

COPYRIGHT AND THE NIGERIAN LIVE BAND CULTURE: FAIR DEALING,
INFRINGEMENT OR CULTURAL EXPRESSION?

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ABSTRACT

Copyright protection automatically covers every work once it is created, irrespective of the fixed medium of expression. for a work to be used by anyone other than the copyright owner, permission must first be obtained, if not, the user would be termed an infringer. The law of various jurisdictions also specifies certain acts that would not constitute an infringement of a copyrighted work when done, and these acts fall under what is known as fair dealing or fair use. in Nigeria, Culture is tantamount to identity. numerous ethnic groups find ways to express themselves culturally, and one of these ways is being entertained by live bands in public places. this study adopts a doctrinal research methodology, using statutes, judicial precedent and scholarly literature to analyze the legal complexities arising from the performance of musical works and sound recordings by live bands at public places, particularly the tension between cultural expression, fair use and copyright infringement. the study finds that while the performances of live bands in Nigeria serve significant cultural and social functions, there is limited clarity provided by existing copyright frameworks, thereby creating a legal grey area for performers and copyright owners. The study therefore highlights the need for a more culturally responsive interpretation of copyright exceptions in Nigeria.

Keywords: Copyright, Performance Rights, Collective Management Organization (CMO), Live Music, Nigeria

1.0 Introduction

It's early December, the harmattan fog disappearing behind the fierce glare of the afternoon sun. Inside an event hall, an elderly man is celebrating his 70th birthday, family and friends surrounding him as he moves on the dance floor, the voices of the live band his children hired urging him to dance more. The band sings songs of veteran artistes, and soon the elderly man begins to enjoy himself, wishing he was young enough to dance harder.

This scene is common to every Nigerian; bands, dick jockeys, home rentals, shop owners and comperes, make use of the music of artistes. Some even add their own beat, lyrics or arrange various songs together and then post it on social media to attract clients, get money and acquire fans, without the owner being aware of how far their music has travelled.

The same goes for church choirs and content creators. Nowadays, it's hard to ascertain who first produced a song or a video, because once released, everyone would jump on the train of its popularity to create an imitation of the original.

Gone are the days when infringement consisted of releasing the work before the owner does through the distribution of pirated copies, thereby causing loss. Now, infringement involves waiting till the work is released, then making copies of it in such a way that the owner does not get the proceeds of the copies and ends up still suffering a loss.

The copyright law of Nigeria is more often than not sidelined in informal, cultural and entertainment settings. It could even be deduced that most of these performers do not know or care enough to find out the laws pertaining to copyright and their use of copyrighted works in Nigeria. This paper examines the legal grey area between the use of copyrighted works and copyright infringement, by analyzing the ways through which works can be used, such as the doctrine of fair dealing, public domain or obtaining a license, while still maintaining the utmost level of cultural expression.

2.0 Literature Review

Scholarly discourse on copyright law has long emphasized the protection of creative works through exclusive works granted to authors and creators.¹ In Nigeria, the extant copyright is the Copyright Act, 2022² ('the Act') which provides the statutory framework for promoting musical, literary and artistic works, and delineates the rights of copyright owners, including reproduction, adaption, public performance, and distribution.³ Existing studies primarily focus on the legal definitions of copyright infringement,⁴ fair dealing⁵ and public

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¹ WIPO, 'Understanding Copyright and Related Rights (WIPO Publication No. 909, 2016) 4 https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf&ved=2ahUKEwivptLu6a-SAxV3QEEAHYbGM0gQFnoECB4QAQ&usg=AOvVaw06MI7yA6xoBWqrkzjcJPkq accessed 29 January 2026

² Danol Partners, 'Copyright Protection of Creatives in Nigeria' (16 June 2025) https://www.danolpartners.com/blog/post?id=8#&utm_source=mondaq&utm_medium=syndication&utm_content=contentmaxviews&utm_campaign= accessed 20 August 2025

³ The Copyright Act 2022, Cap C28, Laws of the Federation of Nigeria 2004, ss 9–13

⁴ Deborah Sarah Gado, 'Awareness and Extent of Infringement of Copyright Laws Among Undergraduate Students in Ahmadu Bello University, Zaria, Kaduna State, Nigeria' (2016) 20

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://kubanni.abu.edu.ng/bitstreams/112b35ae-a93e-4343-8e2b-626037bfc49/download&ved=2ahUKEwjt_PT79q-SAxUpZ0EAHSc7IpoQFnoECB0QAQ&usg=AOvVaw3rmEc7S0qxNqfXrSAkqeDB accessed 29 January 2026

⁵ Sunmoni Fehintola Wuraola, 'Fair Use and Fair Dealing; An Overview of Copyright Law in Nigeria' (2023) xxiii <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://paper>

performance,⁶ highlighting the tension between protecting the rights of authors while at the same time permitting the public to benefit from the use of such copyrighted work.⁷ However, much of these studies concentrate on formal or commercial contexts, leaving informal and culturally embedded practices relatively underexplored.

Comparative analyses reveal that foreign jurisdictions have developed varying approaches to regulating public performance and licensing.⁸ In the United Kingdom, live and public performances are monitored,⁹ with exceptions provided for personal or educational use. In the United States, the principle of fair use allows for a broader application of copyrighted works for non-commercial, educational, and research-related purposes.¹⁰ Despite this, public performances for commercial gain remain firmly regulated. Similarly, in South Africa¹¹ and Namibia,¹² statutory provisions grant exclusive rights to copyright owners while permitting only specific exceptions. These indicate the significance of licensing frameworks and enforcement mechanisms in balancing the interests of authors and those who desire to make use of their works.¹³

s.ssrn.com/sol3/papers.cfm%3Fabstract_id%3D4888743&ved=2ahUKEwj9roSg-K-SAxVVRDABHeZPE8EQFnoECBgQAQ&usg=AOvVaw05VEdKC3NY5ggVy5lYz1Di accessed 29 January 2026

⁶ M.F. Makeen, 'The Evolution and Scope of the Public Performance Right of Musical Works Under International, U.S. and Egyptian Copyright Laws' (2018) 65(2) SOAS 169 <https://soas-repository.worktribe.com/output/433066> accessed 29 January 2026

⁷ Canaan Suitt, 'When Do I Need Permission To Use a Copyrighted Work?' (*Super Lawyers*, 30 June 2025) <https://www.superlawyers.com/resources/intellectual-property/when-do-i-need-permission-to-use-a-copyrighted-work/> accessed 29 January 2026

⁸ The legislations examined were those of the United Kingdom, the United States, South Africa and Namibia

⁹ GOV UK, 'Get a Licence to Play Live or Recorded Music' <https://www.gov.uk/licence-to-play-live-or-recorded-music#:~:text=You%20usually%20need%20to%20get,example%2C%20a%20concert%20or%20festival>) accessed 29 January 2026

¹⁰ Stephen Eldridge, 'Fair Use' (*Britannica*, 26 December 2025) <https://www.britannica.com/topic/fair-use> accessed 29 January 2026

