

LEGAL GUIDE TO THE NIGERIAN CREATIVE INDUSTRY

Overview

In the last decade the Nigerian creative industry has become a strong cultural force dominating sub Saharan Africa and making inroads globally. For over a decade key institutions like the World Bank and British Council etc have been advocating the growth and the impact of the industry to the Nigeria economy. It was not until in 2014 after the rebasing of the Nigerian economy that the real picture began to emerge; for example, the film industry alone accounted for 1.4% of our GDP (i.e. \$7.2 Billion), employing over a million people aside from key sectors like music, advertising, software design, design publishing, fashion design, visual arts (photography, painting), performing arts (live music, dance, theatre, DJ), comedy, Audio visual (Television and Radio), blogging, gastronomy (culinary arts) and Makeup etc.

Flowing from the above and given Nigeria's youthful population of about one hundred and twenty million (120,000,000) people – the Federal Government has prioritised the creative industry under its Economic and Recovery Growth (ERGP) 2017 – 2020. In addition to that government has embarked on a series of reforms meant to galvanise the industry. According to a report by PWC (Entertainment and Media Outlook: 2017 -2021 - An African Perspective), Nigeria with a current valuation of \$4 billion is set to become the fastest growing creative industry globally surpassing the United States within the next 3 years.

Incentives

The Nigerian Export Import Bank created a loan facility named the Nigerian Creative Arts & Entertainment Facility Loan to ensure access to finance towards sustainable development of the creative industry. Any Company in Nigeria can benefit from the facility provided it is incorporated in Nigeria; and

- Operates in the entertainment and creative industry,
- is not owned by government (federal, State or local), and
- It is not an oligarch business interest that may interfere with content policy for its own interests.

This facility covers all segments of the creative industry. An investor who has a registered a company in Nigeria can access funding, after meeting all the requirements. Also, the Bank of Industry has launched a US\$3 million dollar fund (Nollyfund) to support filmmakers. The Federal Ministry of Information and culture recently created a US\$1m dollars venture capital fund to assist with better access to finance for stakeholders within the industry.

Another major incentive to investing in the creative industry is the Pioneer Status Incentive (PSI) granted by the Federal Government. PSI is a tax holiday provided for under the Industrial Development (Income Tax Relief) Act, that grants qualifying industries/products relief from the payment of corporate income tax and withholding tax on dividends for an initial period of three years, renewable for one or two additional years. An industry or product is designated as pioneer if it is not being carried on in Nigeria on a scale suitable to the economic requirements of the country; or where there are favourable prospects for further development; or if it is expedient in the public interest to encourage the development and establishment of an industry in Nigeria. The Nigerian Investment Promotion Commission (the "NIPC") is responsible for processing applications for the grant or extension of PSI. The pioneer status for the creative industry covers music production, publishing and distribution – including online digital distribution – photography; production as well as post-production of digital content for motion pictures, videos, television programmes, commercials, distribution and exhibition (digital movies, animation, videos, TV programmes and commercials); publishing of books (copyrighted books) as well as development and publishing of ready-made software (operating systems, software applications and computer games).

The three sectors that drive the industry are Film, Music and Television:

Film/Television Industry

Piracy has been a bane of the film industry until recent investments in cinemas which led to the Wedding Party grossing over five hundred million N500,000,000 from 133 screens serving a population of 180,000,000 people, that is 1 screen for every 2,000,000 compared to United States with 40,000 screens (i.e. 1 screen to every 9000) or China with 13,000 screens (1 screen to every 220,000). The deficit creates an obvious opportunity for between 5000 – 10,000 screens in the next 10 years, extrapolating from the above obvious opportunities are available in Nollywood's value chain.

The Television market in Nigeria grew enormously in 2016. The market is driven by pay-tv subscription model led by Multichoice's DStv and GOtv services via satellite and pay-DTT (Digital Terrestrial Television) and by Star times. The on-going Digital Switch Over (DSO) when completed promises to unlock opportunities in manufacturing for over 30,000,000 setup boxes, create 180 state channels, 30 regional channels and 10 National channels which will cater for local music, news, film, children programming, weather and sports etc. Also, it will create opportunities for push and subscription Video On demand (VOD) substantially reducing piracy to the barest while building capacity and demand for writers,

professionals in lightning, sound, camera, location, editing, actresses, actors, insurance costume etc.

