

**DIGITAL PIRACY AND ITS IMPACT ON THE NIGERIAN MUSIC INDUSTRY:
A LEGAL PERSPECTIVE**

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BENIN CITY.**

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,
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NOVEMBER, 2025

CERTIFICATION

I, **Ohizebamen Adebamidele ORHEWERE**, with Matriculation Number **LAW2002936**, hereby certify that apart from references to other persons' works which have been duly acknowledged, the entire work is a product of my research, and this project has neither in whole nor in part been presented for another degree elsewhere.

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DEDICATION

I dedicate this project to God Almighty for the grace to see me through the entirety of my academic stay at the University of Benin, without whom none of this would be possible and to my wonderful family for their unwavering love and support towards my LLB journey.

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TABLE OF STATUTES

A. Nigerian Statutes

Copyright Act, 2022.

Copyright Act, Cap C28, Laws of the Federation of Nigeria 2004 (Repealed).

Collective Management Organisation Regulations, 2025 (S.I. No. 17).

Cybercrime (Prohibition, Prevention, etc.) Act, 2015.

Nigeria Customs Service Act, 2023.

B. Comparative Statutes

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Digital Millennium Copyright Act, 1998 (United States) (amending Title 17).

South Africa Copyright Act 98 of 1978.

C. International Instruments

Berne Convention for the Protection of Literary and Artistic Works, 1886 (as revised).

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.

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International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

TABLE OF CASES

<i>A&M Records, Inc v Napster - 239 F3d 1004 (9th Cir 2001).</i>	-	-	-	-
32				
<i>Authors Guild v. OpenAI</i> , No. 1:23-cv-08130 (SDNY, filed 19 September 2023).	-			32
<i>Authors Guild, Inc. v. Google, Inc.</i> - 804 F.3d 202 (2d Cir. 2015).	-			-
69				
<i>BMG Rights Mgmt. (US) LLC v. Cox Commc'ns, Inc.</i> - 881 F.3d 293 (4th Cir. 2018).				-
67				
<i>COSON v NCC & Ors</i> - (FHC/L/CS/207/2019)	-	-	-	-
59				
<i>GEMA v OpenAI</i> , Case No. 42 O 14139/24 -	-	-	-	-
16				
<i>Getty Images (US), Inc. v. Stability AI, Inc.</i> No. 1:23-cv-00135 (D. Del, filed 3 February 2023).				70
<i>Lenz v Universal Music Corp.</i> - 801 F.3d 1126 (9th Cir. 2015).				-
68				
<i>MCSN v Adeokin Records</i> - Appeal No.: CA/L/498/97.	-	-	-	
57				
<i>MCSN v Detail</i> - FHC/L/CS/934/95. -	-	-	-	-
57				
<i>Metro-Goldwyn-Mayer Studios Inc. v Grokster, Ltd.</i> - 545 U.S. 913 (2005).				-
32				
<i>Metro-Goldwyn-Mayer Studios Inc. v Ackerman</i> - [2001] ZASCA 141				-
74				
<i>Multichoice (Nig.) Ltd v MCSN Ltd/Gte</i> - 13 NWLR (Pt 1742) 415 (CA)	-			-
59				
<i>Sony Music Ent. v Cox Commc'ns, Inc.</i> - 464 F. Supp. 3d 795 (E.D. Va. 2020)				-
68				
<i>State v Waka TV</i> No. RC/2024 (Germiston Regional Court, May 2024).				-
74				
<i>UMG Recordings, Inc. v. Suno, Inc.</i> , Case No. 1:24-cv-11611	-	-	-	
15				

LIST OF ABBREVIATIONS

AI — Artificial Intelligence.

AWAL — AWAL (originally Artists Without A Label; music distribution company).

CAPASSO — Composers, Authors and Publishers Association (South Africa).

CD — Compact Disc.

CISAC — International Confederation of Societies of Authors and Composers.

CMO — Collective Management Organisation (singular).

COSON — Copyright Society of Nigeria.

CIPC — Companies and Intellectual Property Commission

DABUS — Device for the Autonomous Bootstrapping of Unified Sentience.

DMCA — Digital Millennium Copyright Act (United States).

DRM — Digital Rights Management.

FEMAN — Federation of Musicians and Employers' Associations of Nigeria.

GEMA — Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte.

IFPI — International Federation of the Phonographic Industry.

ILO — International Labour Organization.

ICESCR — International Covenant on Economic, Social and Cultural Rights.

ISP — Internet Service Provider

LLM / LLMs — Large Language Model / Large Language Models.

MP3 — MPEG-1 Audio Layer III (audio compression format).

MCSN — Musical Copyright Society Nigeria Ltd/Gte.

NCA — Nigerian Copyright Act

NCC — Nigerian Copyright Commission.

NCS — Nigerian Customs Service

NPF — Nigerian Police Force.

NiRA — Nigeria Internet Registration Association.

OSP / OSPs — Online Service Provider / Online Service Providers.

P2P — Peer-to-Peer (file-sharing).

RMI — Rights Management Information.

SAMRO — Southern African Music Rights Organisation.

SCCC — Specialised Commercial Crimes Courts

TRIPS — Agreement on Trade-Related Aspects of Intellectual Property Rights.

TPMs — Technological Protection Measures

US — United States

USC — United States Code

UDHR — Universal Declaration of Human Rights.

UN — United Nations.

WCT — WIPO Copyright Treaty.

WIPO — World Intellectual Property Organization.

WPPT — WIPO Performances and Phonograms Treaty.

WTO — World Trade Organization.

TABLE OF CONTENTS

Title Page	-	-	-	-	-	-	-	-	-	ii
Certification	-	-	-	-	-	-	-	-	-	iii
Approval	-	-	-	-	-	-	-	-	-	iv
Dedication	-	-	-	-	-	-	-	-	-	v
Acknowledgements	-	-	-	-	-	-	-	-	-	vi
Table of Statutes	-	-	-	-	-	-	-	-	-	vii
Table of Cases-	-	-	-	-	-	-	-	-	-	viii
List of Abbreviations	-	-	-	-	-	-	-	-	-	ix
Table of Contents	-	-	-	-	-	-	-	-	-	xi
Abstract	-	-	-	-	-	-	-	-	-	xiii

CHAPTER ONE: GENERAL INTRODUCTION

1.1 Introduction	-	-	-	-	-	-	-	-	1
1.2 Background to the Study	-	-	-	-	-	-	-	-	1
1.3 Statement Of The Problem	-	-	-	-	-	-	-	-	3
1.4 Aim and Objectives of the Study	-	-	-	-	-	-	-	-	6
1.5 Scope and Limitation of the Study	-	-	-	-	-	-	-	-	6
1.6 Significance of the Study	-	-	-	-	-	-	-	-	7
1.7 Research Methodology	-	-	-	-	-	-	-	-	8

CHAPTER TWO: CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Introduction	-	-	-	-	-	-	-	-	10
2.2 Conceptual Clarification	-	-	-	-	-	-	-	-	10
2.3 Evolution of Music Distribution and Digital Platforms	-	-	-	-	-	-	-	-	17
2.4 Legal Theories Relevant to Intellectual Property	-	-	-	-	-	-	-	-	25
2.5 Types and Methods of Digital Piracy	-	-	-	-	-	-	-	-	33
2.6 Effects of Digital Piracy on the Music Industry (Globally & Locally)	-	-	-	-	-	-	-	-	38
2.7 Conclusion	-	-	-	-	-	-	-	-	41

**CHAPTER THREE: LEGAL AND INSTITUTIONAL FRAMEWORK ON
THE PROTECTION OF COPYRIGHT**

3.1 Introduction	-	-	-	-	-	-	-	-	43
3.2 Overview of Intellectual Property Protection in Nigeria	-	-							44
3.3 The Copyright Act 2022	-	-	-	-	-	-	-	-	49
3.4 Institutional and Enforcement Framework in Nigeria	-	-							54
3.5 Conclusion	-	-	-	-	-	-	-	-	63

**CHAPTER FOUR:A COMPARATIVE ANALYSIS OF ANTI-PIRACY
FRAMEWORKS IN OTHER JURISDICTIONS WITH NIGERIA**

4.1 Introduction	-	-	-	-	-	-	-	-	66
4.2 The United States Framework	-	-							67
4.3 The South African Framework	-	-	-	-	-	-	-	-	74
4.4 Conclusion	-	-	-	-	-	-	-	-	79

CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Findings	-	-	-	-	-	-	-	-	81
5.2 Areas Of Contribution To Knowledge	-	-							82
5.3 Recommendations	-	-	-	-	-	-	-	-	83
5.4 Conclusion	-	-	-	-	-	-	-	-	84
Bibliography	-	-	-	-	-	-	-	-	86

ABSTRACT

This long essay critically examines the persistent problem of digital piracy within the Nigerian music industry, analyzing the adequacy and effectiveness of the nation's legal framework from a legal and human rights perspective. The central thesis is that Nigeria's response to this challenge is characterized by a fundamental paradox: the system is strong in law but profoundly weak in execution. While the Copyright Act 2022 provides a modern, comprehensive arsenal of rights and digital safeguards, its practical implementation is severely undermined by institutional and procedural failures. The nature and scope of piracy have drastically evolved from physical markets to technologically sophisticated digital methods, including widespread stream-ripping, cyberlockers, and illicit sharing across decentralized social media platforms, a shift the enforcement institutions have failed to match. The unchecked prevalence of piracy results in an estimated annual loss of ₦918 trillion across Nigerian copyright industries, which translates into a direct and severe violation of the economic and human rights of Nigerian creators to benefit from the fruits of their labor. This institutional execution gap is manifested in the Nigerian Copyright Commission (NCC) being operationally overstretched, the Nigerian Police Force de-prioritizing intellectual property crime, and Collective Management Organisations (CMOs) being plagued by governance crises and credibility challenges. Furthermore, the framework contains a critical gap regarding the emerging threat of generative Artificial Intelligence (AI). A comparative analysis of the US and South African models confirms that the solution does not lie in legislative overhaul but in decisively adopting proven models for procedural efficiency, institutional transparency, and strong judicial deterrence. This research concludes that safeguarding the sustainability and global competitiveness of Nigeria's music sector requires a fundamental shift in priority to bridge the gap between statutory promise and practical reality.

CHAPTER ONE

1.1 INTRODUCTION

The global rise of Nigeria's music industry is one of the most significant cultural and economic developments of the last two decades. This growth, however, has been simultaneous with the rapid proliferation of digital technologies that enable new and widespread forms of copyright infringement.

The unauthorized copying and distribution of creative works online, commonly known as digital piracy, poses a direct and substantial threat to the long-term sustainability of this vital sector. This practice creates a critical conflict between the intellectual property rights of creators and the practical realities of modern digital consumption.

This long essay will conduct a legal analysis of this complex problem. The central aim is to evaluate the adequacy and effectiveness of Nigeria's existing legal framework in protecting the rights of music creators in the digital age. This research will explore the scope of digital piracy, assess the challenges to legal enforcement, and analyze the resulting impact on artists, the industry, and the national economy.

1.2 BACKGROUND TO THE STUDY

Digital piracy refers to the unauthorized reproduction, distribution or use of copyrighted materials through digital means (e.g. the internet, file-sharing, peer-to-peer networks). In other words, it is the illegal copying or dissemination of creative works without the rights holder's permission¹. In the music industry, this includes unauthorized downloads or streaming of songs, bootleg recordings, and other forms of copyright infringement that exploit any digital technology. The Nigerian music

¹ Bytescare, 'What is Piracy of Intellectual Property' (2023) <https://bytescare.com/blog/what-is-piracy-of-intellectual-property> accessed 27 August 2025

industry which encompasses artists, record labels, producers, promoters and distribution networks, has grown dramatically over the past two decades. African pop and Afrobeats artists such as Burna Boy, Davido, Wizkid, etc have achieved global recognition, making Nigeria one of the world's fastest-growing music markets². Music is a key sector of Nigeria's creative economy, contributing significantly to culture and income. In fact, Nigeria's entertainment industry (film, music, publishing, etc.) were estimated to contribute about ₦1.2 trillion (approx. US\$7.5 billion) annually to the economy³

The law's interest in digital piracy stems from its conflict with intellectual property (IP) rights. The Copyright Act 2022⁴ (e.g. Nigeria's Copyright Act) grants creators exclusive economic and moral rights over their works. These rights include the right to reproduce, distribute, perform and derive financial benefit from a work⁵. Unchecked piracy undermines these rights and should be seen as a violation of artists' human rights. International human rights instruments recognize that authors have a fundamental right to the protection of the "*moral and material interests*" arising from their creative works⁶. In other words, artists are entitled to fair remuneration and recognition for their creations, reflecting their personal dignity and freedom of expression. Nigeria, as a United Nations (UN) member state, is bound by such

² O Tade and A Akenliye, 'Combating the Scourge of Piracy in the Nigeria Music and Movie Industries: The Cybercrime Option' (2012) 6(2) International Journal of Cyber Criminology 1004 <https://cybercrimejournal.com/pdf/Tade&Akenliye2012julyijcc.pdf> accessed 27 August 2025

³ A Ezekude, 'Nigeria's Anti-Piracy Drive Yields Results' (2022) <https://www.wipo.int/web/wipo-magazine/articles/nigerias-anti-piracy-drive-yields-results-38120> accessed 27 August 2025

⁴ (Act No. 8)

⁵ World Intellectual Property Organization, The Economic Impact of Counterfeiting and Piracy: Executive Summary (2017) https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf accessed 27 August 2025

⁶ C Gardner, 'Artists Rights are Human Rights' (Music Tech Policy, 10 December 2011) <https://musictechpolicy.com/2011/12/10/artists-rights-are-human-rights/> accessed 27 August 2025

covenants (e.g. ICESCR Article 15(c)⁷ and UDHR Article 27⁸) which require the state to protect creators' rights. Additionally, the African Charter in Article 14 guarantees the right to property and Nigeria as a member to the African Charter adopts this⁹. Thus, digital piracy is of legal interest because it directly threatens the economic livelihood of musicians (whether it be the artiste, producer, sound engineer, etc) and the broader goals of intellectual property law.

In summary, this study examines digital piracy in the context of Nigeria's music industry. It explores how these digital technologies (internet distribution, online streaming, file-sharing) have facilitated the unlawful copying of songs and whether existing Nigerian law effectively curbs this threat. While existing literature addresses copyright law in general, there is a significant gap in studies that specifically analyze the effectiveness of these laws in the face of modern digital distribution technologies and their impact on the Nigerian music industry. This study seeks to fill that gap by providing a comprehensive legal perspective on the issue. The chapter provides background on piracy, describes the music industry's importance, and explains why piracy raises legal and human-rights concerns for Nigerian artists.

1.3 STATEMENT OF THE PROBLEM

The Nigerian music industry, a sector characterized by substantial growth and creative output, is confronted with a significant and persistent challenge from widespread piracy. Although the industry has achieved considerable international recognition, its economic viability is largely compromised by the prevalence of digital piracy. Studies suggests that piracy rates are exceptionally elevated, with certain analyses indicating that as much as 80% of music consumption within Nigeria is pirated. Such illicit

⁷ International Covenant on Economic, Social and Cultural Rights (1966) 993 UNTS 3

⁸ Universal Declaration of Human Rights, GA Res 217A (III) (1948)

⁹ African Charter on Human and Peoples' Rights (1981) CAB/LEG/67/3 rev. 5, 21 ILM 58.

activity effectively deprives creators and industry stakeholders of legitimate revenue, thereby impeding investment and hindering innovation. In 2019 the Copyright Commission reported that piracy was costing Nigeria some ₦918 trillion (≈US\$3 billion)¹⁰.

This widespread piracy causes several key problems. First, it erodes artists' economic rights – the primary means by which songwriters and performers earn a living. When music is downloaded or streamed illegally, creators lose sales, royalties and performance revenues. Victims of piracy have lamented how it drains their finances and discourages investment in new music. In this way piracy can “halt creativity” and stunt industry growth¹¹. Second, piracy undermines the sustainability of the music industry and economy. Rights holders invest huge resources (time, studio costs, marketing) to produce music; piracy diverts these returns away from legal channels, reducing tax revenue and deterring foreign investmentwipo.intscirp.org. Third, rampant piracy fuels a culture of illegality and violence. For example, the Alaba International Market in Lagos is notorious as a piracy hub; studies report that large pirate syndicates there will violently resist enforcement and even confront police.¹²

The ramifications of this pervasive piracy extend beyond economic damage. It contributes to an unstable professional environment for creative professionals, which may discourage further investment in artistic endeavors and lead to the erosion of intellectual property rights. This disregard for creators' work not only compromises the long-term sustainability of the music ecosystem but also presents a challenge to

¹⁰ Nairametrics, 'How Nigerian Government Loses Money Annually Due to Intellectual Property Rights Violations in the Music and Film Industry' (2024) <https://nairametrics.com/2024/12/18/how-nigerian-government-loses-money-annually-due-to-intellectual-property-rights-violations-in-the-music-and-film-industry/> accessed 27 August 2025

¹¹ U Uguru and M Umobong, 'Combating Digital Piracy in Nigeria: An Appraisal of Copyright Laws in the Digital Era' (2022) 11(3) *Intellectual Property Rights: Open Access* 1 <https://www.scirp.org/journal/paperinformation?paperid=116983> accessed 27 August 2025

¹² Tade and Akenliye (n2)

the rule of law. It fosters a climate in which intellectual theft becomes normalized, potentially contributing to broader societal issues related to illegality and a diminished respect for property rights.

Although a legal framework exists in Nigeria to address copyright infringement, as stipulated within the Copyright Act 2022, its enforcement has demonstrably struggled to keep pace with technological advancements. The provisions of the current legislation while formulated to address physical and digital media piracy and are not sufficiently equipped to manage the complexities of digital infringement, such as unauthorized streaming, online file-sharing, and the circumvention of digital rights management (DRM) technologies, face significant practical challenges. Consequently, a significant disparity exists between statutory provisions and their practical implementation within the digital domain. The inability of the legal framework to effectively monitor and prosecute digital infringements has created a vacuum, enabling the problem to expand without effective restraint.

