

STRATHMORE UNIVERSITY

**REFORM OF LEGISLATION ON COLLECTIVE MANAGEMENT
ORGANISATIONS IN KENYA:**

A Study on the Music Copyright Society of Kenya (MCSK)

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DISSERTATION

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DECLARATION

I, Linda Adhiambo Otieno, declare that this dissertation is my original work except where indicated by the special reference in the text. This dissertation has not been submitted to any other institution for the award of an undergraduate degree or any other award in Kenya or elsewhere.

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LIST OF ABBREVIATIONS

IP-Intellectual Property

IPRs- Intellectual Property Rights

CMO(s)-Collective Management Organisation(s)

RRO(s)-Reproduction Rights Organisation(s)

MCSK-Music Copyright Society

PRiSK-Performers' Rights Society of Kenya

KAMP- Kenya Association of Music Producers

KOPIKEN- Reproduction Rights Society of Kenya

NCC-Nigeria copyright Commission

MCSN-Musical Copyright Society of Nigeria

COSON-Copyright Society of Nigeria

WIPO- World Intellectual Property Organisation

TRIPS-Agreement on Trade-related Aspects of Intellectual Property Rights

CHAPTER1: INTRODUCTION

1.1 Background

Intellectual property (IP) relates to people's creative and inventive activities.¹ It is often referred to as the creation of the mind: it cannot be touched, weighed, felt or seen.²

Several writers attempt to define intellectual property but to date, IP has no universally agreed definition. Rather than define IP as a concept, the various treaties and conventions on IP refer to various categories of IP. For instance, the 1967 Convention establishing the World Intellectual Property Organisation (The WIPO Convention) does not offer a formal definition of IP rather 'defining' IP broadly as including rights relating to:

“Literary artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.” (Article 2)

Similarly, Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) only defines IP by listing categories of it (Article 1.2): Copyright and Related Rights, Trademarks, Geographical Indications, Industrial Designs, Patents.

Intellectual property rights (IPRs) are rights that the society awards to the individuals or organizations for their creative works³. Intellectual property rights (IPRs) can also be defined as legal devices that protect creations of the mind which have commercial value, such as inventions⁴. IPRs comprise **copyright**, patents, trademarks and industrial designs.

Copyright is a legal right that authors, publishers, and other producers of creative works have to protect their work from being reproduced without their permission.⁵ It gives the copyright owner of such a right exclusivity of ownership, use and economic proceeds that emanate from it.⁶ This balances of the private right of the creator to protection with the right of the community to access and enjoy the benefits of the IP.⁷

¹Otike J, Copyright: The Challenges posed by Reproduction Rights Organizations (RROS) in the Provision of Information to Users with special reference to Kenya, Moi University, 2012, pg1

² Kameri-Mbote P, Intellectual property protection in Africa: An assessment of the status of laws, research and policy analysis on intellectual property rights in Kenya, IELRC, 2005, pg1

³Kretschmer M, The future of collecting societies, 2004, pg2 (eprints.bournemouth.ac.uk)

⁴Opati L, Intellectual Property Rights in Health-Impact on Access to Drugs, 2009, pg1

⁵Yen AC, Restoring the natural law: Copyright as labour and possession Ohio State Law Journal, 1990, pg3

⁶ Otike J, Copyright: The Challenges posed by Reproduction Rights Organizations (RROS) in the Provision of Information to Users with special reference to Kenya, Moi University, 2012, pg2

⁷Nyukuri E, Intellectual Property Protection in Africa: Status of Laws, Research, and Policy Analysis in Ghana, Kenya, Nigeria, South Africa, and Uganda E Nyukuri, ACTS Press, 2006, pg2

In Kenya, the legal right of copyright is protected under the Copyright Act⁸. The Copyright Act was passed in 2001 having undergone 3 major amendments in 1975, 1989 and 1995⁹. It later came into force in February 2006. According to the Copyright Act, copyright subsists in musical works, literary works, artistic works and audio-visual works¹⁰. This legal right lasts for a period of fifty years from the end of the year it was first published¹¹. Section 35 specifies various acts that constitute infringement of a one's copyright in a given work such as distribution of protected works without permission or circumventing technical measures designed to protect copyrighted material. The same section provides remedies that may be sought by a copyright owner where his legal right has been infringed, such as legal action for payment of damages, injunction or delivery of infringing copies.

It is, however, difficult for an owner of copyright to keep track of all third parties who use his work without permission. This is where collective management organizations comes in. CMOs are organizations or societies appointed by copyright owners to issue reproduction licence or receive reproduction fee on their behalf¹². Collective Management Organisations (CMOs) act as an important or crucial link between copyright owners and users. They are essential because many copyright owners may not have the time and resources to issue licence to each and every person that requests to reproduce copyrighted work. Without them, copyright owners would be compelled to deal directly with users.¹³ This would, indeed, have been a very tedious task. CMOs usually pay a copyright owner monetary compensation referred to as **royalties** for the use of his work third parties.

In Kenya, the CMOs responsible for collecting licensing fees and distributing royalties to owners of copyright in music is the Music Society of Kenya (MCSK). The MCSK was registered in 1986 under the Companies Act¹⁴ of Kenya. MCSK is licensed and registered by the Kenya Copyright Board (KECOBO). Collective management is regulated under the Kenya Copyright Act and, its subsidiary legislation, the Copyright Regulations 2004¹⁵. The following are a few of the key provisions: Section 46 of the Act provides for registration process of CMOs, which includes certain conditions that a body must fulfil and documents that need to be submitted by it in order to registered by the KECOBO. It also points out the role of KECOBO in relation collective management organisations such powers of registration and deregistration.

⁸ Cap 130 No. 12 of 2001, The Laws of Kenya

⁹ <https://cipitblog.wordpress.com/?s=MCSK&search=Go> Mwangi P, #World IP Day: A Recap from Kenya, 2015, on 3rd May 2015

¹⁰ Section 22, The Copyright Act of Kenya, Cap 130, The Laws of Kenya

¹¹ Section 25(2), The Copyright Act of Kenya, Cap 130, The Laws of Kenya

¹² Kameri-Mbote P, Intellectual property protection in Africa: An assessment of the status of laws, research and policy analysis on intellectual property rights in Kenya, IELRC, 2005, pg6

¹³ Kameri-Mbote P, Intellectual property protection in Africa: An assessment of the status of laws, research and policy analysis on intellectual property rights in Kenya, IELRC, 2005, pg6

¹⁴ Cap 486, The Laws of Kenya

¹⁵ Cap 130, The Laws of Kenya

Another important aspect covered under Section 46 is the provisions on financial reporting of CMOs to KECOBO (referred to the Board in the Act). The Copyright also gives the Board power to supervise and license CMOs in Kenya. Section 46A regulates the imposition and collection of levy or licensing fees by CMOs. The Copyright Regulations generally supplement the provisions of the Act. For instance, Regulation 15 lists the documents that are required for submission pre-registration. Regulation 16 provides details of the components required in a financial report to be required submitted by a CMO to the Board annually. The Regulations also provide further details on renewal and revocation of licenses granted to CMOs by the Board.

The legal framework on collective management organisations in Kenya has certain inadequacies that contribute to perpetuating the abuse by MCSK in its role of royalty collection and distribution, a view supported by The Kenya Copyright Board executive director, Ms. Marsella Ouma¹⁶. In fact, in 2011, its licence was almost revoked by KECOBO as a result of its constant disability to manage its funds & pay musicians adequately¹⁷. It has also come under investigation for theft and fund misappropriation following an application by Serious Crimes Unit under the Directorate of Criminal Investigation (DCI) for the grant of an order to freeze MCSK's bank accounts in MCSK v Chief Magistrate Inspector General¹⁸.

Kenyan musicians have over the years held protests over being underpaid by MCSK¹⁹, while others have expressed their dismay in television and radio interviews (as discussed in section 2.3). Other artistes have used social media²⁰ to create more awareness over the wanting performance of MCSK year after year. Some musicians have opted to not join MCSK at all saying that grievances raised by musicians are never addressed, hence there is no difference between members and non-members²¹. The detailed examination of Kenyan local laws, in comparison to Nigerian laws, that regulate the activities of collective management organisations in Chapter 2 shows how the inadequacies of the said laws provide little or insufficient supervision of or checks on the financial operations of CMOs.

This aim of this paper is to propose legal reforms to the Kenyan legislation on by drawing lessons from Nigeria's robust legal regime on the same.

¹⁶ Business Daily, Music society hits another sour note with watchdog over royalty payments, Mutegi M & Okuttah M, 27th February 2012

¹⁷ Business Daily, Music society hits another sour note with watchdog over royalty payments, Mutegi M & Okuttah M, 27th February 2012

¹⁸ 2015[eKLR]

¹⁹ The Daily Nation, Muchiri J, "MCSK Vs Artistes: Will these two ever see eye to eye?" November 1, 2014

²⁰ The Standard Newspaper, Kwamboka R, Elani's report not entirely truthful - MCSK CEO responds to allegations, 15th Jan 2016

²¹ The Daily Nation, Why Kenyan artistes are so angry, 26th September 2015

1.2 Statement of the Problem

The legislation on collective management organisations (CMOs) in Kenya is inadequate. This contributes to the abuse of CMOs such as MCSK in exercising their role of collection and distribution of royalties. MCSK executes its role in a manner that does not reflect transparency and integrity to the detriment of copyright owners/musicians by paying insufficient royalties as well as poor management of expenditure of funds.

Kenyan law has inadequate provisions on the supervision of CMOs in their role of protecting the monetary compensation for musicians with regard to use of their copyrighted musical works by third parties. KECOBO officials have admitted that the performance of CMOs like MCSK is wanting and serious measures are needed to prevent further instability in the music industry. The Kenya Copyright Board executive director, Ms. Marsella Ouma, opined that MCSK desperately need to come up with a sound financial management structure to help it dig it out the hole of perpetual fund mismanagement²². Ms. Ouma has commented on how MCSK manages its funds, saying that the MCSK is a body that has failed to carry out even its chief duty by blowing money away in imprudent spending instead of giving priority to the copyright owners that depend on it²³. The acting chief executive officer at the time (January 2016), Mr. Sigei, propounded that law on CMO supervision have several gaps which need to be addressed.²⁴

These inadequacies have contributed to allowing MCSK to abuse its role of royalty collection and distribution unchecked. For instance, MCSK has had legal action brought against it for fund misappropriation and theft of millions of shillings. Former staff members have charged with stealing²⁵. Most recently, in *MCSK V Chief Magistrate Inspector General*²⁶, MCSK sought to stay orders issued by the Magistrate's court freezing all the bank accounts of MCSK following a request by the Serious Crimes Unit under the Directorate of Criminal Investigation (DCI). DCI requested that MCSK's accounts be frozen as it investigates complaints by members in regard to alleged misappropriation and theft of funds.²⁷

²² Business Daily, Music society hits another sour note with watchdog over royalty payments, Mutegi M & Okuttah M, 27th February 2012

²³ Business Daily, Music society hits another sour note with watchdog over royalty payments, Mutegi M & Okuttah M, 27th February 2012

²⁴ The Daily Nation, Legal Reforms required to bridge gaps in supervision of artistes' umbrella groups, 26th January 2016

²⁵ www.MCSK.or.ke last accessed 5th May

²⁶ 2015[eKLR]

²⁷ <https://ipkenya.wordpress.com/category/music-copyright-society-of-kenya>

Kenyan musicians have expressed dismay for years on the manner in which MCSK operates. Numerous artistes such as Ringtone²⁸ have complained through protests that MCSK pays them meagre royalties; that the society does not pay them what they deserve. Other artistes like Elani²⁹ claim that they were paid very little royalties in 2014 which they say was strange because it was their most successful year in their musical career with hits such as *Kukuu, Barua ya Dunia, Zuzu, Milele* and *Hapo Zamani*. Other artistes such as Visita have opined that they would rather not join MCSK because the issues raised by musicians on royalty payment are never addressed. Visita has been quoted in one of the local dailies averring that even his fellow musicians who are members of MCSK are perpetually underpaid or broke³⁰. Jua Cali, Avril and Sauti Sol are examples of other artistes who have expressed their dissatisfaction with how MCSK handles paying musicians for the public performance of their music, as discussed in Section 2.3.

