement. Music Licences can be categorized into the following:

a. **Master License and Mechanical License**: A master license is granted by the owner of the master recording (masters)[222] in a sound recording to another person who intends to commercially exploit the sound recording. The rights to the masters can occasionally belong to the performer or songwriter, but most often, the initial copyright owner grants these rights to the record company. Therefore, in order to utilize the sound recording, the creative must first negotiate a masters license with the record label that owns the artiste's masters and then pay the label the agreed-upon masters royalty. If a creative intends to utilize the sound recording for profit, whether through streaming, digital downloads, ringback tones, or CDs, a mechanical license must be obtained for the creation, production, reproduction, and distribution of works that are protected, the copyright holder gets paid mechanical royalties. There are no direct fee negotiations between owners and anybody who would wish to insure or utilize these rights, therefore whereas in other jurisdictions these costs are statutorily required, in Nigeria these rates are often set by the collecting organizations.

b. **Synchronization License**: The ability to sync either the musical composition or sound recording with visual media is granted to the licensee under this agreement.[223]For instance, a synchronization license will be necessary if the music or sound recording is going to be used in a movie, video game, or TV commercial. When the composition or sound recording will be used in

[221]Scherer, Dana A. (January 19, 2016). Money for Something: Music Licensing in the 21st Century(PDF). Washington, D.C.: Congressional Research Service.
[222]A master recording is the original audio file from which all subsequent recordings are derived.
[223] Section 51 of the Copyright Act while defining a sound recording excludes soundtrack associated with a cinematograph film.

another format, such as a re-recording, cover, or sampling, a synchronization license is also necessary. In this case, the owners of the copyrights of the key works used get a synchronization royalty.

c. **Broadcast or Performance License**: This is granted to the licensee so they can broadcast, play, record, or stream the sound recording in public on radio, television, at events, or otherwise. Usually, the services of Collective Management Organizations (CMOs) like COSON[224] and MCSON,[225] are employed to grant, negotiate, administer, and recover performance licenses and royalties, respectively.[226]

d. **Print License:** Here, the licensee is given permission to disseminate tangible copies of the musical work's lyrics or notes that have been physically copied or transcribed by the licensee. For the most part, commercial exploitation of sheet music necessitates print licenses.[227]

Where artiste have gone through the rigours of securing any of the above license as applicable to them, the law as apportioned four pillers of four (4) pillars of intellectual property to secure their transactions accordingly. They are namely: Trademarks; Copyrights; Patents and Trade Secrets[228]. In Nigeria, the jurisdiction to hear intellectual property law cases is given under the

[224] The Copyright Society of Nigeria (COSON) is one of the two CMOs in Nigeria.
[225] The Musical Copyright Society of Nigeria (MCSN) is also one of the CMOs in Nigeria.
[226] Please note that Performance Rights Organisations are often part of Collective Management Organisations (CMOs).
[227]Rory P.Q, "How Music Royalties Work" https://iconcollective.edu/how-music-royalties-work/ accessed 16 September 2022.
[228]https://www.americanexpress.com/en-us/business/trends-and-insights/articles/four-pillars-intellectual-property-rights-protection/ accessed 12 May 2022.

Constitution of the Federal Republic of Nigeria 1999 (as amended)[229] exclusively to the Federal High Court. This has also been entrenched in the Nigerian Patents and Designs Act.[230]

a. Patents: A patent is a sort of intellectual property that grants the owner the legal right to prevent others from producing, using, or selling that invention without their consent for a certain period of time. Inventors who have contributed something original to the world are often protected by patents. When an innovation is patented, the patent holder acquires exclusive rights and is able to prevent unauthorized use, production, and sale of that specific invention. It should be noted that patents typically endure for 20 years, and they are typically granted in return for the patent owner disclosing all of the invention's details in public patent paperwork after 20 years[231]. Common examples of things that can be patented include novel business processes, computer software, games, advancements on the internet, perfumes, and magic acts.[232]

[229]S.251 (1)(f) of the Constitution of the Federal Republic of Nigeria 1999(as amended).
[230] Section 32 of the Nigerian Patents and Designs Act.

[231]S.7 Patent and Design Act Cap P2, LFN 2004
[232]https://www.upcounsel.com/what-can-be-patented accessed 12 May 2022.

b. Trademarks

Trademarks are signs and symbols that can be used to differentiate one company's goods or services from another. Trademarks include words, characters, numbers, symbols, catch phrases, colours, photographs, three-and two-dimensional signs such as forms, holograms, sounds, and even tastes and scents. The fundamental basis for trademark registration is distinctiveness. Trademarks often provide protection for a set period of time after which they must be renewed, depending on the specific geographic region or legal jurisdiction. The Nike "Just do it" logo and the Apple logo are two prominent examples of trademarks that are used often over the globe. We have diverse classes of trademarks including but not limited to Generic marks, Descriptive marks, Trade dresses, Certification marks, to mention a few[233].

c. Copyrights[234]

A copyright is a type of legal protection for literary works. It vests someone creates or authors an original piece of work like a literary work, movie, music or diverse kinds of software.[235] It is essentially the right which a creative possess in his literary work. A creative person has a moral and financial claim to his or her work. The ability for a creator to decide how such work is distributed is referred to as an economic right in the context of copyrights.[236] A moral right is the right a creative has to be formally recognized as the creator of the literary work, andthe right to prevent the work from being changed in a way that harms the author's reputation. The

[233] https://www.mondaq.com/trademark/979316/types-of-trademarks-all-you-need-to-know accessed 12 May 2022.
[234] Ekpeyong E., Nigeria: An Appraisal of Copyright Infringements and Remedies Under Nigerian Law http://www.mondaq.com/Nigeria/x/366362/Copyright/An+Appraisal+of+Copyright+Infringements+and+Remedies+under+Nigerian+Law accessed 18 September 2022.
[235] What is copyright? www.bbc.co.uk/copyrightaware/what-is accessed 18 September 2022.

