



LEGAL PRACTITIONERS & ARBITRATORS

# Licensing and Royalty Collection

in the Nigerian Music Industry



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# Introduction

Musical works created or produced by musicians are largely protected by copyright. This basically refers to the exclusive control that is given to the creator of a particular piece of work for a specific amount of time. As a result, the copyright owner is granted the sole right to record music, produce, sell, or distribute copies of the music in various formats (hardware and software), stream the music, stage a public performance of the music, reproduce, or create new work from the original work (for example, modifying one's music to create a new song). In musical works, copyright excludes others from carrying out any of these actions without permission.

However, the copyright owner (the licensor) may decide to license the exploitation of one or more of these rights to another person (the licensee) in return for royalties, which can be a lump-sum payment or some form of compensation (either monetary or non-monetary). The commercial exploitation of a song or sound recording without license or authorization from the copyright owner amounts to copyright infringement.



# Music Licensing/ Royalty Collection

Music licensing involves granting permission for the use of music in various settings, such as films, TV shows, commercials, streaming platforms, and public performances. This process requires negotiating agreements and determining the terms under which the music can be utilized.

Music royalties are compensatory payments received by music rights holders (songwriters, composers, recording artists, and their respective representatives) in exchange for the licensed use of their music.

Royalty collection refers to the mechanism through which artists, songwriters, and other rights holders receive compensation for the use of their music. Royalties can be generated from various sources, including radio airplay, digital downloads, streaming, and public performances. Performance rights organizations (PROs), record labels, and distribution platforms play key roles in collecting and distributing these royalties to the appropriate stakeholders.

Overall, music licensing and royalty collection are crucial for ensuring that creators are appropriately compensated for the use of their musical works in different mediums and platforms.

Upon the issuance of a music license, the ownership rights remain firmly vested in the artist, the licensor, while the party receiving the license, the licensee, obtains the legal authority to exercise some or all the artist's rights, as delineated within the terms of the license agreement.

Within a licensing agreement, it is incumbent upon the licensee to provide commercial or financial compensation. This compensation may take the form of royalties or lump sum payments. Lump sum payments are typically made upon the issuance of the license and represent the value of the rights being acquired.

The amount of remuneration and the conditions of payment shall be as agreed between the users of musical work on the one hand and the owner of the copyright on the musical work on the other hand or their representatives; and where the parties fail to reach an agreement, it shall be determined by the Nigerian Copyright Commission.

# Types of Music Licenses

01	<b>Master Recording License</b> This is the right granted to a music user by the owner of a copyrighted sound recording to use a sound recording. This permission is also called Master right or Master lease. It covers the control of the master recording of a musical piece.
02	<b>Synchronisation License</b> This is the right to use both the recorded versions of a song in an audio-visual work. Any visual content that contains someone else's music requires a synchronisation license. This may include music in films, TV shows, commercials, online videos, and other audio-visual projects.
03	<b>Mechanical License</b> A mechanical license is a legal agreement that permits the reproduction and distribution of a copyrighted musical composition in the form of a sound recording. This license allows individuals or entities to create and distribute copies of a song in a tangible format, such as CDs, vinyl records, or digital downloads.
04	<b>Public Performance License</b> A public performance license is a legal agreement that permits the performance of a copyrighted musical work in a public space. It is required when music is performed in public spaces or through various mediums such as radio, television, live concerts, clubs, restaurants, and other venues. The license ensures that the creators and rights holders of the musical composition are compensated for the use of their work in these public settings.
05	<b>Theatrical License</b> A theatrical license is a legal agreement that permits the public performance of a play, musical, or other theatrical production. This type of license is required when a theatre company, school, community group, or other entity wishes to stage a live performance of a copyrighted music work.
06	<b>Blanket License</b> A blanket license is a type of licensing agreement that permits the use of an entire catalogue or a substantial portion of a catalogue of works, rather than individual works, for a specific purpose and within a defined scope. This type of license is commonly used in the music industry and other entertainment sectors.