This state of affairs has pushed some musicians to turn to social media as a way of shining a light on the poor performance of MCSK. The music group Elani created the popular #ElaniSpeaks video clip, available on YouTube, in which the group calls out for transparency within the MCSK and intervention from the cabinet secretary of the Ministry of Sports, Culture and the Arts Cabinet Secretary, Hon. Dr. Hassan Wario.³¹

The aim of this paper is to propose reforms that can be made to improve the legislation on collective management organisations (CMOs) -such as MCSK- in order to curb the abuse of their role by providing proper checks or supervision, and as a result provide better protection of the right of compensation musicians for their creative works.

²⁸The Daily Nation, Muchiri J, "MCSK Vs Artistes: Will these two ever see eye to eye?" November 1, 2014

²⁹<https://cipitblog.wordpress.com/2016/01/22/music-money-and-middle-men-changing-dynamics-between-collecting-societies-rights-holders-and-the-public/> on 22nd January 2016 ;The Standard Newspaper, Kwamboka R, Elani's report not entirely truthful - MCSK CEO responds to allegations, on Jan 15th 2016

³⁰The Daily Nation, Why Kenyan artistes are so angry, 26th September 2015

³¹ <https://mpasho.co.ke/it-might-actually-be-true-MCSK-ceo-responds-to-claims-that-some-artists-were-not-paid-the-amount-of-money-they-deserve> last accessed on 20th January 2016; The Standard Newspaper, Kwamboka R, Elani's report not entirely truthful - MCSK CEO responds to allegations, Jan 15th 2016

1.3 Justification for the Study

The inadequacy of legislation of collective management organisations (CMOs) in Kenya poses various problems:

Inadequate compensation for musicians

The inadequacy of Kenyan law on collective management organisations has contributed to MCSK abusing its role of collection of fee and distribution of royalties, together with the poor management of collected funds. Legislation on CMOs in Kenya is not stringent enough to check collecting societies as compared with Nigeria especially on the issue of supervision of its financial activities, as discussed in the next section. It has been reported for fund misappropriation by its members on several occasions. On one occasion, MCSK's license was almost revoked by KECOBO in 2011 but the revocation was stopped by MCSK's application to a court to prevent it³².

Musicians such as Ringtone³³ and Elani³⁴ have made claims that MCSK does not pay them the royalties that they deserve. In addition, legal proceedings have been brought against it on number of occasions. A recent case, MCSK v Chief Magistrate Inspector General, saw the Serious Crimes Unit under the Directorate of Criminal Investigation (DCI) request an order to freeze MCSK's accounts following complaints by members on alleged fund misappropriation and theft. These examples are just the tip of the iceberg, as seen in Section 2.1 and 2.3. The failure of MCSK to fairly compensate their members leads to their economic exploitation and is a great injustice to them.

Instability of the music industry in Kenya

CMOs such as MCSK play a very important role in the music industry. They collect license fee for the reproduction of a copyrighted work and ensure that the owner is fairly compensated³⁵. Poor legislation, if not strengthened to provide safeguards for musicians' compensation, will continue to contribute to the poor performance of CMOs in their role, copyright owners will not be adequately rewarded.

³²Business Daily, Music society hits another sour note with watchdog over royalty payments, Mutegi M & Okuttah M, 27th February 2012

³³The Daily Nation, Muchiri J, "MCSK Vs Artistes: Will these two ever see eye to eye?" November 1, 2014

³⁴The Standard Newspaper, Kwamboka R, Elani's report not entirely truthful - MCSK CEO responds to allegations, on Jan 15th 2016

³⁵Kretschmer M, The future of collecting societies, 2004,pg8 (eprints.bournemouth.ac.uk)

This will discourage creativity on their part and on upcoming artistes entering the industry. The lack of a comprehensive legal frame work can cause huge problems of confusion, frustration and instability in the music industry of a country. This has been experienced in Nigeria especially with its earlier Acts of 1970 and 1988, as well as the years before the institution of the comprehensive and detailed Copyright Regulations of 2007 (as explained in Section 2.2)

1.4 Statement of Objectives

This study aims to achieve the following objective:

To find out how the legislation on collective management organizations in Kenya can be reformed or strengthened or improved

1.5 Research Questions

The following are questions that this study seeks to answer:

How legislation on collective management organizations in Kenya can be reformed or strengthened or improved?

CHAPTER 2: LITERATURE REVIEW

2.1 Legislation on Collective Management Organisations in Kenya

In this section, I shall discuss the laws that govern collective management organisations or CMOs or collecting societies in Kenya in order to give a general understanding of the legislation of collective administration under this jurisdiction. It is important to know and understand the Kenyan provisions on CMOs in order to properly compare them to those of the Nigerian jurisdiction. This comparison shall be handled in Section 2.3.

The legislation on collective management organisations or CMOs or collecting societies is embodied in the Copyright Act of Kenya³⁶ and under its subsidiary legislation, the Copyright Regulations³⁷. The Copyright Act has undergone 3 major amendments in 1975, 1989 and 1995³⁸. The Copyright Act was passed in 2001. It later came into force in February 2006. The Copyright Act (No. 12) of 2001 is accompanied by the Copyright Regulations (2005). The recent Copyright (Amendment) Regulations 2015 raised the registration fee and licence renewal fee payable to the Kenya Copyright Board (KECOBO)³⁹. The former fee was raised from sh10, 000 to sh250,000 while the latter is dependent on a collecting society's revenue as per its last audited accounts ranging from 1% to 3%.

Starting with the Copyright Act, Section 48 provides for the definition of a collecting society. It provides that a collecting society means an organization which has as its main object the negotiation for the collection and distribution of royalties and the granting of licenses in respect of copyright works. Collecting societies in Kenya are licensed and supervised by the Kenya Copyright Board (KECOBO) or the Board⁴⁰. The Board under Section 34(3) (e) of the Act is allowed to keep an effective data bank on authors and their works or rights. The Board also has the power to register collecting societies⁴¹.

³⁶ Cap130 of 2001

³⁷ Cap130 of 2004

³⁸ <https://cipitblog.wordpress.com/?s=MCSK&search=Go> Mwangi P, #Wolrd IP Day: A Recap from Kenya, 2015, on 3rd May 2015

³⁹ <https://cipitblog.wordpress.com/?s=MCSK&search=Go> Nzomo V, Copyright (Amendment) Regulations 2015: Attorney General Hikes Registration and renewal fees, 2015, on 4th May 2015

⁴⁰ Section 5, The Copyright Act, Cap 130 of 2001

⁴¹ Section 46(2) provides that a collecting society shall apply to the Board for registration; Section 46(3) provides that a collecting society shall be issued with a certificate of registration which is valid for 12 months from the date of issue

Additionally, this section provides that the Board may only approve the registration of a collecting society if it fulfils the certain conditions. Firstly, it must be a company limited by guarantee and must be incorporated under the Companies Act Cap 486⁴². Secondly, it must be a non-profit making entity⁴³.

Thirdly, its rules and regulations must ensure that the interests of members of the collecting society are adequately protected⁴⁴. Fourthly, its principal objectives must be the collection and distribution of royalties⁴⁵. Lastly, its accounts must regularly audited by independent external auditor elected by the society⁴⁶.

The Board also has the power to deregister a collecting society. The Board may deregister a collecting society if it satisfied that the collecting society is not is not functioning adequately as a functioning society⁴⁷ or if it is not acting in line with its Memorandum or articles of Association⁴⁸. A collecting society may also be deregistered by the Board if it does not comply with Section 46(4)⁴⁹, which lists the conditions that a collecting society must fulfil in order to be approved by the Board, or with any provision of the Act⁵⁰. In order for it to run, the Board receives funds from the Minister to enable it perform its duties⁵¹. Parliament provides the Board with, out of its monies, grants towards the expenditure of the Board in the exercise of its powers⁵².

The matter of imposition and collection of levy by a collecting society is dealt with under Section 46A. Under this section, a collecting society shall not impose or collect royalty based on a tariff that has not been approved and published in the Gazette by the Cabinet Secretary⁵³. Section 47 provides for the submission of annual reports and accounts by a collecting body to the Board. Under this Section, a collecting society is required to submit to the Board, after the end of each financial year, a report of its operations during that year⁵⁴. A copy of the society's audited accounts in respect of that year must accompany the report⁵⁵.

⁴² Section 46(4)a, The Copyright Act, Cap 130 of 2001

⁴³ Section 46(4)b, The Copyright Act, Cap 130 of 2001

⁴⁴ Section 46(4)c, The Copyright Act, Cap 130 of 2001

⁴⁵ Section 46(4)d, The Copyright Act, Cap 130 of 2001

⁴⁶ Section 46(4)e, The Copyright Act, Cap 130 of 2001

⁴⁷ Section 46(9) a, The Copyright Act, Cap 130 of 2001

⁴⁸ Section 46(9) b, The Copyright Act, Cap 130 of 2001

⁴⁹ Section 46(9) c, The Copyright Act, Cap 130 of 2001

⁵⁰ Section 46(9) d, The Copyright Act, Cap 130 of 2001

⁵¹ Section 16(1)a, the Copyright Act, cap 130 of 2001

⁵² Section 16(2), the Copyright Act, cap 130 of 2001

⁵³ Section 46(A) (a),The Copyright Act, Cap 130,2004

⁵⁴ Section 47(1) (a),The Copyright Act, Cap 130,2004

⁵⁵ Section 47(1) (b),The Copyright Act, Cap 130,2004

Looking at the Copyright Regulations, Regulation 15⁵⁶ supplements section 46(2) of the Act on registration of collecting societies. Regulation 15 provides a list of the documents that a collecting society is required to submit in order to be properly registered by the Board. Moreover, it provides for renewal of the licence of registration by a collecting society. Regulation 16 supplements Section 47 of the Act on the submission of annual reports and accounts by a collecting body to the Board. Regulation 16 provides an extensive list of the components of an annual financial report. The list includes a comprehensive report of all the society's activities during the year, a list of all its members as at the end of the financial year and the total amount of royalties collected by the society. Furthermore, the report must also show the amount of royalties paid to each member, the amount of money spent by the society on the administration of the society and for all its operations and the name, postal and physical address of the auditors of the collecting society.

Finally, it must include the names, addresses and occupations of current officials of the society and any other information that the Board may require. Additionally, it provides that annual financial reports and audits must be submitted to the Board three months at the end of each financial year⁵⁷.

The effect of the current status of collective management laws in Kenya will be discussed in Section 2.3, where the comparisons with Nigerian provisions will be discussed.

Having explained the Kenyan legislation on CMOs, I will proceed to point out the provisions on collective management organisations in Nigeria in the next section.

2.2 Legislation of Collective Management Organisations in Nigeria

To better understand how to solve the legislative inadequacies of collective management in the Kenyan music industry, a comparison with Nigerian laws would offer solutions. I selected Nigeria because it has one of the largest music industries in Africa and the world. It may, therefore, be informative and interesting to examine the laws on collective management in such a massive music industry. It may provide great guidance for a small but fast-growing music industry like Kenya's. In 2013, Robert Orya, managing director, Nigerian Export-Import Bank (NEXIM), said Nigeria's music industry ranked third globally in gross earnings. According to him, the revenue the music industry has generated in the last three years was between \$300m and \$800m.

⁵⁶ Regulation 15, The Copyright Regulations, Cap 130, 2004

⁵⁷ Regulation 16(2), The Copyright Regulations, cap 130, 2004

Additionally, it has some of the highest paid African artistes: Chidinma Elike, popularly known as Miss Kedike following her popular song “Kedike,” has a net worth of N280million; Duncan Mighty has a net worth of N700 million; Yemi Alade has a net worth of N572 million⁵⁸. Artistes such as 2Face Idibia have won highly-coveted international awards such as the BET Best International Act: Africa in 2011.⁵⁹

In this section, I shall first give a brief history of the legal framework on collective management organisations in Nigeria. This will demonstrate how the Nigerian law has evolved and the effect it has on collective management of copyright in music on the ground. Secondly, I shall point out the laws that currently govern collective management organisations or CMOs or collecting societies in Nigeria in order to give an understanding the legislation on collective management in this country.