¹¹ Aisha Playton, 'What is Fair Dealing? Dissecting the South African Copyright Law Position' (*De Beer Attorneys*, 14 September 2024) <https://www.debeerattorneys.com/post/what-is-fair-dealing-south-africa#:~:text=Legal%20Framework%20of%20Fair%20Dealing,harm%20the%20original%20work's%20value> accessed 29 January 2026

¹² Enynna S. Nwauche, 'The Public Interest in Namibian Copyright Law' (2009) 1(1) NLJ 57, 59 https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.kas.de/documents/252038/253252/nwauche.pdf/ade14df8-b2c9-6811-05e0-ac5261cc057f&ved=2ahUKEwiln_ea4LGSAXVUCnkGHf3kKLMQFnoECEoQAQ&usg=AOvVaw1m_KIH6kvW4hiIq2EGmSac accessed 29 January 2026

¹³ Patricia Akester, 'The New Challenges of Striking the Right Balance Between Copyright Protection and Access to Knowledge, Information and Culture' IGC(1971)XIV/4 (*UNESCO*,

Notwithstanding the insights provided by both Nigerian and foreign laws, limited attention has been directed at the intersection of copyright law and Nigeria's live band practice. Existing literature rarely addresses the complexities arising when live bands perform copyrighted musical works in public. Likewise, there is minimal discussion on how communal practices and culturally rooted notions of shared creative ownership influence perceptions of copyright, fair dealing and infringement within informal entertainment contexts.¹⁴ This gap highlights the need for research that situates copyright law within Nigeria's unique socio-cultural terrain, particularly as it relates to live musical performances.

Consequently, the present study seeks to address this lacuna by examining the legal grey areas surrounding the public performance of copyrighted works by live bands in Nigeria. By exploring the interplay between statutory copyright provisions, collective management mechanisms and culturally embedded practices, this research contributes to the broader understanding of how copyright law interacts with local cultural expression. The study highlights the necessity for more culturally responsive approaches to copyright regulation, particularly in contexts where informal use is rampant, without undermining the economic and moral rights of creators and copyright owners.

3.0 Copyright

Copyright is an exclusive right which an author, a creator, a copyright owner or a licensee have to perform,¹⁵ reproduce,¹⁶ share,¹⁷ display, make derivations of,¹⁸ publish, make adaptations or translations of, transfer ownership of their copyrighted work or make it available for public access.¹⁹ For a work to be eligible for copyright protection, it must be original and fixed in a tangible medium of expression.²⁰ Ideas, procedures, processes, concepts, principles and

2010) 1 <https://unesdoc.unesco.org/ark:/48223/pf0000187683> accessed 29 January 2026

¹⁴ Balogun Ololade Victor, 'Copyright and Cultural Appropriation in Nigeria: The Need To Protect Identity' (2025)

https://www.researchgate.net/publication/388708011_COPYRIGHT_AND_CULTURAL_APPROPRIATION_IN_NIGERIA_THE_NEED_TO_PROTECT_CULTURAL_IDENTITY accessed 29 January 2026

¹⁵ Wix Encyclopedia, 'Copyright' <https://www.wix.com/encyclopedia/definition/copyright> accessed 20 August 2025

¹⁶ Kettering University, 'What Does Copyright Mean' (17 June 2025) <https://libguides.kettering.edu/c.php?g=943770&p=6907182> accessed 20 August 2025

¹⁷ Aggarwal Associates, 'What is a Copyright?' (8 December 2024) <https://aggarwalassociates.com/intellectual-property/what-is-copyright/> accessed 20 August 2025

¹⁸ Mike Arnold and Samantha Levin, 'The Difference Between Plagiarism and Copyright Infringement' (*Copyright Alliance*, 22 June 2021) <https://copyrightalliance.org/differences-copyright-infringement-plagiarism/> accessed 20 August 2025

¹⁹ The Copyright Act (n 3) ss 9–13

²⁰ *Ibid* s 2(2) There has to be a previous reference above on this same page before *ibid*' can be used [Note: Let your footnote be in Times New Roman].

discoveries²¹ do not enjoy copyright protection. The Act brings into existence the Nigerian Copyright Commission (NCC)²² which is empowered to be in charge of all copyright activities in Nigeria.²³ According to the Act, the works that can be copyrighted are:

1. Literary works
2. Musical works
3. Artistic works
4. Audiovisual works
5. Sound recordings
6. Broadcasts²⁴

Nigeria is a party to several international treaties on copyright. These include, but are not limited to:

1. Berne Convention for the Protection of Literary and Artistic Works, 1886
2. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995
3. World Intellectual Property Organization Performances and Phonograms Treaty (WPPT), 1996.²⁵

The copyright scene in Nigeria is significantly influenced by these international treaties. Firstly, the Berne Convention establishes the principle of automatic protection and national treatment,²⁶ which strengthens the protection of musical works and sound recordings performed publicly in Nigeria. Secondly, TRIPS reinforces these protections by stating the minimum standards for the enforcement of copyright, including performance rights, thereby reinforcing the legal position of copyright owners against unauthorized public performances.²⁷ The WPPT further expands protection in response to modern modes of exploitation by recognizing the exclusive rights of authors and copyright owners over the performance and derivation of their works.²⁸ These three treaties jointly shape Nigeria's copyright regime by buttressing exclusive rights while also

²¹ Ibid s 3

²² s 77(1)

²³ s 78(1)

²⁴ The Copyright Act 2022, Cap C28, Laws of the Federation of Nigeria 2004, s 2(1)

²⁵ Blessing Ajunwo-Choko and Anastasia Edward, 'Copyright Infringement and Enforcement of Rights in Nigeria' (*Lexology*, 25 April 2024)

<https://www.lexology.com/library/detail.aspx?g=62f78836-9f6f-41ae-99ba-5f5587914277#:~:text=Some%20other%20international%20conventions%20that%20go%20vern%20copyright,Visually%20Impaired%20or%20otherwise%20Print%20Disabled%202013%20accessed%2028%20August%202025>

²⁶ Berne Convention, art 5(2)

²⁷ TRIPS, art 14(1)

²⁸ WPPT, arts 5(1), 6, 7, 8(1) and 10

permitting limited exceptions, such as fair dealing, which must be balanced alongside cultural expression and the safeguarding of copyright interests.

4.0 Live Band

Nigerians are not strangers to parties. Every Saturday boasts of glittering clothes, sleek cars and a show of mink notes. Over the years, the use of live band at parties have grown steadily. Gone are the days of having only a disk jockey play pre-recorded songs. Now, Nigerians want it fresh from the lips of sonorous singers who never fail to disappoint.