[236] World Intellectual property organization.

moral right to a literary work has also been provided for [237], while the economic right to a literary work has been vested on a creative.[238]

Of the above, Musicians are largely protected by copyright, which refers to the exclusive control that is given to the creator or author of a work over that work for a specific amount of time. The duration of a copyright on an original work depends on the copyright regulations in force in each nation. In Nigeria, a copyright on any other kind of creative work outside pictures expires 70 years after the end of the year in which the creator or owner passes away. When a government or corporate entity serves as the author or owner, the deadline is 70 years following the end of the year the work was originally published. The works covered by copyright in Nigeria are:

- Literary works
- Artistic works
- Musical works
- Cinematograph works
- Sound recording
- Broadcasts

To claim the above the artiste, the artiste must prove that the copyright has been created with sufficient effort to ensure its originality. This means that the inventor must demonstrate that adequate efforts (resulting in originality) was invested in such creative activity when creating it. The work must also be expressed, which means that it must be fixed in a specific medium of expression; something that can be observed, reproduced, or communicated directly or through

[237]S.12 CA Laws of the Federation of Nigeria 2004.

[238]S.13 CA Laws of the Federation of Nigeria 2004.

the use of a machine or instrument. But note that if at the time of making an artistic work the author/owner intended that it should be used as a model to be multiplied by an industrial process, then the artistic work is not eligible for copyright.[239]Not only should the work be eligible for copyright, but the author or any of the writers (if there are more than one author) must also be qualified. The author must be either a Nigerian citizen or a Nigerian resident. In the case of a company, it must be a legal entity formed under Nigerian law. The author of a creative work is granted exclusive rights to reproduce the work in any material form. The author may also publish the work, distribute the work to the public for commercial purposes, or alter the work. The author also has the exclusive right to authorize those acts to be done. All of these may be done to the whole creative work or to a substantial part of it.[240]The owner of a copyright has the right to claim authorship of the work, and the authorship should be disclosed whenever any of the aforementioned acts are performed. However, this does not apply when the work is featured incidentally or accidentally when broadcasting current events. [241]

Accordingly, section 5 (1) of the Copyrights Act[242] provide thus

> Subject to the exceptions specified in the Second Schedule to this Act, copyright in a work shall be exclusive right to control the doing in Nigeria of any of the following acts, that is,

[239] Ekpeyong E., Nigeria: An Appraisal of Copyright Infringements and Remedies Under Nigerian Law 14 January 2015 .http://www.mondaq.com/Nigeria/x/366362/Copyright/An+Appraisal+of+Copyright+Infringements+and+Remedies+under+Nigerian+Law. Accessed 26 September 2022.

[240]Ibid

[241] S. 51 of the Copyrights Act Laws of the Federation of Nigeria 2004.

[242]Ibid.

in the case of a literary or musical work, to do and authorize the doing of any of the following acts-

1. Reproduce the work any material form;
2. Publish the work;

Perform the work in public;

1. Produce, reproduce, perform or publish any translation of the work;
2. Make any cinematograph film or a record in respect of the work;
3. Distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement;

- Broadcast or communicate the work to the public by a loud speaker or any other similar device;
- Make an adaptation of the work;

1. *Do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-paragraphs (I) to (vii) of this paragraph.*

As a result, the copyright owner is granted the sole right to record music, produce, sell, or distribute copies of the music in various formats (hardware and software), stream the music, stage a public performance of the music, reproduce or create new work from the original work (for example, modifying one's music to create a new song). In musical works, copyright also applies to prohibiting others from carrying out any of these actions without permission.[243]

[243] S. 6(1)(a) of the CA.

Nonetheless, there are exceptions to these formats as stated above.

One of these exceptions state that it is permissible for a person other than the owner/author of an y of the works covered by copyright to perform any of the acts designated as the exclusive right of the owner/author in the course of fair dealing for research purposes, private use, criticism or re view, or reporting of current events.This is however subject to the condition that if the use is public, there should be an acknowledgement of the title of the work and its authorship except where the work is incidentally included in a broadcast. [244]Also, the owner/author of the works covered by copyright has no right to control any act such as reproduction, distribution or publication of the author's work where it is done by way of parody or caricature.

Another exception is where a person reads or recites any reasonable extract from a published literary work in public or in a broadcast. This is permitted in so far as there is sufficient acknowledgement of its authorship and the reading or recitation is not for commercial purposes.

If a creative discovers that an unauthorised party has infringed on their copyright by performing or authorizing any of the acts listed above, suchcreator may demand tha t the infringement cease immediately, or demand that the copyrightinfringer deliver all of the wo rks (original and copies) and pay compensation for using the works. An agreement on how to use the author's work in the future may also be reached with the person who infringed on it. If the in dividual who infringes on the author's copyright fails to comply with the author's demands, the a uthor may seek redress in court.

4.3.2 Remedies for Infringement

[244]Ibid

In Nigeria, there are civil and criminal penalties for infringing a protected right in the entertainment sector. The copyright owners may submit a lawsuit in the federal district court where the infringement took place if they want to demand monetary damages, profits, legal costs, or an injunction. For copyright infringement, there are several remedies available:[245]

1. **Injunctions:** To stop continuing or future infringement, a copyright holder may obtain a temporary or permanent injunction. When a person's liability has been shown and there is a significant chance of continued violation, permanent injunctions are routinely issued.[246]

2. **Confiscation and Destruction:** During the course of the case, the courts may order the seizure of works that are being used in violation. As part of a final determination, the court may order the confiscated works to be destroyed or any other reasonable disposition of the infringing works.