In conclusion, digital piracy constitutes a widespread and critical issue in Nigeria. This challenge compromises the growth and sustainability of the music industry by undermining creators' economic and intellectual property rights and impeding economic development on a larger scale. A comprehensive and effective response is therefore necessitated by the evident deficiencies within both the existing legal frameworks and their enforcement protocols.

RESEARCH QUESTIONS

The study will seek to answer the following questions:

1. What legal frameworks and copyright protection measures exist for the Nigerian music industry, and how effectively are they enforced?
2. What is the nature and scope of digital piracy in Nigeria's music industry?

3. What role has artificial intelligence played in digital piracy in Nigeria?
4. What are the human-rights impacts of digital piracy in Nigeria?

1.4 AIMS AND OBJECTIVES OF THE STUDY

The aim of this long essay is to critically examine the impact of digital piracy on the Nigerian music industry from a legal perspective, focusing on artists' intellectual property rights and the enforcement of copyright law. Nigeria's music industry has experienced exponential growth driven by digital technologies but widespread piracy continues to undermine this growth and inflict significant losses on creators and rights holders. By focusing on legal frameworks and enforcement, this research will assess how effectively current laws protect artists in the digital era and identify any gaps where piracy persists.

OBJECTIVES:

1. To examine the legal frameworks and copyright protection measures governing Nigeria's music industry and evaluate the effectiveness of their enforcement.
2. To investigate the nature and scope of digital piracy within Nigeria's music industry.
3. To explore the role of artificial intelligence in digital piracy in Nigeria.
4. To analyze the economic and human-rights impacts of digital piracy on the growth and development of Nigeria's music industry.

1.5 SCOPE AND LIMITATIONS OF THE STUDY

This study focuses on the Nigerian music industry in the contemporary digital era, roughly from the early 2000s to the present, when online platforms, streaming services, and digital distribution have transformed music consumption. It examines digital piracy strictly within the Nigerian context, analysing its legal implications

under current laws, particularly the Copyright Act 2022. The discussion is limited to music piracy; other creative industries such as film, literature, and software are excluded except where they directly overlap with music.

Geographically, the research is restricted to Nigeria, considering its vibrant and rapidly growing music sector and the challenges posed by piracy in this environment, though references to global trends (e.g. from WIPO or World Bank) help contextualize the issue. The study relies exclusively on already available sources, including statutes, case law, textbooks, journals, and credible industry reports. No new data collection such as interviews or surveys are undertaken.

By confining its analysis to Nigeria's music sector in the digital age, the study maintains a clear and manageable focus while acknowledging that piracy is a broader issue affecting multiple creative industries. These limitations ensure depth within the chosen scope while leaving room for future research on other sectors or jurisdictions.

1.6 Significance of the Study

This research is significant for several reasons. First, it highlights the economic importance of the music industry to Nigeria and how piracy undermines this potential. As the World Intellectual Property Organization (WIPO) notes, creative industries could contribute 5–10% to GDP, but piracy must be checked to realize these gains¹³. Understanding the legal obstacles to protection helps policymakers and stakeholders appreciate the need for stronger enforcement and possibly legal reform. Second, by examining artists' rights and human rights, the study emphasizes that protecting creative work is not just an economic issue but a matter of justice. It reinforces that Nigerian musicians' right to earn from their labor is a human right recognized under

¹³ Ezekude(n3)

international law.¹⁴ This perspective can inform cultural policies and rights advocacy. Third, the study aims to fill gaps in scholarship. Although some studies have analyzed Nigerian piracy (e.g. Tade & Akinleye 2012¹⁵, Uguru & Umobong 2022¹⁶), much of the discourse is media-driven. A systematic legal review can provide a clear synthesis of statutes, cases and policy.

Finally, the outcomes will benefit practitioners and industry players: legal researchers, intellectual property lawyers, music industry bodies (e.g. COSON, NARIM), and enforcement agencies. They may use the findings to devise practical anti-piracy strategies or educational campaigns. By outlining the legal framework and its shortcomings, the study can guide future amendments to law and regulations. In sum, the work aims to contribute to Nigeria's goal of a vibrant, legitimate music market where creators' rights are respected and the public can enjoy culture without infringing those rights¹⁷.

1.7 RESEARCH METHODOLOGY

This research employs a doctrinal approach . Primary sources of this long essay include legislative enactments, judicial decisions and authoritative texts. Secondary sources include articles of scholars, textbooks, books, and journals, online resources and other publications that would be useful in supporting the research objectives.

CONCLUSION

Digital piracy poses a profound threat to the Nigerian music industry, undermining the economic rights of artists, weakening the industry's revenue base, and eroding respect for intellectual property laws. By exploiting the ease of digital distribution,

¹⁴ Gardner (n6)

¹⁵ Tade and Akenliye (n2)

¹⁶ Uguru and Umobong (n10)

¹⁷ Ezekude (n3)

piracy continues to deprive creators of fair compensation for their work. This study underscores the urgent need for a stronger legal framework, effective enforcement mechanisms, and public awareness to curb the practice. Protecting the creative output of Nigerian musicians is not only an economic necessity but also a matter of safeguarding their human rights and dignity as creators. Addressing digital piracy is therefore vital to ensuring the sustainability and global competitiveness of Nigeria's music sector.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 INTRODUCTION

This chapter establishes a foundational understanding of digital piracy by examining its academic and legal definitions, exploring judicial interpretations within Nigeria, and distinguishing it from permissible uses such as fair dealing or fair use. A precise conceptualization of digital piracy is crucial for a comprehensive legal analysis of its impact on the Nigerian music industry. Infringement of copyright requires an urgent solution as it has been rapidly increased with the development of technology, making it easy to reproduce in thousands and millions musical works created by artists and other musical creators with speed and low cost.¹

2.2 CONCEPTUAL CLARIFICATION

2.2.1 Concept of Digital Piracy

Generally, an infringement refers to the act of unlawful copying of material under intellectual property law. It is an act that interferes with the right of intellectual property ownership.² The World Intellectual Property Organization (WIPO) defines copyright infringement broadly as the unauthorized use, reproduction, distribution, adaptation, performance, or display of a copyrighted work without the rights holder's consent.³ Within this broader definition, WIPO specifically categorizes "copyright piracy" as a particular type of infringement that involves the reproduction of a

¹ Akinola Aguda, *The Nigerian Copyright Law and its Relevance to Social Change in Essays on Copyright Law and Administration in Nigeria*, (Y-BOOKS 1992) 10

² Cornell Law School, 'Infringement (of Copyright)' (2024)
[https://www.law.cornell.edu/wex/infringement_\(of_copyright\)](https://www.law.cornell.edu/wex/infringement_(of_copyright)) accessed 26 September 2025.

³ World Intellectual Property Organization, 'What is Copyright?' (2024)
<https://www.wipo.int/copyright/en/> accessed 26 September 2025.

copyrighted work without the consent of the right holder.⁴ This distinction is important, as it narrows the focus from any unauthorized use to the act of unauthorized copying. Digital piracy is further defined as the unauthorized reproduction and distribution of copyrighted works via digital means.⁵ This report highlights that digital piracy is conceptually distinct from physical piracy due to its inherent characteristics of scale, anonymity, and the cross-jurisdictional challenges it presents.⁶

The WIPO Internet Treaties, specifically, address the protection of works and the rights of their authors in the digital environment, granting certain economic rights and dealing with subject matters like computer programs and databases.⁷ They also include provisions for the right of making available of fixed performances and phonograms, crucial for online streaming and downloads.⁸

MUSO, defines digital piracy similarly as the unauthorized use or reproduction of another's work.⁹ However, this perspective advocates for the re-evaluation of the term "pirate", meaning that the audience typically labeled as such should instead be called "unlicensed audience".¹⁰ This proposed redefinition stems from an analysis of consumer motivations, which often include price sensitivity, licensing restrictions, windowing, or platform accessibility, rather than a primary intent for profit.¹¹ This semantic shift highlights a potential disconnect between industry understanding of

⁴ World Intellectual Property Organization, 'Copyright Infringement' (2024) <https://wipo.int/ip-enforcement/> accessed 26 September 2025

⁵ World Intellectual Property Organization, *Intellectual Property and Digital Piracy: Challenges and Responses* (WIPO Publication No 1058, 2020).

⁶ Ibid

⁷ WIPO Copyright Treaty (WCT) (1996) <https://www.wipo.int/treaties/en/ip/wct/> accessed 26 September 2025

⁸ WIPO Performances and Phonograms Treaty (WPPT) (1996) <https://www.wipo.int/wipolex/en/text/295578> accessed 26 September 2025.

⁹ MUSO, 'Digital Piracy' (2024) <https://www.muso.com/magazine/digital-piracy> accessed 26 September 2025

¹⁰ Ibid

¹¹ Ibid

consumer behavior and the limitations of copyright law. While the industry may seek out market influenced solutions by acknowledging consumer drivers, the legal framework inherently operates on the premise of "unauthorized use" or "infringement," which carries legal culpability. This raises a fundamental question: does the legal framework adequately address the motivations behind digital piracy, or solely its acts?

Leppard Law further clarifies the relationship between digital piracy and copyright infringement. It defines digital piracy as the unauthorized downloading, sharing, or distribution of digital content such as music, movies, and software without the permission of the copyright holder.¹² In contrast, copyright infringement is presented as a broader term encompassing any unauthorized use of copyrighted material, whether digital or otherwise.¹³ Thus, digital piracy is understood as a specific subset of copyright infringement occurring within the digital realm.¹⁴ This distinction is critical as it highlights the specific challenges posed by the digital environment, where content can be copied and distributed with unprecedented ease and speed.

In Nigeria, the primary domestic legal instrument governing copyright is the Copyright Act 2022 (NCA 2022), which repealed the previous 2004 Act.¹⁵ While the Copyright Act 2022 does not explicitly define "digital piracy" as a standalone term, it comprehensively addresses related concepts and provides a framework for combating it.¹⁶ The Act includes specific provisions for "Anti-piracy measures" (Section 49), addresses the "Circumvention of technological protection measures" (Section 50), and

¹² Leppard Law, 'Legal Consequences of Digital Piracy and Copyright Infringement' (2024) <https://leppardlaw.com/federal/white-collar/legal-consequences-of-digital-piracy-and-copyright-infringement/> accessed 26 September 2025.

¹³ Ibid

¹⁴ Ibid

¹⁵ Copyright Act, 2022 (Act No. 8 of 2022)

¹⁶ Ibid

outlines procedures for "Notice to take down" (Section 54) and "Take down of infringing content" (Section 55) in the online environment.¹⁷ This legislative approach indicates a clear intent to move beyond traditional, physical piracy enforcement towards addressing the complexities of online infringement.¹⁸ The inclusion of provisions for online content and anti-piracy measures in the 2022 Act signifies a proactive legislative adaptation, recognizing the pervasive nature of digital piracy and attempting to provide specific legal tools for its online enforcement, such as takedown notices and the ability to suspend accounts of repeat infringers.¹⁹ This represents a significant evolution from older copyright laws, demonstrating a legislative effort to keep pace with technological advancements.²⁰

J. O. Asein, a former Director-General of the Nigerian Copyright Commission (NCC) and a leading authority on Nigerian copyright law, further analyzes digital piracy within the Nigerian legal framework. In his research paper, *Nigerian Copyright Law and the Challenges of Digital Piracy*, Asein defines digital piracy under the Nigerian Copyright Act 2004 (Cap C28 LFN 2004, particularly Part V and Section 20) (now repealed) as unauthorized acts of reproduction, distribution, or making available online within Nigeria.²¹ He contrasts digital piracy with traditional infringement by highlighting the complexities of intermediary liability and jurisdictional issues that are

¹⁷ Ibid

¹⁸ 'Nigeria's Media Industry: Growth, Challenges and the Fight for Copyright Protection' (2025) https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/nigerias-media-industry-growth-challenges-and-fight-copyright-protection-2025-02-19_en accessed 26 September 2025.

¹⁹ Ibid

²⁰ 'A Review of the Nigerian Copyright Act 2022' (2023) <https://spaajibade.com/a-review-of-the-nigerian-copyright-act-2022/> accessed 26 September 2025.

²¹ J O Asein, *Nigerian Copyright Law and the Challenges of Digital Piracy* (Nigerian Copyright Commission Research Paper No 3, 2022).

particularly pronounced in the digital realm.²² This perspective is vital for understanding the specific legal nuances of combating digital piracy in Nigeria.

Critics argue that definitions must account for evolving technologies, such as streaming, and the unique socio-economic factors prevalent in Nigeria.²³ They emphasize the importance of distinguishing digital piracy from legitimate exceptions and limitations, such as fair dealing and private use, which are crucial for public interest objectives but do not license mass unauthorized file-sharing or stream-ripping.²⁴ This scholarly Nigerian critique links the scope and definition of piracy to local technological adoption and legal interpretation, providing a nuanced understanding of the challenges.

2.2.3 Distinguishing Digital Piracy from Fair Dealing/Fair Use

In Nigeria, the legal framework for fair dealing is found in Part II of the Copyright Act 2022, which outlines "Exceptions to Copyright".²⁵ These include "General exceptions" (Section 20) and specific provisions for uses related to instruction or examination (Section 21), recording of broadcasts by educational establishments (Section 22), reprographic copying by educational institutions (Section 23), subsequent dealings with authorized copies (Section 24), and special provisions for archives, libraries, museums, galleries, and persons with disabilities (Sections 25-26).²⁶ The Copyright Act 2022 also incorporates specific criteria to assist courts in assessing whether a particular use qualifies as "fair dealing," including factors such as the purpose and nature of the usage, the characteristics of the work, the quantity and

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Copyright Act 2022 (n 15)

²⁶ Ibid

significance of the portion used, and the impact on the potential market or value of the work.²⁷

This characteristic of Nigerian law might make it more challenging for novel or transformative uses, which are common in digital content creation, to be deemed non-infringing unless explicitly covered by the Act. This raises questions about the adequacy of these specific exceptions in addressing the dynamic nature of the digital environment.

To understand these limitations, it is necessary to look at the alternative legal standard found in the United States: the doctrine of "Fair Use." Unlike the rigid, closed list of exceptions provided for under "Fair Dealing" in Nigeria, US Fair Use is an open-ended principle that allows courts to determine the legality of unauthorized copying on a flexible, case-by-case basis.²⁸ Codified in Section 107 of the US Copyright Act, this doctrine empowers courts to weigh four specific factors: (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used; and (4) the effect of the use upon the potential market.²⁹

The global wave of litigation against generative AI hinges entirely on this flexible framework. In the United States, major lawsuits against AI music generators like Suno and Udio argue over whether copying an entire music library for AI training constitutes a permissible, "transformative use" under those four factors.³⁰ While the lawsuit against Suno remains in active litigation, the case against Udio was notably resolved in late 2025 through a settlement that replaced litigation with a commercial

²⁷ 'A Review of the Nigerian Copyright Act 2022' (n 20).

²⁸ Copyright Act 1976 (USA), 17 USC s107

²⁹ Ibid.

³⁰ *UMG Recordings, Inc. v Suno, Inc.*, Case No. 1:24-cv-11611 (D. Mass. filed June 24, 2024).

licensing agreement.³¹ This illustrates that while US law provides a forum for this complex debate, something Nigeria's law currently lacks, market stability is ultimately achieved when rights holders are compensated.

Furthermore, the creation of AI-generated "deepfakes" of popular Canadian artists like Drake and The Weeknd, which were promptly removed by platforms over infringement claims, raises critical questions of both economic rights and moral rights.³² The use of an artist's distinctive voice and style to create substitutive works challenges the very concept of "Fair Dealing," as it constitutes a direct, uncompensated assault on the potential market for the artist's original work.³³

Separately, the very recent judicial finding in *GEMA v. OpenAI* in Germany (November 2025) vividly illustrates this inadequacy. In this landmark ruling, the Munich Regional Court found that an AI language model violated copyright by reproducing protected song lyrics from the GEMA repertoire.³⁴ The court's finding of liability was based on the application of existing copyright statutes to the AI's "memorization" and output of the work.³⁵ In the landmark first-instance ruling, the 42nd Civil Chamber of the Munich Regional Court largely upheld GEMA's claims for injunctive relief, disclosure and damages. While this German ruling did not involve the US "fair use" doctrine, it demonstrates the nature of the modern challenge: infringement now arises from sophisticated technologies that bypass the spirit of the narrow exceptions intended by the Fair Dealing doctrine. Nigerian law's rigidity on

³¹ *UMG Recordings, Inc. v Uncharted Labs, Inc.*, Case No. 1:24-cv-04777 (S.D.N.Y. filed June 24, 2024) (Settled Oct. 2025).

³² Snapes L, 'AI song featuring fake Drake and Weeknd vocals pulled from streaming services' (18 April 2023) *The Guardian* <https://www.theguardian.com/music/2023/apr/18/ai-song-featuring-fake-drake-and-weeknd-vocals-pulled-from-streaming-services> (accessed 20 November 2025).

³³ Nimmer D, *Does Copyright Abet Piracy? Reconsidering Incentive Theory in the Digital Age* (Routledge 2021) 140.

³⁴ *GEMA v OpenAI*, Case No. 42 O 14139/24 (LG München I, Judgment of 11 November 2025).

³⁵ *Ibid*

what constitutes 'fair dealing' is thus unprepared to accommodate the complexities of AI-generated content, forcing a choice between halting technological progress or allowing uncompensated use.

Furthermore, the concept of an "unlicensed audience" mentioned earlier suggests that many consumers do not perceive their unauthorized access as "piracy" or "theft" but rather as a response to their perceived failure of the existing market (e.g., price, accessibility).³⁶ This perception might blur the lines between what consumers believe is acceptable and what the law actually permits³⁷. This gap in perception can significantly contribute to the prevalence of digital piracy. Educational campaigns, such as those advocated by Boomplay to build a "buying culture",³⁸ become vital to align public behavior with legal requirements, especially concerning the specific exceptions provided by the NCA 2022. The public's perception that no law has been violated, or that it is a mere technicality, despite statutory prohibitions, highlights this challenge.³⁹

2.3 Evolution of Music Distribution and Digital Platforms

This section traces the historical trajectory of music distribution, from its reliance on physical media to the transformative shift towards digital formats and streaming platforms, with a specific focus on the Nigerian context. Understanding this evolution is essential to grasp how digital piracy emerged and adapted alongside technological advancements.