A live band is a group of singers, instrumentalists²⁹ and sometimes sound engineers³⁰ who perform musical works in front of a set number of people to keep them entertained.³¹ A live band helps to keep the atmosphere lively, fill in the silence with their unmatched beats and create such a performance that will charge the energy of the place.³² Perhaps one of the reasons why live bands have become increasingly popular in the Nigerian party scene is because of their ability to tailor their songs and lyrics to the persons they are singing for.³³ This could mean a honourable mention of a person's name, or changing the song based on the age range of the persons on the dance floor, or even using the opportunity to make subtle announcements.³⁴

²⁹ GT Function Band, 'Function Band vs. Live Band vs. Band: Understanding the Differences with Intouch Function Band' <https://gtfunctionband.co.uk/function-band-vs-live-band-vs-band-understanding-the-differences-with-intouch-function-band/#:~:text=What%20is%20a%20Live%20Band,and%20engagement%20to%20any%20setting>. accessed 20 August 2025

³⁰ Career Explorer, 'What Does A Live Sound Engineer Do?' <https://www.careerexplorer.com/careers/live-sound-engineer/#:~:text=One%20of%20the%20primary%20workspaces,optimal%20sound%20quality%20and%20balance>. accessed 28 August 2025

³¹ Law Insider, 'Live Band Definition' <https://www.lawinsider.com/dictionary/live-band#:~:text=Live%20band%20means%20music%2C%20live,form%20of%20dancing%20including%20cabaret>. accessed 20 August 2025

³² Blitz Nation, 'Why Live Bands Are the Secret to Successful Corporate Events' <https://www.weareblitznation.com/post/why-live-bands-successful-corporate-events#:~:text=Unlike%20pre%2Drecorded%20playlists%2C%20live%20bands%20connect%20directly,unique%2C%20ensuring%20your%20corporate%20event%20stands%20out>. accessed 20 August 2025

³³ Angela Tripodi, 'Help! How do I decide between a live band and DJ?' (*Adelaide Musicians Live*, 19 March 2024) [https://amlive.com.au/blog/help-how-do-i-decide-between-a-live-band-and-dj/#:~:text=With%20a%20live%20band%20\(well,as%20having%20a%20live%20band](https://amlive.com.au/blog/help-how-do-i-decide-between-a-live-band-and-dj/#:~:text=With%20a%20live%20band%20(well,as%20having%20a%20live%20band). accessed 20 August 2025

³⁴ Epik Team, 'Wedding DJ vs Band: Making the Right Choice' (5 August 2025) <https://epikweddings.com/wedding-dj-vs-band/#:~:text=Live%20bands%20excel%20in%20engaging%20with%20the,the%20atmosphere%20and%20preferences%20of%20the%20attendees>. accessed 20 August 2025

However, live bands in Nigeria have existed far before the beginning of the 2020s. For instance, Ebenezer Obey with his band, The International Brothers, which later became the Inter-Reformers, ruled the 1960s to 70s in the West.³⁵ From the East, there were the Oriental Brothers,³⁶ the North produced Bala Miller and his Great Music Pirameeds of Africa.³⁷ Then there was PlantashunBoiz,³⁸ and, Yinka Ayefele and his Merry Makers Band,³⁹ who emerged within the same year. The listing of live bands would be incomplete without the mention of Koola Lobitos, a band headed by Fela Kuti⁴⁰ where they sang just as much as they gyrated to the sound of their beat. It can therefore be deduced that live bands play an important role in the musical sector of Nigeria.

Most bands nowadays rarely perform their own songs. Rather, they rehearse and then sing a wide range of songs by other artistes, in order to give their audience, the best of both worlds.

At this point, one then can wonder, the performances of live bands where they sing other artistes' songs, does it fall under the fair dealing scope provided by the law, or is it an outright infringement or should it simply be regarded as cultural expression? It is imperative to examine these three separately before ascertaining the position of the law on what a public performance by a live band amount to.

³⁵ Derek R. Bullamore, 'Ebenezer Obey' (*Wikipedia*, 20 April 2025)

https://en.m.wikipedia.org/wiki/Ebenezer_Obey accessed 20 August 2025

³⁶ Precious Ihezue, 'Evolution of Igbo Highlife!' (*African Music Library*, 22 April 2025)

<https://africanmusiclibrary.org/blog/the-evolution-of-igbo-highlife> accessed 20 August 2025

³⁷ Historical Nigeria, 'Nigeria'

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.facebook.com/photo.php%3Ffbid%3D122222920964189242%26id%3D61555677277624%26set%3Da.122104784384189242%23~:text%3Dand%2520Samuel%2520Akpabot-,In%25201956%252C%2520Miller%2520moved%2520to%2520Kaduna%2520and%2520played%2520a%2520key,%252C%2520funk%252C%2520and%2520Hausa%2520rhyt hms.&ved=2ahUKEwiszpb14q2PAxViX0EAHaejDEgQFnoECB0QBQ&usg=AOvVaw29ZX1pg ht8T-agl3_3B4e2 accessed 28 August 2025

³⁸ African Music Library, 'PlantashunBoiz'

<https://africanmusiclibrary.org/band/Plantashun%20Boiz> accessed 28 August 2025

³⁹ Dami Ajayi, 'Meet Yinka Ayefele, The Tungba Creator' (*Medium*, 28 June 2020)

<https://jollypapa.medium.com/meet-yinka-ayefele-the-tungba-creator-3ba18f6a3dac> accessed 20 August 2025

⁴⁰ Albert Oikelome, 'From The Koola Lobitos Era To Afrobeat – A Study of The Artistic Years of Fela Anikulapo Kuti' (2019) 2(1) ResearchGate

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.researchgate.net/publication/335665769_%27FROM_THE_KOOLA_LOBITOS_ERA_TO_AFR OBEAT%27-

[A_STUDY_OF_THE_ARTISTIC_YEARS_OF_FELA_ANIKULAPO_KUTI&ved=2ahUKEwi1rq26uq 6PAxWYEEAHb6cC1MQFnoECGQQAQ&usg=AOvVaw1TJsNxBtnLtdooe-zyY83f](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.researchgate.net/publication/335665769_%27FROM_THE_KOOLA_LOBITOS_ERA_TO_AFR OBEAT%27-A_STUDY_OF_THE_ARTISTIC_YEARS_OF_FELA_ANIKULAPO_KUTI&ved=2ahUKEwi1rq26uq 6PAxWYEEAHb6cC1MQFnoECGQQAQ&usg=AOvVaw1TJsNxBtnLtdooe-zyY83f) accessed 28 August 2025

5.0 Copyright Infringement

Copyright infringement is exercising the rights of a copyright owner without authorization from the said owner. This is done by reproducing, making adaptations, derivations, having public performances, publishing and distributing a copyrighted work without the permission of the person in whom copyright over that particular work is vested.⁴¹ Copyright infringement is a civil offence and could also be a crime,⁴² because the law recognizes the need for a person to enjoy the fruits of their labour,⁴³ to the exclusion of others.

