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| S/N | NAMES | MATRIC NUMBER |
| 1. | IBRO SANDRA KURA | 16/LAW01/097 |
| 2. | ASIBONG NSIDIBE IME | 16/LAW01/039 |
| 3. | NNEMZI CHIOMA | 16/LAW01/132 |
| 4. | JIDDA SALAMA YETUNDE | 16/LAW01/115 |
| 5. | SHOFOWORA OREOLUWA | 16/LAW01/196 |
| 6. | OGHENEYOMA ONOKPACHERE | 14/LAW01/176 |
| 7. | ONUNWOR VICTORIA CHIGONUM | 16/LAW01/178 |
| 8. | EDAKO ESTHER NJURE | 16/LAW01/O62 |

QUESTION:

Chinwe, your campus roommate, is an upcoming artist. She is hoping to build a career in the music industry. Her dad has been disappointed that rather than practicing her profession, she wants to be singing. Although she tries to convince him that music is lucrative in Nigeria, she secretly hides her fears of not knowing how to actually make money from her songs and the intricacies of the commercial exploitation of her musical talent. She has approached you for your legal advice as an IP student also interested in entering the entertainment industry on how she can commercially exploit her works and make money generally in her music career. Advise her accordingly.

**INTRODUCTION:**

The above scenario bothers on copyright. Copyright is otherwise known as “author’s right” in Civil law jurisdiction. Copyright literally means the right to copy; however, it is not exclusively the right to copy. To answer the above question satisfactorily, copyright as a concept has to be understood.

WHAT IS COPYRIGHT?

Copyright has been defined by different authors from their different perspectives and as such there is no general definition of the concept copyright.

According to ***Bainbridge,*** copyright is a property right which subsists in various works such as literary, artistic, musical, sound recordings, films and broadcasts.

On the otherhand***, Oyewunmi***  sees Copyright as a proprietary right which confers exclusive rights to authorize or prohibit a wide range of activities relating to qualified subject matter. These activities include; the performance, translation, adaptation, publication and other forms of use or exploitation of the protected work.

THE NATURE OF COPYRIGHT:

1. Copyright is a property right: In this context the right of ownership can be exercised and even though it is intangible, it can be sold, licensed etc. Remedies can be granted to the owner of a copyright.

ELIGIBLE WORKS UNDER COPYRIGHT;

The subject matter of copyright refers to the kind of works of intellectual property in which copyright may subsist or works that are eligible for copyright protection. Many factors may come to bear in assessing the copyright status of a material.

Essentially, an eligible work can be referred to as ‘a product, which is a result of the effort of the author, qualifying it for protection under copyright’. Civil law jurisdictions do not close the categories of works that qualify for protection under copyright. However, in common law jurisdictions, the categories are narrowed down. Section 1 (1) of the Copyright Act[[1]](#footnote-1)provides six categories of works and they include:

. Literary works

. Musical works

. Artistic works

.Cinematograph films

. Sound recordings

. Broadcasts

LITERARY WORKS:

By virtue of the Copyright Act[[2]](#footnote-2)”literary work” includes; irrespective of literary quality, any of the following works similar thereto: novels, stories and poetic works; plays, stage directions, film scenarios and broadcasting of scripts; choreographic works; computer programs; textbooks, treaties, histories, biographies, essays and articles; encyclopedias, dictionaries, directories and anthologies; letters, reports and memoranda; lectures, address and sermons; law reports, excluding decisions of courts; written tables or compilations.

MUSICAL WORKS:

A musical work means “any musical composition, irrespective of musical quality and includes works composed for musical accompaniment”[[3]](#footnote-3). Thus, any musical composition, the quality being immaterial, provided it is original and fixed in a particular medium qualifies as musical work[[4]](#footnote-4). In ***Anikulapo-Kuti v Iseli***[[5]](#footnote-5), it was held that the requirement of fixation simply means that the musical work must be in a tangible form.

Secondary activities like arranging music (by adding accompaniments, new harmonies, new rhythms, etc.) and transcribing it for different musical forces have been held to attract their own musical copyright protection. In ***Sawkins v Hyperion***[[6]](#footnote-6), the question was whether Dr.Sawkins’ performing editions qualified as original musical work. Patten J. at first instance held that it qualifies. On appeal, it was held that the work of Dr. Sawkins has sufficient aural and musical significance to attract copyright protection. However, he could be guilty of infringing the copyright of the earlier work if he makes his arrangement without the permission of the copyright owner. Also, in ***Redwood Music v Chappell***[[7]](#footnote-7), it was submitted that an arrangement of an existing musical work can only attract a separate copyright if it involved great skill and labor.

SOUND RECORDINGS:

The Act defines sound recording as the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced but does not include a sound track associated with a cinematograph film.

BROADCASTS:

The Act[[8]](#footnote-8) provides that broadcast means” sound or television broadcast by wireless telegraphy or wire or both, or by satellite or cable programs and includes re-broadcast.