3. **Damages:** Before a final judgement, a copyright owner may elect to seek actual damages and profits from the offender.

4. **Litigation Costs:** The courts have the ability to allow any party to recover all litigation costs.

5. **Criminal Penalties:** Criminal prosecution may follow a copyright violation done with the intention of obtaining a competitive advantage or personal financial gain.[247]

The importance of Nigeria's entertainment industry to our social and economic development cannot be overstated. Because copyright is necessary to protect and prohibit using the original

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[245]Legal remedies for copyright infringement in Nigeria (2021) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiOnNOr7f36AhXqhP0HHeh9AhAQFnoECAsQAQ&url=https%3A%2F%2Fwww.lexology.com%2Flibrary%2Fdetail.aspx%3Fg%3Dffc42333-ac14-4fd8-8c08-a05a9ffc4c4e&usg=AOvVaw1WoWxbxO2_dJQ9Qe3YWpwt accessed 11 May 2022

[246]Pamela Samuelson, 'Withholding Injunctions in Copyright Cases: Impacts of eBay' *william and mary law review [2022] (63) (3).*

[247]Ibid

work of the artiste, it has a substantial influence on the industry. In the entertainment sector, copyright infringement comprises the unauthorized use of a protected work as well as the breach and piracy of an author's exclusive right. According to the Act, it is illegal to create, duplicate, reproduce, publish, broadcast, publicly perform, distribute, or modify works that are protected. The performance of these activities without the owner's consent constitutes infringement, unless the activity falls under the purview of the exceptions from copyright control.[248] The Nigerian Copyright Commission (NCC) has so far been positioned towards its goal of protecting the entertainment industry and enforcing copyright laws to prevent piracy and other copyright infringement.

4.3.3 Third Party Licensing in the Nigerian Music Industry

The music industry in Nigeria has developed substantially. From being a "bad" job for some parents or a hobby for many artistes, the music business has developed into a successful career. In a recent study,[249] the Nigerian music industry was projected to generate a revenue of over $50 million[250] for the Nigerian economy by 2022.[251]The industry has been quickly growing over the last ten years, giving artistes and other stakeholders a wide range of opportunities to make money from their work. One of these opportunities, which gives the copyright owner more control over a song, is the licensing of music. In reaction to the recent decline in physical record sales and the emergence of digitally mediated forms of music like Caller Ring-Back Tunes (CRBT) and digital music streaming, Nigerians' appetite for digital music has substantially

[248] Second Schedule of the Copyright Act.
[249] The 'Nigerian Recorded Music Industry Report (2015 – 2020)', published by the Disruptive Creative Economy Meeting (DCEM) grouphttps://africanvibes.com/dcem-projects-50-million-revenue-for-nigeria-music-industry-by-2020/ accessed 16 September 2022.
[250] Approximately N19,250,000,000 using the extant Central Bank of Nigeria (CBN) foreign exchange rate.
[251] Abishek Singh, "Nigerian Music Industry Revenue to Hit 50 Million Dollars by 2022 https://www.premiumtimesng.com/entertainment/music/336689-nigerias-music-industry-revenue-to-hit-50-million-by-2020-report.html accessed 16 September 2022.

grown. [252] making licensing (rather than an outright assignment) the preferred option for the commercial exploitation of their music for many creatives.

4.4 Impact and Expectations: The Nigerian Situation

The biggest year in the history of the African music business is predicted to be 2022.

The researcher believes that the worldwide influence of the African music business would be unstoppable with the rise in streaming and the number of new artistes breaking in 2021.The coming year seems to hold great promise for music, therefore it's necessary to think about what the music business has planned Market Share Growth The largest market share it has ever had internationally is the first big forecast for the African music business in 2022.

The researcher predicts that more international pop collaborations from the continent will lead to more chart-topping singles, albums, and platinum records. This is especially true given the global explosion of the Afrobeats genre. International superstars have collaborated with some of Africa's most exciting artistes. We experienced it with Justin Bieber, Wizkid, and Tems, and now Fire Boy and Ed Sheeran have released a brand-new single.[253]

In addition, we'll witness more female collaborations with foreign musicians in 2022, as well as a rise in the proportion of female African artistes that top the charts. A rise in the use of African music syncs in global video games, television programs, and motion pictures is another important trend forecast that will aid in the market share growth of African music. When it

[252] As of December 2018, BoomPlay who entered the Nigerian market in 2015 had about 40 million users and millions of mobile App downloadshttps://filterfree.ng/features/5-of-the-best-music-streaming-apps-in-nigeria/ accessed 16 September 2022.
[253]Grammys 2021: Burna Boy and Wizkid wins big at music awards https://www.bbc.com/news/world-africa-56393983 accessed 11 may 2022.

comes to the rise of African music genres, Amapiano will see a significant increase in the United States in 2022Global Players' Local Investment:

> *The second forecast is that more foreign record labels, tour operators, media outlets, and technological firms will put more money and content into Africa. These companies will acquire or partner with local companies to expand their market reach, providing a stronger infrastructure for the entire African music community. More companies will establish larger offices on the continent and hire the best local executives to navigate the market. As a result of these investments, we will see more original content from artistes; larger tours and festivals; more artistes getting their music heard globally; and new ways for artistes to connect directly with their fans as a res ult of these investments.*[254]*Increased revenue outside of recorded music.*