The copyright owner can bring an action against the infringer to seek for damages, an injunction, accounts for profits⁴⁴ or obtain an Anton Pillar order⁴⁵ by way of an ex-parte application.⁴⁶ For criminal liability, an infringer would pay a specified amount, be sent to prison to serve a term of a number of years or both, based on the gravity of the offence committed.⁴⁷

In this digital era, a lot of persons upload another's creation without due acknowledgment or permission. Once a copyright owner finds out that his work has been infringed, the Act states that he can notify the service provider to take down or disable access to the infringing content.⁴⁸ Upon being satisfied that truly, the content was an infringement of another, the service provider must remove it from its system.⁴⁹

To avoid infringing, a work can be used by others by obtaining permission,⁵⁰ or if such work is in the public domain⁵¹ or through certain exceptions provided

⁴¹ Michael Sumner, 'What Is Copyright Infringement: Basic Guide' (*ScoreDetect*, 7 January 2024) <https://www.scoredetect.com/blog/posts/what-is-copyright-infringement-basic-guide> accessed 20 August 2025

⁴² Osuya & Osuya Law Firm, 'Navigating Copyright Infringement In The Nigerian Copyright Act 2023' <https://osuyalawfirm.com.ng/2023/05/08/navigating-copyright-infringement-in-the-2023-act-understanding-your-rights-and-obligations/> accessed 20 August 2025

⁴³ Sumner (n 42)

⁴⁴ Copyright Act (n 3) s 37(2)

⁴⁵ *Ibid* s 38(1)

⁴⁶ Mary Imelda Obianuju Nwogu, 'Infringement of Copyright in Nigerian: A Juridical Review' (2022) 2(2) *IJCLLR* 63, 67

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.civillawjournal.com/article/36/2-2-7-729.pdf&ved=2ahUKEwixkML3ibOPAxW4W0EAHWFpPfmQFnoECCAQAQ&usg=AOvVaw2NhoKwAPGav-E9Ler3vRt9> accessed 20 August 2025

⁴⁷ *Ibid* Part V, ss 44-45

⁴⁸ *Ibid* s 54(1)

⁴⁹ *Ibid* s 55(1)

⁵⁰ Achyut Kulkarni, 'Comparison Between Fair Use And Fair Dealing' (*IP Matters*, 17 September 2022) <https://www.theipmatters.com/post/comparison-between-fair-use-and-fair-dealing> accessed 20 August 2025

⁵¹ Kettering University (n 16)

under the laws of various jurisdictions. One of such exception is known as fair dealing or fair use.⁵²

6.0 Fair Dealing

Fair dealing is a mechanism promulgated by lawmakers to ensure that the society can still make use of works that are under copyright protection.⁵³ If every use of a work constituted an infringement, it would frustrate and hamper the creation of new works. Fair dealing gives space for others to enjoy the work of another, based on certain circumstances, such as research, private use, and satire.⁵⁴ It is not a means for infringers to have a field day, rather, it is to promote the opportunity to use a work, without having to seek permission from the copyright owner,⁵⁵ or without being slammed with a lawsuit at every twist and turn.⁵⁶

The Act is not silent on the exceptions to the use of copyrighted materials. Some of these exceptions are:

1. Private use
2. Parody, satire, pastiche, or caricature
3. Non-commercial research and private study
4. Criticism, review or the reporting of current events
5. For the purposes of an examination⁵⁷ or for other educational purposes⁵⁸ where the use is not more than five percent of the work.⁵⁹

In *Campbell v. Acuff-Rose, Inc.*,⁶⁰ Acuff-Rose Music, Inc. sued 2 Live Crew and their record company, claiming that 2 Live Crew's song titled 'Pretty Woman'

⁵² Aggarwal Associates (n 17)

⁵³ Unchained Music Team, 'Fair Use Music: Understanding The Legal Doctrine' (9 November 2024) <https://www.unchainedmusic.io/blog-posts/fair-use-music-understanding-the-legal-doctrine> accessed 20 August 2025

⁵⁴ Kulkarni (n 51)

⁵⁵ Joy Butler, 'Music Licensing: What Is Considered Fair Use?' (6 June 2017)

<https://www.copyright.com/blog/music-licensing-fair-use/> accessed 20 August 2025

⁵⁶ Glory Onoyeyan, 'Copyright Law and Photocopying Practice in Nigeria' (2018) 2179 LPP 1, 6

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://digitallcommons.unl.edu/libphilprac/2179/&ved=2ahUKEwiQw93Xh7OPAxXPZkEAHag5NGkQFnoECCEQAQ&usg=AOvVaw0YFlq997MD1dRXIIogoS5D> accessed 20 August 2025

⁵⁷ s 21(3)

⁵⁸ ss 22(1) and 23(1)

⁵⁹ s 23(2)

⁶⁰ 510 U.S. 569 (1994)

infringed Acuff-Rose's copyright in Roy Orbison's 'Oh, Pretty Woman.' The District Court held that based on the lyrics, 'Pretty Woman' was a parody of 'Oh, Pretty Woman' and as such fell under fair use doctrine. On appeal, the Court of Appeals held that in as much as it was a parody, as soon as 2 Live Crew released it and gained money from it, the use became unfair to the original copyright owner.

In 2024, BrainJotter, whose real name is Chukwuebuka Amuzie, made use of an 80s song by Mike Ejeagha. The song titled, 'Ka Esi Le Onye Isi Oche', which BrainJotter derived his 'GwoGwoGwoNgwo' dance soon caught on like wildfire and became the dance of the moment. A number of persons questioned whether it was an infringement or not. BrainJotter quickly clarified that his use fell under the parody sphere of fair use, and also that he made use of the licensed version Mike Ejeagha's label released to social media. He further stated he made no monetary gain from it, only used a small portion, and then went ahead to give the veteran singer a sum of 2 million naira as a form of appreciation.

The Act provides that, in order to distinguish between the use of a copyrighted work that falls under fair dealing and the one that does not, the factors to look out for are: the reason for its use, the type of work it is, the section that was taken out and the result of such use has on the value of the work as a whole.⁶¹ Such as is seen in the case of BrainJotter, the portion he used was 15 seconds⁶² out of the 16 minutes and 56 seconds⁶³ of the whole song, it was for parody and he used the licensed version that the record label permitted social media users to take from. Therefore, his use of Mike Ejeagha's song was labelled as fair dealing.

7.0 Cultural Expression

Cultural expression is the means by which a group of people, bound together by their traditions, customs, beliefs and experiences,⁶⁴ show the richness and uniqueness of their heritage. This could be done through songs, clothing, beating of drums, language, knowledge about the production and preservation of items and food, and literature.⁶⁵

⁶¹ The Copyright Act 2022, Cap C28, Laws of the Federation of Nigeria 2004, s 20(1)

⁶² Naijafavourite, 'Brain Jotter GwoGwoGwoNgwo New Dance Original Video' (*YouTube Shorts*, 24 July 2024) <https://youtu.be/tAmz68Hdow4?si=Ht2qkJ600ujXSph> accessed 28 August 2025

⁶³ Lyric Chief, 'Ka Esi Le Onye Isi Oche' <https://www.lyricchief.com/songs/ka-esi-le-onye-isi-och> accessed 28 August 2025

⁶⁴ Sarah Lee, 'The Power of Cultural Expression' (*Number Analytics*, 24 May 2025) <https://www.numberanalytics.com/blog/the-power-of-cultural-expression> accessed 20 August 2025

⁶⁵ Fiveable, 'Cultural Expression' <https://library.fiveable.me/key-terms/ap-art-history/cultural-expression> accessed 20 August 2025

In Nigeria, a country with an estimated number of 235 million people,⁶⁶ 300 to 500 ethnic groups,⁶⁷ and 520 languages,⁶⁸ various tribes have found ways to express themselves through artistic creation, entertainment,⁶⁹ recipes, dance steps, wedding ceremonies, and even health tips.