2.2.1 History of the Legal Framework on Collective Management Organisations in Nigeria

The legislation on collective management in Nigeria began with its first Copyright Act of 1970⁶⁰. The 1970 Act contained very little or limited provisions on collective management⁶¹. It only mentioned a “competent authority” whose role was to supervise bodies that granted licenses to copyright users through checks and balances⁶². It also mentioned that the members of such body, consisting of 3 members⁶³, were to be appointed by the Commissioner⁶⁴ and that said members were to exercise their duty with integrity and transparency⁶⁵. Additionally, it stated that the any aggrieved parties could seek appeal on a matter from the Commissioner⁶⁶. It is clear that at the beginning the legislation on CMOs under this Act was very limited and created a situation where the legal framework was very poor.

⁵⁸Odunaiké D, Public Performance Right in Copyright Works in Nigeria, Available at SSRN 2666099, 2015 www.papers.ssrn.com, pg69; <http://buzznigeria.com/top-20-richest-musicians-in-nigeria-the-net-worth-of-no-1-will-shock-you/> on 20th October 2015

⁵⁹ <https://www.bet.com/> on 6th November 2015

⁶⁰ Rotimi O, ‘Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa’, 2012, University of South Africa (UNISA), pg34

⁶¹ Rotimi O, ‘Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa’, 2012, University of South Africa (UNISA), pg 34

⁶² Section 13(2), the Copyright Act of Nigeria, 1970; where a licensing body unfairly refused to grant a license to a user or granted it with unfair terms, the competent authority would direct that the license be granted.

⁶³ Section 13(1), the Copyright Act of Nigeria, 1970

⁶⁴ Section 13(1), the Copyright Act of Nigeria, 1970

⁶⁵ Section 13(3), the Copyright Act of Nigeria, 1970

⁶⁶ Section 13(4), the Copyright Act of Nigeria, 1970

In 1988, the provisions on collective management in the existing Act were deleted. This was because of protests and lobbying by interested parties regarding the provisions, who pushed for legal reform⁶⁷. Therefore at this time Nigeria had no legal regime for collective management.

The proposals made by lobbyists in 1988 to reform the law on collective management were reflected in the 1992 Act⁶⁸. This Act contained more provisions on collective management, all under Section 39, covering than the previous Act covering various aspects. Firstly, it provided a definition for a collecting society⁶⁹ as an organisation whose main objective is to collect and distribute royalties. The preceding 1970 Act had no mention collecting societies as seen above. It was only concerned with the body or authority that exercised supervision under it. Secondly, it gave the conditions⁷⁰ that a collecting society has to fulfil in order to qualify for registration by the Commission. For instance, a body seeking to be registered as a collecting society had to be non-profit, limited by guarantee, have its main mandate as collection and distribution of royalties. It also had to comply with all the regulations of the Commission embodied in the provisions of the Act. Additionally, it had to represent a substantial number of copyright owners in any kind or category of works recognised and protected under the Act. The Act, however, did not give direction as to what would constitute a substantial number, which implies that the Commission was to exercise its discretion.

Thirdly, it gave provisions for formation of a collecting society and the application for approval⁷¹. Fourthly, the 1992 Act stated that, in addition, to the Commission's power to grant or refuse registration, it could also formulate regulation⁷² to be given effect by the Act. Fifthly, any activity that is carried out by a collecting society outside its mandate without the approval of the Commission is illegal and viewed as a criminal offence⁷³. Such criminal act, under this section, attracts a fine of N2, 000, imprisonment, for 6 months or both. In comparison, to its predecessor, the 1992 Act had much stronger regulation. It covered much more aspects regarding collective management organisations, their functions, the supervisory body (Commission).

The Nigeria Copyright Commission (NCC) saw a need in the industry for further legislation on collective management to strengthen Section 39 of the 1992 Act. This led to the birth of the Copyright (Collecting Societies) Regulations of 1993.

⁶⁷ Okoroji J, Copyright, Neighboring rights and New Millionaires, 2008 pg 167

⁶⁸ Okoroji J, Copyright, Neighboring rights and New Millionaires, 2008, pg 199

⁶⁹ Section 39, the Copyright Act of Nigeria, 1992

⁷⁰ Section 39(2) a-d, the Copyright Act of Nigeria, 1992

⁷¹ Section 39(1), the Copyright Act of Nigeria, 1992

⁷² Section 39(7), the Copyright Act of Nigeria, 1992

⁷³ Section 39(4),(5),(6), the Copyright Act of Nigeria, 1992

The Copyright Regulations (1993) contained regulations aimed at supplementing the provisions of the Copyright Act (1992) on collective management under Section 39. The 1993 Regulations provided details on the process of approval⁷⁴ to operate as a collecting society or CMO, and withdrawal of such approval⁷⁵. The Regulations also provided details on aspects of the granting of licenses⁷⁶. The renewal of licenses of licenses⁷⁷ is also discussed in detail. Another important aspect that these regulations provided for is the settlement of tariff disputes⁷⁸. Therefore these new regulations gave further clarity on the procedural and technical matters and requirements regarding CMOs, which are essential to the operation of CMOs.

In 1999, there was further amendment to the Copyright Act. The amendment's aim was to limit the action of collecting societies or CMOs on copyright infringement. It provided that a CMO could not institute or maintain a claim on copyright infringement before seeking approval to institute the claim from the NCC (The Commission). The Act introduced the key rule that a CMO also had to represent more than 50 copyright owners as well as have prerequisite permission from the Commission to operate as a collecting society, which reflected the 1992 Act amendment. The application of this rule was seen in *Musical Copyright Society of Nigeria Ltd (MCSN) v Details Nigeria Limited*⁷⁹, where the plaintiff (MCSN) sought to sue the defendant for copyright infringement. MCSN was at the time of the suit not a registered collecting society. This means that it did not have the necessary prerequisite approval to operate as a collecting society in order for it to be allowed to institute a claim.

Therefore, based on these grounds the defendant claimed that the plaintiff could not have *locus standi*. Additionally, at the time, the MCSN was acting as a collecting society, without the Commission's approval, representing more than 2 million artistes. The plaintiff argued that it was not instituting claim as a collecting society or CMO but rather as an owner, assignee and exclusive licensee under Section 15 of the Act. The court ruled in favour of the defendant's preliminary locus-standi objection. The court, after considering the evidence before it, deemed the plaintiff to be a collecting society. The fact that it was not registered under Section 32B (4) of the Act implied that the Commission did not approve it to operate as a collecting society. The court was of the opinion that allowing the MCSN to function as a CMO would be contrary not only to the letter of the law but also to the spirit of the law. Therefore, the court found that MCSN did not have the legal capacity to institute the claim.

⁷⁴ Regulation 4, The Copyright (Collecting Societies) Regulations, 1993

⁷⁵ Regulation 13, The Copyright (Collecting Societies) Regulations, 1993

⁷⁶ Regulation 6, The Copyright (Collecting Societies) Regulations, 1993

⁷⁷ Regulation 16, The Copyright (Collecting Societies) Regulations, 1993

⁷⁸ Regulation 15, The Copyright (Collecting Societies) Regulations, 1993

⁷⁹ (1996) FHCLR 473

A different approach was taken in *MCSN v Nigeria Hotels*⁸⁰. The court was of the opinion that because MCSN was the owner, assignee and exclusive licensee of the largest repertoire of musical works, it had legal capacity or *locus standi* to institute a claim on this ground alone under Section 15 of the 1988 Act (MCSN was not registered by the Commission at the time). The same position was taken by the court regarding MCSN's capacity to institute a claim in *MCSN v Ade Okin Records*⁸¹ as well as in *MCSN v Vee Networks Ltd*⁸².

However, the courts returned to the approach made in *MCSN v Details Nigeria Limited* in later years after the 1999 amendment to the Act. The 2004 Copyright Act (like the Act in 1999) prohibited a CMO from suing unless it had been registered by the Commission under the Act or unless it had been given a certificate of exemption by the Commission. In *MCSN v Compact Disc Technologies* [2010]⁸³, the court stated that the fact that MCSN was the owner, assignee and exclusive licensee with the largest repertoire of musical works in Nigeria was not in dispute. However, since MCSN was not registered as required by the law under Section 17 of the Copyright Act 2004. The issue on whether MCSN has legal right to institute claim (or use) and legal right to operate as a CMO has been quite contentious for many years. The NCC had always rejected MCSN's application for registration except in 2005. However, the registration was withdrawn after just 3 months without explanation.

The withdrawal of the license of MCSN gave rise to numerous protests from MCSN and other interested persons or parties⁸⁴. Several meetings were held to try and resolve this dispute but they bore no fruits⁸⁵. As frustration and confusion increased around the MCSN situation and (naturally) around the overall status of collective management of Nigeria's music industry, the last meeting was the start to bringing an end to the conflict and confusion surrounding collective management in Nigeria.

The Honorable Attorney General of the Federation and Minister for Justice directed that the NCC take all necessary measures to resolve the collective management crisis in Nigeria⁸⁶. This led to the review and reform of the legal framework on collecting societies by the NCC. This review gave birth to the Copyright (Collective Management Organizations) Regulations of 2007, with the consent of the Supervising Minister.

⁸⁰ (1992) FHC/L/43/89

⁸¹ [2004] FHC/L/CS/216/96

⁸² [2009] FHC/L/CS/707/05

⁸³ <http://afro-ip.blogspot.co.ke/2011/07/collecting-royalties-in-nigeria.html> on 12Nov 2015

⁸⁴ Okoroji T, Copyright, Neighbouring Rights and the New Millionaires, 2008, pg180

⁸⁵ Rotimi O, 'Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa', 2012, University of South Africa (UNISA), pg 50

⁸⁶ Rotimi O, 'Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa', 2012, University of South Africa (UNISA), pg 50

These regulations comprise four parts and a schedule. They provide very detailed provisions regarding all matters concerning CMOs. The first part gives provisions on application, renewal and revocation of licenses while the second part discusses management and membership of CMOs. The third and fourth parts provide in detail for licensing, distribution of royalties and miscellaneous provisions. These regulations replaced the Copyright (Collecting Societies) Regulations of 1993. The regulations also changed the replaced the term “collecting societies” with “collective management organizations”.

2.2.2 MCSN, PMRS & COSON

In 1971, the Performing Rights Society of England (PRS) appointed Giwa & Atilade and Co., a law firm, to be its agent, a following application by the former⁸⁷. The PRS licensed the law firm making it the first indigenous CMO in Nigeria. The firm’s aims were to get a good number of Nigerian composers or copyright owners to join the PRS and begin licensing copyright users. Most users were, however, unwilling to pay licensing fees. The reason was that they felt that there were very few Nigerian members in the PRS, and they would much rather pay the licensing fees to a Nigerian institution. The firm decided to respond to the request of the copyright owners by forming the Musical Copyright Society of Nigeria (MCSN). The MCSN was then registered on 20th July 1984. Consequently, a contract of reciprocal representation was made between MCSN and PRS, eliminating the previous one between n PRS and the firm. However, MCSN did not satisfy all copyright owners who claimed that they wanted a national collecting society that would let them decide how their rights would be managed and reflect the overall nationalistic aspirations of the creative community⁸⁸.

Following the 1992 amendments to the Act (there were now provisions for administration & regulation of collecting societies), the Performing and Mechanical Rights Society of Nigeria (PMRS) was formed by a group of performers, producers and composers⁸⁹. The PMRS applied for approval by the NCC which was granted. Before this time, the MCSN had applied to the Commission for approval to operate as a collecting society, but approval was denied. The NCC denied approval because MCSN had refused to submit some documents requested by the NCC. More importantly, the Commission was of the opinion that MCSN did not represent a nationalistic interest due to the dominance of PRS which was a British body⁹⁰.

⁸⁷ Rotimi O, ‘Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa’, 2012, University of South Africa (UNISA), pg 26

⁸⁸ Adewopo A, Nigerian Copyright Systems Principles and Perspectives, 2012, pg 87

⁸⁹ Rotimi O, ‘Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa’, 2012, University of South Africa (UNISA), pg 26

⁹⁰ Rotimi O, ‘Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa’, 2012, University of South Africa (UNISA), pg 26: The governing board of MCSN was comprised of 4 members elected by the general meeting and 4 persons nominated by PRS and MCPS. Article 23(d) of the Articles of Association of the organization provided that “no resolution (at any general meeting) shall be deemed to have been carried, whether on a show of hands or on a poll, if the PRS or MCPS has voted against it”.

The result of the denial of MCSN's application and the acceptance of PMRS's application was that the former did not technically have legal power to operate as a collecting society while the latter did.