The third forecast is that revenue from sources other than recorded music would increase for the African music business. African artistes are untapped Fortune 500 brands. There will be more international cooperation agreements with Fortune 500 firms, more NFT partnerships, and more artistes producing and owning their own goods rather than collaborating with another company. All African artistes will tour more. In early 2022, Burna Boy made history as the first African performer at Madison Square Garden in New York. This event serves as a reminder to the rest of the world that African music exists, that New York is the media and brand center of the world, and that if they want to be a part of the influence that will affect future generations, they need to do business with us. With this momentum in the African music community and increased

[254]How Afrobeats is making the world listen by Mankaprr Coneth , Nelson C.J https://www.rollingstone.com/music/music-features/afrobeats-global-rise-1282575/ accessed 11 may 2022.

resources being channeled to the continent in 2022 by various industry players, African music is likely to decline in the near future. Rather, the year 2022 promises to be much more exciting, and we should brace ourselves for the best of times in the African music industry. Spotify has unveiled "Wrapped," an annual round-up of the top artistes, albums, songs, and playlists of the year as streamed by Spotify users around the world. According to Spotify, the list is a first for the region (Nigeria). The 2021 Wrapped results defined how Nigerians sought to be entertained, informed, and connected with their favourite local and international musicians.[255]The list is dominated by Nigerians, with WizKid ranking as the country's most streamed artiste. Davido comes in third, followed by Burna Boy in second. Drake is the only foreign performer in the top five and is now the fourth most streamed artiste. The top five is completed by Olamide. Tems is at the top of the list of Nigeria's most streamed female artistes, demonstrating the popularity of homegrown music. Ayra Starr, a 19-year-old musician who is also the November artiste on Spotify EQUAL, is the second most streamed female artiste, while Doja Cat, the only foreign performer in the top five, comes in at number three.

Tiwa Savage and Teni are the next two most streamed female artistes. The most streamed track in Nigeria is LADIPOE's "Feeling," followed by Fireboy DML's "Peru," and Ruger's "Bounce," which is the third most streamed track. Omah Lay's' Understand 'is the fourth most streamed track in Nigeria, with Lojay's Monalisa rounding out the top five. WizKid's rave of the moment is, unsurprisingly, Made in Lagos (Deluxe Edition), the most streamed album in Nigeria, with the original "Made in Lagos" coming in second, ahead of international star Justin Bieber's "Justice," which comes in third. Davido makes another top five appearance with his album "A Better Time

[255] ibid

while Drake's latest release, Certified Lover Boy, rounds out the top five. Burna Boy, the Afrobe ats star, won a Grammy for his album 'Twice As Tall' at the 2021 ceremony on his the second try.[256]

Burna, whose real name is Damini Ogulu, was defeated by seasoned Beninese singer Angelique Kidjo for the 2020 Grammys.

Burna, 29, said, "This is a tremendous win for my generation of Africans all across the world," as he won the Best Global Music Album prize from his home in Lagos, Nigeria.

Every African should learn from this, he said, because they can do anything, no matter where they are or what they want to achieve.

Wizkid, 30, was yet another Nigerian winner, this time for his work with American artiste Beyonce on "Brown Skin Girl," which took home the 63rd Grammy Award for Best Music Video.Beyoncé collaborated with Afrobeats musicians on her album "The Lion King: The Gift," which she referred to as her "Love Letter to Africa." features collaborations with Afrobeats artistes including Shatta Wale and Tiwa Savage.[257]

These award wins, according to music industry observers like Aibee Abidoye, indicate that Afrobeats music "is here to stay." In an interview with CNN, Abidoye, a Nigerian music industry executive, said that Burna Boy's Grammy win is a significant victory for Africa. "With this win, African music — Afrobeats — is here to stay as an acceptable genre of music," said Abidoye, Executive Vice President of Nigerian record label Chocolate City. Afrobeats have struck a chord with young people all over the world. D'Banj's hit "Oliver Twist" was one of the first to chart in the UK, peaking at number nine in 201

[256]https://www.africanews.com/2021/03/15/grammy-awards-2021-nigerians-burna-boy-and-wizkid-win// accessed 12 may 2022.
[257]Ibid.

2.Following its debut in May 2016, Drake and WizKid's "One Dance" remained at the top of the US Billboard Hot 100 chart for ten consecutive weeks, and the UK announced the establishment of Britain's first-ever Afrobeats singles chart in 2020.The late Fela Anikulapo Kuti, who was recently nominated for entry into the Rock and Roll Hall of Fame, created the Afrobeats genre, which was later popularized by Burna Boy, Wizkid, and Davido.[258]Femi and Seun Kuti, who are both accomplished artistes in their own right and have had Grammy nominations on several occasions without success, are Fela's sons.

> *When you think about Afrobeat, the original genre -- that's from the Kutis, who actually have been nominated for years, it has never really been accepted as a thing. It has always been sort of sidelined. But what we're seeing now is an acceptance of the difference in the music, Abidoye said.*[259]
>
> *They couldn't ignore Burna Boy... people think that he really epitomizes Afrobeats, so it makes sense that he would win, she added.*

4.5 Chocolate City sues Brymo for Breach of Contract.

The Chocolate City Entertainment Company has said it invested almost N20 million on its former artiste, Ashimi Olawale Ibrahim (popularly known as Brymo), but failed to recoup up to N3 million according to court documents.

The music label and singer have been embroiled in a legal tussle since 2013 over allegations of breach of contract.

[258]ibid
[259] ibid

Brymo left Chocolate City in 2013 shortly after the release of Son of A Carpenter, his debut album on the label, accusing the company of failing to promote the record.

The music company, on the other hand, said the artiste breached a five-year contract that required him to release three albums between 2011 and 2016.[260]

'No royalties'

In a court document deposed at the Lagos Division of the Federal High Court, Brymo (the defendant) accused his former label of short-changing him, saying he never received any advance as agreed in his contract for the development of the album Son of A Carpenter.