Cultural expression is necessary as it helps to pass down values from generation to generation, in order to ensure that the young ones do not forget their identity, and to also promote a sense of communal affection within that particular ethnic group.⁷⁰

8.0 The Nigerian Live Band Culture in Juxtaposition with the Copyright Act

The Act expressly provides for the rights accrued to a copyright owner in musical works. These are the rights to:

1. Reproduce the work
2. Publish the work
3. Perform the work in public
4. Translate the work
5. Distribute the work to the public for commercial gain
6. Turn it into an audiovisual work
7. Adapt the work
8. Broadcast the work

⁶⁶ Simon Kemp, 'Digital 2025: Nigeria' (*DataReportal*, 3 March 2025)

<https://datareportal.com/reports/digital-2025-nigeria> accessed 28 August 2025

⁶⁷ Mark A. Green, 'Nigeria Has More Than 500 Languages, 300 Ethnic Groups... And Critically Important Elections' (*Wilson Center*, 21 February 2023)

<https://www.wilsoncenter.org/blog-post/nigeria-has-more-500-languages-300-ethnic-groups-and-critically-important-elections#:~:text=With%20more%20than%20200%20million,world's%20most%20culturally%20diverse%20countries.> accessed 20 August 2025

⁶⁸ David M. Eberhard, Gary F. Simons and Charles D. Fennig, 'Nigeria' (*Ethnologue*, 2025)

<https://www.ethnologue.com/country/NG/#:~:text=Summary:,12> accessed 28 August 2025

⁶⁹ The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, art 4(3)

⁷⁰ Lee (n 65)

9. Communicate the work to the public⁷¹

The copyright owner can authorize another through the grant of a license to use his musical work and to exercise the same rights the owner had, in exchange for royalties. This is done to ensure that a creator is able to benefit from the work of his hands, and to encourage further creativity.⁷²

It would then mean that any person who creates an adaptation, derivation or recording of a musical work will not be regarded as an infringer if such a person asks for approval to use the work from the copyright owner or the Collective Management Organisation (CMO) in charge and pays the necessary royalties if required by the owner or CMO.⁷³

A CMO is a body that allows the public to make use of copyrighted works, especially those in the musical sphere, by giving licenses and collecting royalties on behalf of copyright owners⁷⁴ in a way that these owners are duly compensated for the use of their works, and the public also can enjoy the creation of another.⁷⁵

The Musical Copyright Society Nigeria (MCSN) is the only CMO legally authorized to function in Nigeria⁷⁶ ever since the license of Copyright Society of Nigeria (COSON) got suspended.⁷⁷

Live bands are not excluded from the list of persons that need a license to sing a compilation of songs belonging to other artistes,⁷⁸ as public performance is part of the rights of an author, and as such, for a live band to exercise this same right,

⁷¹ The Copyright Act 2022, Cap C28, Laws of the Federation of Nigeria 2004, s 9 Cite fully, this is a fresh page.

⁷² Adeoluwa Ademola and Shalewa Akinde, 'Music Licensing and Royalty Collection in the Music Industry in Nigeria' (*Business Day*, 15 May 2025) <https://www.google.com/amp/s/businessday.ng/news/legal-business/article/music-licensing-and-royalty-collection-in-the-music-industry-in-nigeria/%3famp> accessed 20 August 2025

⁷³ Copyright Act (n 3) s 27(1)(b)(c)

⁷⁴ Ibid s 88(7)

⁷⁵ Ibid s 88(6)(a)

⁷⁶ Frank Okeke and Titilade Adelekun Ilesanmi, 'COSON v. MCSN: Let The Music Pay Who Exactly?' (2019)

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://lelawlegal.com/add111pdfs/COSON1.pdf&ved=2ahUKEwjc9tP6ILOPaxVDT0EAHXFfKKEEQFnoECQQAQ&usg=AOvVaw2hS6FscwpjIThdLeQus1_S accessed 20 August 2025

⁷⁷ Chijioke Okorie, 'A Girl Has No Name: Does the Decision in MCSN v COSON and 2 Others Have Any Impact on Copyright Collective Administration In Nigeria?' (*The IPKat*, 9 April 2020) <https://ipkitten.blogspot.com/2020/04/a-girl-has-no-name-does-decision-in.html?m=1#:~:text=Both%20MCSN%20and%20COSON%20are.posts%20here%2C%20here%20and%20here.> accessed 20 August 2025

⁷⁸ Ruth Towse, 'Getting Permission' <https://www.copyrightuser.org/trending/getting-permission/> accessed 21 August 2025

it must have sought permission from the proper quarters and paid the necessary royalties.⁷⁹ Business owners are not to allow the performance of a copyrighted work if the performer does not have a license, unless they were reasonably unaware that the live band had no license.⁸⁰ They must also obtain licenses for songs played within their space, independent of the live band's license.

This rule is highlighted in the case of *Registered Trustees of Association of Hotel Proprietors of Edo state v. Copyright Society of Nigeria Ltd & Ors*,⁸¹ where the Court of Appeal held that the Appellant, being a hotel, even if it did not make any profit from the public performance and communication to the public of songs within their premises, in so far that it was a public establishment, the use of these songs would have boosted their sales and thus improved their business, which then means the hotel should have obtained a license as instructed by the 1st Respondent.⁸²

Furthermore, under the Berne Convention, copyright owners of musical works have the exclusivity to permit the performance of their works in public through whatever means they deem fit.⁸³ Therefore, although not explicitly stated, it can be deduced that anyone who does not obtain a license from the copyright owner before performing the musical work is committing an act of infringement.