# Types of Royalties

01	<b>Neighbouring Rights (and Royalties)</b>
02	<b>Digital performance royalties</b>
03	<b>Sync Licensing Fees</b>
04	<b>Public Performance Royalties</b>
05	<b>Mechanical Royalties</b>

## Who Receives Music Royalties?

Various parties are entitled to music royalties on a song, and the specific entitlements depend on the roles and rights associated with the creation, performance, and distribution of the music. Besides songwriters and artists, there might be many others involved in the process. Examples of some are Recording artists, Songwriters, record labels, distributors, publishers etc.

# Music Licensing under the Nigerian Copyright Act, 2022


Under the Nigerian Copyright Act 2022 (the “Act”), an assignment of copyright or an exclusive license pertaining to a copyrighted work is only valid if expressed in written form. However, non-exclusive license for works controlled by copyright may be oral, written, or inferred from the copyright owner's conduct.

Also, when an assignment or license is issued by one copyright owner, it is considered valid for co-owners, with any received fees to be distributed equitably according to their agreement.

Similarly, unless otherwise specified in an agreement, transferring copyright ownership or granting a license for a work does not imply the transfer of ownership of the material in which the work is embodied.

## The role of Collective Management Organisations in Nigeria.

Under the Act, a Collective Management Organization (CMO) is defined as an organization representing copyright owners, which has as its principal objectives the negotiating and granting of licenses, collecting, and distributing of royalties in respect of copyright work. CMOs play a crucial role in the administration and protection of intellectual property rights, particularly in the field of music and related rights. They are empowered by the Act to function as intermediaries between rights holders and users of copyrighted works, ensuring fair compensation for creators and facilitating the legal and ethical use of intellectual property in various sectors, especially the music industry.



CMOs collect royalties on behalf of rights holders, such as musicians, composers, lyricists, and publishers. This includes royalties for public performances, broadcasts, and reproductions of musical works. They issue licenses to entities that wish to use copyrighted works. These licenses ensure that the users have the legal right to exploit the works, and the CMOs collect fees on behalf of rights holders.

A CMO may issue licenses permitting the use of works of owners of copyright who are not members of the CMO, provided that:

1. such works are of the same category as works for which it is approved to issue licences;
2. the owners of copyright in such works are not otherwise represented by any other CMO ;
3. there is not more than one CMO approved to operate in the particular category of works concerned ;
4. the owners of copyright in such works have not by written notice to the CMO, opted out of collective management of their rights ;
5. and the CMO does not discriminate against such owners in terms of the tariffs for the use of their works and the payment of royalties to such owners.

The Nigerian Copyright Commission (NCC) is the agency empowered by the Act to approve the establishment of a CMO and to regulate its activities. No person or corporate body is entitled to perform the duties of a CMO without the approval of the NCC as required the Act. Furthermore, any person or corporate body who functions or acts in the capacity of a CMO without the approval of the NCC shall be liable on conviction in the case of an individual, to a fine of at least N1,000,000 or imprisonment for a term of at least five years or both ; and a body corporate, to a fine of at least N5,000,000.

Where remuneration is to be received on behalf of the owner of copyright in the sound recording by more than one CMO, the CMO concerned shall agree on which of them shall collect such remuneration on their behalf, failing which the NCC may specify accordingly.

# *Conclusion*

In conclusion, the issuance of a music license is a nuanced process that carefully balances the rights of the artist, or licensor, with the legal authority granted to the licensee. The licensor retains ownership rights, ensuring the artistic integrity and control over their creation. Simultaneously, the licensee gains the privilege to exercise specified rights as outlined in the license agreement. A critical facet of this transaction is the financial aspect, with the licensee obligated to provide compensation to the licensor.

Whether through royalties or lump sum payments, this financial arrangement underscores the inherent value of the artistic rights being acquired. As the music industry in Nigeria continues to evolve, the symbiotic relationship established through licensing agreements remains pivotal, fostering a dynamic and mutually beneficial ecosystem for artists and those seeking to utilize their creative works.





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