"The plaintiff (Chocolate City) on many occasions told the defendant that it would give him a release from the contract and then change its mind," Brymo said.

"The defendant was never paid any royalties on the album Son of A Carpenter nor was he ever given a stated amount of the monies expended by them for the album.

"An email dated 14th May 2013 from the defendant clearly stated that the defendant is owed the sum of N925, 555.83 for the album Son of A Carpenter."

Brymo also accused his former label of failing to employ a manager for him, transferring one they earlier gave to him to another artiste, and forcing him to single-handedly employ and pay his own manager.

[260] https://www.premiumtimesng.com/news/more-news/211125-chocolate-city-battles-brymo-says-n20-million-invested-artiste-yielded-n3-million.html accessed 22 June 2022.

"The defendant never provided a platform for it to release another album, as it did not have the means to do so," said Brymo.

"It is based on the breach that the defendant wants to be released from the contract so he can continue with his career independent of the label."[261]

Chocolate City denies.

Chocolate City, however, said it paid for, on Brymo's behalf, every recording cost it authorised and for which a prior approval was sought and obtained by the singer.

The music group also said it is standard industry practice for record companies to pay for all expenses incurred during recording (paying producers, video director, dancers, and others), as opposed to giving the entire budget to the artiste.

"It is a notorious fact in Nigeria music industry that most artistes will fritter away the approved budget if same is handed over to them without producing any commercially and technically satisfactory Master recordings," Chocolate City stated in its deposition before the court.

"The artistes are mostly not business inclined.

"The plaintiff avers that it has advanced and expended almost N20 million on the defendant but has not recoup (sic) up to N3 million."

The label also accused Brymo of failure to actualise his career potential due to inability to "follow simple instructions", insubordination, and active/passive promotion of Indian hemp

[261]Ibid

which caused "serious damages to his brand and that of the plaintiff and other artistes in the stable of the plaintiff".[262]

"The defendant's active and passive promotion of drugs/marijuana included posting of pictures of Indian hemp/marijuana on his Twitter handle, Facebook or Instagram," the label said.

"It got so bad that no reputable company was ready or willing to give him an endorsement deal, thereby deny himself and the plaintiff good revenue.

"In fact, a major telecommunication company in Nigeria suddenly pulled out of an endorsement deal worth N20 million which the plaintiff was negotiating for the defendant and which would have earned the plaintiff about N10 million."

The music label denied telling Brymo it lacked the funds to produce his second album, and accused him of intentionally creating a crisis and then announcing to the public that he had become an independent artiste.

Between his exit from Chocolate City in 2013 and this year, Brymo has released three studio albums: Merchants, Dealers & Slaves (2013); Tabula Rasa (2014), and Klìtòrìs (2016).

Chocolate City said Brymo recorded and released Merchants, Dealers & Slaves despite an interim court injunction restraining him from doing so.

In the suit before Justice Babs Kuewumi, the company sought an order granting it sole and exclusive ownership of all the copyright (excluding musical composition) in the Son of A Carpenter album, as well as a single titled 'Down.'

[262]Ibid.

It also sought an order of perpetual injunction restraining Brymo from breaching the terms of their Exclusive Recording artiste Agreement of 11th April, 2011, as well as N100 million as damages.

At the last hearing date on September 16, Qudus Mumuney, counsel to Brymo, argued that the suit did not fall within the jurisdiction of the Federal High Court and urged the court to strike it out.

"The State High Court has exclusive jurisdiction to determine a dispute arising from a simple contract," said Mr. Mumuney.

"The plaintiff's action is frivolous, vexatious, and an abuse of court process."[263]

4.6 Record Label sues Bella Shmurda for copyright infringement, breach of contract

Bella is said to have a subsisting contract with One Word Global Records Limited which is due to expire in 2022.The Label claims that the singer has, contrary to the provisions of the contract, been engaging in the release, publication, distribution and promotion of songs and videos, among others, without the consent and authorization of the Label. The Singer has even gone as far as announcing that he has been signed onto another record label, Dangbana Republik, while his contract with One Word Global Records Limited still subsists. The Singer is also said to have been engaging in collaborations with other artistes without the consent of the record label.[264]

[263] https://www.premiumtimesng.com/news/more-news/211125-chocolate-city-battles-brymo-says-n20-million-invested-artiste-yielded-n3-million.html accessed 22 June 2022.

[264] https://www.pulse.ng/entertainment/music/record-label-sues-bella-shmurda-for-copyright-infringement-breach-of-contract/4hh5csr accessed 22 June 2022.

According to the Label, the Singer has also failed to remit the royalties accruing from the exploitation of the songs released under the label.

In the Originating process filed by One Word Global Records, the Label claims ownership of the trademark to the name, "Bella Shmurda" as well as the copyright in all the musical works and recordings released under or in connection with the name.

The Label thus seeks the Order of Court restraining the Singer from laying claim to the name and performing the musical works released under or in connection with the name. The Label also seeks the sum of N200 million damages for the Singer's breach of the Contract.[265]

According to the Chief Executive Officer of the Label, Prince Nkem Onyenwenu, all efforts to get Bella Shmurda to listen to the voice of reason have proved abortive and the Singer.

He threatened that the Label would not hesitate to file similar actions against any person or organisations who aids, assists or partakes in the violation of its trademark in the name and its copyright in the musical works released under the name.

4.7 The Case of Runtown

For the second time in two years, Eric Many, the record label that signed Nigerian pop star, Douglas Jack Agu, a.k.a Runtown, has filed an injunction at a Federal High court sitting in Lagos, against the singer for breach of contract.