REQUIREMENTS FOR MUSICAL WORK FOR COPYRIGHT PROTECTION

1. ORIGINALITY: According to Section 1(2)(a) of the Copyright Act, a musical work shall be eligible for copyright protection unless sufficient effort has been expended on making the work to give it an original character. This simply means that the work should have originated from the author, not copied from another work and that sufficient time, effort, skill, labor etc has been expended on the work by the author.[[9]](#footnote-9)
2. FIXATION: A musical work shall not be eligible for copyright protection unless the work has been fixed in any definite medium of expression now known or later to be developed from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device as stated in Section 1(2)(b) of the Act[[10]](#footnote-10) .
3. QUALIFYING AUTHOR: An author is simply the creator of the work. For musical work to be eligible for protection there must be some connection between the author and Nigeria in respect of nationality or domicile of the author, place of first publication, government work and by virtue of international agreements.

**Rights conferred by Copyright** (musical works)

. Copyright confers both economic and moral rights on the right holder.

•These rights are subject to the exceptions to copyright control as contained in the Second Schedule to the Act

•Gives the exclusive right to control the doing in Nigeria of any of the listed acts

•A person carrying out any of the activities without the permission of the copyright owner would be infringing.

Economic rights

1. Reproduce the work in any material form

2. Publish the work

3. Perform the work in public

4. Produce, reproduce, perform or publish any translation of the work

5. Make any cinematograph film or a record in respect of the work

6. Distribute to the public, for commercial purpose, copies of the work, by way of rental, lease, hire, loan or similar arrangement.

DURATION OF COPYRIGHT (MUSICAL WORKS)

The First Schedule of the Copyright Act provides for the duration of copyright and the duration depends on the category of work. For musical Works specifically, the duration for copyright is seventy years after the end of the year in which the author dies.

BENEFITS OF COPYRIGHT IN THE MUSIC INDUSTRY

As a copyright owner, you get six exclusive rights. You alone can create copies of your song, distribute it, make derivatives, display it and perform the composition and sound recording. If someone else wants to do any of these things, they need to get permission from you and in most cases provide some sort of payment.

Copyright protects the musical works which encompasses the combination of sounds that make-up the music as well as the works, such as the lyrics of a song which accompany the musical work. The musical work is protectable irrespective of the musical quality. Thus what may appear as mere unpleasant noise with little more than nuisance value to some may nevertheless qualify for protection as a musical work.

Copyright protects your music against infringement and plagiarism. Your work whether it is the composition or sound recording becomes automatically copyrighted the moment it is created and fixed in a tangible form that is perceptible either directly or with the aid of machine or device. You just need to prove that you are in fact the author of the original work, especially in a case where you suspect someone of infringing on your intellectual property.

Copyright ensures that you receive the royalties that you are legally entitled to when your music is used or exploited in various ways. Through the process of licensing, you can also allow others to use your music in exchange for a payment known as royalty. Depending on what copyright you have of a song, whether it is the composition, sound recording, or both, then you are entitled to certain amount of money.

**How to make money in the music industry through IP(copyright)**

Copyright is the most important tool for right owners in the music industry. This is as a result of the exclusive control it gives them over their work and the opportunity to derive financial benefit as a result of such exclusivity.

The end goal of every player in the music industry is profit. There are three IP monetization strategies that can transform random light-bulb moments to dollar signs for artistes and record labels​—licensing, merchandizing, and outright sale.

**Licensing**

Licensing is often the path more travelled when it comes to monetizing intellectual property. It allows the rights owner (licensor) to grant another (licensee) the right to use the intellectual property for a determined financial consideration (royalty) and period of time. Licensing is very broad with record labels and artistes having the opportunity to license music for use in adverts, games, TV shows, and other ventures.

The terms of a licensing agreement must be clear. It must state whether the licensing is exclusive or nonexclusive, the time frame for the license, geographical limitations, and any due-diligence provisions such as what expected of the licensee within the duration of the license.

**Merchandizing**

This refers to leveraging on established goodwill and popularity to produce goods and services that consumers can relate with and patronize.

**Outright Sale**

This is a complete transfer of all your rights to another individual or corporate entity. To be valid, sale must be in writing with all the terms specifically drawn out.

Chinwe can use the above strategies to make money in her music career.

**CONCLUSION:**

Copyright is indeed an essential aspect of Intellectual property which gives authors of works protection against infringement by other persons. In the instant case, Chinwe can make a lot of money by exploiting her musical works through licencimg, merchandizing and outright sale.

The music industry is a very lucrative aspect in Nigeria and where such music is backed up by copyright, it tends to be protected against infringers.

1. Section 1(1) of the Copyright Act Cap C28 Laws of the Federation of Nigeria 2004 [↑](#footnote-ref-1)
2. Section 51 Copyright Act Cap C28 (LFN) 2004 [↑](#footnote-ref-2)
3. ibid [↑](#footnote-ref-3)
4. Section 1(2) Copyright Act Cap C28 (LFN) 2004 [↑](#footnote-ref-4)
5. (2003-2007) 5 IPLR 53 [↑](#footnote-ref-5)
6. 2005 RPC (32) 808 C.A [↑](#footnote-ref-6)
7. 1982 RPC 109 [↑](#footnote-ref-7)
8. ibid [↑](#footnote-ref-8)
9. University of London Press v University Tutorial Press [↑](#footnote-ref-9)
10. Yemi Anikulapo-Kuti v.Iseli [↑](#footnote-ref-10)