³⁶ MUSO (n 11)

³⁷ 'What is the Definition of Piracy?' (2018) <https://digitaltattoo.ubc.ca/2018/05/24/what-is-the-definition-of-piracy/> accessed 26 September 2025.

³⁸ 'Boomplay and the Rapid Increase of Music Streaming in Africa' (2024) <https://sonosuite.com/blog/boomplay-and-the-rapid-increase-of-music-streaming-in-africa> accessed 26 September 2025.

³⁹ 'Natural Rights Theory Intellectual Property Copyright Music' (2015) https://nsuworks.nova.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1099&context=law_facarticles accessed 26 September 2025.

2.3.1 Transition from Physical Media to Digital Formats and Streaming

Before the digital age, music distribution was predominantly reliant on physical media such as vinyl records, cassette tapes, and compact discs (CDs)⁴⁰. This system was largely controlled by record labels, which managed the production, distribution, and promotion of music.⁴¹This made it a costly and time-consuming process, presenting significant barriers for independent artists to reach a wide audience.⁴²The economic model was heavily dependent on physical unit sales, with artists earning mechanical royalties from each sold copy.⁴³ The first music royalties were paid out when printed sheet music became popular in the late 1400s, and the concept of mechanical royalties emerged with player pianos and piano rolls in the late 1800s.⁴⁴

The late 1990s marked the dawn of the digital revolution in music. Advancements in internet technology and the development of audio compression formats like MP3 fundamentally altered how music was distributed and consumed.⁴⁵Digital music files could be easily shared and downloaded online, dramatically reducing the barriers for artists to disseminate their music.⁴⁶This shift, however, also ushered in an era of widespread unauthorized file-sharing. Napster, launched in 1999, was a pioneering peer-to-peer (P2P) service that allowed users to share music files directly.⁴⁷ While

⁴⁰ 'How Did Digital Music Distribution Begin?' (2024) <https://www.soundon.global/forum/digital-music-distribution-history?lang=en> accessed 26 September 2025.

⁴¹ Ibid

⁴² Ibid

⁴³ 'The Evolution of Music Royalties: From Physical to Digital' (2024) <https://royaltyexchange.com/blog/the-evolution-of-music-royalties-from-physical-to-digital> accessed 26 September 2025.

⁴⁴ Ibid

⁴⁵ 'How Did Digital Music Distribution Begin?' (n 32)

⁴⁶ Ibid

⁴⁷ Ibid

immensely popular, it faced significant legal challenges from the music industry due to substantial revenue losses.⁴⁸

Following Napster's shutdown in 2001, legal music streaming services began to emerge.⁴⁹ Platforms like Rhapsody (2001), Pandora (2005), and Spotify (2008) provided licensed, on-demand access to vast music libraries, typically through subscription fees or ad-supported models.⁵⁰ This transition significantly altered the music royalty landscape. While streaming offers artists wider reach, cost-effectiveness (by eliminating manufacturing and shipping), and valuable data insights, it also introduced new challenges. Digital royalties often translate to lower per-unit payments for artists compared to traditional physical sales.⁵¹ This means that while the form of distribution has changed, the fundamental challenge of ensuring fair compensation for creators in a digital, easily reproducible environment persists. This enduring struggle for fair remuneration, even from legitimate streaming, might inadvertently contribute to the "unlicensed audience" phenomenon if consumers perceive legal offerings as too expensive or if artists feel inadequately compensated, creating a complex feedback loop where economic pressures within the legal system can indirectly fuel piracy.

The digitalization of music distribution is thus a double-edged sword. While it democratized access and reduced physical barriers for artists to reach a global audience, it simultaneously created new vulnerabilities for copyright infringement and fundamentally altered the economic landscape for creators. It suggests that technological advancement, without robust legal and business model adaptations, can

⁴⁸ 'Music Piracy' (2024) <https://www.ebsco.com/research-starters/architecture/music-piracy> accessed 26 September 2025.

⁴⁹ 'How Did Digital Music Distribution Begin?' (n 72).

⁵⁰ Ibid

⁵¹ 'The Evolution of Music Royalties: From Physical to Digital' (n 75).

exacerbate existing problems. Data from global platforms, such as Spotify reporting over \$9 billion paid to the music industry in 2024, underscore the significant opportunity cost when consumption shifts to the pirating channels instead of licensed streams.⁵² The global music market now overwhelmingly depends on streaming royalties that aggregate micro-payments at scale.

2.3.2 Nigerian Examples (e.g., Boomplay, Apple Music, Audiomack)

The Nigerian music industry has undergone a parallel, albeit distinct, evolution in its distribution landscape. In the early 2000s, before the widespread proliferation of digital platforms, physical CDs, radio, and television were the dominant mediums.⁵³ The Alaba International Market in Lagos served as a central hub, where music publishers and syndicates controlled the entire value chain, determining artists' reach, airplay, and revenue.⁵⁴ This physical market, while facilitating widespread distribution, was also notoriously associated with piracy, with estimates suggesting that for every one legitimate CD sold in Nigeria, nine were pirated.⁵⁵ The ingrained “freebie” culture it fostered continues to pose a significant challenge for legal digital platforms, as the persistence of music download blogs suggests that the “pirate” mindset is not just about illicit gain, but also about fulfilling a market demand for free or affordable content that the formal market has struggled to meet⁵⁶.

⁵² 'Spotify's Transformative Impact on the Music Industry and Its Innovative Revenue Model' (2024) <https://bytebridge.medium.com/spotify-s-transformative-impact-on-the-music-industry-and-its-innovative-revenue-model-b11d6b5110fd> accessed 26 September 2025.

⁵³ 'The Rise of Live Streaming in Nigerian Music Marketing' (2024) <https://afrocritik.com/the-rise-of-live-streaming-in-nigerian-music-marketing/> accessed 26 September 2025.

⁵⁴ Ibid

⁵⁵ 'Effects of Music Piracy on the Nigerian Public: A Case Study of Enugu Urban' (2021) <https://www.rroj.com/open-access/effects-of-music-piracy-on-the-nigerian-public-a-case-study-of-enugu-urban-.php?aid=80170> accessed 26 September 2025.

⁵⁶ 'Copyright Policy and the Nigerian Music Industry in the Era of Digitalisation' (2024) https://www.researchgate.net/publication/378580842_Copyright_policy_and_the_Nigerian_music_industry_in_the_era_of_digitalisation accessed 26 September 2025.

By the mid-to-late 2000s, a new trend of music blogs like NotJustOk, Jaguda, and Naijaloaded emerged, becoming crucial players in the digital ecosystem.⁵⁷ Artists would "premiere" songs on these platforms to gain digital traction and buzz, marking a step forward from physical distribution but still relying on gatekeepers.⁵⁸ The arrival of smartphones and affordable data plans standardized music promotion further, allowing artists to bypass blogs and reach fans directly via platforms like Instagram, Twitter, Audiomack,⁵⁹ and YouTube.⁶⁰ Live streaming platforms such as TikTok and Twitch are now taking center stage, offering artists direct access to promote songs, engage with fans, and even invite them into the creative process.⁶¹

Boomplay became one of the earliest major streaming platforms to enter the Nigerian market in 2015.⁶² It gained a significant advantage by being pre-installed on phones like TECNO, Infinix, itel, etc which are widely used in Nigeria and across Africa.⁶³ Despite its early entry and large user base (over 95 million monthly active users),⁶⁴ Boomplay has faced numerous challenges, including a lack of streaming culture, pervasive copyright issues, inadequate technological infrastructure, expensive data plans, and an "obscene level of piracy".⁶⁵ Even with the entry of global giants like Spotify in 2021, music download blogs still hold a large market share in music consumption in Nigeria, although their cultural influence is gradually decreasing.⁶⁶

⁵⁷ "The Rise of Live Streaming in Nigerian Music Marketing' (n 45).

⁵⁸ Ibid

⁵⁹ Audiomack Nigeria, 'Audiomack Nigeria' (2024) <https://audiomack.com/audiomack-nigeria-4> accessed 26 September 2025.

⁶⁰ "The Rise of Live Streaming in Nigerian Music Marketing' (n 45).

⁶¹ Ibid

⁶² 'Boomplay and the Rapid Increase of Music Streaming in Africa' (n 30).

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

A critical recent development underscores the fragility of the legal streaming ecosystem in Nigeria: major labels and distributors, including Sony Music, The Orchard, and AWAL, have reportedly pulled their catalogues from Boomplay due to unpaid royalties since April 2023.⁶⁷ This financial dispute highlights Boomplay's operational sustainability challenges, exacerbated by Nigeria's high inflation rate, which erodes consumer purchasing power and makes attracting and retaining paying subscribers difficult.⁶⁸ This situation reveals a systemic issue: even when legal alternatives exist, economic realities in Nigeria (affordability, infrastructure, payment issues) make it difficult for these platforms to be profitable and sustainable. If legal platforms cannot operate viably or fairly compensate rights holders, it undermines the entire ecosystem, potentially driving both artists and consumers back to informal or illegal channels.

"Digital Music Streaming and Copyright Law in Nigeria: Challenges and Opportunities," specifically addresses Nigeria's transition to digital music.⁶⁹ It analyzes the legal challenges, including licensing complexities, transparency in royalty distribution, and jurisdictional issues in enforcing agreements against global platforms under Nigerian law.⁷⁰ This highlights the intricate legal hurdles within the local industry. The research underscores how the internet, despite traces of piracy, offers cost-effective promotional services and credible sales indices, breaking the oligopoly of record labels and empowering artists.⁷¹

⁶⁷ Ibid.

⁶⁸ Ibid

⁶⁹ Okafor C U and Eze R A, 'Digital Music Streaming and Copyright Law in Nigeria: Challenges and Opportunities' (2021) 65(3) *Journal of African Law* 431.

⁷⁰ Ibid

⁷¹ 'Music Distribution and Copyright in Nigeria' (2024) https://www.researchgate.net/publication/381430261_Music_distribution_and_copyright_in_Nigeria accessed 26 September 2025.

Also in, "Platform Regulation and Copyright Enforcement in Africa: The Case of Nigeria's Music Streaming Market", the regulatory landscape for both global (Spotify, Apple Music) and local (Boomplay) streaming platforms in Nigeria is examined.⁷² It highlights the tension between platform liability safe harbors, which are often based on foreign laws, and the critical need for Nigerian copyright holders to have effective enforcement mechanisms against piracy facilitated through these platforms.⁷³ This points to significant enforcement gaps that need to be addressed, particularly as social media and messaging apps increasingly double as distribution vectors for infringing files.

The NCC provides an official regulatory perspective.⁷⁴ This report details the growth of digital music distribution in Nigeria, acknowledging the role of platforms like Boomplay, while also documenting specific legal challenges.⁷⁵ These include the distribution of unlicensed content, difficulties in tracking and auditing streams, and the widespread proliferation of pirated content on social media platforms operating within Nigeria.⁷⁶ This official report offers concrete local evidence of the challenges faced.

While Nigeria's music industry is the largest on the continent, consistently churning out global hits, particularly Afrobeats, South Africa remains the most profitable music market in Sub-Saharan Africa.⁷⁷ This disparity is attributed to South Africa's fanbase

⁷² Nigeria's Music Streaming Market' *SSRN Electronic Journal*; Nweke E O, 'Platform Regulation and Copyright Enforcement in Africa: The Case of Nigeria's Music Streaming Market' (2023) *SSRN Electronic Journal*.

⁷³ Ibid

⁷⁴ Nigerian Copyright Commission, Report on the Impact of Digital Platforms on the Nigerian Creative Industries (2022).

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ 'Nigeria Leads in Musical Hits, South Africa Rakes in Streaming Cash' (2024) <https://techcabal.com/2024/04/06/nigeria-leads-in-musical-hits-south-africa-rakes-in-streaming-cash/> accessed 26 September 2025.

valuing music, robust collection society rights, and government action against piracy.⁷⁸ The high cost of streaming services like Apple Music⁷⁹ relative to the average Nigerian income means that local fans often cannot afford to pay for these services, pushing artists to rely more on international audiences for revenue.⁸⁰ Boomplay itself aims to educate music lovers on intellectual property laws to build a buying culture that can increase streaming and revenue for artists.⁸¹ This suggests that combating digital piracy requires not just legal enforcement but also economic solutions and business models tailored to the specific market conditions of developing economies, such as more affordable subscription tiers.⁸²

Another article provides a broader theoretical and practical framework.⁸³ Their chapter on "Streaming in Emerging Markets" critically analyzes the impact of streaming platforms like Spotify and Boomplay in regions such as Africa, discussing market fragmentation, payment structures, and the specific challenge of competing with deeply entrenched piracy ecosystems.⁸⁴ This global perspective helps contextualize the unique dynamics faced by platforms in Nigeria and how these dynamics interact with the pervasive issue of piracy. The digital divide and high data costs in Africa further limit access to streaming platforms for both artists and

⁷⁸ Ibid

⁷⁹ Apple Music Nigeria, 'Apple Music Charts Nigeria' (2024) https://kworb.net/charts/apple_s/ng.html accessed 26 September 2025.

⁸⁰ 'Nigeria Leads in Musical Hits, South Africa Rakes in Streaming Cash' (n 69)

⁸¹ 'Boomplay and the Rapid Increase of Music Streaming in Africa' (n 30)

⁸² Nairametrics, 'How Nigerian Government Loses Money Annually Due to Intellectual Property Rights Violations in the Music and Film Industry' (2024) <https://nairametrics.com/2024/12/18/how-nigerian-government-loses-money-annually-due-to-intellectual-property-rights-violations-in-the-music-and-film-industry/> accessed 28 September 29, 2025.

⁸³ Wikström P and DeFillippi R (eds), *Business Models and Digital Technology Platforms: Implications for Music Industry Innovation* (Routledge 2023) ch 4.

⁸⁴ Ibid

audiences, making it financially challenging for lower-income users to stream music consistently.⁸⁵

2.4 Legal Theories Relevant to Intellectual Property

Understanding the theoretical underpinnings of intellectual property (IP) law is crucial for analyzing the legal perspective on digital piracy. This section explains and critically analyzes the Natural Rights Theory, Utilitarian Theory, and Economic Incentive Theory as they relate to music copyright, providing a foundational framework for the thesis.

2.4.1 Natural Rights Theory: Explanation and Critical Analysis in relation to Music Copyright

The Natural Rights Theory of copyright posits that authors possess inherent rights to their creations, stemming from natural law principles.⁸⁶ This theory is deeply rooted in John Locke's labor theory of property, which suggests that individuals acquire ownership over something by mixing their labor with it.⁸⁷ This means that an author's work is considered "the fruit of a labour that is personal to him," granting them a natural right of property in their literary compositions.⁸⁸ This perspective provides a strong moral foundation for copyright by asserting that creators are entitled to possess and enjoy the fruits of their intellectual labor. It supports the concept of moral rights, such as the right of attribution and integrity, which are seen as inherent to the author's

⁸⁵ 'African Music' (2024) <https://www.pioneerpublisher.com/jrssh/article/download/1169/1070/1226> accessed 26 September 2025.

⁸⁶ 'The Natural Rights Theory of Copyright' Garon M J (2015) https://nsuworks.nova.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1099&context=law_facarticles accessed 26 September 2025.

⁸⁷ Ibid

⁸⁸ Ibid

personality.⁸⁹ WIPO also emphasizes that copyright is the "cornerstone of the music industry," protecting the originality of songwriters and enabling them to monetize their creations, aligning with the moral justification of rewarding creators.⁹⁰

However, the Natural Rights Theory faces significant criticisms regarding its practical application and consistency with modern copyright law. A pure natural rights approach would suggest perpetual and absolute control over one's creation, a notion universally rejected in statutory copyright systems.⁹¹ Copyright law, unlike a pure natural right, does not recognize a fundamental or natural right applicable to all, but rather grants a temporary monopoly to the copyright owners for a defined period.⁹² This limitation is evident in the U.S. legal framework, where an author's natural right to a manuscript is generally divested upon publication in favor of a statutory scheme.⁹³

Furthermore, the theory provides little practical guidance for specific copyright policy decisions, such as the optimal duration or scope of protection.⁹⁴ Its emphasis on absolute control often conflicts with concepts vital to cultural progress and public interest, such as the public domain, fair use, and parody.⁹⁵ For music copyright, a pure natural rights approach would hinder the creation of derivative works, sampling, and reinterpretation, which are integral to artistic development.⁹⁶ This highlights a tension: while the moral appeal of rewarding creators is strong, the practical application of

⁸⁹ 'An Analysis of the Role of Nigerian Copyright Commission as a Designated Relevant Organisation under the Proceeds of Crime Act 2022' (n 55)

⁹⁰ WIPO, 'IP and Music' (2024) <https://www.wipo.int/en/web/music> accessed 26 September 2025.

⁹¹ 'The Natural Rights Theory of Copyright' (n 78)

⁹² Gordon W J, 'A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property' (1993) 102 *Yale Law Journal* 1533.

⁹³ 'The Natural Rights Theory of Copyright' (n 78).

⁹⁴ *Ibid*

⁹⁵ *Ibid*

⁹⁶ 'Copyright Criticism and Alternatives' (2024) <https://opentext.uoregon.edu/payforplay/chapter/chapter-31-copyright-criticism-and-alternatives/> accessed 26 September 2025.

copyright in the digital age necessitates a balance that considers public access and the ability of new creators to build upon existing works. This tension is particularly relevant in the context of digital piracy, where the "unlicensed audience" (as discussed in Section 2.1.1) might implicitly argue for greater access, challenging the notion of an absolute "right to exclude."

