



LEGAL PRACTITIONERS & ARBITRATORS

# Harmonizing Creativity and Copyright

A Legal Exploration of Music Sampling in Nigeria



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Music sampling is a dynamic artistic practice that breathes new life into compositions by integrating snippets of existing music. Put simply, it involves borrowing elements from one piece and weaving them into another. It's a creative process that often pays homage to musical influences, stirring nostalgia while ushering in fresh, innovative sounds. Think of Ayra Star's "Sability" conjuring the memory of Awilo ngomba's "Coupe Bibamba" or the

distinct Fela-esque vibes in Burna Boy's tracks; these are all examples of music sampling in action.

In this article, we will explore the legal landscape of music sampling in Nigeria, scrutinizing the country's copyright laws, licensing procedures, and the potential stumbling blocks that artists and creators might confront when incorporating samples into their work.

# *Copyright Laws in Nigeria*

To appreciate the legal intricacies of music sampling in Nigeria, one must begin with an examination of the country's copyright laws. The cornerstone of copyright regulation in Nigeria is the Copyright Act of 2023 (the "Act"). This Act endows creators with exclusive rights over their original works, encompassing musical compositions and sound recordings. According to the Act, creators have the exclusive right to reproduce, distribute, and perform their work. This means that unauthorized use of someone else's music, including sampling, has the potential to violate these exclusive rights.

The Nigerian Copyright Act introduces exceptions to copyright exclusivity, which allow for specific use of copyrighted material without the need for authorization or payment. One such exception is "pastiche", a concept where a new work is created that imitates, parodies, or humorously references the original, as long as it maintains a distinctive character. Pastiche has significant implications for music sampling, as it permits artists to

elements from existing songs into their compositions, provided that the resulting work is sufficiently unique and falls within the bounds of artistic expression or satire. This exception offers some flexibility in the realm of music sampling, but it also introduces complexities, as determining what qualifies as a pastiche and ensuring the necessary transformation can be subject to interpretation and potential legal disputes.

To determine whether a pastiche qualifies as fair dealing under the Nigerian Copyrights Act, specific factors must be considered. These include the purpose and character of its usage, the nature of the work, the amount and substantiality of the portion used concerning the work as a whole, and the effect of the use on the potential market or value of the work. These considerations help ensure that the use of copyrighted material for pastiche remains within the boundaries of fair dealing under Nigerian copyright law.

# *Sampling in the Nigerian Music Industry*

Nigeria's music industry has evolved remarkably over the years, showcasing a profusion of creativity and innovation. Sampling has become a commonplace practice among Nigerian musicians, enabling them to merge diverse musical genres and cultural influences to craft unique and celebrated sounds. Nevertheless, artists must be mindful of the legal consequences and potential repercussions of unlicensed sampling. A pertinent example involves Danny Young's 2019 lawsuit against Tiwa Savage for copyright infringement, accusing her of sampling his "Oju Tiwon" without obtaining a license for her single "One." However, the parties reportedly settled out of court.

A more recent case making headlines is the N200 million lawsuit against Afrobeats rising star Shalipopi, who sampled Monday Edo's "Ogbaisi" in his popular track "Obapluto." The outcome of this lawsuit may shape the landscape of music sampling in Nigeria, spotlighting the looming spectre of copyright infringement.



# *The Importance of Licensing*

Licensing is a pivotal component of music sampling in Nigeria. When a musician intends to sample another artist's work in a manner that does not fall within the scope of fair dealing, they must secure proper licensing and permission. This is typically accomplished through a sample clearance, which involves obtaining consent from the original copyright owner—be it the artist, record label, or publisher—along with negotiating the terms of use, including royalty payments.

Failing to acquire the requisite licensing can lead to legal troubles, such as copyright infringement allegations, entailing consequences like cease and desist orders, fines, and the removal of infringing content from distribution platforms.





# *Challenges and Controversies*

Despite the legal imperative for licensing, there are challenges and controversies surrounding music sampling in Nigeria:

**Limited Awareness:** Many emerging and independent artists may lack sufficient knowledge about copyright laws and the licensing process, unintentionally stumbling into copyright infringements.

**Complex Clearance Process:** Clearing samples can be a protracted and intricate endeavor, involving negotiations with multiple copyright holders, making it onerous for artists to obtain the necessary permissions.

**Cost Implications:** Procuring licenses for samples can be financially taxing, especially for up-and-coming musicians with constrained budgets. This financial burden might discourage artists from following the proper licensing protocol.

**Ambiguity in the Law:** The Nigerian Copyright Act of 2023 does not explicitly address music sampling, which can give rise to uncertainties and variable interpretations of the law.

# *Conclusion*

Music sampling is a potent tool that empowers artists to infuse their creations with originality and innovation. However, in Nigeria, as in many other nations, the legal complexities surrounding music sampling should not be underestimated. It is paramount for artists and creators to familiarize themselves with copyright laws, licensing requirements, and the potential hurdles they might encounter when weaving samples into their music.

To steer clear of legal entanglements, artists should prioritize securing proper licensing and permissions for the samples they employ. Striking a harmonious balance between artistic freedom and copyright protection can pave the way for a thriving music industry in Nigeria—one that thrives on creativity while respecting intellectual property rights.

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