[265]Ibid

The entertainment company served the rising pop singer a writ of summons a few days back with the Suit No: FHC/L/CS/267/2018. It also released a statement that partly reads, 'Runtown has been deliberately breaching his contract with us (Eric Many) for a while and despite our many appeals to him he has refused to bulge. He went for a show in Las Vegas since January 13, 2018 and has since decided to withdraw all obligations of his contract. He has steadily been recording an album without the consent and approval of his record label."

According to the statement of claim filed at the Federal High Court by Eric Many, "a Recording Agreement was made between the Plaintiff and the Defendant dated 22nd June 2016, the copyright and other intellectual property and cognate rights and legal positions and protections applicable to all works done by the Defendant during an initial period of two years covered by the Agreement, is vested in the Plaintiff. The Plaintiff will rely on a copy of the said Recording Agreement at trial. Under the Agreement, parties recognize and acknowledge the sum of N114,456,670.00 (One Hundred and Fourteen Million, Four Hundred and Fifty Six Thousand, Six Hundred and Seventy Naira) as "Prior Investment", representing the sum invested by the Plaintiff into the development of the Defendant's musical works and records under the defunct 'Artiste Agreement', precursor to the 'Recording Agreement".

In a press statement issued yesterday, the label also states that, "he's recording with artistes like Del B without the written approval of the label and without an Eric Many appointee at the point of recording as agreed in our contract. Runtown has also been appearing in venues and collecting appearance fees without the approval of the label and also performing in private shows without the label's consent which contravenes clause 4.4.1 of his record deal which states that 'the Defendant (Runtown) can only engage in recording, collaborating or performing with other

artistes for third parties or other record companies upon proper notification in advance to the Plaintiff.

Upon this notification, the Plaintiff would then enter into an agreement with the collaborating artiste or his record company to ensure that the Plaintiff and the Defendant receive proper credit, legal/copyright protection and compensation for the collaborative work".

Though Runtown's record deal with Eric Many is due to expire at some time this year, the label says he still owes the company a lot of money including, 'Hundreds of millions of Naira from the Lamborghini Gallardo super-fast car which he still has to pay back to the label and also, an album that must be released through the right channels. He has been doing numerous collaborations with several artistes without getting the written approval of the label and as a result, no royalties have come back to the label from any of these collaborations. He has been warned severally about this on numerous occasions but he refused to listen, so we as the label had to go to court to stop him from these dubious actions'.

The label also confirms sacking his current manager, Ifeanyi Nwunne saying, 'Eric Many has also fired Ifeanyi Nwunne as Runtown's manager. He is more of a drug addict that smokes marijuana round the clock. A new manager will be appointed soonest'.

Eric Many, however, is seeking the sum of "N65 million being general damages against the Defendant (Runtown) in favour of the Plaintiff for infringement of the Plaintiff's copyright to the collaborative musical works "Call Me" and "Weekend" both of which featured the Defendant as well as N5 million as costs of this action".

"Eric Many has chosen to hold back on anything pertaining to Runtown,till further investigations. This means that anyone who engages Runtown without a written approval from Eric Many, signed by the chairman, will be sued heavily. This will be the second time in two years that Runtown has had to face off with his label. In May 2016, he was sued in the Federal High Court by Eric Many on allegations that he signs up, concludes and attends musical shows without the knowledge of the label. Back then, Eric Many also secured a court injunction stopping Runtown from performing as an artiste anywhere in the world. He later went back to the label to apologize and the case was settled out of court.[266]

4.8 G Worldwide and Kiss Daniel

In *G Worldwide Entertainment v. Anidugbe*[267]an action was commenced in the FHC by the record label against the Defendant popularly known as *'Kiss Daniel'* for breaching their contract by appointing a new manager, soliciting for bookings, negotiating and entering performance agreements without the knowledge of the label, using the trademarked name, '*Kiss Daniel'* without the label's permission. The contract was terminated after four years, instead of the seven years it was to run for. The label also claimed the masters of the songs *'4 Dayz'* and *'For You'* (a collaboration with *Wizkid*) off his yet to be released *'Evolution'* album. In addition, the record label claimed the trademark rights to the name *'Kiss Daniel'*. The artiste proceeded to exit the label, established his own '*Flyboy Inc.'* label and changed his stage name to*' Kizz Daniel'*

[266]https://www.vanguardngr.com/2018/03/breach-contract-record-label-slams-runtown-n70m-lawsuit/ accessed 12 June 2022.

[267]*G Worldwide Entertainment v. AnidugbeUnreportedSuit No: FHC/L/CS/1758/2017, Judgment of 30.11.2017 (Kuewumi, J).*

Chapter Five

5.0 Summary, Conclusion and Recommendations

5.1 Summary of Findings

Human behavior is characterized by conflict, and the courts have always been asked to step in and make rulings that have set precedents. Expecting confrontations between record companies and the artistes they have hired to perform would be wishful thinking; they are more likely to occur now than they ever have. Better negotiating skills can significantly reduce the recurring disputes between the parties regarding master ownership, trademark usage, and contract violations by artistes who have previously benefited from the performance of the record label's obligations, even though there is no way to permanently end the conflict between labels and their artistes.

Record labels, the primary employers of musicians, have recently changed away from the standard record contracts that they need potential signee artistes to sign to more expansive types of contracts such as the multiple rights deal, commonly referred to as the *"360 deal"*. Major record labels appear to like these types of artiste agreements because they carry less risk than traditional contracts or deals for the development of artistes; in fact, they encourage artistes who have already signed traditional agreements to think about renegotiating their contracts to include multiple rights. The term "360 deal" can be stated in a variety of ways, such as "90 deal,""180 deal," or "270 deal," but because these terms do not have standardized definitions, they are frequently used informally. The 360 deal is a type of artiste-record label agreement that, while the specifics may differ from artiste to artiste, entitles such record label to participate to a significant extent in the profits realized from the artiste's sales, music publishing income, touring income, and all other profits due to the artiste. Simply put, it grants the label the right to a percentage of all artiste earnings.