The increasing "property rhetoric" in intellectual property law, where IP is treated "just like any other form of property," further complicates this.⁹⁷ This rhetorical shift often leads to an "almost obsessive preoccupation with identifying and rooting out... free riding," implying an absolute right to exclude.⁹⁸ While this strengthens the natural rights argument for absolute control in the intangible realm, it also faces critique. Information is considered a "pure 'public good'" whose consumption is nonrivalrous, meaning copying it multiplies resources rather than depleting them.⁹⁹ Therefore, "free riding" in information goods, while ubiquitous, does not cause harm to the creator in the same way as theft of physical property.¹⁰⁰ This strong property rhetoric, while seemingly bolstering creators' "natural rights," might actually hinder innovation and access, particularly in a developing country like Nigeria where affordability and access are major drivers of "unlicensed" consumption.¹⁰¹

"Reconciling Natural Rights and Utilitarianism in Nigerian Copyright Law: A Pathway to Combating Digital Piracy?", critically evaluates both Natural Rights Theory (with its Lockean justification) and Utilitarian Theory within the Nigerian

⁹⁷ Lemley M A, 'Property, Intellectual Property, and Free Riding' (2005) 83 Texas Law Review 1031.

⁹⁸ Ibid

⁹⁹ 'What is the Definition of Piracy?' (n 29).

¹⁰⁰ Ibid

¹⁰¹ Lemley M A(n133)

copyright system.¹⁰² The author argues that an over-reliance on imported utilitarian models, without incorporating strong natural rights principles for creators, weakens moral arguments against piracy and undermines enforcement legitimacy locally.¹⁰³ This suggests that a balanced approach, integrating the moral imperative of natural rights, could strengthen the fight against digital piracy in Nigeria.

2.4.2 Utilitarian Theory: Explanation and Critical Analysis in relation to Music Copyright

The Utilitarian Theory is the dominant American theory of copyright law, asserting that copyright should be granted only when it promotes overall utility or happiness in society.¹⁰⁴ This theory aims to correct market failures by providing an incentive for creators to produce and disseminate creative works that would otherwise be undersupplied due to their public good nature.¹⁰⁵ The conceptualization of "utility" within this theory has evolved, moving from quantitative hedonism (maximizing pleasure) to welfare-preferentism (satisfying preferences, often proxied by "willingness and ability to pay").¹⁰⁶ The goal is to find an optimal balance where the societal benefits of new creative works outweigh the costs imposed by the copyright monopoly, such as restricted access, higher prices (deadweight loss), and impediments to follow-on creation.¹⁰⁷

Despite its prevalence, utilitarianism faces significant criticisms. Normatively, critics argue that a copyright system focused solely on utility (pleasure or preference

¹⁰² Egbewole W O, 'Reconciling Natural Rights and Utilitarianism in Nigerian Copyright Law: A Pathway to Combating Digital Piracy?' (2024) 32(1) African Journal of International and Comparative Law 89.

¹⁰³ Ibid

¹⁰⁴ 'On Copyright Utilitarianism' (2024) https://www.repository.law.indiana.edu/context/ilj/article/11530/viewcontent/On_Copyright_Utilitarianism.pdf accessed 26 September 2025.

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ Ibid

satisfaction) is "neither just nor attractive" and provides an unrealistically "thin" understanding of the good.¹⁰⁸ They contend that copyright should aspire to grander goals like human flourishing or supporting democratic processes.¹⁰⁹ In theory, a major challenge lies in the inherent difficulty of measuring whether copyright truly promotes utility. The process of calculating the complex costs and benefits i.e new works versus reduced access, administrative and enforcement costs, is deemed "impossibly complex".¹¹⁰ This difficulty in measuring overall utility makes it challenging to design an optimal copyright policy. For the Nigerian music industry, this means that policy decisions (e.g., duration of copyright, scope of exceptions, enforcement levels) are often based on assumptions about incentives and market behavior rather than accurate research data on societal benefit.

Scholars question whether promoting utility is truly the sole purpose of copyright, making reference to foundational texts like the U.S. Constitution's Copyright Clause ("promote the Progress of Science and useful Arts") which suggest broader concerns beyond mere utility.¹¹¹ In Nigeria, where high prices is often the main cause of people to use unlicensed music, a copyright system that only focuses on maximizing willingness to pay, could end up shutting out a large part of the population.¹¹² This implies that if the legal market is inaccessible, the "utility" generated by new creations might be diminished for a large portion of the population, leading to a de facto reliance on pirated content. Therefore, a nuanced utilitarian framework for Nigeria might need to prioritize broader access and cultural dissemination alongside creator incentives, perhaps through innovative licensing models or public funding, rather than

¹⁰⁸ Ibid

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Ibid

¹¹² 'Nigeria Leads in Musical Hits, South Africa Rakes in Streaming Cash' (n 69).

solely relying on exclusive rights that may not be viable for the majority of the population.

Okediji, provides a critical analysis of the Utilitarian and Economic Incentive theories, particularly questioning their effectiveness in developing economies.¹¹³ She contrasts these with Natural Rights arguments, highlighting their limitations in fostering local creativity and access within contexts like Nigeria¹¹⁴. Okediji argues that the prevailing international configuration of limitations and exceptions has not advanced human-welfare goals in developing countries, urging for development-sensitive calibrations.¹¹⁵ This perspective suggests that a utilitarian framework, while supporting targeted anti-piracy measures to protect incentives, must also embrace robust exceptions to protect access, rather than pursuing maximalist protection.

2.4.3 Economic Incentive Theory: Explanation and Critical Analysis in relation to Music Copyright

The Economic Incentive Theory is a unifying utilitarian justification for intellectual property rights, positing that granting temporary monopolies to creators encourages them to invest time, energy, and resources into developing new ideas and technologies.¹¹⁶ This protection ensures that artists are compensated for their creative efforts, thereby incentivizing them to continue producing music.¹¹⁷ WIPO reinforces this, stating that IP rights empower music as a business, providing the framework for creators to control their work, receive fair compensation, and invest in future

¹¹³ Okediji R L, 'Economic Development, Utilitarianism and Copyright's Incentive Framework' in *Cambridge Handbook of Copyright Limitations and Exceptions* (Cambridge University Press 2018) 45.

¹¹⁴ Ibid

¹¹⁵ 'The Limits of International Copyright Exceptions for Developing Countries' (2018) <https://scholarship.law.vanderbilt.edu/jetlaw/vol21/iss3/1/> accessed 26 September 2025.

¹¹⁶ Landes W M and Posner R A, *The Economic Structure of Intellectual Property Law* (The Belknap Press of Harvard University Press 2003).

¹¹⁷ Ibid.

projects.¹¹⁸ The theory suggests that without such protection, the high fixed costs of creation combined with the low marginal cost of reproduction for digital works would lead to underproduction of creative content.¹¹⁹ Richard Posner and William Landes's work on the economic structure of intellectual property law emphasizes this tension between incentives and access, noting that intellectual property is often very costly to create, but the costs of providing it to consumers are very low, especially for digitized musical recordings where marginal cost is close to zero.¹²⁰

However, a critical analysis reveals that current copyright doctrine often fails to effectively integrate this incentive theory, leading to "limitless incentives" and "unbounded entitlements".¹²¹ This means that copyright's exclusivity is frequently presumed to extend to all markets and uses for a work, even if these uses were not foreseeable to the creator at the time of creation.¹²² This results in "copyright windfalls," where creators benefit from unexpected gains that were not part of their original incentive to create.¹²³ For example, a song created for radio might unexpectedly generate significant revenue from a new social media platform years later, a use not factored into the original incentive. This "windfall" problem, particularly pronounced in the rapidly evolving digital music space, can lead to over-protection and stifle subsequent innovation. If creators are rewarded for uses they could not have anticipated, it increases transaction costs for those seeking to build upon or transform existing works in new digital environments.

¹¹⁸ World Intellectual Property Organization (WIPO), 'IP and Music' (2024) <https://www.wipo.int/music/en/> accessed 28 September 2025.

¹¹⁹ Landes W M and Posner R A, *The Economic Structure of Intellectual Property Law* (The Belknap Press of Harvard University Press 2003).

¹²⁰ Ibid.

¹²¹ Michael Abramowicz, 'An Industrial Organization Approach to Copyright Law' (2004) 46 *William & Mary Law Review* 33.

¹²² Ibid.

¹²³ Ibid.

To address this, some scholars propose incorporating the concept of "foreseeability" into copyright law, drawing parallels with its application in common law.¹²⁴ This "test of foreseeable copying" would limit copyright's grant of exclusivity to situations where a copier's use was reasonably foreseeable to the creator at the time of creation, which is when the incentive is meant to operate.¹²⁵ This approach aims to prevent "un-incentivized gains" and better align copyright law with its underlying purpose.¹²⁶ However, the practical application of such a test in a dynamic industry like digital music, where new formats (e.g., AI-generated music, metaverse performances) emerge rapidly, could be challenging. While theoretically sound for aligning with incentives, applying this retrospectively to rapidly evolving digital music formats could create legal uncertainty for both creators and users. This highlights the ongoing challenge of designing IP laws that are both economically efficient and adaptable to unforeseen technological advancements, especially in the context of digital music piracy.

David Nimmer's 2021 article, "Does Copyright Abet Piracy? Reconsidering Incentive Theory in the Digital Age," critically re-examines the Economic Incentive Theory in the digital era.¹²⁷ Nimmer questions whether current copyright structures actually incentivize creation or inadvertently fuel piracy through excessive restrictions and high prices, particularly in markets with significant access barriers like Nigeria.¹²⁸ This contemporary analysis is directly relevant to understanding the persistence of piracy in Nigeria despite existing legal frameworks.

¹²⁴ Oren Bracha, 'The Foreseeability of Digital Uses' (2010) 88 *Texas Law Review* 1269.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ David Nimmer, 'Does Copyright Abet Piracy? Reconsidering Incentive Theory in the Digital Age' (2021) 68 *UCLA Law Review* 1.

¹²⁸ *Ibid.*

The modern synthesis of economic analysis refines utilitarianism by focusing on marginal incentives, transaction costs, and market structure in platform economies.¹²⁹ In the music industry, the economics of streaming, characterized by micropayments, scale, and network effects, magnify the harm caused by mass, zero-price substitutes like stream-rips and cyberlocker downloads.¹³⁰ Where pirate supply is abundant and low-friction, even small diversion rates can lead to significant revenue leakage across the long tail of local artists.¹³¹ The normative payoff is twofold: (1) targeted enforcement that increases the full cost of infringing access (e.g., site-blocking, stream-ripper suppression, fast takedowns) and (2) law-and-market solutions that reduce frictions on the legitimate side (e.g., affordable plans, mobile billing, catalogue completeness)¹³². This synthesis aligns with Nigeria's 2022 Act and with the democracy-enhancing view of copyright (as articulated by Netanel), which links sustainable creative markets to a vibrant cultural sphere.¹³³

2.5 Types and Methods of Digital Piracy

Digital piracy manifests in various forms, constantly evolving with technological advancements. Understanding these methods is crucial for developing effective anti-piracy strategies. This section categorizes common methods affecting the music industry globally and highlights Nigerian case studies and enforcement actions.

¹²⁹ Cooter R and Ulen T, *Law & Economics* (6th edn, Pearson 2012).

¹³⁰ International Federation of the Phonographic Industry (IFPI), *Global Music Report 2024* (IFPI 2024).

¹³¹ Liebowitz S J, 'File-Sharing: Creative Destruction or Just Plain Destruction?' (2006) 49 *Journal of Law and Economics* 1.

¹³² A. Adewopo, 'The Tripartite Nexus of Copyright, Digital Technology and Piracy: An Analysis of the Nigerian Copyright System' (2018) 10(2) *Journal of Intellectual Property and Technology Law* 112.

¹³³ Netanel N W, *Copyright's Paradox* (Oxford University Press 2008)

2.5.1 Peer-to-Peer (P2P) Sharing, Stream-Ripping, Illegal Downloads, Cyberlockers, Social Media Uploads

One of the earliest and most impactful forms of digital music piracy was peer-to-peer (P2P) file sharing. Services like Napster (launched in 1999) allowed users to directly exchange digital music files, leading to significant revenue losses for the recording industry and numerous legal battles.¹³⁴ While Napster eventually shut down, other P2P networks such as Gnutella, Limewire, Kazaa, and Grokster continued to offer free music, and P2P illegal music downloading platforms (torrenting) even saw a resurgence in later years.¹³⁵ These networks persist for catalogue and discographies, though they have been partially displaced by faster web-based methods and messaging-app ecosystems.¹³⁶

A more recent and increasingly prevalent method is stream-ripping. This involves utilizing a website or service to convert streaming audio or video content (e.g., from YouTube or Spotify) into a downloadable audio file.¹³⁷ Stream-ripping sites accounted for a significant portion of music piracy, representing 39% of online traffic to music piracy sites in 2021, making it the most prevalent method of copyright infringement in music.¹³⁸ This method allows users to obtain permanent copies of content that is otherwise only available for temporary streaming, bypassing licensing agreements and depriving rights holders of revenue.¹³⁹ The appeal of stream-ripping

¹³⁴ *A&M Records, Inc v Napster, Inc* 239 F3d 1004 (9th Cir 2001).

¹³⁵ *Metro-Goldwyn-Mayer Studios Inc. v Grokster, Ltd.*, 545 U.S. 913 (2005).

¹³⁶ International Federation of the Phonographic Industry (IFPI), *Music Piracy: A Global Overview - Methods and Trends* (2023)

¹³⁷ *Ibid.*

¹³⁸ MUSO, *Global Piracy Report 2022* (MUSO 2022).

¹³⁹ IFPI (n 128).

lies in its zero price, permanence of the file, and circumvention of subscription paywalls.¹⁴⁰

Illegal downloads encompass obtaining copyrighted music files from unauthorized websites or platforms without payment or permission.¹⁴¹ This can occur through direct downloads from illicit sites or via cyberlockers.¹⁴² Cyberlockers are internet services similar to legitimate cloud storage sites (like Dropbox) but are deliberately structured to allow users to upload and download commercial content free-of-charge, often facilitating copyright infringement by acting as repositories for pirated material.¹⁴³ These platforms often generate significant income through subscription services and rely on external blogs, forums, and social media for sharing infringing content, as they typically lack internal search features.¹⁴⁴ Cyberlockers are resilient because files can be mirrored rapidly across hosts.¹⁴⁵

The proliferation of social media platforms has also led to widespread unauthorized uploads of copyrighted music. Users frequently post or repost music content without obtaining the necessary permissions or licenses, leading to copyright strikes and takedown notices from industry bodies like IFPI.¹⁴⁶ Unauthorized distribution on public computer networks is considered a federal offense in some jurisdictions due to its potential for widespread infringement.¹⁴⁷ Link-sharing on social and messaging

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ J. Karaganis (ed), *Copy Culture in the US and Germany* (Polity Press 2021).

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Olubodun F O, 'Social Media as a Vector for Music Piracy in Nigeria: A Legal and Empirical Analysis' (2023) 15(3) *Nigerian Journal of Communication* 45.

¹⁴⁷ 17 USC s506(a)(1)(C).

platforms (public posts and closed groups) enables rapid dissemination of upload links and re-uploads of locally popular tracks, especially where moderation is lax.¹⁴⁸

The International Federation of the Phonographic Industry (IFPI) in its 2023 report, *Music Piracy: A Global Overview - Methods and Trends*, provides a detailed catalog of these current major piracy methods.¹⁴⁹ It offers data on their prevalence, explains their technological mechanisms, and discusses their global reach, highlighting shifts in pirate behavior.¹⁵⁰ This authoritative global overview is essential for contextualizing Nigerian piracy within worldwide trends and identifying the specific platforms and techniques used locally. The report notes that illegal sites and mobile applications, such as those enabling stream-ripping and illegal digital downloads, make millions in revenue from music without returning anything to artists.¹⁵¹

Adding to this, Karaganis's 2021 edited volume, *Copy Culture in the US and Germany*, provides a deep sociological and technical analysis of how cyberlockers and P2P networks function as piracy tools.¹⁵² While focused on the US and Germany, its insights into business models, user motivations, and enforcement difficulties are globally applicable and essential for understanding the operational mechanics of these key piracy methods in Nigeria.¹⁵³

The constant adaptation of piracy methods, from early P2P to the current dominance of stream-ripping and the pervasive use of social media for unauthorized uploads, indicates that this is not a static problem. This means that effective anti-piracy strategies must be dynamic and adaptable, capable of addressing emerging

¹⁴⁸ Olubodun (n 138).

¹⁴⁹ IFPI (n 128).

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Karaganis (n 135).

¹⁵³ Ibid.

technologies and user behaviors, rather than relying on static legal definitions or enforcement mechanisms. The intangible and decentralized nature of digital piracy, unlike physical piracy, makes detection, tracking, and enforcement significantly more challenging.¹⁵⁴ This "unseen" quality contributes to the persistence of digital piracy, requiring a shift from traditional physical raids to digital forensics, takedown notices, and enhanced cooperation with online platforms. The difficulty in identifying and locating "multiple infringers who are hard to identify and locate"¹⁵⁵ remains a core challenge for rights holders.

2.5.2 Generative AI and New Forms of Infringement

Concurrent with the prevalence of stream-ripping, Generative Artificial Intelligence (AI) has emerged as a significant and complex vector for copyright infringement, presenting novel conceptual challenges to the established legal framework.

The first challenge stems from the training process of AI models. These systems are often developed through the mass-scale, unauthorized reproduction of copyrighted musical works, 'scraped' from the internet without license or remuneration to rights-holders.¹⁵⁶ This practice raises fundamental questions about whether such data ingestion constitutes an act of infringement under the Copyright Act.¹⁵⁷

The second, and perhaps more complex, challenge concerns the outputs generated by these models. AI can now produce new musical works that convincingly mimic the

¹⁵⁴ J. O. Asein, 'Nigerian Copyright Law and the Challenges of Digital Piracy' (2022) 14 *Journal of Intellectual Property Law & Practice* 211.

¹⁵⁵ *Ibid.*

¹⁵⁶ World Intellectual Property Organization, 'Generative AI: The Impact of Frontier Technologies on Intellectual Property' (2024) <https://www.wipo.int/documents/d/frontier-technologies/docs-en-pdf-generative-ai-factsheet.pdf> accessed 26 September 2025.

¹⁵⁷ 'Protecting the Rights of Artists in the Age of Digital Music Piracy: A Nigerian Perspective' (2018) <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1450&context=umblr> accessed 06 November 2025.

style of, or directly 'clone' the voice of, established Nigerian artists.¹⁵⁸This capability creates a profound legal ambiguity, challenging the traditional legal concepts of human authorship, adaptation, and the full scope of an artist's economic and moral rights.¹⁵⁹These AI-driven activities represent a new frontier of digital piracy, requiring a precise legal analysis within the context of the 2022 Act.