Music

Nigeria's music better known as Afrobeats has become a cultural phenomenon. Nigerian music in recent times is probably the most travelled music globally leading to several local artist bagging international deals with such companies like Sony music. A music collaboration between Nigeria's Wizkid and the rapper Drake, was until recently the most streamed song ever. It has now become a fad for foreign artist to feature local artists in order to tap into the growing influence of Afrobeats. As a spin-off of its popularity several local artists tour both Europe and North American to the delight of their fans. Back home telecommunication networks are the largest distributors of music through caller tunes and ring back tones - MTN alone (out of 5 licensed GSM companies) claims revenues of about \$150,000,000 annually. This excludes the deluge of music videos, locally curated music television channels, talent competitions, concerts, radio and online streaming. According to PWC, the music sector is currently worth over \$1 Billion dollars and is only expected to grow exponential as broad access becomes more affordable, royalty collection improves and creation of digital rights once the amended copyright draft bill is passed into law.

Any person seeking to get involved in the industry will need to take into cognisance the following issues, how they impact its operations and the relevant government agencies.

Copyright

In Nigeria, all copyrights are protected under 2004 copyright laws CAP 28 Laws of Federation (LFN) for a period of 70years for literary, cinematographic, and musical and artistic works while films and photography last 50 years from the date of the death of the publisher. The Nigeria Copyrights Commission (NCC) is the body set up for copyright administration, registration and enforcement. A unique feature of the copyright law in Nigeria is the notification scheme which allows copyright owners to register their copyrights through the, deposit of a copy of their works with the Nigeria Copyright Commission (NCC). Nigeria being a signatory to the Internet treaties is currently in the process of domesticating the treaties – the draft amendment bill, has passed the 2nd reading at the National Assembly.

The Copyright Society of Nigeria (COSON)

Nigeria Copyrights Commission (NCC) is empowered to license different collecting societies for different categories of work. Regulation 5 (2) Copyright (Collecting Societies) Regulations, 2007 provides amongst other things that collecting societies administer rights

in the most efficient and cost effective manner in the collection and distribution of royalties; in line with those powers Copyrights Society of Nigeria (COSON) was licensed for the purpose of collecting royalties, instituting actions on behalf of owners of sound recording and musical works, while Reproduction Rights Society of Nigeria (REPRONIG) was licensed as a collecting society to cater for the rights of authors in the literary field. A collecting society for film works has been licensed though it is yet to become fully operational.

Broadcasting

The Nigeria Broadcasting Commission (NBC) regulates all forms of broadcasting by issuing licenses for radio and television stations (satellite or terrestrial broadcast) and equipment approvals. The NBC under the on-going DSO also licenses signal distributors, setup box manufacturers, other value-added services etc, allocates frequencies, regulates content and generally sets standards as well as give policy direction on other disruptive technologies in the broadcasting industry. The Commission also has a 30% local content policy that must be met by all its licensees.

Value Added Services

The Nigeria Communications Commission (NCC) over sees and licenses service providers using the telecommunication networks to sell or distribute media services through any of the licensed telecommunication networks i.e. Over The Top (OTT), Caller Tunes and ring back tones etc.

Censorship

The Nigeria Film and Video Censors Board (NFVCB) is the regulatory body set up by Act No.85 of 1993 to regulate films and video industry in Nigeria. The Board is empowered by law to classify all films and videos whether imported or produced locally. It is also the duty of the Board to register all films and video outlets across the country and to keep a register of such registered outlets among other functions such registered outlets among other functions across the country and to keep a register of such registered outlets among other functions.

Domain name registration

Nigeria Internet Registration Association (NiRA) is the registry for ".ng" Internet Domain Names and maintains the database of names registered in the ".ng" country code Top Level Domain. NiRA is a self-regulating body and manager of the ".ng" national resource, the country code Top Level Domain (ccTLD) name space in the public interest of Nigeria and global Internet communities.

Trademarks/Patent etc.

For the protection of trademarks i.e. a name, logo, slogan, domain name, shape, color or ideas, inventions, designs, and trade secrets apply to the Trademarks, Patents And Designs Registry, Commercial Law Department, Federal Ministry Of Industry, Trade And Investment through an accredited agent.

Conclusion

As the creative industry continues to grow and the government is set to continue legal and regulatory reforms that ensure protection and enforcement of rights, provide incentives for investors, capacity building for practitioners at different levels. While the sector has huge challenges such as low broadband penetration, poor postproduction facilities. These challenges create huge opportunities for infrastructural development in distribution ,post production, financing and funding, lease of equipment, capacity building, touring and cinema development in Nigeria.