If a live band chooses not to pay royalties in order to obtain a music license, it can either create its own songs, or wait patiently till the copyright ceases to exist in the musical work (which is 70 years, starting from the year after the year which the author died) or sound recording (50 years after the year the work was first created or given public viewing, depending on which came first).⁸⁴ As soon as these enter the public domain, it would not be an infringement to use them. Recourse must be made to situations where the identity of the owner of a copyrighted work may not be known, thus making the obtaining a license impossible.⁸⁵

⁷⁹Danol Partners (n 2)

⁸⁰ Copyright Act (n 3) s 36(e)

⁸¹ [2020] LPELR-43198 (CA)

⁸² Commercial Law Reports Nigeria 2021

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://assets.ctfassets.net/xh9wlpqzblok/s0Ho79lyv0iArokEmCYd8/7b9555f9a012c639d3e54045413bab8e/CLRN_MAY_2021_ISSUES_full.pdf&ved=2ahUKEwiMh-WXjq-PAxVtRkEAHUS4J58QFnoECB0QAQ&usg=AOvVaw3em6R1edGcMzOYeGRiumKh accessed 29 August 2025

⁸³ art 11(1)(i)

⁸⁴ The Copyright Act 2022, Cap C28, Laws of the Federation of Nigeria 2004, s 19

⁸⁵ Ifeanyi C. Ogbodo and Ikechukwu P. Ugwu, 'Status of Orphan Works Under Nigerian Copyright Legal Regime' (2022) 3(1) RUNLJ 162

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.researchgate.net/publication/358271872_Status_of_Orphan_Works_under_Nigerian_Copyright_Legal_Regime&ved=2ahUKEwjlvp7ipqaPAXXFUUEAHV5fEYAAQFnoFCIOBEAE&usg=AOvVaw0wHkxB1xtGuX3ND89-PZfk accessed 25 August 2025

In Nigeria, these works are regarded as anonymous and pseudonymous works, and are protected by copyright for 70 years starting from the year immediately following the one in which the work was given public access based on the author's consent or 70 years after it was created, even if not given public access.⁸⁶

The widely used term for works with unknown authors is 'orphan works',⁸⁷ and the use of orphan works (or anonymous and pseudonymous works) by individuals is usually not permitted because copyright still subsists in the work, despite the owner being unidentifiable, especially since the copyright owner, his beneficiaries or estate can suddenly show up and sue for copyright infringement.⁸⁸ The safe route would be to use a work that the author is known by first obtaining approval.

When it comes to the exception of fair dealing as provided under the law, most often than not, using the musical work of another is almost never considered as fairness, since it has the capacity of being commercialized and thereby reducing the value of the original. As seen in *Acuff-Rose*, even though the song was a parody, the profits gotten made the Court decide that the parody had caused damage to the original. As such, the use was no longer considered fair. A few years back, Adekunle Gold, a popular Nigerian musician cried out when he was watching a Nollywood movie and suddenly heard his song being played without his prior consent.⁸⁹

Such is the battle artistes all over Nigeria face, that it can now even be regarded as a norm. In a country with 36 states and the Federal Capital Territory, inhabited by millions of people, artistes and CMOs cannot effectively measure how many times their musical works are used, and by whom. It should be pointed out that copyright is a personal right.⁹⁰ The government would not deploy police officers to begin to search all the event halls, bars, clubs, and other places of public entertainment within the country to find out whether the use of

⁸⁶ Copyright Act (n 3) s 19(2)

⁸⁷ University of Glasgow, 'How Do I Get Permission To Use Other People's Works?' <https://www.copyrightuser.org/faqs/question-13/> accessed 21 August 2025

⁸⁸ Karen Workman, 'What's An Orphan Work?' (*Copyright Licensing New Zealand*, 15 June 2022) <https://www.copyright.co.nz/about/news-and-blog/whats-an-orphan-work#:~:text=But%20not%20having%20an%20identifiable,how%20copyright%20applies%20to%20you?> Accessed 29 August 2025

⁸⁹ Pulse Nigeria, 'Adekunle Gold Is Angry' https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.facebook.com/pulsenigeria247/videos/pulsegist-adekunle-gold-vs-nollywood/1897119633714789/&ved=2ahUKewjEu_yiiK-PAxUWVUEAHdIMHKAQtWj6BAGOEAE&usg=AOvVaw1nFeLGAXWJTWoYJauc_Y9y accessed 25 August 2025

⁹⁰ Will Kenton, 'Intangible Personal Property: Definition, Types, and Example' (*Investopedia*, 30 April 2022) <https://www.investopedia.com/terms/i/intangible-personal-property.asp> accessed 20 August 2025

a musical work or sound recording is fair or not. Most perpetrators are only exposed if the recording of their performance is uploaded to a social media platform, and in this digital world of today, nearly everything is uploaded online, whether meaningful or not. Live bands are not exempted from this, as they record videos and soundtracks of their performance and put it online in order to increase their followers, attract clients and score gigs.

If a live band sings a fusion of Obey, Miller and Kuti's songs at a party without the requisite music license, puts it on the internet for others to have public access to it, and uses this to get further performances in which they get paid, it is no longer a fair dealing. This is because once commercialization is involved in which the original owner gets no proceeds from, the law will regard it as exploiting the musical work for personal gain.

However, if a live band sings a compilation of musical works or sound recordings during rehearsals, it will be fair dealing because it is a private use which does not devalue the original works. It might also be classified as research or private study, especially if used by the live band to hone their musical skills or increase their knowledge on various types of melodies and harmonies found in music.

In a situation where a live band remixes songs, compiles them or blends them in a unique and creative way, distinct from any other existing work, copyright protection will be accorded to it. The Berne Convention makes provision for this by stating that translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.⁹¹ From this, it can be understood to mean that, firstly, in order to even put songs together, the live band must have first obtained licenses from all the artistes or CMOs involved. If not, the copyright owners can seek legal reliefs against the live band. Secondly, because of the originality, authorship, creativity and fixation of the remix or arrangement, the work automatically attains copyright status, irrespective of whether there is copyright over the musical works or sound recordings included and whether or not the live band paid royalties to get a license. Thirdly, just because the adaptation or derivative work is copyrighted, it does not erase the copyrights in the songs used, and action can be sought against the live band if they use the compilation for commercialization purposes.

Coming down to the matter of cultural expression, it can be stated that Nigeria operates a communal system when it comes to tradition. This system facilitates the concept of 'free sharing'⁹² where a person can use a property of another

⁹¹ Berne Convention for the Protection of Literary and Artistic Works 1886, art 2(3)
[Check: Art 2 (3)]

⁹² Kunle Ola, 'Evolution and Future Trends of Copyright in Nigeria'
https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ojs.law.cornell.edu/index.php/joal/article/view/26/77&ved=2ahUKEwiLycT3mrOPAxVEQ0EAHfw2IRsQFnoECCQAQ&usq=A0vVaw3h_lcmZx6RB-CTINpoGjrt accessed 20 August 2025

without the thoughts of paying for the use. Neither does the property owner think twice before handing over his property to be used, because of the belief of giving so that one can also be given.

Truly, live bands are a classic example of cultural expression. From the use of traditional drums, to the wearing of cultural attires, and the singing of nostalgic songs, one cannot but marvel at how well they represent the culture of the people present. Because a live band is able to keep pace with the energy of the attendees based on their preferences, age and ethnicity, they can flow smoothly in a way that honours the tradition of the people present.

Therefore, performances of this nature can be termed as cultural expression. However, cultural expression cannot be used as a defence against copyright infringement. Culture, in itself, appreciates the creativity of another. If a man were to regale his children with fables, he would start by saying he was taught about it by his own father. In as much as it is free sharing, due acknowledgement to the original owner is paid.

This is precisely the crux of copyright laws, that a person be recognized, appreciated and compensated for the use of their works.