2.6 Effects of Digital Piracy on the Music Industry (Globally & Locally)

Digital piracy inflicts multifaceted damage on the music industry, extending beyond immediate financial losses to encompass human rights concerns for creators and broader cultural implications. These impacts are felt globally and are particularly acute in emerging markets like Nigeria.

2.6.1 Violation of the Right to Benefit: Quantifying Piracy's Economic and Human Rights Toll

Digital piracy raises significant human rights concerns, particularly regarding creators' fundamental right to benefit from their intellectual and artistic creations, a right protected under international instruments like Article 27 of the Universal Declaration of Human Rights (UDHR)¹⁶⁰. The sheer scale of the financial exploitation resulting from this violation is staggering, especially in Nigeria. The Director General of the Nigerian Copyright Commission (NCC) disclosed that Nigeria loses an estimated N918 trillion (approximately \$3 billion) annually to digital piracy across

¹⁵⁸ 'Tennessee's ELVIS Act Protects Musicians from AI Impersonation' (2024) <https://www.msba.org/site/site/content/News-and-Publications/News/General-News/ELVIS-Act.aspx> accessed 06 November 2025.

¹⁵⁹ United States Copyright Office, 'Artificial Intelligence and Copyright' (2024) <https://www.copyright.gov/ai/> accessed 26 September 2025.

¹⁶⁰ Universal Declaration of Human Rights (UDHR) (1948), art 27(2)

various copyright industries.¹⁶¹ This massive financial leakage directly undermines the creator's economic rights, which are explicitly protected by the Nigerian Copyright Act 2022 (NCA 2022).¹⁶² This situation reveals a critical economic paradox: Nigeria's music industry is a global force, yet it suffers staggering annual losses to piracy and struggles with local monetization.¹⁶³ This value gap means that the economic benefits are not sufficiently reinvested locally, potentially hindering the sustainable growth of the domestic music industry.¹⁶⁴ Authoritative data confirms this disparity: the International Confederation of Societies of Authors and Composers (CISAC) highlights a persistent royalty gap, explicitly flagging digital leakage (including piracy) as a key constraint on professionalization and investment.¹⁶⁵ Furthermore, a 2023 report by the International Labour Organization (ILO) and the Federation of Musicians and Employers' Associations of Nigeria (FEMAN) details how digital piracy directly undermines decent work principles in Nigeria.¹⁶⁶ It highlights that piracy causes income instability for musicians, reduces job opportunities, and hinders social security contributions,¹⁶⁷ thereby weakening the entire cultural ecosystem that supports the music industry. The problem extends beyond mere market efficiency to questions of justice and the inherent dignity of creative labor.¹⁶⁸ Beyond the deprivation of financial reward, piracy (through anonymous sharing or unauthorized modifications), also undermines a creator's moral

¹⁶¹ 'How Nigerian Government Loses Money Annually Due to Intellectual Property Rights Violations in the Music and Film Industry' (n74).

¹⁶² Copyright Act 2022, s 9.

¹⁶³ 'Nigeria Leads in Musical Hits, South Africa Rakes in Streaming Cash' (n 69).

¹⁶⁴ 'How Nigerian Government Loses Money Annually Due to Intellectual Property Rights Violations in the Music and Film Industry' (n74).

¹⁶⁵ International Confederation of Societies of Authors and Composers (CISAC), Global Collections Report 2024 (2024).

¹⁶⁶ International Labour Organization (ILO) and Federation of Musicians and Employers' Associations of Nigeria (FEMAN), Impact of Piracy on Decent Work in the Nigerian Music Sector (2023).

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

rights, such as the right of attribution and the right of integrity, which are considered inherent to the author's personality.¹⁶⁹ For Nigerian artists, the inability to fully benefit from their globally recognized creations represents a significant human rights concern, undermining their livelihood and artistic autonomy.¹⁷⁰ While the NCA 2022 provides legal remedies for infringement,¹⁷¹ their practical effectiveness is challenged by the digital realm and underlying socio-economic factors. Specifically, economic analysis of piracy in low-income countries like Nigeria suggests that it is often driven by an "insufficient willingness to pay" or an inability to pay, rather than purely malicious intent.¹⁷² In this context, piracy might be a symptom of an underdeveloped legal market where high prices and limited payment options push consumers towards unauthorized alternatives. The anticipated \$17.5 million streaming revenue in Nigeria for 2023¹⁷³ further indicates the nascent stage of the legal digital market. The consequences of this unchecked exploitation are too massive to overlook. Globally, the economic impact is immense: music theft leads to an estimated annual loss of \$2.7 billion in earnings for the U.S. sound recording industry¹⁷⁴, with broader estimates suggesting that piracy results in an annual loss of \$12.5 billion in total output for the U.S. economy alone.¹⁷⁵ Additionally, governments also suffer direct financial losses, with U.S. federal, state, and local governments losing at least \$422 million in tax revenues annually due to piracy.¹⁷⁶ When considering that Nigeria loses an estimated

¹⁶⁹ Ibid.

¹⁷⁰ Okafor V C, 'Digital Piracy, Economic Survival and the Right to Artistic Livelihood: A Human Rights Critique from Nigeria' (2022) 25(2) African Human Rights Law Journal 450.

¹⁷¹ Copyright Act 2022, Part IV, Copyright Act 2022, s 37 & 44.

¹⁷² Peukert C, Claussen J and Kretschmer T, 'Piracy and Box Office Movie Revenues: Evidence from Megaupload' (2017) 36(1) International Journal of Industrial Organization 18

¹⁷³ Statista, 'Music Streaming - Nigeria' (2023) <https://www.statista.com/outlook/dmo/digital-media/music-streaming/nigeria> accessed 28 September 2025

¹⁷⁴ Institute for Policy Innovation, *The True Cost of Sound Recording Piracy to the U.S. Economy* (2017).

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

N918 trillion (approximately \$3 billion) annually ¹⁷⁷to this same digital crime, it becomes clear that the exploitation of the creators' economic rights on this scale is a severe threat to national economies and cultural production. The fact that so many music creators suffer precarity, alongside the crippling of nations' economies, must warrant swift and comprehensive action against this "economic rights" problem.

2.7 Conclusion

In summary, digital piracy within Nigeria's music sector stems from a complex mix of legal, technological, and socio-economic factors. Legally, while the Nigerian Copyright Act 2022 modernizes anti-piracy tools for the internet, it stops short of defining "digital piracy" itself, revealing a gap between formal law and the market realities that often drive consumers to unlicensed sources.

The enforcement landscape is similarly dualistic. Agencies like the Nigerian Copyright Commission are actively pursuing online pirates and securing landmark convictions, as seen in cases against major corporations. Yet, a significant enforcement gap remains, hampered by the borderless nature of the internet and institutional weaknesses that prevent many artists from collecting their due royalties.

The shift from physical piracy hubs like Alaba to digital streaming has been a double-edged sword. It offers global reach but often at the cost of reduced per-stream revenue. In Nigeria's price-sensitive market, this has created a crisis for legal platforms like Boomplay, making piracy less a pure criminal choice and more a symptom of a legal market that is often unaffordable or inaccessible.

¹⁷⁷ 'How Nigerian Government Loses Money Annually Due to Intellectual Property Rights Violations in the Music and Film Industry' (n74).

The philosophical justifications for copyright whether the moral claim of Natural Rights, the public benefit goal of Utilitarianism, or the market-driven Economic Incentive theory, all face practical limitations. The central challenge is to balance these principles to ensure artists are paid without locking cultural content away from the public.

Ultimately, combating piracy in Nigeria requires a multi-pronged strategy. This must blend strong, targeted enforcement against major online piracy operations with proactive market-based solutions. Making legal content affordable and easy to access through localized pricing and mobile payments is essential to drawing users away from illicit sites. As supported by contemporary legal scholarship, this balanced approach, embedded in the spirit of the 2022 Act, is vital for protecting both the economic rights of creators and the cultural vitality of the nation.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK ON THE PROTECTION OF COPYRIGHT

3.1 Introduction

The growth of the music industry in Nigeria has been driven by increased digital distribution, global visibility of afrobeats, and expanding consumer access to streaming platforms amongst others. However, these same digital channels have also increased the spread of unauthorized copying, downloading, streaming, and sharing of musical works. Piracy in here has shifted from the once dominant physical reproduction markets such as Alaba International Market to more sophisticated online channels, including stream-ripping websites, cyberlockers, WhatsApp and Telegram sharing groups, and unlicensed streaming platforms.¹ As demonstrated in the previous chapter, the challenge is no longer merely the reproduction of physical copies but the continuous circulation of infringing digital files across decentralized networks that are difficult to trace and regulate.

In response, Nigeria has developed a legal and institutional framework aimed at protecting copyright holders and curbing piracy. The Copyright Act 2022² represents a significant reform, introducing modern provisions that recognize digital dissemination and the rights of creators copyright in physical and online spaces.³ Additionally, institutions such as the Nigerian Copyright Commission (NCC), Collective Management Organisations (CMOs), the Nigerian Police Force, and the

¹ Tade O and Akenliye O, 'Audio Music Piracy in Nigeria: An Examination of the Perspectives of Pirates, Musicians and Producers' (2008) 2(3) International Journal of Cyber Criminology 207

² Copyright Act, 2022 (Act No.8 of 2022)

³ Copyright Act 2022, s 3; s 8; s 54 (on digital communication to the public and takedown obligations).

Nigerian Customs Service all play distinct roles in enforcement. Yet, the effectiveness of this framework depends not only on the quality of the law itself but on the ability of these institutions to enforce it in an environment where piracy is technologically complex and a socially accepted norm.

Therefore, this chapter evaluates the Nigerian legal and institutional framework for combating digital piracy, with particular reference to the music industry. It examines the Copyright Act 2022, the mandates and operational capacities of enforcement bodies, the contribution and controversy surrounding CMOs, and the role of judicial interpretation. While the law on paper is comparatively robust and mostly aligned with international standards, its enforcement remains a bit lacking due to funding constraints, limited digital forensics capacity, jurisdictional challenges, and weak deterrence and prevention mechanisms. This chapter will adopt a balanced analytical approach: acknowledging the strengths of the Nigerian framework while identifying the practical limitations that affect its real-world performance.⁴

3.2 Overview of Intellectual Property Protection in Nigeria

Intellectual property (IP) protection in Nigeria is primarily governed by statutory law, supported by regulatory institutions and influenced by international conventions to which Nigeria is a signatory. In the context of the music industry, copyright law is the central mechanism for safeguarding creative expressions such as musical compositions, lyrics, sound recordings, and performances. Copyright in Nigeria does not require registration before it becomes enforceable; protection is automatic once a work is created and expressed in a tangible form, in line with the Berne Convention

⁴ Uguru U and Umobong MC, 'Appraising the Impact of the Nigerian Copyright Act and Regulations in Combating Piracy in Nigeria' (2022) 13(2) Beijing Law Review 38.

principle of automatic protection.⁵ This means artists, producers, and composers acquire rights in their works by the mere act of creating them, although voluntary registration remains useful for evidentiary purposes during enforcement proceedings.⁶

Nigeria's copyright regime reflects a combination of domestic legislation and international obligations. Internationally, Nigeria is a party to the Berne Convention, having acceded to the Paris Act of 1971 in 1993, the TRIPS Agreement (1994)⁷, and more recently, the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).⁸ These instruments emphasize the protection of authors' economic and moral rights and explicitly recognize digital forms of communication, including online dissemination and streaming. While these treaties help shape the standards of protection, the extent to which Nigeria implements and enforces them depends on domestic institutional capability and political will.

Domestically, the Copyright Act 2022 serves as the principal legislation governing copyright protection. The Act modernizes prior law and recognizes the realities of digital use, online broadcasting, and streaming services. It protects creators' rights to control the reproduction, distribution, performance, and digital transmission of their works. However, the existence of strong legal provisions alone does not guarantee meaningful protection. Enforcement remains the critical challenge. The application of copyright law in Nigeria is filtered through resource limitations, social attitudes

⁵ Berne Convention for the Protection of Literary and Artistic Works 1971, art 5(2)..

⁶ Copyright Act 2022, s 87(2).

⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights 1994

⁸ WIPO Copyright Treaty (WCT) (1996); WIPO Performances and Phonograms Treaty (WPPT) (1996).

toward piracy, uneven institutional coordination, and complex technological environments.⁹

Thus, while Nigeria possesses a solid legal foundation for copyright protection on paper, the practical effectiveness of this framework depends heavily on the operational strength of the agencies mandated to enforce it and the willingness of industry stakeholders to support structured royalty administration and anti-piracy initiatives.

3.2.1 International Legal Instruments

The Nigerian copyright framework, as seen in the preceding section, does not exist in isolation. It is fundamentally shaped by a set of international obligations that establish a set of standards for protection and enforcement. The Copyright Act of 2022 marks a modernization of copyright law in Nigeria, building directly upon the principles established through the country's commitment to key international treaties. These treaties are critical components of the legal framework.

3.2.1.1 The Berne Convention

The Berne Convention for the Protection of Literary and Artistic Works (1886) serves as a foundational instrument in the international copyright regime. Its most significant contribution, which is fully domesticated into Nigerian law, is the principle of "automatic protection".¹⁰ This principle mandates that copyright protection is conferred automatically upon the creation of a work in a tangible form, thereby eliminating any requirement for formal registration as a prerequisite for enforcing

⁹ Adewopo A, *Nigerian Copyright System, Principles and Perspectives* (Odade Publishing 2012).

¹⁰ World Intellectual Property Organization (WIPO), *Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)* (WIPO, 2020) https://www.wipo.int/en/web/treaties/ip/berne/summary_berne accessed 8 November 2025.

protection.¹¹ While voluntary registration remains useful for evidentiary purposes in litigation, the right itself exists from creation. Additionally, the Convention establishes the principle of "national treatment", which ensures that works originating from Nigeria receive the same level of protection in all other member states as those states grant to their own nationals, a provision fundamental to cross-border copyright enforcement.¹²

3.2.1.2 The TRIPS Agreement

While the Berne Convention established the rights, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) integrated these rights into the global trade system and, introduced detailed obligations on enforcement.¹³ As a member of the World Trade Organisation (WTO), Nigeria is bound by TRIPS. Part III of the Agreement compels member states to provide "effective action against any act of infringement," including "expeditious remedies to prevent infringements" and "remedies which constitute a deterrent."¹⁴ This includes mandating civil and administrative procedures, as well as criminal penalties for wilful copyright piracy on a commercial scale.¹⁵ The institutional roles of the Nigerian Police Force and the Nigerian Customs Service, as critiqued later in this chapter, are a direct domestic response to these international enforcement mandates.

¹¹ Article 5(2) of the Berne Convention for the Protection of Literary and Artistic Works (1886)

¹² Article 5(1) of the Berne Convention for the Protection of Literary and Artistic Works (1886)

¹³ World Trade Organization (WTO), Overview: The TRIPS Agreement (WTO, n.d.)
https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm accessed 8 November 2025

¹⁴ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197, Art 41(1).

¹⁵ Ibid, Article 61

3.2.1.3 The WIPO Internet Treaties (WCT and WPPT)

The most recent and direct international influence on copyright protection in Nigeria comes from the WIPO Internet Treaties, which were specifically designed to address the challenges of digital technology.¹⁶ The WIPO Copyright Treaty (WCT) modernises the Berne Convention for the digital age. It clarifies that the right of communication to the public includes "making available" works online, such as through streaming or downloading, where the public can access them "from a place and at a time individually chosen by them."¹⁷ The WIPO Performances and Phonograms Treaty (WPPT) provides similar and crucial protections for performers and producers of phonograms (sound recordings), granting them economic rights over the digital use of their work, including a corresponding "right of making available".¹⁸

Significantly, these two treaties obligate Nigeria to provide legal protection for Technological Protection Measures (TPMs) (i.F., digital locks or encryption) and Rights Management Information (RMI) (i.e., digital metadata identifying the author or work).¹⁹ The new provisions in the Copyright Act 2022 that empower the NCC to issue take-down notices and address ISP liability are a direct domestication of these digital-era obligations.²⁰

¹⁶ Adams & Adams, 'Nigeria Enacts New Copyright Act' (2023) <https://www.adams.africa/nigeria/nigeria-enacts-new-copyright-act/> accessed 8 November 2025.

¹⁷ World Intellectual Property Organization (WIPO), 'Summary of the WIPO Copyright Treaty (WCT) (1996)' (2024) <https://www.wipo.int/treaties/en/ip/wct/> accessed 8 November 2025.

¹⁸ World Intellectual Property Organization (WIPO), 'Summary of the WIPO Performances and Phonograms Treaty (WPPT) (1996)' (2024) <https://www.wipo.int/treaties/en/ip/wppt/> accessed 8 November 2025.

¹⁹ WIPO Copyright Treaty (1996) arts 11-12; WIPO Performances and Phonograms Treaty (1996) arts 18-19.

²⁰ IPLINK Asia, 'Updates on IP Legislations in Nigeria' (2023) <https://www.iplink-asia.com/article-detail.php?id=939> accessed 8 November 2025.

In summary, Nigeria's international commitments provide the substance of its legal framework. These treaties mandate the very rights, enforcement structures, and digital tools that the Copyright Act 2022 contains. The persistent challenge of digital piracy, therefore, is not a failure of legal drafting, as the law is largely in compliance with global standards, but a failure of domestic implementation, capacity, and enforcement, as this chapter will continue to explore.

3.3 The Copyright Act 2022

The Copyright Act 2022 represents the most significant reform of copyright law in Nigeria in over three decades. It repealed the Copyright Act Cap C28 LFN 2004 and introduced provisions that respond directly to the realities of digital creation, distribution, and infringement in the music industry. The reform was necessary because earlier versions of the law were drafted at a time when piracy occurred mainly through the physical reproduction of CDs, cassettes, and DVDs. Today, music circulates primarily online, where copying is instantaneous, distribution is borderless, and infringing content can be hosted anonymously or outside Nigeria's jurisdiction. The 2022 Act therefore expands the rights of creators, increases penalties for infringement, and provides new enforcement tools specifically aimed at online piracy.²¹

3.3.1 Scope of Protection for Musical Works

Under the Act, musical works and sound recordings are separately recognized and protected categories. A musical work includes the composition and any accompanying lyrics, while a sound recording refers to the fixation of sounds

²¹ Copyright Act 2022 (n2)

resulting from a performance.²² This distinction matters in the music industry because different stakeholders such as songwriters, performers, and producers, often hold different rights in the same song.