5.2 Conclusion

The average Nigerian takes pleasure in his or her ability to complete a simple task without assistance. When the typical Nigerian is seeking to conserve money that they would otherwise have to spend on hiring specialists, the "do-it-yourself" phenomena is more apparent. Although this is admirable, there are other people who spend a lot of time in colleges studying professional subjects. Therefore, it would be reckless for a layperson to try to do a work that is only meant for individuals with specialized knowledge. Nigerian musicians regularly tell stories about how their record firms are taking advantage of them and cheating them. When artistes sign contracts with record labels without doing proper diligence, they frequently find themselves obliged to suffer the consequences. The common thread in the majority of these tales is that the artistes failed to consult an attorney who might have given them good advice or reviewed the contracts before they signed them. Undoubtedly, record firms pull up a lot of aspiring and failing artistes from the streets and offer them the chance of a lifetime in a deal that occasionally includes showy benefits like an apartment and/or a car. These performers, who are accustomed to working long hours in the sweltering weather, seldom give contracts a second thought before signing them, and it is only after they have committed to such objectionable clauses that they become aware that they are not being fairly rewarded for their true worth.

But at that point, it would be too late because the law is clear that a person is bound by the contract he commits to, absent fraud. The opposite may also be true, as record companies occasionally accept contracts from artistes without carefully reading them to make sure they are fairly paid for their investment in the musician. This typically occurs when an artiste switches labels or when they have established themselves before getting signed. In the entertainment sector, lawyers are essential to both sides' interests. Before signing a deal with a record company, it is highly recommended to inform a lawyer. A record contract is created by one party, typically

the record company, and is geared toward the record label's advantage. It is up to the artiste to decide which terms should be changed and which terms they are happy with. The majority of entertainment attorneys are taught to look out for these unfair provisions, commonly called "restrictive covenants," and to suggest changes that would benefit both parties in the long term. Before signing any record agreement, it's a good idea to consult an entertainment attorney because lawyers are familiar with the law. They are aware of the laws and rules governing the entertainment sector.

Because the law really offers minimum protection for the intellectual property developed by an individual, which an artiste may take advantage of, some artistes are actually better off without signing any contracts with record labels. However, some record agreements are written such that the baseline protection that the law grants the artiste is suspended. Therefore, once an artiste accepts the conditions of the contract, they would be unable to rely on the legal standard protection. When record label agreements fall well short of legal requirements and industry best practices, an entertainment lawyer would immediately notice.

Additionally, an entertainment lawyer's responsibilities extend beyond just examining contracts and counseling artistes on their consequences. The use of many artistes' intellectual property is really entitled to particular rights and compensation. These advantages, often known as intellectual property rights, are frequently misused and violated by outside parties. Entertainment attorneys are adept at identifying and combating violations of their clients' intellectual property rights. It is crucial to note that as technology advances, so do the laws governing the protection of intellectual property. Since the rapid growth of social media has made it so simple to violate intellectual property rights in the twenty-first century, it is crucial for record labels and artistes to

both have lawyers on retainer who will be in charge of updating the protections offered to the works produced by those parties.

When should an artiste get in touch with legal counsel? Ideally, the artistes should speak with attorneys even before they get into a contract with a record company. Lawyers are skilled negotiators who know how to push for the best possible outcome and put the interests of their clients first. This means that any artiste would benefit significantly from having a lawyer at their side or ready to go while approaching the negotiating table. When an artiste learns that he has signed away his freedom because he failed to have a lawyer evaluate his contract or defend his interests at the negotiating table, he will be forced to employ a lawyer. But fixing the problem would be more expensive than if it had been avoided.

Role of Legal Practitioners in the Entertainment Industry

There are specific functions In the industry that require the expertise of a legal practitioner viz:

- The majority of clients sign into contracts without fully comprehending their terms, according to contractual guidance. Consequently, the artiste would require legal counsel to advise on the potential legal repercussions.
- Drafting and negotiating production and development contracts, including agreements for writers, artistes, and recordings.
- Facilitating and negotiating distribution agreements for a project related to entertainment.
- Developing funding contracts for grants, sponsorship, bank loans, investments in co-production, and other sorts of investments.

- Creating sample contracts for clients, including licensing agreements, appearance releases, and location releases.
- Examining contracts and other legal papers to evaluate legal issues, commercial concerns, or other matters.
- Using alternative dispute resolution to resolve contract disputes (Mediation, conciliation or arbitration).
- Verify that the customer is adhering to the regulations set out by the regulatory bodies in the industry.
- Bring a lawsuit for contract violations, trademark infringement, copyright violations, and other relevant offenses.
- Attend meetings on behalf of the client where necessary.

5.3 Recommendations.

1. The simplest and safest way to avoid disputes is for the artiste to obligitively retain the services of an entertainment lawyer to study the contract that the label has provided to him and to support him in negotiating against clauses that might exploit rather than protect him. If the record contract had been properly drafted and understood, conflict cases that result from its conditions may have been avoided.