Nevertheless, one cannot help but note the other side of the coin, especially in a country like Nigeria which is deeply rooted in tradition and customs, where people are of the opinion that a public performance of another's musical works or sound recording amounts to free publicity of which the copyright owner should be grateful for, and to accept as the compensation for the use of his works. Perhaps, this could be deciphered as the reason why a huge number of artistes, singers and music publishers maintain their silence when they see their works being performed without royalties paid to them. Because if they utter a word, Nigerians would implore them to allow the use of their works, as it would help the performer grow in the music industry, and also be a way for them to promote their works. After all, it is only a popular song that everyone cares to sing, reproduce or perform in public.

Two good examples of cultural expression, so far, would be the use of Ejeagha's song by BrainJotter and that of Obey's song by Simi (a popular Nigerian musician), where there was acknowledgment of the copyright owner, compensation was given, and permission acquired first. In Simi's case, she sang 'Aimasiko' in her own words, featured the veteran singer himself in a second version and allegedly went on her knees in front of him to ask if she could use his song as the idea behind hers before releasing it.⁹³

⁹³ Simi, 'Aimasiko' (*YouTube*, 2018) Simi kneels at 3:29 to 3:35 of the song <https://youtu.be/eDIqkEWLYzE?si=joa8gH7qLiJlrdR9> accessed 26 August 2025

In such cases, one can see that as a result of the communal spirit of Nigeria, compensation for the use of one's works does not always have to be monetary. At times, due acknowledgment and asking is sufficient to prompt the copyright owner to grant approval. This will enable the owner feel appreciated, while also encouraging younger artistes to sharpen their singing prowess in the industry.

9.0 Foreign Perspectives

9.1 United Kingdom (UK)

In the UK, the law restricts the performance of a work protected by copyright in public⁹⁴ and the playing of a recorded song in public.⁹⁵

The fair dealing exceptions state that a person can only make use of a copyrighted work if it's an ephemeral copy that is expedient for technological advancement,⁹⁶ personal copies for private use,⁹⁷ research and private study,⁹⁸ criticism, review, quotation and news reporting,⁹⁹ caricature, parody or pastiche,¹⁰⁰ and incidental inclusion.¹⁰¹ A person can also use a copyrighted work by first obtaining a written and signed license from the copyright owner allowing the licensee to exercise his right over the work to the exclusion of others.¹⁰² Therefore, the UK's law does not allow for the public performance of another's work without a license.

The CMO in operation in the UK is the Phonographic Performance Limited and Performing Rights Society (PPL PRS) which manages the rights of music creatives, by giving what is known as 'TheMusicLicence' to a business, live band or an individual which allows them to use musical works and sound recordings to their heart's content without being accused of infringement.

Originally, PPL and PRS were two separate bodies and individuals who sought to use musical works for public performances had to obtain license from the one in charge of that particular song. This was quite cumbersome, and these two decided to join forces in order to make it easier for persons to collect music license from just one CMO.

⁹⁴ Copyright, Designs and Patents Act 1988, s 19(1)

⁹⁵ Ibid s 19(3)

⁹⁶ Ibid s 28A

⁹⁷ Ibid s 28B

⁹⁸ Ibid s 29

⁹⁹ Ibid s 30

¹⁰⁰ Ibid s 30A

¹⁰¹ Ibid s 31

¹⁰² Ibid s 92(1)

PPL PRS ensures that live performances do not occur without a license first obtained and royalties paid, so that composers, publishers and singers benefit from the use of their works being displayed to the public.¹⁰³

9.2 United States (U.S.)

In the U.S., the term used is fair use (not 'fair dealing'), which allows a person to use a work covered by copyright for purposes of criticism, comment, news reporting, teaching, scholarship, or research. The determining factors for whether the use of a copyrighted work, even if unpublished, falls under the scope of fair use or not are:

1. The purpose of the use, including whether it's for monetary gain or non-monetary educational benefits
2. The type of creative work it is
3. The amount and substance of the portion lifted in contrast to the whole work
4. The effect of the use upon the market value of the work¹⁰⁴

Furthermore, if a literary work or musical work is:

Performed for personal purposes without monetization involved (for instance, a group of ladies singing a song before starting their weekly meeting)¹⁰⁵

1. Performed for religious purposes in a place of worship or any other religious gathering¹⁰⁶
2. Used by business owners in specified circumstances without an entry fee being paid by patrons¹⁰⁷
3. Designed to assist people living with disabilities comprehend a subject matter more effectively, without any commercial gain attached¹⁰⁸

¹⁰³ PPL PRS, 'What Is TheMusicLicense?' <https://pplprs.co.UK/themusiclicence/#:~:text=How%20it%20works,for%20their%20talent%20and%20work>. accessed 25 August 2025

¹⁰⁴ United States Code Title 17 – Copyrights 1976, s 107

¹⁰⁵ Ibid s 110(4)

¹⁰⁶ Ibid s 110(3)

¹⁰⁷ Ibid s 110(5)(B)

¹⁰⁸ United States Code Title 17 – Copyrights 1976, s 110(8)

4. Or for private viewing within a home (such as movie watching),¹⁰⁹ amongst others, then it would not be considered an infringement of the literary or musical work.

The U.S. law is more encompassing than that of the UK and Nigeria because it outlines specific circumstances where the use of a work would be considered fair. For instance, religious gathering can sing songs without infringing on the owner's copyright. Nigeria has no such provision, unless the part of the act that states a work can be used for private use can be said to cover the use by religious gatherings.

In the U.S., a copyright owner has the exclusive rights to reproduce copies and share them, make derivations, give public performances and to display the copyrighted work for public view and fascination.¹¹⁰ Therefore, anyone who does this without a proper license is infringing another's work.

The CMOs in charge are the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Incorporated (BMI) and Society of European Stage Authors and Composers (SESAC) which collect royalties in return for licenses over the public performances of the artistes they represent.

This is because a live band, and other persons who engage in performances at public places make profit, thereby benefiting from the musical work or sound recording used. The owner then must also benefit from the use of his copyrighted work. Anyone who desires to perform must get a Public Performance License from the CMO in charge of the artiste's song to be used. Infringers might face legal action or be asked to pay a fine.¹¹¹

9.3 South Africa

In South Africa, to infringe is to create a reproduction of the original in literary, musical or artistic works, or to make a record of a sound recording in such a manner that it is nearly impossible to distinguish the copy from the original.¹¹² The exclusive right of a copyrighted literal or musical work gives the owner the power to reproduce the work, perform it in public, broadcast it, publish it, adapt it, or allow it to be transmitted through broadcast channels.¹¹³ In order to make use of a musical work, a live band must first obtain an exclusive license which allows the licensee to exercise his right over the creative work to the exclusion of

¹⁰⁹ Ibid s 110(11)

¹¹⁰ Ibid s 106

¹¹¹ Soundsuit, 'BMI and ASCAP Licensing' <https://soundsuit.fm/bmi-and-ascap-licensing/#:~:text=If%20you%20play%20music%20in,musicians%20involved%20are%20fairly%20paid>. accessed 21 August 2025

¹¹² Copyright Act 1978, s 1(1)(xxii)

¹¹³ Ibid s 6

others.¹¹⁴ Therefore, a live band performing songs without permission from the copyright owner is infringing. The law even goes on to define 'performance' to mean the presenting of a work, either through visual or acoustic means, with the use of technological or not.¹¹⁵

Under the law, the exceptions to copyright infringement are, private study or research, news reporting, for judicial proceedings, educational purposes, quotations, by the showing in good faith to a prospective client the first-rate quality of sound equipment and for documentary purposes of an extraordinary character.¹¹⁶

Therefore, a live band, disk jockey or business owner without a license to perform songs would be deemed as an infringer.