The PMRS unfortunately neither had the infrastructure nor the ability to negotiate reciprocal agreements⁹¹. In spite of its shortcomings, the PMRS made efforts to issue licenses locally⁹² but still struggled in international licensing. MCSN, on the other hand, could use PRS' repertoire in Nigeria due to its reciprocal agreement with PRS. This resulted in MCSN being the de facto collecting society while PMRS became the de jure collecting society. Naturally, there arose great clamour for MCSN to be approved especially with it being the largest owner, assignee and licensee of the largest repertoire of musical works in Nigeria⁹³.

The NCC, in attempting to liberalise collective administration in Nigeria, approved the MCSN to operate as a collecting society alongside the existing PMRS. PMRS raised complaints over the approval of MCSN, requesting the government to withdraw it⁹⁴. The government withdrew the approval of MCSN⁹⁵. Naturally, this withdrawal created a lot of conflict which was what generated the legal reform of the law on collective management in Nigeria⁹⁶. The reform gave birth to the Copyright (Collective Management Organisations) Regulations of 2007. Following this, the Commission made a call for any organisations or bodies that wished to become collective management organisations to apply. Three applications were received by the NCC from organisations that wished to act as CMOs with regards to music and sound recording⁹⁷. The NCC, after a thorough selection process, granted approval to the Copyright society of Nigeria (COSON)⁹⁸. This is how COSON, the sole CMO covering rights in music and sound recording, was born.

⁹¹ Uchtenhagen, *The Setting-up of New Copyright Societies*, 2005, pg19: where he noted the importance of new societies having the cooperation of foreign sister societies

⁹² Okoroji T, *Copyright, Neighbouring Rights and the New Millionaires*, 2008pg103

⁹³ <http://afro-ip.blogspot.co.ke/2011/07/collecting-royalties-in-nigeria.html> on 12Nov 2015

⁹⁴ Adewopo A, *Nigerian Copyright Systems Principles and Perspectives*, 2012, pg105

⁹⁵ Adewopo A, *Nigerian Copyright Systems Principles and Perspectives*, 2012, pg105

⁹⁶ Rotimi O, 'Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa', 2012, University of South Africa (UNISA), pg 27

⁹⁷ Rotimi O, 'Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa', 2012, University of South Africa (UNISA), pg 27

⁹⁸ Rotimi O, 'Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa', 2012, University of South Africa (UNISA), pg 27

2.2.3 Current law on Collective Management in Nigeria

The legislation on collective management organisations or CMOs or collecting societies is embodied in the Copyright Act of Nigeria⁹⁹ and under its subsidiary legislation, the Copyright (Collective Management Organisations) Regulations¹⁰⁰.

Starting with the Copyright Act, Section 39(8) provides for the definition of a collecting society as an organisation which has as its main object the collection and distribution of royalties and the granting of licences.¹⁰¹ Section 39(2)¹⁰² provides conditions that need to be fulfilled by a collecting society before it can be approved for registration. Firstly, it must be a company limited by guarantee. Secondly, it must be a non-profit making entity.

Thirdly, it must comply with the provisions of the Act and any regulation made by the Commission. Fourthly, its principal objectives must be the collection and distribution of royalties. Lastly, it must represent a substantial number of copyright owners.

Another provision on CMOs under the Act under section 39(4) is that a body cannot perform as a collecting society without the approval of the Commission. Section 39(5) states that if a body operates as a collecting society without the Commission's approval, it shall be guilty of an offence that attracts a fine of N1, 000 or imprisonment for a term not exceeding 6 months or both.

Another relevant provision under the Act is Section 40. Section 40(1) provides that there shall be a levy on any **material** used or capable of being used to infringe copyright in a work. Further, Section 40(5) defines "material" as including any object, equipment, machine, contrivances or any other device used or capable of being used to infringe copyright in a work. Additionally, Section 40(2) provides that the levy payable is determined by the Minister. Section 40(3) provides that the levy payable on use of copyrighted work shall be paid into the fund of the Commission, which then disburses it amongst the collecting societies. Lastly, Section 40(4) provides that the Minister shall have power to exempt any class of materials from the payment of levy.

I shall now look at the Copyright (Collective Management Organisations) Regulations 2007 in Nigeria whose provisions are quite extensive. Regulation 8 talks about application by a body to become a collecting society: the applicant must apply in the prescribed form and pay the application fees.

⁹⁹ Cap 28, Laws of the Federation of Nigeria, 2004

¹⁰⁰ Cap 28, Laws of the Federation of Nigeria, 2007

¹⁰¹ Section 39(8), The Nigeria Copyright Act Cap 28, The Laws of the Federation of Nigeria, 2004

¹⁰² Section 39(2), The Nigeria Copyright Act Cap 28, The Laws of the Federation of Nigeria, 2004

In addition to the above provision, Regulation 1 states that any body or company applying for licence to operate as a CMO must submit to the Commission certain documents. The applicant must submit a certificate of registration in respect of the company issued under the Companies and Allied Matters Act, the Memorandum of Association of the Company, the Articles of Association of the company and a statement indicating the class of right or category of right owners in which the society owns rights or intends to represent. The applicant must also submit a membership list of not less than 100 right owners representing the class(es) of right to which the company is seeking a licence in order to operate as a Collective Management Organisation.

Additionally, this list must contain the signed consent of such persons to belong to the Organisation. Other documents that the applicant must submit are the membership agreement used by the organisation and evidence of payment of the prescribed application fee. Lastly, the applicant must submit the undertakings by at least 5 (five) Directors including the Chairman of the Company that the Company shall comply with provisions of the Copyright Act and these Regulations in respect of the operations of the Organisation, as well as any other documents that the Commission shall deem necessary.

Regulation 2 provides that a licence to operate as a collective management organization is valid for three years and renewable every two years. This regulation also encourages that applications for renewal be made anytime within six months before the expiration of the license. Regarding renewal, Regulation 3 provides that renewal of a license is subject to the discretion of the Commission.

Regulation 9 provides that a collecting society shall keep proper account reports and books. Regulation 7 states that a general report of activities and an annual audited financial report should be prepared and submitted to the Commission not later than the 1st day of July in each year. Every meeting of the general assembly and the governing board of the society is to be entered in a special register and a certified copy of same needs to be submitted to the Commission when required under Regulation 8.

Regulation 11 provides for the establishment of a holding account to hold any share of the distributable amount which cannot be allocated or distributed. At the expiration of the holding period, the undistributed amount falls into the general revenue of the CMO. Another provision under Regulation 12 is that CMO's may withhold not more than 30% of the total royalties and fees collected, and that these funds are to cover the administrative costs of the society.

Under Regulation 15, a CMO must distribute the royalties in a fair and equitable manner which must be approved by its members. Regulation 13 mandates the collective management organizations to make available to users their complete repertoire of works with respect to which it is representing the right owners and to draw up tariffs for usage of copyright works administered by them.

It is clear that Nigeria has more extensive legislation on collective management organisations than Kenya; it is more specific and stringent. Some writers however are of the opinion that the Nigerian legal provisions on the regulation and administration of CMOs is stringent for it limits the actions of collecting societies¹⁰³.

The legal framework of Nigeria on collective management being robust and comprehensive, especially in comparison to Kenyan law, has not been without challenges in its implementation. The key areas of concern when it comes to implementation have been the prerequisite approval of the Commission for a body to function as a collecting society or CMO; and the constitutionality of Section 17 and Section 39 of the Copyright Act 2004.

a) Prerequisite approval of the Commission

As mentioned earlier, MCSN had been operating as a collecting society without the Commission's approval since 1984. However, the 1999 amendments to the Act made it such that a collecting society had to attain permission from the Commission before it can institute a claim¹⁰⁴. The effect of this provision was that a body would neither be deemed to have legal ownership of copyright on behalf of its members nor would it be able to institute a claim on their behalf for copyright infringement if its application to the Commission for registration was denied¹⁰⁵. MCSN had applied to the NCC to be allowed to operate as a collecting society¹⁰⁶ but its application was denied because of its refusal to submit certain documents¹⁰⁷. The interpretation of this provision by the courts has been at the centre of the conflict on whether MCSN was a legitimate collecting society or not. MCSN had been the de facto collecting society for many years, having the largest repertoire of musical works in Nigeria¹⁰⁸. However, PMRS had been approved by NCC in compliance with the provision, making it the de jure collecting society as explained in Section 2.2.2.

¹⁰³ Rotimi O, 'Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa', 2012, University of South Africa (UNISA), pg 53

¹⁰⁴ Section 39(4), Nigerian Copyright Act 1992

¹⁰⁵ Rotimi O, 'Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa', 2012, University of South Africa (UNISA), pg66

¹⁰⁶ Okoroji J, Copyright, Neighboring rights and New Millionaires, 2008 pg 52

¹⁰⁷ Adewopo A, *Nigerian Copyright System: Principles and Perspectives*, 2012, pg103

¹⁰⁸ <http://afro-ip.blogspot.co.ke/2011/07/collecting-royalties-in-nigeria.html> on 12 Nov 2015

This state of affairs caused widespread confusion among copyright owners who did not know which collecting society to join, while other owners preferred MCSN¹⁰⁹. Several copyright users used this confusion in the industry as an excuse not to pay fees for using copyrighted work, saying they did not know which body to pay to¹¹⁰. The result of this was that copyright owners were not receiving the payment or compensation they deserved for their copyrighted musical works¹¹¹.

In *Musical Copyright Society Nigeria Ltd v Detail*¹¹², the plaintiff, MCSN, sought to sue the defendant for unauthorized use of copyrighted musical work. The defendant, however, raised a preliminary objection that the plaintiff did not have locus standi. The defendant presented that the plaintiff showed that it represented over 2 million copyright owners but had not been approved by the Commission to do so pursuant to Section 32B of the 1988 Act as amended in 1999 – its registration had not been approved. MCSN argued that it was suing as an owner, assignee and exclusive licensee of copyright under Section 15 of the 1988 Act as amended in 1999. The judge, Odunowo J, considered the characteristics of a collecting society being that it is a body that protect copyright owners by monitoring use of copyrighted work, negotiating licenses for use or such work and collecting & distributing royalties. The judge also considered the evidence before it which was the deed of assignments executed with members of MCSN which clearly showed the activities of MCSN. The judge held that these activities fell under the characteristics of a collecting society as mentioned above. In the judgment, the judge stated importantly that:

“it is for the foregoing reasons that I have come to the inexorable conclusion, after deep reflection, that the plaintiff is a collecting society. Not having been registered pursuant to Section 32B (4) of the Copyright Act, it cannot be permitted to operate as such body. To do so would be tantamount to subverting not only the letter but also the spirit of the copyright laws of this country”.

However, in *Musical Copyright Society Nigeria Ltd V Ade Okin Records (2007)*¹¹³, the court also held that MCSN’s non-approval by NCC did not cause it to lack locus standi. In this case, the plaintiff, MCSN, had brought a motion ex parte and had obtained an Anton Piller order against the defendant.

¹⁰⁹ Rotimi O, ‘Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa’, 2012, University of South Africa (UNISA), pg 54

¹¹⁰ Rotimi O, ‘Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa’, 2012, University of South Africa (UNISA), pg 54

¹¹¹ Rotimi O, ‘Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa’, 2012, University of South Africa (UNISA), pg 55

¹¹² Rotimi O, ‘Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa’, 2012, University of South Africa (UNISA), pg 68

¹¹³ Rotimi O, ‘Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa’, 2012, University of South Africa (UNISA), pg69

The defendant raised the objection that MCSN operated as a collecting society but without the required approval from NCC as stated in Section 32B (4) of the 1988 Act as amended in 1999. The defendant also added that the fact that MCSN did not disclose its status of non-approval to the court had the effect that the order was obtained by fraud. MCSN argued that it instituted the claim as an owner, assignee and exclusive licensee of copyright under Section 15 of the 1988 Act. The judge, Ukeje J, similarly considered the characteristics or attributes of a collecting society: that an organization representing a large number of copyright owners and carrying out duties on their behalf such as negotiating licenses and collecting & distributing royalties makes it a collecting society. This consideration, together with the judge's examination of the deed of assignments, led the judge to conclude MCSN was a collecting society. Having established that, the judge considered whether MCSN was in compliance with the statutory rule of having prior approval of the Commission to operate as a collecting society. The judge held that MCSN had not been approved by the NCC as a collecting society as required under Section 32B of the Act. Therefore, MCSN did not have *locus standi* to institute the claim.