2. Sensitization: Education is the most powerful weapon which can be used to change the world according to Nelson Mandela. This issue of Music Recording Contracts and how labels exploit the desperation of artistes can be limited by making artistes and Creatives aware and sensitive about how to handle these issues. A record deal is supposed to be a mutually beneficial working relationship between the artistes and the Record Labels and not a one sided affair. artistes should

be aware that Labels cannot exist without them therefore they should have a sense of worth before signing any kinds of contract and this can be achieved by improving their knowledge, changing their attitudes, Focus on their skills and what they have to offer and building a social support to enable artistes know where they can get support and/or give support to other people facing the same issue.

3. A better structure is required for Nigeria's intellectual property legal framework. New copyright legislation like the *CA Bill* should consider some of the concerns that this digital age and a larger music market/audience could raise and ensure that Labels draft standard and balanced contracts for their artistes as of course stipulated by International Best Practices to curb the constant exploitation of these artistes and Creatives in general.

4. Copyright regulators, primarily the NCC (Nigerian Copyrights Commission), should intensify their efforts in tackling piracy in Nigeria because this ill reduces by a large percentage, the profit that labels realise from the commercialisation of an artiste's creative output. It becomes incredibly hard and time consuming for a signed artiste to offset the advance paid and promotional expenses that the label has expended on them and in the end the royalties available to these artistes are infinitesimal, if any.

5. As previously said, the CBN created the CIFI (The Creative Industry Financing Initiative) to provide funding for the creative sector, which therefore includes the music sector. Although this is commendable, more efforts and concessions from the apex bank, the Federal Government, and Nigerian financial institutions are required to support this industry. The industry currently has the potential to generate significant income for its stakeholders (artistes, government, professional service providers, etc.). The CIFI should also focus on independent artistes that

have great potentials in order to fund them and/or enter into a partnership with them and save them the fate of being at the mercy of Record Labels.

6. A lack of instruction or direction for aspiring artistes on the complexities of the music industry is another urgent problem facing the Nigerian music industry. This is important since the education of young and aspiring artistes is crucial to the success of the music business. It is necessary to educate and employ experts in this field because many aspiring musicians are illiterate about the terms of record company contracts. If the music industry is to compete with emerging economies, this gap must be bridged right once. This can be accomplished by employing the expertise of such experts throughout the industry and value chain.

7. The interests of creatives in the music business must be protected by associations like the PMAN (The Performing Musicians Employers Association). This might involve lobbying or influencing decision-makers on matters that have an impact on the sector.

8. Review Clause should be added to Music Recording Contracts in order to ensure that the parties can at a point or two before the end of the contract can review certain terms and clauses provided in the Contract and this would really help to limit the rate at which Music Record Contracts are breached due to either party realising at some point that the terms of the contract are unfavorable afterall and this realisation occurs when the artiste blows up and starts to make a lot of money for the label and he only receives peanuts as royalties based on the initially agreed terms.

9. Know the type of deals to offer an artiste. It does not have to always be the Multiple rights contract, other options like Partnerships, work for hire, management and promotion deals should be considered by record companies as these other kinds of deals are of a more balanced nature.

10. A body should be established to certify legal practitioners in the creative industry as 'Entertainment Lawyers", the lawyers that are specialized in the Entertainment and Creative Industry to make these lawyers stand out as specialists in the Industry.

5.4 Contributions to Knowledge.

This study makes a legal incursion into the otherwise generally discussed music industry as made up of a variety of relationships, as well as rapidly evolving technology. The research attempted to give legal answers to music recording contract issues, for which there were no answers.

5.5 Suggested Areas for Further Research

1. The roles of "International Best Practice' in drafting Music Recording Contracts
2. Judicial processes and Alternative dispute resolution mechanisms for handling Music Recording contracts issues.

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- National Examination Council.

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- Best graduating student in Public Administration and Law respectively.

- Award of Merit as Stage Manager, Dance and Drama Community Development Service(CDS), National Youth Service Corps, Ado-Ekiti, Ekiti state in 2014/2015 Batch 'C'

- Most Creative and versatile Award at Intelligence Republic Advertisement Agency.

- Best talent manager at Maya Awards.

PROFESSIONAL EXPERIENCE

- **Intelligence Republic Advertisement Agency, Oluyole Est. Ibadan, Oyo State, Nigeria**

Job Summary

- Created lovely advertisement ideas for top firms to boost their products/sale
- Assisted in directing these advert ideas in order to ensure the ideas are well interpreted.
- Given award of Excellency by the agency

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Position Held: Legal Assistant Law Chamber /Firm (2011)

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  - Script writer for the photo novel series, Fame and Luv 2, Lagos Hustlers and the movie Make Believe.
  - Social Media Manager and strategist for fame and luv social media accounts.
  - Actor in the photo novel series Lagos Hustlers and the movie Make Believe.
  - Manager and A&R, Kobi Mighty Records.

- **Kobi Mighty Records**

  Position held: Lawyer, Manager and Head of A&R.

  Job Summary

  - Talent scouting and overseeing the artistic development of recording artistes.
  - A & R Executive.
  - Music Promotion and Distribution.

- Drafting of Recording contracts and legal documents.
- Day to day management of the entire label team.
- Negotiating contracts and fees, finding and booking events and venues that match the artist's career strategy.
- Liason between the artist and record label.
- Review of every content before approving for release.
- Company Secretary.

High Light Entertainment(Europe based)

Position held: Lawyer, Manager and Head of A&R.

Job Summary

- Talent scouting and overseeing the artistic development of recording artistes.
- A & R Executive.
- Music Promotion and Distribution.
- Drafting of Recording contracts and legal documents.
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- Negotiating contracts and fees, finding and booking events and venues that match the artist's career strategy.
- Liason between the artist and record label.
- Review of every content before approving for release.
- Company Secretary.

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  Position Held: Legal Extern.

  Job Summary

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Preparing Legal Documents.

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_____ _____

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