The CMO in charge is the Southern African Music Rights Organisation (SAMRO). Upon the payment of license fees, SAMRO gives public establishments a Music Usage License, in order for them to be able to play the music of artistes. Live bands can also apply for a license from SAMRO, and these license fees are given to the owner of the musical work or sound recording as royalties. This is to ensure that creators of musical works and sound recordings are well compensated for the use of the works, while allowing the society to also benefit.¹¹⁷

9.4 Namibia

In Namibia, a copyrighted literary work or musical work gives the exclusive licensee or owner the ability to reproduce the work, publish it, perform it, create adaptation of it, broadcast it and permit it to be transmitted through distribution channels.¹¹⁸ Similarly, this right gives the owner or licensee the power to make a recording that comprises of the original, let it be played in public, and to broadcast it, amongst other rights.¹¹⁹

The law gives room for fair dealing in the use of a literary or musical work for research or private study, private use, criticism or review, report of current happenings, purposes of judicial proceedings, quotations, educational reasons, by broadcast stations for lawful broadcasts.¹²⁰ Therefore, anyone who carries out

¹¹⁴ Ibid s 1(1)(xxi)

¹¹⁵ Ibid s 1(1)(xxix)

¹¹⁶ Ibid s 12

¹¹⁷ SAMRO, 'It's Yours. Own It.' <https://www.samro.org.za/> accessed 21 August 2025

¹¹⁸ Copyright and Neighbouring Rights Protection Act 1994 (amended in 2016) s 7

¹¹⁹ Ibid s 10

¹²⁰ Ibid s 15

these activities without a license from the owner or authorizes another person to do so, will be deemed an infringer.¹²¹ Anyone who allows the performance of a work in a public place, where the performance is an infringement of a copyrighted work, is also guilty of infringement¹²² unless he can prove he was reasonably unaware that the performance in itself was an infringement.¹²³ In addition, anyone who causes a literary or musical work to be performed in public, while fully knowing that such performance is an infringement, is guilty of an offence under the law¹²⁴ and is liable to the payment of a fine or a term of imprisonment or both.¹²⁵

Namibia has only one CMO, founded in 1993 and known as The Namibian Society of Composers and Authors of Music (NASCAM) which protects the rights of its artists and every other copyright under it such as authors, composers, lyricists, and publishers. After the payment of the requisite licenses fees, NASCAM gives the payee the license to use the work, while relinquishing the royalties to the copyright owner.¹²⁶

10.0 Summary of Findings

This study finds that the public performance of musical works and sound recordings by live bands in Nigeria generally falls within the exclusive rights of copyright owners. Therefore, live bands who seek to perform must first obtain the requisite license from the copyright owner or Collective Management Organisation (CMO).

This study finds that most live band performances in Nigeria do not fall under the scope of fair dealing; as such performances are usually used for financial gain, and would most likely have an impact on the commercial value of the original works.

The study finds that Nigeria's cultural practices significantly influence the unauthorized use of musical works and sound recordings, with many regarding these uses as a form of cultural expression rather than an activity that must be regulated by the copyright law.

The study finds that low or zero awareness of copyright obligations among live bands and business owners acts as a major contributor to the widespread and continued infringement of copyrighted works.

¹²¹ Ibid s 29(1)

¹²² Ibid s 29(3)

¹²³ Ibid s 29(4)

¹²⁴ Ibid s 33(2)(a).

¹²⁵ Ibid s 33(3)

¹²⁶ NASCAM, 'Empowering Namibia's Music Creators' <https://nascam.org.na/about/> accessed 21 August 2025

Comparative analysis indicates that Nigeria's copyright law lacks sufficient clarity and enforcement when compared with selected foreign jurisdictions, particularly in relation to public performances.

11.0 Recommendations

Nigeria should amend the Copyright Act to include the scope of orphan works¹²⁷ or promulgate a *suis generis* law that covers the use of these works without infringement for live bands that desire to use songs that are so old the owner cannot be ascertained, or the record label has collapsed, and no beneficiary or estate in sight.

On June 2, 2025, NCC released its Copyright Advisory No. 4,¹²⁸ admonishing all disk jockeys to seek permission before playing songs that are not theirs in public or face a five-year prison sentence or a fine of N1,000,000 (One Million Naira).¹²⁹ The same warning should be issued to live bands, otherwise, these bands would continue to engage in unauthorised public performances without incurring liability under the law.

The associations that regulate the activities of live bands, namely, the Performing Musicians Association of Nigeria (PMAN) and the Association of Music Band Owners of Nigeria (AMBON), must ensure every live band is registered with them, and must be instructed to bring the list of songs they wish to perform in public places of entertainment with their license alongside. These associations should also organize educational seminars and musical conference so as to train live bands and their members on the law pertaining to the use of musical works and sound recordings.

12.0 Conclusion

Copyright owners of musical works and sound recordings are entitled to any proceeds made from the use of their works, not just a mere shout out during public performances by live bands. Some copyright owners do not even get a shout out, their efforts over their works reduced to nothing.

¹²⁷ Ogbodo and Ugwu (n 87)

¹²⁸ Stren and Blan Partners, 'Nigerian Copyright Commission Warns DJs: No More Playing Music Without Paying Royalties' (18 August 2025) <https://strenandblan.com/nigerian-copyright-commission-warns-djs-no-more-playing-music-without-paying-royalties/#:~:text=In%20the%20Copyright%20Advisory%20No,will%20not%20be%20to>lerated. accessed 28 August 2025

¹²⁹ Benjamin Njoku, 'Obtain MCSN License or Face 5-year Jail Term, NCC Warns Disc Jockeys' (Vanguard, 7 June 2025) <https://www.google.com/amp/s/www.vanguardngr.com/2025/06/obtain-mcsn-license-or-face-5-year-jail-term-ncc-warns-disc-jockeys/amp/> accessed 28 August 2025

In as much as it is imperative to celebrate cultural values, it is also important that live bands pay royalties to get a license in order to perform a plethora of songs in public. This would encourage the creator to make more songs for public benefit. Live bands have the choice of doing this, or using the works in a way that is it considered fair dealing or risk facing a legal claim from the copyright owner for infringement.

However, the application of copyright laws are yet to be fully cemented in Nigeria, creating a lacunae for public performances by live bands to slip through unnoticed. Until the law is taken seriously, the populace will continue to shimmy on dance floors across the nation while live bands perform, oblivious to the silent tears of copyright owners.