However, on appeal, the court was of the opinion that the right to claim or sue was not limited to collecting societies. Therefore, it was sufficient for MCSN to sue merely as an owner or assignee of copyright. The judge opined that the interpretation of the provision under section 15 of the 1988 Act and Section 32B of the 1992 Copyright (Amendment) Act was that a collecting society is not the same as an owner, assignee or licensee of copyright, and that rights are conferred on owners, assignees and licensees. This meant that, according to the judge, rights are not the "exclusive reserve of collecting societies." The MCSN therefore, in this case, was deemed to have *locus standi*.

At this point the previous Court of Appeal decision established a very strong judicial backing for MCSN's operation as a collecting society and its ability to initiate a claim without the NCC's approval. This, however, changed in a later case decided in 2010. In *MCSN v Compact Disc Technologies* [2010]¹¹⁴, the court recognised the fact MCSN was the owner, assignee and exclusive licensee with the largest repertoire of musical works in Nigeria. This fact, the court stated, was not in dispute at all.

However, under Section 17 of the Copyright Act 2004, the court stated that it was required that a collecting society be registered following the Commission's approval, prior to instituting any proceedings on infringement. Since MCSN was not approved by NCC, it was found to not be in compliance with the law. It therefore, as concluded by the court, did not have *locus standi* to institute claims without NCC's approval.

¹¹⁴ <http://afro-ip.blogspot.co.ke/2011/07/collecting-royalties-in-nigeria.html> on 12 Nov 2015

However, in the most recent Court of Appeal case, Musical Copyright Society of Nigeria Limited V Nigerian Copyright Commission¹¹⁵, it was concluded that the lack of approval of MCSN by the Commission does not take away its legal right as owner or assignee of copyright or its right to institute a claim or an appeal, in this case. The appellant claimed that the respondent had contravened their fundamental right by harassment, detention and intimidation. The appellant showed evidence that the respondent had raided their offices/premises and taken documents and had also detained two of the appellant's officers in a room with little or no ventilation and no power supply. The appellant sought to a declaration that the respondent's conduct was unlawful.

The respondent in defending itself said that the appellant had infringed copyright by authorizing illegal reproduction of musical & film works, as reported to it by the International Federation of Phonographic Industries (IFPI). The respondent also argued that under the Copyright Act it had power to enter any premises without a warrant, inspect, seize documentation relating to copyright infringement, and generally exercise all powers, rights and privileges of a police officer. The judge opined that charging onto the premises of the appellant without a warrant and based only on a complaint is illegal and unconstitutional, and that no police officer has such a right. The court also held that the respondent failed to acknowledge and appreciate the reality and notion that an owner or assignee of copyright such as the MCSN can enforce property rights without being registered as a collecting society by the Commission. The judge reiterated that registration as a collecting society is not a prerequisite for the exercise and enjoyment of the rights of an owner or assignee of copyright. From the discussions above it is clear that there was no agreement on whether or not prior approval is necessary and how much power it conferred upon a collecting society.

This was, however, remedied by following the legal reform that gave birth to the Copyright regulations of 2007. These regulations provided intended that prior approval by the commission was necessary. Following that, the NCC requested that any organizations interested in becoming a CMO in light of music and sound recording apply. Applications would be subject the NCC's approval. This was to eliminate possible future confusion as had been experienced with MCSN, where it was a collecting society *de facto* but not *de jure* (by law). There were 3 applicants, MCSN, being one of them. The NCC chose the Copyright Society of Nigeria (COSON). COSON is currently the sole CMO in music copyright and has been operational for 6 years now.

The opinion of Nigerian musicians has been generally positive. A good example is Sunny Neji, popular Nigerian artiste, was quoted in Nigeria's Encomium Weekly saying:

¹¹⁵ (2011)FHC/L/CS/35

“...I resigned my membership of MCSN because I felt it was time we moved ahead and I felt the way forward was with COSON and COSON represents what we have been agitating for. It represents the future of every act as far as collective management is concerned....government deemed it fit to register only one body....COSON is the only legally registered and recognised CMO in the country.....” He further states that COSON has been more efficient in fee collection and royalty distribution than MCSN ever was: “...[COSON] they are like rent collectors. They help you collect your money.....it makes it easy for musicians to concentrate on music and shows. So to a large extent artistes are assured of getting what they have not been getting in the past.”¹¹⁶

COSON has been praised by musicians for being more reliable in its role of royalty collection and distribution. Additionally, COSON has filed more cases than MSCN against copyright infringers and has ongoing cases against Smooth FM, Cool FM, Sheraton Hotel, Bolingo Hotel among others.¹¹⁷ However, COSON still not satisfactorily efficient and still faces challenges in exercising its role. COSON is still criticised by artistes such as 2Face Idibia¹¹⁸ for not collecting enough fees and consequently paying insufficient royalties.¹¹⁹

COSON Chairman Tony Okoroji has countered such complaints saying that COSON is doing much better than MCSN and that many restaurants and radio stations (under the MCSN regime) played music for free).¹²⁰ He adds that a huge part of the challenge for COSON is that the average Nigerian does not understand or appreciate intellectual Property therefore it becomes hard to get copyright users to comply. He says that most Nigerians only understand and see value in property like land and motor vehicles. The insinuation here is that for collective management to work – especially in third world countries like Nigeria and Kenya where the concept is fairly new – CMOs, the government and any other relevant bodies need to go beyond legislation, implementation and further into educating the masses on IP. Therefore, as is evident from the discussion (in this Section and in the previous one), dissatisfaction with MCSN, as well as COSON , has been with failure to collect enough money from copyright users rather than embezzlement of funds meant to be paid as royalties as in the case of MCSK.

¹¹⁶ Encomium Weekly, 'Why I dumped MCSN for COSON ', 14th January 2016

¹¹⁷ Odunaike D, 'Public Performance Right in Copyright Works in Nigeria, Available at SSRN 2666099, 2015 www.papers.ssrn.com),pg78

¹¹⁸ <http://www.cosonng.com/> on 4th Oct2015:Other members of COSON include Sunny Neji, Flavour, Olamide, Waje, Coco Ice, Frankie D'Nero, Banky W, D'Prince, Sound Sultan, on 20th September 2015

¹¹⁹ Odunaike D, 'Public Performance Right in Copyright Works in Nigeria, ,Available at SSRN 2666099, 2015 – www.papers.ssrn.com),pg78

¹²⁰ Encomium Weekly,'5 years of COSON excites Tony Okoroji ', 14th April 2015: “...COSON has collected over N500 million for artistes last year...”

b) The Constitutionality of Section 17 and Section 39 of the Copyright Act 2004

The constitutionality of Section 17 and Section 39 of the Copyright Act has been challenged in Nigerian courts¹²¹. It has been argued that these provisions contravene the right to own property as guaranteed in the Nigerian Constitution¹²², the African Charter on Human and People's Rights and Universal Declaration of Human Rights. In *Musical Copyright Society of Nigeria Ltd (appellants) Vs. Nigerian Copyright Commission (respondent)*¹²³, the appellants sought various reliefs. Firstly, the appellant sought a declaration that Sections 17 and 34 of the Copyright Act are unconstitutional as they contravene the appellant's fundamental right to property embodied in Articles 40 and 44. Secondly, the appellant also sought a declaration that it has as owner, assignee and licensee of various copyright owners to enjoy the property in their works without said rights being infringed upon, frustrated or abrogated. Thirdly, the appellant sought a declaration that the Section 17 and 39 of the Copyright Act contravened the African Charter on Human and People's Rights Ratification and enforcement act. Fourthly, the appellant sought a declaration that it does not require a license from the respondent to enjoy its rights as owner, assignee and licensee of copyright.

In deciding the matter, the court considered Article 44 of the Constitution that prohibited compulsory acquisition of property and Article 14 of the African Charter that guarantees the right to property. These provisions were considered with the fact that the respondent had compulsorily the appellant's documents by raiding its offices and advised the public not to deal with the appellant because the appellant had not been registered by the respondent. The respondent's legal counsel argued that Section 17 and 39 did not restrict copyright owners from associating or assembling but gave the respondent the power to approve collecting societies making it an offense to operate without approval. Secondly, the legal counsel raised Article 45 of the Constitution on the restriction on human rights. Thirdly, the case of *Medical and Health Workers Union of Nigeria V Honorable Minister of Labour and Productivity*¹²⁴ was used in the respondent's defense, where it was held that Section 3 and Section 5 of the Trade Union Act, which provide conditions that a body has to fulfil in order to be registered as a trade union, were not inconsistent with the 1999 Constitution. Fourthly, it was argued that the grund-norm was the Constitution and not the African Charter. Therefore, the African Charter could not grant rights beyond what the Constitution provided.

¹²¹ Rotimi O, 'Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa', 2012, University of South Africa (UNISA), pg 87

¹²² Cap C.23 Laws of the Federation of Nigeria 2004

¹²³ (2009) FHC/L/CS/478

¹²⁴ (2005) 17 NWLR PT.953

In determining the case, the judge raised the question: “Does the requirement to obtain a license from the respondent to operate amounts to compulsory acquisition of property or right?” The judge was of the view that the requirement that a body is required to comply with certain conditions before being allowed to exercise its rights does **not** amount to compulsory acquisition of that right or property. The fact that MCSN was required to be approved before carrying out its business as a collecting society did not amount to compulsory acquisition of the appellant’s rights. Therefore, no right of the appellant had been breached guaranteed under Article 44 of the Constitution.

From the discussion, it is clear that: (i) Nigeria has a comprehensive and robust legal regime on CMOs (ii) the problems facing the MCSN, later replaced by COSON, have been to do with its legislation regarding its legal capacity to operate. This can be contrasted with the problems with MCSN to do with the misuse or embezzlement of funds meant to be directed towards payment to musicians as compensation for use of their works by copyright users. Given the above facts, Kenya can learn a lot from the legal regime of Nigeria on collective management organizations.

Having explained the legislative framework of Nigeria on collective management organisations, I shall proceed to compared it to that of Kenya in the next section. The purpose of this is to pick lessons from the Nigerian laws in order to help reform Kenyan law on CMOs.

2.3 Comparison between Kenyan and Nigerian law

The inadequacy of Kenyan legislation contributes to the abuse of the role of collection and distribution of royalties by MCSK as well as mismanagement of funds that goes unchecked, a view supported by KECOBO officials¹²⁵. The acting chief executive officer at the time (January 2016), Mr. Sigei, propounded that law on CMO supervision have several gaps which need to be addressed. He added that as Kenya should be on the path on the path to reform these laws and that the Board encourages musicians to launch their complaints and concerns using the Board’s complaint procedure on the Board’s website (www.copyright.co.ke).¹²⁶

¹²⁵ The Daily Nation, Legal Reforms required to bridge gaps in supervision of artistes’ umbrella groups,26th January 2016

¹²⁶ The Daily Nation, Legal Reforms required to bridge gaps in supervision of artistes’ umbrella groups,26th January 2016

The Kenya Copyright Board executive director, Ms. Marsella Ouma, is also of the view that MCSK desperately need to come up with a sound financial management structure to help it dig it out the hole of perpetual fund mismanagement¹²⁷.

In fact, it is well-known that musicians have been in conflict with CMOs like MCSK for payment of insufficient royalties for years¹²⁸. Claims have even been launched against MCSK under allegations of fund misappropriation. Most recently, in *MCSK v Chief Magistrate Inspector General*¹²⁹, MCSK sought to stay orders issued by the Magistrate's court freezing all the bank accounts of MCSK following a request by the Serious Crimes Unit under the Directorate of Criminal Investigation (DCI). DCI requested that MCSK's accounts be frozen as it investigates complaints by members in regard to alleged misappropriation and theft of funds.¹³⁰ I shall point out the shortcomings of Kenya provisions/ law by comparing it with Nigerian law, and show the effect such shortcomings has had on collective management of copyright in music in Kenya.

The first provision in Kenya law that I shall discuss concerns the filing of annual reports and audited accounts by collecting societies of CMOs. Under Nigerian law, a CMO is required to submit an annual report of its activities and an annual audited financial report¹³¹. Kenyan law has the same provision under Section 47 (as shown in Section 2.1). However, Nigerian law differs in that it prohibits a CMO from withholding more than 30% of the total fees it collects, and requires that such funds may only be directed towards administrative costs only¹³². Kenya has no such provision. From this comparison, it is clear that the Kenyan provision on filing of annual report and audits is inadequate because they still give leeway for fund misappropriation by CMOs.