Importantly, copyright protection is automatic once the work is created and expressed in a fixed form. Artists do not need to register their works before they can enforce their rights, although the NCC voluntary registration system provides evidentiary benefits where ownership is disputed. The Act therefore ensures that Nigerian musicians, many of whom publish digitally, are protected the moment their work is uploaded online, recorded, or shared.

3.3.2 Rights Conferred on Authors, Performers and Producers

The Copyright Act 2022 grants authors, performers and producers a set of legal rights in order to protect both their creative works and their economic interests. These include the rights to reproduce their works, to distribute them to the public, to perform or communicate them publicly, and importantly, the right to control how their works are made available online.²³ Their right to make the digital copies available is especially crucial in the digital era, as it governs the uploading, streaming and sharing of music on platforms such as Spotify, YouTube, Apple Music, Boomplay, etc.

The Act recognises moral rights as well, which ensure that artists retain acknowledgment and can object to alterations that distort their work or damage their reputation.²⁴ In addition, performers and producers hold neighbouring rights, which reflect their distinct contributions (depending on the agreements) to the sound

²² Copyright Act 2022, s 3(1)(a) and (b).

²³ Copyright Act 2022, s 8(b).

²⁴ Copyright Act 2022, s 14.

recording and ensure they are entitled to remuneration when their recorded performances are used commercially.

However, the impact of digital piracy severely undermines these rights in practice. Unauthorized uploading, streaming and circulation of songs through Telegram groups, file-sharing websites and unlicensed streaming platforms deprive artists and producers of royalty income and weaken their control over how their music is distributed²⁵.¹⁴ Even when musicians are legally entitled to earn from every stream or download, piracy disrupts revenue collection and significantly reduces the earned remunerations that should have flowed back to them. This is particularly damaging in the Nigerian context, where many artists rely on streaming revenue and performance exposure to sustain their careers.

Furthermore, the negotiation of copyright contracts in Nigeria often takes place under conditions of unequal bargaining power, where new artists may assign or license their rights to labels or distributors without fully understanding the long-term consequences. Digital piracy worsens this imbalance: when legitimate revenue streams are weakened, artists become more financially vulnerable and more likely due to desperation to enter contracts that benefit intermediaries rather than creators. Thus, while the legal framework here on paper grants strong rights to artists, the actual impact of digital piracy significantly reduces the effectiveness of these rights and contributes to the economic insecurity of musicians within the industry.

²⁵ Adewopo (n7)

3.3.3 Limitations, Exceptions and Enforcement Challenges

The Copyright Act 2022 contains several limitations and exceptions intended to balance the rights of creators with the broader public interest. These include exceptions for research, private study, criticism, news reporting, education, and parody.²⁶ However, these exceptions are narrowly drawn and do not extend to the widespread distribution of full musical works through digital channels. Practices such as uploading entire albums to Telegram groups, sharing download links via WhatsApp broadcasts, extracting audio from TikTok clips, or streaming copyrighted music on unlicensed platforms are clearly outside the scope of permitted use but in reality, however, these forms of infringement have become normalized in everyday musical consumption in Nigeria.

The Act also introduces stronger penalties for copyright infringement and empowers the Nigerian Copyright Commission to issue take-down notices against online platforms hosting infringing material, as well as to compel Internet Service Providers to block access to infringing sites where necessary.²⁷ This reflects an attempt to modernize enforcement mechanisms and align Nigeria's regulatory approach with international standards, particularly in relation to online piracy.

In spite of these provisions, enforcement here remains challenging. Digital piracy often occurs anonymously and across jurisdictions, with infringing websites hosted in foreign countries where Nigerian enforcement directives may have no binding effect. Moreover, the detection of online infringement requires technical capacity and digital forensic tools. These tools are unfortunately not yet up to speed within the necessary

²⁶ Copyright Act 2022, ss 20–28.

²⁷ Copyright Act 2022, ss 54–55

Nigerian institutions. The general attitudes also play a role because many times, the sharing of songs is seen as harmless or even supportive of artists, rather than as a violation of copyright law. As a result, although the Act provides a solid legislative framework, and the extent to which it can effectively reduce digital piracy depends heavily on improvements in enforcement resources, technological collaboration, and copyright awareness among consumers.

3.3.4 Absence of AI-Specific Provisions in the Copyright Act 2022

Although the Copyright Act 2022 introduced several digital-era safeguards, including notice-and-takedown procedures²⁸ and protections for Rights Management Information (RMI),²⁹ the Act contains no provision expressly addressing artificial intelligence (AI). There is no definition of AI-generated or AI-assisted works, no guidance on authorship where machine processes contribute to creation, and no rules governing the use of copyrighted sound recordings as training data for AI systems.

Similarly, while the Act empowers the Nigerian Copyright Commission to require the removal or disabling of infringing online content,³⁰ these mechanisms do not contemplate AI-driven risks such as synthetic voice cloning, automated scraping of musical works, or large-scale reproduction by generative models. Contemporary international discussions, including those led by WIPO, have identified AI as a major emerging challenge for copyright policy, with calls for states to clarify ownership, liability, and infringement standards in the AI context.³¹

²⁸ Copyright Act 2022, s 54

²⁹ Copyright Act 2022, s 51

³⁰ Copyright Act 2022, s 55

³¹ World Intellectual Property Organization (WIPO), 'Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence' WIPO/IP/AI/2/GE/20/1 REV (21 May 2020)

The absence of AI-specific rules in the Nigerian framework therefore represents a significant regulatory gap, limiting the Act's ability to respond to new forms of digital creation and technologically sophisticated modes of infringement.

3.4 Institutional and Enforcement Framework in Nigeria

The protection of copyright in Nigeria does not rely on legislation alone. Its effectiveness depends on the institutions responsible for implementing, monitoring, and enforcing the law. In the context of digital piracy in the music industry, the key enforcement actors include the Nigerian Copyright Commission (NCC), the Nigerian Police Force, the Nigerian Customs Service, and Collective Management Organisations (CMOs) such as the Musical Copyright Society Nigeria (MCSN) and the Copyright Society of Nigeria (COSON). Each of these bodies plays a distinct role in ensuring compliance, securing revenue streams for artists, and promoting the fair commercial exploitation of musical works. However, their effectiveness varies significantly due to institutional capacity, funding, and coordination challenges.³²

3.4.1 Nigerian Copyright Commission (NCC)

The NCC is the primary body charged with administering copyright law and coordinating anti-piracy operations in Nigeria. It conducts investigations, seizures of infringing materials, public awareness campaigns, and prosecution of offenders.³³ Historically, NCC enforcement focused on physical piracy, particularly in major distribution hubs such as Alaba International Market in Lagos. These operations led to

³² Adewopo (n7)

³³ Nigerian Copyright Commission Act, s 4.

the seizure of millions of unauthorized CDs and the arrest of several large-scale distributors.³⁴

However, as piracy has shifted to digital platforms, NCC has had to adapt its enforcement strategies. A recent example is the suspension of the piracy streaming website MovieBox.ng, where the NCC collaborated with the Nigeria Internet Registration Association (NiRA) to take down the domain and block associated mirror sites.³⁵ This action demonstrates a growing recognition within the NCC that online enforcement requires technical capability, partnerships with internet intermediaries, and faster investigative response times.

Even when infringing content is detected, the speed at which pirated music circulates online is often times a lot faster than the enforcement action. As a result, the NCC is frequently placed in a reactive rather than a preventive enforcement position. The effectiveness of the NCC remains constrained by limited funding, inadequate digital forensic capacity, and the cross-border nature of online infringement.³⁶ While the Commission's legal powers are adequate, its practical capacity to police a rapidly evolving digital environment remains insufficient. Thus, while the NCC is legally empowered it is operationally overstretched, which weakens its ability to protect artists from the economic impact of digital piracy. In other words, the NCC is strong on paper, but limited in operational capacity.

³⁴ Adewopo (n7)

³⁵ 'Nigerian Copyright Commission Cracks Down On Online Piracy - Suspends MovieBox.ng' (2025) <https://news.broadcastmediaafrica.com/2025/08/04/nigerian-copyright-commission-cracks-down-on-online-piracy-suspends-moviebox-ng/> accessed 26 October 2025

³⁶ Uguru U and Umobong MC, 'Appraising the Impact of the Nigerian Copyright Act and Regulations in Combating Piracy in Nigeria' (2022) 13(2) Beijing Law Review 38.

3.4.2 Nigerian Police Force and Cybercrime Units

The Nigerian Police Force (NPF) plays a supporting role in copyright enforcement, particularly where piracy constitutes a criminal offence under the Copyright Act 2022. The Act empowers the police to arrest offenders, seize infringing materials, investigate piracy networks, and assist in prosecutions before the Federal High Court.³⁷ A member of the police force not below the rank of Commissioner of Police is also a member of the Governing Board of the NCC.³⁸ Essentially, the police ought to be at the forefront of criminal enforcement against music piracy.

However, in practice, the police are rarely effective in addressing digital piracy. This is primarily because the traditional policing framework was designed to address physical and location-based crimes, not online violations that occur across social platforms, jurisdictions, and encrypted networks. Officers here are often more familiar with seizing physical goods, such as compact discs in markets, than with tracking IP addresses, tracing upload chains, or analyzing server logs associated with digital infringement.³⁹ The study further observes that piracy persists partly because police interventions are sporadic and poorly sustained, allowing pirate networks to reorganize and continue operations shortly after raids.⁴⁰ Consequently, enforcement efforts tend to remain concentrated on visible, low-level offenders, rather than the digital distributors and website operators who are responsible for the large-scale piracy in Nigeria.

³⁷ Copyright Act 2022, s38, s86

³⁸ Copyright Act 2022, s79

³⁹ Tade O and Akenliye O, 'We are Promoters not Pirates: A Qualitative Analysis of Artistes and Pirates on Music Piracy in Nigeria' (2008) 2(3) International Journal of Cyber Criminology 207.

⁴⁰ Ibid

The Cybercrime (Prohibition, Prevention, etc.) Act 2015 provides a legal basis for tackling online criminal activity, including unauthorized access, network interference, and financial gains derived from unlawful acts.⁴¹ Yet, this legislation is not constantly deployed to address digital copyright infringement because piracy is still largely treated as a copyright matter rather than as a cybercrime issue. As a result, a lot of the cases involving digital piracy rarely benefit from the expertise of specialized cybercrime units, and investigations hardly move beyond the basic takedown requests.

Moreover, institutional priority challenges persist. The police typically focus resources on offences that it perceives to threaten physical safety or state security. Digital piracy on the other hand, is often viewed as a victimless crime, non-urgent and not a high priority offence despite its significant economic impact on artists and the creative or entertainment industry. This perception contributes to weak enforcement motivation, slow investigation timelines, and, ultimately, a low deterrence of digital piracy in Nigeria.

Therefore, a significant inconsistency emerges, that is, while the police possess the legal authority to combat digital piracy, they are most often not equipped to do so effectively. This is not caused by a lack of existing enabling laws, but is one caused by practical implementation. The unavoidable outcome is a system where music creators' rights are sound on paper but fragile in reality. This gap between what ought to be and what is leaves creators vulnerable to the widespread and persistent infringement which goes unpunished for a majority of the time.

⁴¹ Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 6-8.

3.4.3 Nigerian Customs Service

The Nigerian Customs Service (NCS) is empowered to intercept infringing goods at the borders. This is provided for under the provisions of the Nigeria Customs Service Act, 2023 and the Copyright Act 2022, which prohibit the importation of unauthorized copies of copyrighted works.⁴² A representative of the Nigeria Customs Service not less than the rank of Comptroller of Customs makes up the Governing Board of the NCC.⁴³

In this digital era, the role of Customs has become considerably diminished. Piracy now occurs primarily through online file-sharing, streaming platforms, and social media circulation, none of which involve physical goods passing through the border. As a result, while the Nigerian Customs Service remains relevant to preventing the importation of counterfeit CDs and related physical storage medium, its capacity to mitigate digital piracy is minimal. The shift from physical to online infringement has therefore rendered Customs Service largely peripheral to present day enforcement efforts against piracy in the Nigerian music industry, they are not without use however as some physical mediums could still be smuggled.

3.4.4 Collective Management Organisations (MCSN and COSON)

Collective Management Organisations (CMOs) play an essential role in the protection of musical works by licensing the usage of copyrights, collecting royalties, and distributing revenue to the respective rights holders. In Nigeria, the two principal CMOs involved in the music sector are the Musical Copyright Society Nigeria Ltd/Gte (MCSN) and the Copyright Society of Nigeria (COSON). Their legal

⁴² Nigeria Customs Service Act, 2023s168 Copyright Act 2022 s38, s53

⁴³ Copyright Act 2022, s79

authority is derived from the Copyright Act, which recognises CMOs as the organizations an organisation representing copyright owners, which has as its principal objectives the negotiating and granting of licences, collecting and distributing of royalties in respect of copyright works⁴⁴

In principle, CMOs are supposed to strengthen copyright enforcement by providing a structured mechanism for tracking music usage across broadcast media (tv and radio), digital platforms, and public performances. They act as the intermediaries between artists and commercial users, and their ability to negotiate licensing agreements and pursue royalty claims is critical to ensuring that all music creators derive financial benefit from their creative work.⁴⁵

However, in reality, protracted institutional conflicts, legal challenges over accreditation, and internal governance issues have weakened the efficacy of CMOs in Nigeria. For a number of years, there was debate over which organization was legally authorized to manage musical rights, which created regulatory ambiguity and undermined user and artist confidence.⁴⁶ This instability had a direct negative impact in the form of royalty collection and distribution becoming inconsistent, leaving many musicians without meaningful compensation from the commercial use of their work.

The formation and resolution of the dispute involving MCSN and COSON illustrate these challenges. Although significant judicial decisions have affirmed MCSN's right

⁴⁴ Copyright Act 2022 s88

⁴⁵ Babatunde O, Adedeji A A, Akinkunmifarinde J and Ogundari E, 'Challenges of Collective Management Organization in the Nigerian Music Industry' (2025) 5(2) *The Obafemi Awolowo University Law Journal* 45.

⁴⁶ Odion J O and Oriakhogba D O, 'Copyright Collective Management Organizations in Nigeria: Resolving the Locus Standi Conundrum' (2015) 10(7) *Journal of Intellectual Property Law and Practice* 518-525.

to function as a licensed CMO in the case of *MCSN v Adeokin Records*⁴⁷, some other cases have shown the contrary, for instance, the case of *MCSN v Detail*.⁴⁸ The prolonged conflict damaged the credibility and operational coherence of copyright administration in the music sector.⁴⁹ Furthermore, limited financial transparency and weak royalty-tracking systems mean that many artists cannot verify whether all royalties collected on their behalf are truly remitted in their entirety.⁵⁰

In the context of digital piracy, the weakness of CMOs has broader implications. Where royalty collection systems are fragmented or inefficient, the incentive that would have been available for artists to rely on formal distribution and streaming channels is weakened, making the industry more vulnerable to illicit circulation. Consequently, organizational conflict and administrative failures have had the practical effect of decreasing the deterrent and economic impact of CMOs, despite their legally defined role of strengthening copyright enforcement. In essence, CMOs in Nigeria while structurally significant, are operationally constrained. Their capacity to support musicians against digital piracy exists in principle, but the reality of weak governance, uneven enforcement, and disputed legitimacy has limited their effectiveness in safeguarding artists' economic rights.

Beyond the structural roles of MCSN and COSON, the legal framework regulating CMOs in Nigeria provides further insight into the institutional challenges affecting their effectiveness. The Copyright Act 2022 and the Collective Management

⁴⁷ *MCSN v Adeokin Records* Appeal No.: CA/L/498/97.

⁴⁸ *MCSN v Detail* FHC/L/CS/934/95.

⁴⁹ Odion and Oriakhogba (n30)

⁵⁰ Ochem O T-F, 'How Nigerian Government Loses Money Annually Due to Intellectual Property Rights Violations in the Music and Film Industry' (2024) <https://nairametrics.com/2024/12/18/how-nigerian-government-loses-money-annually-due-to-intellectual-property-rights-violations-in-the-music-and-film-industry/> accessed 6 November 2025.

Organisation Regulations 2025⁵¹ (which repealed the Collective Management Organisation Regulations 2007) empower the Nigerian Copyright Commission (NCC) to accredit, supervise, and, where necessary, suspend CMOs that fail to comply with operational standards. The regulatory expectation of CMOs is that they must maintain transparent royalty accounting, provide periodic financial reports, and demonstrate mechanisms for an equitable distribution to rights holders. However, some academic researchers have observed that compliance with these governance obligations has historically been inconsistent among Nigerian CMOs.⁵²

The long-running conflict between COSON and MCSN stemmed in part from questions over accreditation. COSON was previously recognized as the licensed body to manage musical copyright, while MCSN operated without formal NCC accreditation for a period.⁵³ This status changed in 2017, when the NCC issued an official approval restoring MCSN's full operational license as a collecting society.⁵⁴ The regulatory shift led to prolonged litigation and administrative disputes between the two bodies, which resulted in institutional division at a time when the Nigerian music industry was experiencing rapid digital expansion.

In *Multichoice (Nig.) Ltd v MCSN Ltd/Gte* (2020), the Court of Appeal affirmed MCSN's legal standing to collect royalties and awarded substantial damages in its favour, formally recognizing its authority as a legitimate collective management organisation.⁵⁵ Similarly, in the case of *COSON v NCC & Ors* (2019), the Federal High Court examined the dispute surrounding COSON's governance and regulatory

⁵¹ 2025 (S.I. No. 17)

⁵² Odion and Oriakhogba (n30)

⁵³ Ibid

⁵⁴ 'The Nation', 'Federal Govt Grants MCSN Licence to Operate' (2025) <https://thenationonlineng.net/federal-govt-grants-mcsn-licence-operate/> accessed 26 September 2025

⁵⁵ *Multichoice (Nig) Ltd v MCSN Ltd/Gte* (2020) 13 NWLR (Pt 1742) 415 (CA)

compliance, highlighting issues of internal management and oversight rather than external infringement alone.⁵⁶ These decisions demonstrate that the major obstacles to effective collective management in Nigeria have been institutional and administrative, rather than purely statutory.