The law in Kenya states the documents that should be submitted for financial supervision by KECOBO, which is important but inadequate. It offers no real safeguard or protection of royalty funds. In fact, MCSK's license was almost revoked by KECOBO in 2011 due to its incessant failure to pay musicians adequately, but the revocation was stopped by MCSK's application to a court to prevent it¹³³. MCSK in 2014 collected sh310 million of which Sh141 million was dispersed to the artistes¹³⁴. This means that 55% was withheld and spent by the society.

¹²⁷ Business Daily, Music society hits another sour note with watchdog over royalty payments, Mutegi M & Okuttah M, 27th February 2012

¹²⁸ The Daily Nation, Why Kenyan artistes are so angry, 26th September 2015

¹²⁹ 2015[eKLR]

¹³⁰ <https://ipkenya.wordpress.com/category/music-copright-society-of-kenya> on 4th October 2015

¹³¹ Regulation 7, the Copyright (Collective management Organisations) Regulations, 2007

¹³² Regulation 12, the Copyright (Collective management Organisations) Regulations, 2007

¹³³ Business Daily Africa, Mutegi M and Okuttah M, Music society hits another sour note with watchdog over royalty payments, 27th February 2012.

¹³⁴ The Daily Nation, Muchiri J, "MCSK Vs Artistes: Will these two ever see eye to eye?" November 1, 2014

In 2011, a similar situation was seen where MCSK collected a total of sh217 million, sh152 was geared towards expenses, leaving only 29% to be channeled towards paying royalties to musicians¹³⁵. It is therefore clear that the law regulating CMOs provides for the submission of financial reports to KECBO but offers no real safeguards to ensure that royalty funds are not squandered. The spending of collected licensing funds should be monitored through stringent rules, as is the case in Nigeria (as shown in Section 2.2). Knowing that the true power of the law will reside in its implementation, the first step, however, will be to ensure that the laws are robust and strict.

Furthermore, there is Regulation 16(3) in Kenyan law that seeks to supplement Section 47 by giving an extensive list of what the annual financial report should contain (as discussed pointed out in Section 2.2). However, I shall focus on these 2 components: the total amount of royalties collected by the society, and the amount of money spent by the society on the administration of the society and for all its operations. This provision is important but bear no real constraints on how CMOs spend the funds they collect. Adoption the 30% rule on expenditure will offer checks and balance on the expenditure of CMOs, which will aid in preventing any recurrence of MCSK's misappropriation. This rule seeks to reiterate the role of CMOs which is that: "...they are essentially appointees of copyright owners who exist to collect reproduction fee on behalf of copyright owners"¹³⁶.

The second provision I shall discuss is on collection of levy in both Nigeria and Kenya. Under Nigerian law, CMOs are required to pay the funds collected into the fund of NCC. The Commission then disperses the various CMOs, based on the members that each CMO has and the various rights they are protected for¹³⁷. The NCC is enabled to distribute funds in a fair and equitable way given that Section 34(3) (e) of the Act allows it to keep an effective data bank on authors and their works or rights. Kenya the similar provision under Section 5(f) of the Copyright Act allowing KECOBO to track the authors or copyright owners belonging to CMOs and their protected works or rights. However, there is no provision giving KECOBO extensive supervision over CMO funds. KECOBO has a supervisory role over MCSK¹³⁸. However, the laws should confer specific powers & control measures that KECOBO can exercise over MCSK expenditure or financial activities.

¹³⁵ Business Daily, Music society hits another sour note with watchdog over royalty payment, 27th February 2012

¹³⁶ Otike J, Copyright: The Challenges posed by Reproduction Rights Organizations (RROS) in the Provision of Information to Users with special reference to Kenya, Moi University, 2012, pg6

¹³⁷ Section 40(3), The Copyright Act of Nigeria, The Laws of Federation of Nigeria, 2004

¹³⁸ Section 5(b) provides that one of the Board's functions is to license and supervise the activities of collective management societies as provided for under this Act

This would help prevent the recurrent situation where musicians have complained to MCSK through various ways and media yet their grievances are not attended to. Several artistes, such as Elani¹³⁹ and Ringtone, who has taken part in protests along with other artistes,¹⁴⁰ have complained to MCSK that they are being paid meagre royalties. Elani have claimed that they were paid very little royalties in 2014 which they say was strange because it was their most successful year in their musical career with hits such as *Kukuu*, *Barua ya Dunia*, *Zuzu*, *Milele* and *Hapo Zamani*.¹⁴¹ Elani asserted that, regarding that year: “We realised that the cheque MCSK gave us which was worth sh 31,000, which was supposed to be the value of Elani music playing everywhere for the period of a year did not make sense to us.....There was something wrong.¹⁴²” Other artistes such as Visita have said that they deliberately do not join MCSK because they do not see the point of joining an organisation where issues raised are never resolved. Visita claimed that his fellow musicians who are members of MCSK are perpetually broke¹⁴³. MCSK CEO Maurice Okoth dismissed these allegations as defamation¹⁴⁴.

Apart from protests, musicians have complained across various media platforms that MCSK has paid them insufficient royalties. In an NTV news broadcast interview, on 9th May 2015, news anchor Larry Madowo mentioned while interviewing MCSK Director Njenga Mwalimu, that Kenyan artistes are accusing MCSK of unfairly paying out royalties and misappropriating the money belonging to members. He added that musicians say that there is a lot of impunity in MCSK, where officials handle funds without consulting members at all. Mr Mwalimu, however, countered this saying that MCSK has a proper system that ensures accountability. Additionally, Mr Madowo said that musicians were of the view that MCSK does not collect money from all over the country, and that musicians demanded that MCSK books should be audited by a competent international body such as Deloitte. Musicians also wanted to be involved in royalty collection.

Another example of a disillusioned artiste is Avril. She opines that MCSK has not improved its role of royalty collection and structure since its inception in 1983, according to an interview on *Upbeat*, a K24 music programme, on 17th May 2015 by Eugene Omuhamba.

¹³⁹ The Standard Newspaper, Kwamboka R, Elani's report not entirely truthful - MCSK CEO responds to allegations, 15th Jan 2016

¹⁴⁰ The Daily Nation, Muchiri J, “MCSK Vs Artistes: Will these two ever see eye to eye?” November 1, 2014

¹⁴¹ The Standard Newspaper, Kwamboka R, Elani's report not entirely truthful - MCSK CEO responds to allegations, on Jan 15th 2016

¹⁴² <https://cipitblog.wordpress.com/2016/01/22/music-money-and-middle-men-changing-dynamics-between-collecting-societies-rights-holders-and-the-public/> on 22nd January 2016

¹⁴³ The Daily Nation, Why Kenyan artistes are so angry, 26th September 2015

¹⁴⁴ The Standard Newspaper, Kwamboka R, Elani's report not entirely truthful - MCSK CEO responds to allegations, Jan 15th 2016

Other artistes such as Sauti Sol and Ringtone have similarly complained that MCSK does not pay them the royalties that they deserve¹⁴⁵. Jua Cali, a popular *genge* artiste, admitted in an interview on Mseto East Africa – a music programme aired on Citizen TV - that when Elani voiced its woes amount MCSK through a YouTube video (*Elani Speaks*) he was not surprised¹⁴⁶. He mentioned that receiving insufficient royalties had been something that musicians had complained about for a very long time. Furthermore, he added that as an artiste, when you work hard on your music, you have the right to ask why you are not being paid enough. Other musicians have also reacted to the video *Elani Speaks*, supporting the woes Elani has over MCSK. For instance, Rufftone, a gospel artiste, made a 17-minute video in response to Elani's video¹⁴⁷. In the video, Rufftone expresses his dismay at how MCSK, the body charged with the responsibility of looking after the welfare of Kenyan musicians, is paying artistes poorly. It would, therefore, help to give KECOBO the same powers over CMO funds as in the Nigerian law, or perhaps more similar powers or abilities to curb misuse of funds by CMOs like MCSK.

However, other persons have a different opinion that musicians are simply whining and angry, and that the reason they are not receiving enough royalties is their own fault¹⁴⁸. Musicians have been accused of not putting out enough songs and that is why they earn little money for their creative musical works. Artistes such as Daddy Owen have supported this argument in part saying that Kenyan artistes do not work hard enough. Daddy Owen compared Kenyan musicians to Tanzanian musicians like Davido and Diamond release albums on the regular as well as performing at concerts & going on tour consistently to promote their music. He, however, stated that MCSK does pay insufficient royalties, but does not think that MCSK's failure is the only problem.

The view that musicians are partly, if not wholly responsible, for their poor payment has been supported by writers such as Larry Madowo. He terms the approach sued by musician in their craft as "casual"¹⁴⁹. Madowo points out that musicians have complained over MCSK failure to pay insufficient royalties and even held a press conference in 2015 to that effect, and rightly so. However, he compares Kenyan artistes to American artistes who take advantage of all opportunities to promote their work: websites for music downloads, social media, tours, free music samples. He uses the example of American musicians like Taylor Swift and Kanye west who are extremely aggressive in the promotion of their music, to the point where their music blows up on sites like iTunes and Spotify.

¹⁴⁵ <https://youtube.com/watch?v=MQGnwAxJwjQ> on 4th October 2015

¹⁴⁶ <https://youtube.com/watch?v=EacUC4QnA> Mseto East Africa YouTube Channel, on 14th May 2015

¹⁴⁷ <https://youtube.com/watch?v=/loAnkA9okjs> on 16th September 2015

¹⁴⁸ The Daily Nation, Why Kenyan artistes are so angry, 26th September 2015

¹⁴⁹ The Daily Nation, Madowo L, To succeed Kenyan artistes must get professional help, 11th May 2015

Using the example of online sources, Madowo says that when Kenyan musicians come on his show #Trend to promote a new track or album or music video, they submit them to the #Trend producers in person on a flash disc or a DVD – they do not make their work easily available online. He adds that local websites such as mdundo.com and waabeh.com try very hard to avail local music online but Kenyan musicians do not take full advantage of them. Most musicians, who come on the show, Madowo adds, do not even have lawyers, publicists, tour managers or nay professional talent mangers of any kind.

Whether or not, musicians are partly to blame for them being poorly paid, the MCSK's failure is still evident. The unreliability of MCSK in paying royalties has pushed many musicians to turn to Content Service Providers (CSPs) such as Cellulant Kenya Limited in order for the former to receive more royalties for their music. Using the example of Cellulant, it creates agreements with rights holders whereby it agrees to pay them royalty of 10% of any ringtone that is downloaded by Cellulant's customers. MCSK officials did retaliate against Cellulant by raiding the premises of Cellulant, on December 16th 2008, accompanied police officers by on allegations that the CSP had breached the copyright of its members¹⁵⁰. Turning to CSPs appears as an attractive alternative to musicians when MCSK compensates them poorly, especially since the former pays a higher percentage of royalty. However, it is important to realize that this is not the best solution for musicians, and understanding the differences between CSPs and CMOs will help in realising this.

Firstly, CSPs are businesses which means that their aim and reason for existing is purely to make profit. CMOs are non-profit entities¹⁵¹ whose sole purpose is to operate on behalf and for the benefit of rights holders. Secondly, CSPs are authorized to deal in content pursuant to licenses obtained from rights holders which are by and large non-exclusive in nature. On the other hand, collecting societies like MCSK have in place exclusive assignments from rights holders, which means that MCSK is able to do all things on the rights holders' behalf including negotiating, suing or licensing users such as CSPs.

In *Cellulant Kenya Ltd v Music Copyright Society of Kenya Ltd*¹⁵², the High Court tried to make clear that CSPs and CMOs are different. The following paragraph illustrates this:

“It was apparent to the court that the plaintiff [Cellulant] was exploiting the individual music artists by taking advantage of their ignorance by dangling the carrot that it would pay them a higher percentage of royalty than that offered by the defendant [MCSK].

¹⁵⁰ <https://cipitblog.wordpress.com/2016/01/22/music-money-and-middle-men-changing-dynamics-between-collecting-societies-rights-holders-and-the-public/> on 22nd January 2016

¹⁵¹ Section 46(4)b, The Copyright Act, Cap 130 of 2001

¹⁵² [2009] eKLR

The plaintiff would rather deal with individual artists who have no mechanism of verifying whether any of their artistic output had been sold as ring tones to the members of public, than deal with the defendant which has the technical knowhow and expertise to exact the royalties due to its members from the plaintiff.”

The third provision I shall discuss concerns royalty distribution. Under Nigerian law, regulation 15 of provides that a CMO must distribute the royalties in a fair and equitable manner which must be approved by its members. The members act as a kind of watchdog, in addition to the NCC. Kenyan law lacks such a provision. Adoption of this provision in Kenyan law would help Kenyan musicians, together with KECOBO, prevent unfair payment before it happens. This will help put an end to the years of musicians complaining that the royalties received are insufficient (as seen in the various examples above) or do not reflect the impact their works have had on the consumers. The example of Elani being paid a mere sh 13,000 for several hits song in 2014 comes to mind¹⁵³. This will save them from perhaps going into protests or litigation on which they will incur costs for legal advice and representation. Additionally, the fact that the musicians will be involved in the royalty distribution process acts as a deterrent to any ill-meaning officials or personnel who intend to steal or embezzle funds. Accountability on expenditure will also be enhanced and push the MCSK to coin and strictly implement a sound financial management scheme.

The fourth provision is on the appointment of an auditor by the CMO. Section 46(4) (e) of the Kenyan Copyright Act provides that the accounts of a collective management organisation should be audited by an independent external auditor elected by the CMO. This provision give leeway for a CMO to elect auditors who can be bribed to keep mum if funds are being mismanaged or embezzled. It defeats the purpose of objective supervision. Nigerian law under Regulation 7 of the Copyright regulations required the auditing of every CMO’s accounts and books but does not state who shall choose or appoint the auditor.

The Nigerian provision puts the interests of the members or copyright owners first. It dovetails the idea, as mentioned before, that CMOs exist primarily serve copyright owners. CMOs should not make it their aim to make profit with the royalties belonging to musicians¹⁵⁴.

The relevance of making the above comparisons is to show that Nigerian law on collective management is very detailed and specific, which is a characteristic that is not reflected in Kenyan law on collective management (as seen in the previous section. This partly contributes to the laxity and inefficiency of MCSK in its role of collection of licensing fees and distribution of royalties.

¹⁵³ <https://cipitblog.wordpress.com/2016/01/22/music-money-and-middle-men-changing-dynamics-between-collecting-societies-rights-holders-and-the-public/> on 22nd January 2016

¹⁵⁴ Otike J, Copyright: The Challenges posed by Reproduction Rights Organizations (RROS) in the Provision of Information to Users with special reference to Kenya, Moi University, 2012, pg7

CHAPTER 3: THEORETICAL FRAMEWORK

3.1 Hohfeldian theory on property

Hohfeld expounded on the interests in property through the terms *claim rights* and *privilege rights*¹⁵⁵. Claim rights refer to rights that impose a duty on the opposite party to respect that right through action or otherwise, while privilege rights have no corresponding rights attached to them¹⁵⁶. In his explanation of claim rights, Hohfeld discussed what he terms as *jural correlatives*¹⁵⁷. *Correlatives*, he posited, indicates that there exists interests that exists on opposite sides of a pair of persons in a legal relationship¹⁵⁸. *Jural correlatives* which explained the effect of *right, privilege, power and immunity* that one has on a given property¹⁵⁹.

When one has a right over property, then there is a correlating duty on the other party to respect that property as denoted by the legal relationship or agreement¹⁶⁰. When one has a privilege, then there is a correlating lack of right on the other party¹⁶¹. Where one has a power, it exists with respect to someone who has a liability¹⁶². Where one has an immunity, it exists with respect to someone who has a disability¹⁶³.

Kenyan musicians' legal ownership in musical works or copyright is recognised under Section 22 of the Copyright Act. Copyright is protected for a duration of 50 years from the end of the year it was first published under Section 25 (2) under the Copyright Act. Every person right to property is protected under Article 46 of the Constitution of Kenya and Article 17 of the Universal Declaration of Human Rights (UDHR).

This guarantee on the protection of property extends to the compensation to Kenyan musicians for the use or public performance of their musical works. CMOs such as MCSK have a correlating or corresponding duty to protect the right of compensation of musicians for use of their copyrighted works through collection and payment of royalties.

¹⁵⁵ Hohfeld W, *Fundamental Legal Conceptions Applied in Judicial Reasoning*, Yale University Press, 1946,pg167

¹⁵⁶ Hohfeld W, *Fundamental Legal Conceptions Applied in Judicial Reasoning*, Yale University Press, 1946,pg167

¹⁵⁷ Cook W, *Hohfeld's Contribution to the Science of Law*, Yale Law Journal, 1918, pg 721

¹⁵⁸ Cook W, *Hohfeld's Contribution to the Science of Law*, Yale Law Journal, 1918, pg 721

¹⁵⁹ Cook W, *Hohfeld's Contribution to the Science of Law*, Yale Law Journal, 1918, pg 722

¹⁶⁰ Florito L and Vatierno M, *Beyond Legal Relations: Wesley Hohfeld's Influence on American Institutionalism*, *Journal of Economic Issues*,2011, pg 199

¹⁶¹ Hohfeld W, *Fundamental Legal Conceptions Applied in Judicial Reasoning*, Yale University Press, 1946,pg168

¹⁶² Florito L and Vatierno M, *Beyond Legal Relations: Wesley Hohfeld's Influence on American Institutionalism*, *Journal of Economic Issues*,2011, pg 199

¹⁶³ Florito L and Vatierno M, *Beyond Legal Relations: Wesley Hohfeld's Influence on American Institutionalism*, *Journal of Economic Issues*,2011, pg 200

Given that musicians have historically been unfairly or inadequately compensated (as seen in the discussion in Chapter 2), MCSK can be said to have breached its correlating duty. The legal reforms proposed under this paper aim to ensure strict checks on CMOs to curb the breach of their duty of royalty collection and distribution.

3.2 Labour Theory

Locke propounds that God gave the earth to mankind in common and that each individual has 'property' in his/her own 'person' and the 'labour' of his/her body and the 'work' of his/her hands. In his *Two Treatises of Government* (1690) Locke says:

Whatsoever, then, he removes out of the state that nature has provided and left it in, he has mixed his labour with it, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state Nature placed it in, it has by this labour something annexed to it that excludes the common right of other men¹⁶⁴.

In short, Locke justified private property ownership based on the premise that every individual should own what he/she produces from the commons¹⁶⁵. In other words, Locke means that a person acquires a natural right to property if one has spent effort or labour to create it out of a society's common property.

Adam Smith supports the notion of the acquisition of property through one's labour. He posits that the entitlement of a man to his property arises from his labour poured into it and it is the original foundation a man's title to property¹⁶⁶.

The Labour theory comes out in under the Kenyan Copyright Act, 2001 which states that copyright subsists in a literary, musical and artistic work if "sufficient effort has been expended on making the work to give it an original character" and "the work has been written down, recorded or otherwise reduced to material form." This implies that the Kenyan copyright law legislates to protect IP that has been laboured for or worked for. Kenyan musicians expend a lot of labour in creating their musical creations – coming up with lyrics, composing a melody, performing and marketing their music.

It is therefore imperative that copyright law, which includes legislation on collective management of copyright, is strengthened. Kenyan musicians have, for years, been insufficiently paid or rewarded for the reproduction or public performance of their musical works by copyright users, as discussed in Chapter 2.

¹⁶⁴ Locke J, *The Second Treatise of Civil Government*, Chapter IX, 1690, pg 128

¹⁶⁵ Wekesa M, *An Overview of the Intellectual Property Rights (IPRs) Regime in Kenya*, Konrad Adenauer Stiftung, 2009, pg2

¹⁶⁶ Smith A, *The Wealth of Nations*, Book I, Chapter X, Part II, 1776

Given that property subsists in their music as a result of their effort or labour, their unfair compensation is an infringement on their natural and legal right to that property. Legal reform on the legislation collective management organisations in Kenya is therefore required to strengthen the supervision of CMOs in their financial operations.

CHAPTER 4: FINDINGS

In this section, I shall point out the finding made following comparative study on Kenyan and Nigerian law on collective management organisations:

1. The provision in Kenyan law concerning the filing of annual reports and audited accounts by collective management organizations is insufficient. Under Kenyan law, a CMO is required to submit an annual report of its activities and an annual audited financial report¹⁶⁷. Regulation 16(3) in Kenyan law that seeks to supplement Section 47 by giving an extensive list of what the annual financial report should contain such as: a comprehensive report of all the society's activities during the year, a list of all its members as at the end of the financial year and the total amount of royalties collected by the society, the amount of royalties paid to each member, the amount of money spent by the society on the administration of the society and for all its operations among others.

Additionally, it provides that annual financial reports and audits must be submitted to the Board three months at the end of each financial year. Nigerian law has the same provision under Regulation 7, the Copyright (Collective Management Organizations) Regulations, 2007.

However, Nigerian law differs in that it prohibits a CMO from withholding more than 30% of the total fees it collects, and requires that such funds may only be directed towards administrative costs only¹⁶⁸. Kenya has no such provision. The law in Kenya states the documents that should be submitted for financial supervision by KECOBO, which is important but inadequate. It offers no real supervision over financial activities or expenditure of CMOs.

2. Kenyan law on collection of levy is inadequate. Under Nigerian law, CMOs are required to pay the funds collected into the fund of NCC Section 40(3) of the Copyright Act of Nigeria. The Commission then disperses the various CMOs, based on the members that each CMO has and the various rights they are protected for as stated under the same section. Read with Section 34(3) (e) of the Act, the NCC is enabled to distribute funds in a fair and equitable way as it is empowered by this section to keep an effective data bank on authors and their works or rights. Kenyan law does not provide that KECOBO shall distribute funds to all CMOs.

This provision may be good for Kenya to adopt as it may aid in preventing mismanagement of funds or reckless expenditure by MCSK as discussed before.

¹⁶⁷ Section 47, the Copyright Act of Kenya, Cap 130 of the Laws of Kenya

¹⁶⁸ Regulation 12, the Copyright (Collective Management Organisations) Regulations, 2007

Such a provision, if adopted, when read with under Section 5(f) of the Copyright Act of Kenya that allows KECOBO to maintain an effective data bank on authors and their works, will aid in fair distribution of royalties. It will also empower KECOBO's supervisory role on CMOs under Section 5 of the Copyright Act.

3. Kenyan law on royalty distribution- Under Nigerian law, regulation 15 of provides that a CMO must distribute the royalties in a fair and equitable manner which must be approved by its members. Kenyan law lacks such a provision. Emulating this Nigerian provision would make it compulsory for MCSK to seek the approval of all members on its royalty payment scheme. Given that the members will know which rights they have assigned to MCSK as well as the tariff rates, it will be difficult for artistes to be unfairly compensated.
4. Kenya's provision on the appointment of an auditor by the CMO- Section 46(4) (e) of the Kenyan Copyright Act provides that the accounts of a collective management organization should be audited by an independent external auditor elected by the CMO. This provision give leeway for a CMO to elect auditors who can be bribed to keep mum if funds are being mismanaged or embezzled. It defeats the purpose of objective supervision. Nigerian law under Regulation 7 of the Copyright regulations required the auditing of every CMO's accounts and books but does not state who shall choose or appoint the auditor.
5. Nigeria has a more robust legal regime in collective management, but this does not always result in smooth implementation. Collective management in Nigeria had been riddled with confusion and conflict for years regarding whether MCSN's non-approval by NCC made it unable to function as a legitimate collecting society and regarding the constitutionality of Sections 17 & 39 of the Copyright Act of 2004, as discussed in Section 2.2. Even the institution & registration of the new and more efficient COSON following the legal reforms leading up to the 2007 Copyright Regulations, there are still a few challenges in collective management of copyright in music. Tony Okoboji, COSON Chairman, claims that the biggest problem for COSON is non-compliance on the part of copyright owners due to their lack of understanding & appreciation of IP¹⁶⁹. He further explains that the average Nigerian does not see the value of IP as he does in land, vehicles and other tangible property. He does not understand the concept of 'owing a song'.