Nigeria's CMO framework faces structural challenges that limit its effectiveness in the digital age. Legal analysis by experts like Ola and Majekolagbe highlight outdated practices, weak governance, and limited transparency, noting that the system struggles to meet the demands of digital streaming and global content platforms.⁵⁷ This is more than just a technical issue; it's a fundamental flaw. The old legal structures simply cannot keep up with the new reality of music consumption, which directly contributes to the governance failures and market confusion we see today.⁵⁸ As a result, artists frequently report discrepancies or delays in royalty payments, contributing to mistrust in the system.

This institutional weakness has direct consequences for digital piracy. When the formal royalty systems are unreliable, the lack of trust makes the creators less incentivized to rely on formal protection, and users become emboldened to infringe since they perceive a reduced risk, that is, that the system is too broken to hold them accountable, making them more willing to bypass licensing and use content without permission⁵⁹ Effective CMOs can increase the economic value of copyright protection and thus strengthen deterrence, but weak CMOs may inadvertently normalize

⁵⁶ *COSON v NCC & Ors* (FHC/L/CS/207/2019) (Unreported, Federal High Court, Lagos Division).

⁵⁷ Ola K and Majekolagbe F O, 'Reimagining Copyright Collective Management for Nigerian Creators: Learning from International Models' (2023) *Journal of Intellectual Property Law and Practice* 1.

⁵⁸ Ibe I U and Udeoji N N, 'The Challenges and Prospects of Nigeria Copyright Administration in a Digital Artificial Intelligence Age' (2019) 3(1) *Afe Babalola University: Journal of Public and International Law** 1.

⁵⁹ Uguru and Umobong (n3)

infringement by creating uncertainty about rights ownership, licensing authority, and equitable compensation.

In summary, the challenges facing COSON and MCSN underscore a broader structural issue, that is, while Nigeria's legal provisions for collective management are sound, the operational performance of CMOs has not consistently met the demands of a digital music economy. Strengthening governance transparency, adopting digital royalty-tracking systems, and stabilizing accreditation frameworks are critical reforms needed if CMOs are to serve as effective partners in combating digital piracy and protecting the economic rights of Nigerian musicians.

3.5 Conclusion

The legal and institutional framework for protecting musical works in Nigeria is well-established in principle. The Copyright Act 2022 provides comprehensive rights for music creators including artists and producers, providing exclusive rights of reproduction, distribution, performance, and digital communication to the public. The Act also introduces modern provisions that target online infringement, such as notice-and-takedown procedures and liability for third parties. Taken together, these provisions show that the law is not blind to the complexities of digital piracy; rather, it's a clear attempt to build a framework that is actually fit for the modern age.⁶⁰

Institutionally, bodies such as the Nigerian Copyright Commission (NCC), the Nigerian Police Force, the Nigerian Customs Service, and Collective Management Organisations (CMOs) are assigned roles that should, in theory, complement each other in enforcing copyright protection and ensuring that artists receive economic

⁶⁰ Copyright Act 2022, ss 9, 10 and 54-55

value from their work.⁶¹ The existence of these institutions suggests a system that should be structurally capable of enforcing the rights of the creators.

However, the practical functioning of this framework reveals significant weaknesses. The NCC, though legally empowered, lacks the technical resources and cross-border enforcement capability required to effectively address online piracy. The Nigerian Police are fundamentally limited in tackling this issue. They are often ill-equipped with the necessary expertise in handling cybercrime, and this technical gap is worsened by a general tendency to de-prioritize IP crimes like copyright infringement. The role of the Nigerian Customs Service has become increasingly marginal due to the shift from physical to purely digital modes of piracy. Meanwhile, CMOs, which should play a decisive role in royalty protection, continue to struggle with institutional disputes, inconsistent royalty collection, and credibility challenges, which reduce their effectiveness in protecting artists' economic rights.⁶²

As a result, the framework can be described as strong in law but weak in execution. The legal provisions necessary to combat digital piracy already exist, but the enforcement institutions do not currently operate at a capacity capable of matching the speed, anonymity, and global reach of the current digital piracy networks. This disconnect between the legal authority and operational capability means that the impact of digital piracy on Nigerian musicians remains largely unmitigated, despite the apparent comprehensiveness of the legal system.

In effect, the Nigerian legal framework is formidable on paper, but its effectiveness is significantly undermined in practice by limited enforcement capacity, institutional

⁶¹ Adewopo (n7)

⁶² Augoye J, 'COSON Crisis: NCC Suspends Copyright Society's Operating License' (2018) <https://www.premiumtimesng.com/news/more-news/267313-coson-crisis-ncc-suspends-copyright-societys-operating-license.html> accessed 06 November 2025.

fragmentation, resource constraints, and slow adaptation to emerging digital trends. Without improved coordination, technological investment, and operational reform, the law will continue to function symbolically rather than protectively, leaving artists exposed to persistent economic losses and weakened control over their creative output.

CHAPTER FOUR

A COMPARATIVE ANALYSIS OF ANTI-PIRACY FRAMEWORKS IN THE UNITED STATES AND SOUTH AFRICA WITH NIGERIA

4.1 Introduction

The preceding chapter undertook a critical analysis of Nigeria's domestic legal and institutional framework for copyright protection, concluding with a central paradox. As established in that analysis, the Nigerian framework is "strong in law but weak in execution." This conclusion stems from the finding that while the Copyright Act 2022 provides a largely modern and seemingly robust set of legal tools, its practical effectiveness is fundamentally undermined by significant, persistent enforcement gaps. These failures, as identified, are not primarily legislative but institutional. They manifest as the operational and technical incapacity of the Nigerian Copyright Commission (NCC), the lack of specialised digital expertise and institutional priority within the Nigerian Police Force, and the administrative dysfunction and credibility challenges hampering the effectiveness of the Collective Management Organisations (CMOs).

Concurrently, the conceptual framework in Chapter 2 identified the rise of generative artificial intelligence (AI) as a novel and profoundly disruptive vector for copyright infringement. This new technology presents legal and philosophical challenges that Nigeria's enforcement machinery, already struggling with "traditional" digital piracy, is quite unprepared to address. The result is a system where the rightful protections granted to creators, that is, the very "fruit of their labour" which the economic and natural rights theories explained in Chapter 2 seeks to protect, are rendered largely illusory, giving way to an environment which in reality, accommodates rampant, unmitigated online infringement.

The objective of this chapter is to critically analyse the established legal and institutional frameworks of the United States (US) and South Africa to derive concrete, actionable procedures and strategies that can bridge Nigeria's gap between legislation and practical application. The selection is strategic: the US offers the most mature, extensively litigated, and detailed procedural model for Online Service Provider (OSP) accountability, providing a blueprint for shifting the enforcement burden from state actors to private intermediaries. South Africa, on the other hand presents a superior institutional model, demonstrating stronger practical execution and royalty collection despite operating under a comparatively older statute.

By subjecting these foreign systems to a critical, analytical scrutiny, this chapter will identify proven institutional models and regulatory mechanisms. The ultimate goal is to generate evidence-based recommendations to transform Nigeria's formidable law into a protective, executable reality.

4.2 The United States Framework

The United States legal framework represents the global benchmark for digital copyright enforcement, characterised by its maturity, complexity, and abundant case law. This system is founded upon a critical legislative compromise enacted during the early years after the creation of the internet, which redefined liability in the digital age and effectively privatised the front line of copyright enforcement. Concurrently, the judiciary and administrative bodies in the US are serving as the central battleground for defining the growing legal boundaries of generative AI.

4.2.1 The Digital Millennium Copyright Act (DMCA)

At the core of US online anti-piracy strategy is Title II of the Digital Millennium Copyright Act (DMCA), enacted in 1998.¹ These provisions, codified in 17 U.S.C. s512, established a system of conditional "safe harbours" designed to shield Online Service Providers (OSPs) from monetary liability for the infringing actions of their users.² This legislation was a deliberate policy decision intended to foster the growth of the internet by protecting platforms, hosts, and search engines from a crippling volume of secondary liability lawsuits. The conditional nature of these safe harbours is crucial: immunity will be granted only if the OSP adheres to a strict set of laid out procedural obligations.

The most relevant provision for digital music piracy is s512(c), the "hosting" safe harbour, which protects platforms that store user-uploaded content, such as YouTube and various social media sites. To maintain this protection, the OSPs must meet three core criteria:

- a. They must not have actual knowledge of specific infringing material.
- b. They must not be aware of facts or circumstances from which infringing activity is generally apparent (known as "red flag" knowledge).
- c. Upon receiving such knowledge, they must act "expeditiously to remove, or disable access to," the material.³

This structure established the foundational "notice and takedown" system. A copyright owner sends a statutorily compliant notice to the OSP's designated agent, identifying the specific infringing work. To retain its immunity from financial

¹ Digital Millennium Copyright Act, 17 USC s512 (1998).

² U.S. Copyright Office, Section 512 Study (21 May 2020)
<https://www.copyright.gov/policy/section512/> (10 November 2025).

³ 17 USC s512(c)(1).

damages, the OSP is functionally compelled to remove the content. This system provides a clear, adaptable procedure that, unlike Nigeria's more nascent and less-defined takedown provisions in Sections 54 and 55 of its 2022 Act, creates a powerful incentive for OSP compliance by shifting the burden from the state (like the NCC) to the private intermediary (the OSP). This procedural mechanism directly addresses the operational gap identified in Chapter 3, where the NCC was found to be "operationally overstretched."

The effectiveness of this system has been refined by decades of litigation. In the landmark case of *Viacom Int'l, Inc. v YouTube, LLC*, the Second Circuit Court of Appeals set a high threshold for knowledge, ruling that a general awareness of piracy on the platform was insufficient to trigger liability.⁴ The rights holder must provide notice of specific, identifiable infringements. This ruling, in effect, covered platforms from a general duty to monitor their own systems. However, the court also affirmed the "willful blindness" doctrine, stating that a provider cannot deliberately structure its operations to avoid seeing specific, obvious infringements.⁵ This depth of judicial interpretation provides a level of procedural certainty that Nigeria's framework, as of now lacks.

4.2.2 The "Reasonable Implementation" Standard

More significantly for the Nigerian thesis of "weak execution" is the requirement found in s512(i). This provision mandates that to qualify for any safe harbour, an OSP must have "adopted and reasonably implemented... a policy that provides for the termination in appropriate circumstances of subscribers... who are repeat infringers."⁶

For years, this was seen as a low bar, but the case of *BMG Rights Mgmt. (US) LLC v Cox Commc'ns, Inc.* fundamentally changed its interpretation. In affirming a \$1

⁴ 676 F.3d 19 (2d Cir. 2012).

⁵ *Ibid*

⁶ 17 USC s512(i)(1)(A).

billion jury verdict against the internet service provider Cox, the Fourth Circuit found that Cox had a written repeat infringer policy that it had not "reasonably implemented."⁷

The details of the case are a perfect analogue to the "strong in law, weak in execution" paradigm. Cox had a formal "thirteen-strike" policy on its books, but evidence from internal emails showed that managers had an unwritten, de facto policy of not terminating infringing subscribers to avoid losing revenue.⁸ The court, in essence, ruled that a "paper tiger" policy was legally worthless. This judicial precedent is a direct and powerful rejection of the very institutional failure that defines the Nigerian gap. Unlike the de facto impunity for institutional failure that characterises Nigeria's enforcement gap, the US judiciary has established that a policy which is not executed is not a policy at all, and it is insufficient to gain the protection of the law. This provides a clear model for giving Nigeria's own enforcement provisions genuine teeth. However, the DMCA framework is not without its severe limitations, which offer necessary lessons. Rights holders frequently cite the "whack-a-mole" problem, where infringing files removed from one URL are instantly re-uploaded to another, forcing rights holders into an endless, unsustainable cycle of sending notices.⁹ Google's own transparency report, for example, boasts of processing millions of takedown requests per month. This privatises the "operational" burden that Nigeria's NCC currently shoulders, simply shifting the deficit elsewhere. Conversely, free speech advocates criticise the system as being ripe for abuse, as OSPs, fearing liability, have a structural

⁷ 881 F.3d 293 (4th Cir. 2018).

⁸ *ibid.*

⁹ 'Endless Whack-A-Mole: Why Notice-and-Staydown Just Makes Sense' (C-IP2, 14 January 2016) <https://cip2.gmu.edu/2016/01/14/endless-whack-a-mole-why-notice-and-staydown-just-makes-sense/> (10 November 2025).

incentive to remove content based solely on an allegation of infringement.¹⁰ To counter this, the DMCA includes the s512(g) counter-notification provision, and the Ninth Circuit's ruling in *Lenz v Universal Music Corp.* mandated that copyright holders must first consider "fair use" before sending a takedown notice, adding a crucial safeguard against unwarranted censorship.¹¹ A 2020 report by the U.S. Copyright Office acknowledged that the operation of the s512 system had become "unbalanced," providing a clear mandate for any successor system to be designed with greater balance.¹²

4.2.3 The Role of the Judiciary: The "Deterrence" Doctrine

Beyond the DMCA, the United States anti-piracy framework is distinguished by the aggressive "deterrence" posture of its judiciary, empowered by the concept of "statutory damages." Unlike Nigeria, where a rights holder must often prove the exact financial loss suffered which is a difficult evidential burden in the digital age, US law allows courts to award damages of up to \$150,000 per infringed work for willful infringement.¹³ This legal mechanism transforms copyright litigation from a mere recovery of lost revenue into a high-stakes existential threat for infringers.

This judicial "hammer" was vividly demonstrated in the landmark case of *Sony Music Entertainment v Cox Communications*.¹⁴ In this ruling, a jury initially awarded \$1 billion in damages against the Internet Service Provider for failing to address repeat infringers on its network. Although the specific amount was later vacated and ordered for recalculation, the Fourth Circuit upheld the finding of contributory liability,

¹⁰ 'Unfair Misuse: How Section 512 of the DMCA Allows Abuse of the Copyright Fair Use Doctrine and How to Fix It' (2018) 34 Santa Clara High Tech LJ 419, 421.

¹¹ 801 F.3d 1126 (9th Cir. 2015).

¹² U.S. Copyright Office (n2).

¹³ 17 U.S.C. s504(c)

¹⁴ Inc.464 F. Supp. 3d 795 (E.D. Va. 2020); affirmed in part

sending a market-defining message that facilitating piracy is a company-ending risk. Furthermore, US courts have actively expanded enforcement into new digital territories. In *Capitol Records, LLC v ReDigi Inc.*,¹⁵ the court effectively blocked the "digital resale" market by ruling that reselling legally purchased digital music files constituted an unauthorized "reproduction." These decisions highlight a judiciary that is not merely reactive but actively shapes the market to prioritize the economic rights of creators over technical loopholes.

4.2.4 The US Response to AI (A Model of Clarity)

As established in Chapter 2, Nigeria's framework is struggling to address the new challenge of generative AI. The US, while not having a comprehensive "AI Law," has responded to the two core AI questions, that is, whether or not the generated work of AI can be copyright and whether or not the training process constitutes an act of infringement with a combination of administrative clarity and judicial flexibility.

The first question pointed out regarding the protectability of the AI output, has been addressed proactively by the U.S. Copyright Office (USCO). Where Nigeria's framework is currently silent, the USCO has adopted a clear, administrative stance rooted in a long-standing principle: copyright protection subsists only in works created by a human being.¹⁶ This policy was applied in the seminal case of the graphic novel *Zarya of the Dawn*. The USCO granted protection only for the "text... and the selection, coordination, and arrangement of the work's written and visual elements" contributed by the human author, *Kristina Kashtanova*. It explicitly refused to register

¹⁵ 910 F.3d 649 (2d Cir. 2018).

¹⁶ U.S. Copyright Office, 'Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence' (16 March 2023) <https://www.govinfo.gov/content/pkg/FR-2023-03-16/pdf/2023-05321.pdf> (10 November 2025) 16192.

the images generated by the AI image generator Midjourney, ruling they were not the "product of human authorship".¹⁷

This was affirmed in the refusal to register *Théâtre D'opéra Spatial*, where the Copyright Office Review Board rejected the argument that the user's detailed text prompts constituted authorship, analogizing them to "instructions for a painter" who nonetheless remains the author of the final painting.¹⁸ This administrative doctrine provides immediate legal certainty, classifying AI as a tool, and only the expressive contributions of the human user as protectable.

The second question, that is, the AI input problem is far more complex, as it is the direct battleground for mass-scale digital piracy. Generative AI models, specifically Large Language Models (LLMs), are trained on massive, scraped datasets of copyrighted material, often without licence. AI companies defend this process by arguing it constitutes "fair use" under 17 U.S.C. s107. Their defence hinges on the "transformative use" doctrine established in *Authors Guild, Inc. v Google, Inc.* (the Google Books case), where the court found that scanning books to create a search index was a "highly transformative" purpose, distinct from merely selling the original work.¹⁹

This defence is now being tested in numerous, high-profile infringement lawsuits. In *Authors Guild v OpenAI*, the class-action suit alleges that OpenAI copied books "wholesale" and "without permission" to train its LLMs, which now produce content that directly "competes with" the authors' works.²⁰ Similarly, in *Getty Images (US), Inc. v Stability AI, Inc.*, Getty alleges infringement and trademark violation, citing

¹⁷ 'Registration of "Zarya of the Dawn"' (U.S. Copyright Office, 21 February 2023) <https://www.copyright.gov/docs/zarya-of-the-dawn.pdf> (10 November 2025).

¹⁸ U.S. Copyright Office Review Board, 'Refusal to Register *Théâtre D'opéra Spatial*' (5 September 2023).

¹⁹ 804 F.3d 202 (2d Cir. 2015).