¹⁶⁹ Encomium Weekly, '5 years of COSON excites Tony Okoroji', 14th April 2015: "...COSON has collected over N500 million for artistes last year..."

This shows that it is difficult to enforce what the masses do not understand. The lesson here is that for collective management to be effective the law and implementation is important, but so is educating & enlightening the public. This is reiterated by Rotimi who admits that though Nigeria's law is rich the real challenge does not lie with legislating ".....but with those saddled with the responsibility of implementing and exercising the powers conferred by the law."¹⁷⁰ Legislative reform, where the legal framework is weak, is however the starting point in making collective management of copyright in music efficient, transparent and reliable.

¹⁷⁰ Rotimi O, 'Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa', 2012, University of South Africa (UNISA), pg 4

CHAPTER 5: RECOMMENDATIONS

This paper suggests the following reforms to the Kenyan laws on collective management organisations:

1. Section 47 of the Copyright Act and Regulation 16(3) of the Copyright Regulations should be amended to include Nigeria's 30% rule on expenditure of collective management organisations under Regulation 12 of the Copyright (Collective Management Organisations) Regulations of Nigeria. The mentioned Kenyan provisions should include a requirement that all CMOs in Kenya must not spend more than 30% of the total funds they collect. Additionally, the requirement that such funds should only be directed towards administrative costs should be emulated.
2. Section 5 of the Copyright Act on the Board functions should be amended to emulate Section 40(3) of the copyright Act of Nigeria. It should confer upon KECOBO the power to distribute royalty funds, which should first be paid to its account(s) by CMOs.
3. A new provision should be introduced to the Copyright Act and Copyright Regulations to emulate Regulation 15 of the Copyright Act of Nigeria. The laws of Kenya should make it compulsory for CMOs to seek the approval of members on the royalty distribution scheme before payment or royalty owed to members.
4. A new provision should be introduced to the Copyright Act and Copyright that all CMOs are required to make available to the members as well as the general public the financial statements at the end of each financial year. They must also be regularly updated. This provision, if adopted alongside the recommendation no.3, would enhance accountability of CMOs to its members & KECOBO and responsible financial management.
5. Section 46 of the Copyright Act should be amended to include a provision that all CMOs must have their accounts audited by an external, independent auditor chosen by KECOBO. The auditor must not be chosen by the society itself as is currently stated in the Act under Section 46(4) (e).
6. It may be prudent to consider introducing a new provision that requires consolidation of CMOs in Kenya that operate within the same industry. This will ease matters of accountability & supervision than when bodies operate separately where supervision and control is not strict. The collective management of rights in the music industry is handled by Music Copyright Society of Kenya (MCSK), Kenya Association of Music Producers (KAMP) and the Performers Rights Society of Kenya (PRiSK) which generated about sh 321,322,327 in combined funds collected on behalf of authors, producers and performers respectively¹⁷¹.

¹⁷¹ <https://cipitblog.wordpress.com/?s=MCSK&search=Go> on 16th Apr 2015

However, as demonstrated above, despite there being a lot of money, artistes laws get a raw deal. Consolidation has a high likelihood of minimizing (if not eliminating) fund misuse & theft, with management under one body and close supervision.

There should, to back this consolidation, a provision in Kenyan law on CMOs that provides for this amalgamation, especially where there are bodies in the same industry dealing in similar or related works. Therefore this blogger submits that among the robust legislative measures required to regulate CMOs should be a provision for the amalgamation of CMOs operating in the same industry, such as is the case of music.

Conclusion

The Kenyan legislation on collective management organisations, as seen from the discussion, lacks sufficient checks that aid in controlling and supervising the financial activities of CMOs in comparison to its Nigerian counterparts. The current status of the Kenyan laws offers no real constraints on expenditure of CMOs. As mentioned before, the Kenyan Copyright Act and Copyright Regulations require CMOs to submit a financial report of their operations/expenses and the amount of total fees collected. The laws also compel CMOs to have their books audited and submit them to the Board. These provisions are important, however, they neither prevent the MCSK's management from spending funds in the manner in which they want nor does they deter ill-meaning officials from turning MCSK profit-making entity.

A collective management organisation has as one of its key attributes that it is a non-profit-making entity under Section 46 of the Kenyan Copyright Act. This is reason enough to warrant the strict regulation of and control over MCSK's financial activities. Another important chief attribute of a CMO is that its principal objective is the collection and distribution of royalties under Section 46(4) (d) of the Kenyan Copyright Act.

The notion implied from these two provisions is that CMOs such as are essentially appointees of copyright owners who exist to collect reproduction fee on behalf of copyright owners¹⁷². This justifies conferring more powers on KECOBO to control expenditure and the distribution of royalty funds by CMOs as suggested in the previous section. Additionally, allowing KECOBO to choose an independent external auditor to audit the accounts of CMOs like MCSK will further reinforce the curb the abuse of CMOs in their role of compensating copyright owners for public performance of their music. It is therefore this paper's recommendation that the Nigerian legal framework be emulated to the extent to which it improves Kenya's laws on CMOs, as suggested in the previous section.

¹⁷² Otike J, Copyright: The Challenges posed by Reproduction Rights Organizations (RROS) in the Provision of Information to Users with special reference to Kenya, Moi University, 2012, pg6

It is, however, important to point out that this paper neither suggests that the Nigerian legal framework perfect nor that a robust local laws will ensure a problem-free collective management system. Despite Nigeria's robust laws on CMOs, COSON still experiences challenges in enforcing collective management of copyright music. This challenge is due to non-compliance by copyright users who do not understand the concept of "owing a song", different from MCSK's situation of fund mismanagement and embezzlement.

Nigeria has also had other struggles historically, as explained in Section 2.2. One of them being the legitimacy of MCSN in acting a *de facto* collecting society without the prior approval of the NCC. The other being the conflict on the constitutionality of Sections 17 and 34 of the Copyright Act of Nigeria (2004). Ultimately, the improvement of collective management of copyright in music in Kenya lies in implementation. However, the first step is legal reform – where the laws are inadequate – to spearhead this improvement.

CHAPTER 6: BIBLIOGRAPHY

Statutes or legislation

The Constitution, Revised Edition 2010, Published by the National Council for Law Reporting with the Authority of the Attorney General

The Copyright Act of 2001, Revised Edition 2012 [2010], Published by the National Council for Law Reporting with the Authority of the Attorney-General

The Copyright Act of Nigeria, 1970

The Copyright Act of Nigeria (1992)

The Copyright (Collective Management Organisations) Regulations (2007)

Articles

Rotimi O, 'Operation and Regulation of Copyright Collective Administration in Nigeria: Important Lessons for Africa', 2012, University of South Africa (UNISA)

Adewopo A, Nigerian Copyright Systems Principles and Perspectives, 2012

Okoroji J, Copyright, Neighboring rights and New Millionaires, 2008

Uchtenhagen, The Setting-up of New Copyright Societies, 2005

Otiike J, Copyright: The Challenges posed by Reproduction Rights Organizations (RROS) in the Provision of Information to Users with special reference to Kenya, Moi University, 2012

Kameri-Mbote P, Intellectual property protection in Africa: An assessment of the status of laws, research and policy analysis on intellectual property rights in Kenya, IELRC, 2005

Opati L, Intellectual Property Rights in Health-Impact on Access to Drugs, 2009

Kameri-Mbote P, Property Rights and Biodiversity Management in Kenya, African Centre for Technology Studies Press, 2002

E Nyukuri, Intellectual Property Protection in Africa: Status of Laws, Research, and Policy Analysis in Ghana, Kenya, Nigeria, South Africa, and Uganda, ACTS Press, 2006

Sihanya B, "Copyright teaching and research in Kenya," Konrad Adenauer Stiftung ,2009

Ouma M, Copyright and the music industry in Africa , The Journal of World Intellectual Property, 2004

Wekesa M, An Overview of the Intellectual Property Rights (IPRs) Regime in Kenya, Konrad Adenauer Stiftung,2009

Opati Intellectual Property Rights in Health-Impact on Access to Drugs,2009

Yen AC,Restoring the natural law: Copyright as labor and possession Ohio State Law Journal,1990

Smith A, The Wealth of Nations, Book I, Chapter X, Part II, 1776

Locke J,The Second Treatise of Civil Government, Chapter IX, 1690,pg 128

Cook W, Hohfeld's Contribution to the Science of Law, Yale Law Journal, 1918, pg 721

Florito L and Vatiero M, Beyond Legal Relations: Wesley Hohfeld's Influence on American Institutionalism, Journal of Economic Issues,2011

Hohfeld W, Fundamental Legal Conceptions Applied in Judicial Reasoning, Yale University Press, 1946

Nyariki D,The Economic Contribution of Copyright-Based Industries in Kenya,2009

Kretschmer M ,The future of collecting societies, 2004

Odunaike D,Public Performance Right in Copyright Works in Nigeria,Available at SSRN 2666099, 2015

International Treaties

World Intellectual Property Organization (The WIPO Convention)

Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)

Newspaper articles

The Daily Nation, Buzz Magazine, Muchiri J, "MCSK Vs Artistes: Will these two ever see eye to eye? " 1st November, 2014

The Daily Nation, Madowo L, "To succeed Kenyan artistes must get professional help", 11th May, 2015

The Daily Nation, "Why Kenyan artistes are so angry", 26th September 2015

Business Daily Africa, Mutegi M and Okuttah M, "Music society hits another sour note with watchdog over royalty payments", 27th February 2012

The Standard Newspaper, Kwamboka R, "Elani's report not entirely truthful - MCSK CEO responds to allegations", 15th January 2016

The Daily Nation, "Legal Reforms required to bridge gaps in supervision of artistes' umbrella groups," 26th January 2016

The Daily Nation, Ochieng' A, "Kenyan musicians sue Copyright bodies over royalties", 31st July 2015

The Star, Wabala D, "Kenya Copyright Board accuses Music Society of spending artistes' cash, 26th August 2015

Encomium Weekly, '5 years of COSON excites Tony Okoroji ', 14th April 2015

Encomium Weekly, 'Why I dumped MCSN for COSON ', 14th January 2016

Online resources

<https://cipitblog.wordpress.com/?s=MCSK&search=Go> Mwangi P, #World IP Day: A Recap from Kenya, 2015, on 3rd May 2015

<https://cipitblog.wordpress.com/?s=MCSK&search=Go> Nzomo V, Copyright (Amendment) Regulations 2015: Attorney General Hikes Registration and renewal fees, 2015, on 4th May 2015

<http://www.wipo.int/copyright/en/management>, " Collective Management of Copyright and Related Rights", on 12th February 2015

<http://afro-ip.blogspot.co.ke/2011/07/collecting-royalties-in-nigeria.html> on 12Nov 2015

<https://cipitblog.wordpress.com/2016/01/22/music-money-and-middle-men-changing-dynamics-between-collecting-societies-rights-holders-and-the-public/> on 22nd January 2016

<http://www.MCSK.or.ke/about.htm> on 24th April 2015

<https://ipkenya.wordpress.com/category/music-copyright-society-of-kenya> on 19th January 2016

<https://mpasho.co.ke/it-might-actually-be-true-MCSK-ceo-responds-to-claims-that-some-artists-were-not-paid-the-amount-of-money-they-deserve> on 24th June 2015

<https://ipkenya.wordpress.com/2015/11/17/high-court-upholds-freeze-of-collecting-societys-bank-accounts-ruling-in-MCSK-v-chief-magistrate-inspector-general/> on 5th January 2016

<http://www.copyright.go.ke/about-kecobo.html> last accessed 9th May 2015

<http://www.copyright.gov.ng/> last accessed on 14th September 2015

<http://www.cosonng.com/> last accessed on 20th September 2015

<http://buzznigeria.com/top-20-richest-musicians-in-nigeria-the-net-worth-of-no-1-will-shock-you/> on 20th October 2015

<http://www.bet.com/> on 6th November 2015

<http://buzznigeria.com/awards-won-2face/> on 19th December 2015

<https://youtube.com/watch?v=EacUC4OnA> Mseto East Africa YouTube Channel, on 14th May 2015

https://www.youtube.com/watch?v=O4X_yHpGwOo on 23rd August 2015

<https://youtube.com/watch?v=/loAnkA9okjs> on 16th September 2015

<http://www.businessdictionary.com/definition/administrative-cost.html> last accessed 8th July 2015