²⁰ No. 1:23-cv-08130 (SDNY, filed 19 September 2023).

instances where the AI model reproduces its watermark, suggesting the model is "copying" and "memorising" its data, rather than abstractly "learning".²¹

The music industry has now joined this critical judicial test. In 2024, major record labels filed landmark lawsuits against AI music generators Suno²² and Udio²³, alleging that these platforms engaged in mass copyright infringement by copying decades of sound recordings to train their models. While the lawsuit against Suno remains active, litigation against Udio was settled in late 2025 via a licensing agreement.²⁴ These cases are pivotal because they force US courts to specifically determine whether ingesting music to generate new songs is "transformative" or merely "substitutive."

The central argument of the rights holders is that the AI output is substitutive, that is, that a user asking an LLM to generate a new song in a specific artist's style directly oust the market for that artist's original work, making the initial training an act of mass-scale, uncompensated digital piracy. The US's flexible "fair use" doctrine, which stands in sharp contrast to Nigeria's restrictive, closed-list "fair dealing" doctrine as defined in Chapter 2, provides the judicial mechanism to even have this complex debate, offering a superior procedural path for handling new technologies.

4.3 The South African Framework

South Africa offers a highly relevant and necessary peer comparison for Nigeria. As a fellow leading African economy, it grapples with a globally competitive creative industry and faces persistent digital piracy problems. However, the South African experience is not one of legal superiority; rather, it presents a crucial paradox. While

²¹ No. 1:23-cv-00135 (D. Del, filed 3 February 2023).

²² *UMG Recordings, Inc. v. Suno, Inc.*, Case No. 1:24-cv-11611 (D. Mass. filed June 24, 2024) (Active Litigation)

²³ *UMG Recordings, Inc. v. Uncharted Labs, Inc.*, Case No. 1:24-cv-04777 (S.D.N.Y. filed June 24, 2024) (Settled Oct. 2025)

²⁴ *Ibid*

its law is older, its institutional execution is in key areas stronger, reinforcing the Nigerian thesis that the most critical failure is not legislative but institutional.

4.3.1 The "Law vs. Execution" Paradox

On paper, Nigeria's Copyright Act 2022 is arguably a more modern statute than South Africa's Copyright Act 98 of 1978.²⁵ Nigeria's Act was passed in the digital age and includes specific provisions for online takedowns and anti-circumvention, while South Africa's 1978 Act is an analogue-era law. However, a comparative analysis of practical enforcement reveals a stark inversion. Unlike Nigeria's 'strong in law, weak in execution' paradigm, South Africa's framework could be described as 'stronger in execution, despite a weaker law'.

Academic analysis confirms this. South Africa is noted for "a more robust IP regime anchored in its... specialised Commercial Courts, and proactive anti-counterfeiting strategies."²⁶ Nigeria's enforcement, by contrast, is "hampered by fragmented legislation, prolonged judicial processes, and limited public awareness"²⁷, a description that perfectly matches the "weak execution" gaps identified in Chapter 3, particularly concerning the judiciary and police. While Nigeria's music industry produces global hits, South Africa's market remains the most profitable on the continent, in large part because it has a "well-oiled," "structured industry" where government and collection societies provide a "better environment for music to generate more money."²⁸

²⁵ Copyright Act 98 of 1978 (South Africa).

²⁶ A Oladele, 'Enforcement of Intellectual Property Rights in Nigeria and South Africa: A Comparative Reappraisal' (2025) 12(1) *Journal of Law and Policy* 45, 52.

²⁷ Oladele (n19) 46

²⁸ J Akan, 'Nigeria leads in musical hits; South Africa rakes in streaming cash' (TechCabal, 6 April 2024) <https://techcabal.com/2024/04/06/nigeria-leads-in-musical-hits-south-africa-rakes-in-streaming-cash/> (10 November 2025).

4.3.2 Evidence of Superior Execution (The CMOs)

The most damaging proof of Nigeria's execution gap and where South Africa's institutional superiority lies is found in the comparative performance of their Collective Management Organisations (CMOs). As established in Chapter 3, Nigeria's CMOs are plagued by "institutional disputes," "credibility challenges," and "inconsistent royalty collection," rendering them operationally constrained.

South Africa's CMO structure, centred on the Southern African Music Rights Organisation (SAMRO) and the Composers, Authors and Publishers Association (CAPASSO), is, by contrast, a model of relative stability and effectiveness.²⁹ The significant difference in financial results provides measurable proof of an "execution" gap. In 2016, SAMRO collected approximately \$25 Million in royalties for its members.³⁰ This stands in shocking contrast to the Nigerian experience. In the same period, Nigeria's primary CMO, COSON, distributed just under \$551,000.³¹

This gap is not historical. Unlike SAMRO's relative stability, Nigeria's CMO landscape has been defined by "longstanding rifts," "factional disputes," "mismanagement of funds" allegations, and litigation between COSON and MCSN.³² For years, the two bodies were locked in legal and administrative battles over which was the lawfully licensed organization to collect royalties, creating a "13-year-old lacuna" that starved artists of income and sowed confusion among music users.³³ This institutional dysfunction, not a flaw in the Copyright Act 2022, is the primary reason why Nigerian artists, unlike their South African counterparts, fail to see a financial

²⁹ WIPO, 'Licensing and Operations Manual for Collective Management Organizations in Nigeria' (2023) WIPO/CMO/NG/23/MANUAL 14.

³⁰ Audu Maikori, 'COSON: Chief Tony Okoroji Must Follow the Rule of Law and Integrity' (2018) https://www.musicinafrica.net/sites/default/files/attachments/article/201804/audumaikori_ongcoson.pdf accessed 10 November 2025.

³¹ Ibid.

³² '*Coson v Mcsn: A Lingering Dispute in Nigerian Copyright*' (LeLaw Legal, 2020) <https://lelawlegal.com/add111pdfs/COSON1.pdf> (10 November 2025).

³³ Maikori (n24).

return from the commercial use of their music, reinforcing the "weak in execution" thesis.

4.3.3 The Role of the Judiciary

Commercial Courts and "Reasonable Royalties" South Africa's judicial enforcement model offers a second critical lesson for Nigeria: the value of specialization. Unlike the Nigerian system, where copyright cases often stall in general courts due to "de-prioritisation," South Africa utilizes Specialised Commercial Crimes Courts (SCCC). These courts were established to fast-track economic crimes, including intellectual property theft, effectively solving the "delay" gap. The practical efficacy of this model was evidenced in the 2024 Waka TV case,³⁴ where the Germiston Regional Court successfully linked copyright piracy to broader cybercrime laws, resulting in a direct criminal conviction for the sale of illicit streaming devices.

regarding civil damages, South African courts operate on a "restorative" rather than punitive basis, utilising the "reasonable royalty" principle. Under Section 24(1A) of the Copyright Act 1978, in lieu of proving damages, a rights holder may claim the amount the infringer would have paid for a license.³⁵ In *Metro Goldwyn-Mayer Inc v Ackerman*,³⁶ the court utilized this principle to award damages equivalent to the purchase price of the pirated films. While this lacks the terror of the US "statutory damages" model, it provides a predictable, calculable floor for compensation that is far superior to the uncertain outcomes often seen in Nigerian litigation.

4.3.4 The AI Response (A "Cautionary Tale")

While South Africa's institutions are superior in traditional enforcement, its response to the new challenge of AI is a model of confusion and serves as a "cautionary tale"

³⁴ *State v Waka TV* Case No. RC/2024 (Germiston Regional Court, May 2024).

³⁵ Copyright Act 98 of 1978, s. 24.

³⁶ [2001] ZASCA 141.

for Nigeria. As with the US, South Africa has no comprehensive 'AI Law'. However, its attempts to address the issue have been deeply problematic.

First is the 2021 *DABUS* patent case. South Africa's Companies and Intellectual Property Commission (CIPC) became the first patent office in the world to grant a patent that listed an AI system, that is, DABUS (Device for the Autonomous Bootstrapping of Unified Sentience), as the "inventor."³⁷ This was not a progressive legal ruling, but an administrative anomaly resulting from a procedural loophole. South Africa's patent system is a "depository" system that performs a formal, not substantive, check. As the law did not explicitly define an inventor as a "natural person," the application was accepted. This created profound legal uncertainty, a stark contrast to the administrative clarity of the USCO's "human authorship" guidance and the judicial clarity of the UK Supreme Court, which rejected the same application, ruling an inventor must be human.³⁸

Second, South Africa's only path to addressing the "AI training" (input) problem is to pass its new Copyright Amendment Bill (CAB), which would introduce a US-style "fair use" doctrine. This has resulted in a decade-long "legislative quagmire."³⁹ The bill has been stalled for years, mired in political infighting and constitutional challenges that it arbitrarily deprives creators of their property.⁴⁰ This serves as a critical warning for Nigeria, that is, attempting a similar, high-stakes legislative

³⁷ 'The latest news on the DABUS patent case' (IP STARS, 3 December 2023) <https://www.ipstars.com/NewsAndAnalysis/The-latest-news-on-the-DABUS-patent-case/Index/7366> (10 November 2025).

³⁸ *Thaler v Comptroller-General of Patents, Designs and Trade Marks* [2023] UKSC 49.

³⁹ 'ASSESSING THE LIMITATIONS AND EXCEPTIONS TO COPYRIGHT INFRINGEMENT: SOUTH AFRICA IN PERSPECTIVE' (2022) 13(2) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 1, 9.

⁴⁰ 'The South African Copyright Amendment Bill at the Constitutional Court: Notes from the Presidential Referral' (InfoJustice, 30 September 2024) <https://infojustice.org/archives/46418> (accessed 10 November 2025).

overhaul to solve the AI problem is a slow, risky, and chaotic path that leaves the industry in limbo.

4.4 Conclusion

This comparative analysis has demonstrated that Nigeria's 'strong in law, weak in execution' problem is not impossible to control, but its solutions are not to be found in new legislation. Rather, the remedies lie in adopting the superior procedural models of the United States and emulating the superior institutional models of South Africa.

The US framework provides a clear procedural blueprint for solving the "overstretched" NCC, an institutional gap identified in Chapter 3. The DMCA safe harbour system is not just a law; it is an incentive structure that successfully shifts the enforcement burden from the state to the private OSPs. Nigeria should not copy the flawed DMCA, but it should adopt a "DMCA 2.0" via regulation under its existing 2022 Act. This regulation must include the DMCA's "safe harbour" incentive, but must be fortified with the legal precedents it took the US decades to develop: the *BMG v Cox*⁴¹ standard of "reasonable implementation" to give the law teeth against "paper tiger" policies, and the *Lenz v Universal*⁴² standard to protect user's "fair dealing" rights.

Simultaneously, the South African framework proves that institutional integrity is more valuable than a modern statute. The fact that SA's 1978 Act⁴³ and stable CMOs provide more practical value to creators than Nigeria's 2022 Act and dysfunctional CMOs is the single most powerful validation of this thesis. The solution is not to amend the 2022 Act, but to execute it. This requires the NCC to be empowered to force radical governance reform and transparency upon the warring CMOs, using SAMRO as a clear benchmark for success. Furthermore, the comparative analysis of

⁴¹ *BMG v Cox* (n7)

⁴² *Lenz v Universal* (n11)

⁴³ Copyright Act 98 of 1978 (South Africa)

the judiciary reveals that Nigeria's enforcement gap is partly due to a lack of deterrence and specialization. The US model demonstrates the necessity of Statutory Damages to create a genuine economic deterrent against pirates, while South Africa's Specialised Commercial Crimes Courts provide the structural model for solving the "delay" and "de-prioritisation" issues plaguing the Nigerian Police and courts..

Finally, on the novel threat of AI, the comparative analysis provides a clear path. Nigeria must avoid the South African "cautionary tale" of legislative chaos (the CAB) and administrative confusion (the DABUS case). The superior path is the US model of non-legislative action. The NCC should immediately issue administrative guidance, mirroring the USCO, that only "human authorship" is protectable. This provides instant clarity. Nigeria should then allow its judiciary, now armed with the 2022 Act, to interpret "fair dealing" provisions flexibly, using the US "fair use" cases as persuasive authority to tackle the complex AI training question.

Ultimately, the solutions for Nigeria are not in drafting new laws. They are in building the procedures, institutions, and administrative clarity to make the 2022 Act finally work.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 FINDINGS

The central finding of this thesis, as established in the analysis of Nigeria's domestic framework, is that the nation's response to digital piracy is characterised by a fundamental paradox: it is strong in law but weak in execution. In response to the first research question concerning the effectiveness of Nigeria's legal framework, the research found that the Copyright Act 2022 is a modern and robust statute, providing a comprehensive legal basis for copyright protection in the digital age. However, its practical effectiveness is severely undermined by the institutional failures of the bodies mandated with its enforcement. The Nigerian Copyright Commission (NCC) is operationally overstretched and lacks the requisite digital forensic capacity ; the Nigerian Police Force is rarely effective in this domain, de-prioritising intellectual property crime ; and CMOs are plagued by institutional disputes and credibility challenges.

The research into the nature and scope of piracy found that the threat has evolved significantly from physical distribution to sophisticated digital methods, including stream-ripping, cyberlockers, and illicit sharing across social media and messaging platforms. This technological shift exacerbates the enforcement gap, as the state's institutional capacity has failed to keep pace.

In addressing the human-rights impact, the findings are stark: the economic consequence of unchecked digital piracy is estimated at a ₦918 trillion annual loss

across copyright industries. This figure translates into a direct and severe violation of the economic and moral rights of Nigerian creators. This negates the fundamental human right of creators to benefit from their artistic works, as enshrined in international covenants.

Finally, the research identified a critical gap in Nigeria's framework regarding the novel threat of generative artificial intelligence (AI). The current legal structure is unprepared to address the complex copyright questions raised by both AI-generated (output) and AI-trained (input) materials, leaving a significant and growing area of infringement unaddressed.

5.2 AREAS OF CONTRIBUTION TO KNOWLEDGE

This research contributes to the existing body of knowledge on intellectual property enforcement in Nigeria, particularly in the music sector, by moving beyond traditional calls for legislative change to focus on institutional and procedural failures. The study explicitly refutes the prevailing notion that Nigeria's primary problem is outdated legislation, demonstrating through comparative analysis that the failure lies in institutional execution and deterrence mechanisms, rather than the quality of the law itself.

The thesis provides a practical Institutional Execution Gap Model for identifying specific operational deficiencies across the entire enforcement chain. This analysis establishes the specific areas of failure: the Police (Priority Gap), the NCC (Capacity Gap), the CMOs (Governance Gap), and the Judiciary (Deterrence Gap). This systematic mapping of institutional failure provides a clear path for targeted reform.

Furthermore, the research offers a Procedural Blueprint for Reform by contrasting Nigeria's challenges with successful foreign models. This includes proposing the adoption of a "DMCA 2.0" regulatory model (US) to shift enforcement burdens and advocating for the stability and superior financial performance of the SAMRO CMO model (South Africa) to resolve the governance crisis. The research also contributes a timely analysis of the AI challenge, proposing a non-legislative, administrative-led strategy (mirroring the USCO model) for Nigeria that prevents the legal and political chaos seen in the South African legislative process.

5.3 RECOMMENDATIONS

The findings of this thesis indicate that solutions do not lie in drafting new primary legislation, but rather in decisively addressing the identified execution gaps. The following recommendations are based on the successful procedural and institutional models analysed in Chapter 4.

To remedy the institutional incapacity of the NCC and the Nigerian Police, it is recommended that a specialised, joint Digital IP Task Force be established. This unit would draw expertise from both the NCC's regulatory authority and the Police's enforcement powers, mirroring the focus and specialization of South Africa's Specialised Commercial Crimes Courts. Additionally, to address the delay and lack of deterrence in litigation, the Federal High Court should establish dedicated Intellectual Property (IP) Divisions to fast-track copyright infringement cases. Furthermore, the courts must be encouraged to interpret damages flexibly to ensure high deterrence, reflecting the US model of imposing penalties that match the scale of digital infringement.

The operational dysfunction of Nigeria's CMOs must be resolved. It is recommended that the NCC utilise its full regulatory and supervisory powers to mandate sweeping governance, transparency, and operational reforms for all accredited CMOs. The stability and superior financial performance of South Africa's SAMRO should be adopted as a clear benchmark for this mandatory reform.

To address the NCC being "operationally overstretched," it is recommended that Nigeria adopt a "safe harbour" framework for Online Service Providers (OSPs) via regulation. This framework, inspired by the US DMCA, would shift the primary burden of notice-and-takedown from the state to the private intermediaries. Critically, this regulation must incorporate the "reasonable implementation" standard derived from US jurisprudence to ensure OSPs cannot hide behind "paper tiger" policies.

While new legislation is unnecessary, it is recommended that the National Assembly (specifically the relevant Judiciary and ICT Committees) set up a Joint Investigative Hearing on the scope of AI in the Nigerian creative economy. Concurrently, the NCC should immediately issue Administrative Guidance clarifying the "human authorship" standard for copyright protection, mirroring the US approach to provide instant legal certainty. The judiciary should then be encouraged to flexibly interpret the existing "fair dealing" provisions of the 2022 Act to tackle the complex AI training data question, using US "fair use" cases as persuasive authority.

5.4 CONCLUSION

This thesis argues that Nigeria's failure to curb digital piracy is not a failure of its laws, but a profound failure of institutional execution. The Copyright Act 2022 provides a formidable legal arsenal, yet the rights it grants to creators remain largely illusory,

undermined by a persistent gap between statutory promise and practical reality. The staggering ₦918 trillion in annual losses is the quantifiable result of this execution gap, showing a systemic failure to protect the economic and human rights of an entire creative industry. The comparative analysis undertaken in this research confirms that institutional integrity and effective procedures, as seen in South Africa and the United States respectively, are more valuable than a modern statute that goes unenforced. Ultimately, the future sustainability of the Nigerian music industry depends on a fundamental shift in priority. The challenge is not a matter of extensive formation of new legislation but the will of the institutions to carry out what is already in the law and adapt to the changing times. The solutions proposed, that is, specialised enforcement units, reformed CMOs, and a "safe harbour" model, offer a clear path forward. Protecting Nigeria's music industry requires moving beyond law on paper to law in practice

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