



# The implementation of intellectual property rights to enhance music business in Zimbabwe: Challenges and prospects

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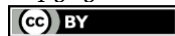
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## Abstract

In the Zimbabwe music industry, the issue of copyright law implementation has been problematic with intellectual property rights violations plaguing the society and resulting in musicians failing to fully benefit financially from their creations. This study is an attempt to find out how musicians are benefiting from their intellectual property that is being used by various businesses including broadcasters. We argue that the problem of piracy has become an Achilles tendon for many artists despite the presence of a copyright law enforcement regime in the country. This article examines the nature and consequences of the copyright law in the country, as well as the way in which ZIMURA is implementing it to advance the cause of popular musicians. The article illustrates how the challenges faced by ZIMURA serve to impoverish Zimbabwean musicians in unheralded ways that leave a good number of artists poor and famous. This qualitative study uses participant observation, document analysis and key informant interviews with purposively selected informants to elucidate the implementation of intellectual property rights in Zimbabwe's music industry. The analysis is informed by the Sustainable Livelihoods Approach as well as Bourdieu's concept of cultural capital. The findings show that in Zimbabwe music is taken as free property by most users who either sell pirated copies or access them for personal use without paying anything. From the study, it is clear that musicians are not getting a fair share of their intellectual property in the form of royalties. It is also notable that music which is appreciated more gets paid more royalties than music that is not popular with broadcasters and audiences.

## Introduction

This study focuses on how intellectual property rights are being implemented in Zimbabwe to improve music business. The music industry is one of the fastest-growing export sectors of the global service economy (United Conference on Trade and Development-UNCTAD, 2018). It is based on creative expression and related intangible assets, thus intellectual property (IP) plays a critical role in determining its performance (Wright, 2000). The export potential of music is already recognised in some developed countries such as the United States of America and China, in addition to its complementary links and its role in the promotion of national culture. However, in most developing



countries, the music industry remains under-researched with insufficient information or reliable data on its economic performance as policymakers focus on other industries like commerce and agriculture. They are still reluctant to accord it the status given to the music industry (Mhiripiri, 2006). According to Legrand and Foley (2019), Africa does not appear in the music royalty collection's top 25 global music earners. The United States tops the list with 1.932 billion Euros, followed by France, which earned 1.006 billion Euros. Only 3 top African earners are ranked in the top 50 globally: South Africa, which earned 35 million Euros, ranked number 29. Algeria raked in 14 million Euros and ranked number 39, and Morocco ranked number 46 with earnings of 6.3 million Euros.

For the most part, developing countries have been unable to commercialise their music successfully and hence reap equitable benefits from this important indigenous resource (Osborn and Greenfield, 2007). No large firms and financial structures are interested in investing significant capital into sophisticated marketing and music distribution in Zimbabwe. The music industry in the country suffers from weak institutional and political support, low levels of entrepreneurial capability and low value-addition. Society not only certifies but also cultivates elite culture, and the cultural resources of the elite play a significant role in their career success. While others may come to acquire this cultural capital, the elites are assumed to be advantaged with dispositions in their homes, acquiring a distinct "natural ease" (Kingston, 2001). The researchers acknowledge in this study that music studios, music producers, and music promoters are owners of production means who exploit popular musicians, who are the proletariat and whose "musicking" skills are cultural capital.

Musicians face several issues unique to their profession. Portfolio careers in music have received much attention recently, but very few of them are comparable in terms of stability and income to traditional jobs (Thiong'o & Barasa, 2019; Throsby & Zednik, 2010; Throsby & Hollister, 2003). This study aimed to investigate and broaden the concept of a musical livelihood beyond paid employment for musicians. This essay examines how Intellectual Property Rights are being implemented in Zimbabwe with a close look at the Zimbabwe Music Rights Association. It also investigates how various Stakeholders in Zimbabwe view Intellectual Property Rights. The discourse also endeavours to discover how Piracy affects the music business in Zimbabwe.

The first part of this essay outlines the methodology used as well as the theoretical orientation. The second section is the conceptual framework in which Intellectual Property, Copyright, Royalties and Piracy are defined in the music business context. The third section discusses the Zimbabwe Music Rights Association's (ZIMURA) function of enforcing copyright law in the country. How the calculations of royalties are done follows. The fourth section focuses on Broadcasting and General (Performing Rights), Mechanical rights royalties (Digital platforms), and The Blank Tape Levy-Prospects of Increasing Revenue Collection. The last section discusses the Challenges faced in copyright law implementation operations.

### **Methodology**

Purposive sampling was used as a non-probability sampling technique in this study. Purposive or judgmental sampling entails selecting cases that are thought to have similar characteristics (Latham, 2007). As a result, the researchers used their discretion and judgement to purposively select 20 respondents who possessed information that was useful in this study. These were drawn from Zimbabwean popular musicians, National Arts Council of Zimbabwe (NACZ), Zimbabwe Intellectual Property Office (ZIPO) and ZIMURA employees from Bulawayo and Harare. The researchers



conducted their research from both Harare (representing the Northern region) and Bulawayo (representing the Southern region) to ensure a fair representation of views in the country.

Qualitative data were collected from various sources, but observation and informal conversations are usually the most important (Genzok, 2003). Interviews and document analysis were also used to collect data from participants in their natural settings. The data collection methods used comprehensively describe the research and the participants involved. As a result, the qualitative research approach provides abundant data about real-life people and situations, which is required to uncover the implementation of copyright law in Zimbabwe. This would help uncover why some popular musicians remain poor despite their fame.

### **Theory**

The Sustainable Livelihoods Approach (SLA), a methodology for analysing and improving the lives of poor and disadvantaged people, was used as the theoretical lens in this study. It is a collaborative approach that recognises how musicians have skills and assets that can be developed to help them improve their lives. One central idea is that different musicians have varying access to livelihood assets, which the SLA seeks to increase. Human, social, and financial capitals are examples of livelihood assets that musicians must frequently trade-off and decide on. The SLA is relevant to this study because the approach indicates that musicians face economic challenges, particularly financially, because they must make various payments before, during, and after song production. Even during a live performance, various payments are made to the venue, band members, instruments, stage, lighting, taxes, and so on, leaving the musicians with little or no money, affecting their livelihood and their ability to afford basic needs, but failing to lift them out of poverty.

It was assumed that the concept of a livelihood extends beyond traditional employment and may include many fundamental aspects of a happy life that income does not always explain. Most definitions also emphasise the economic aspects of those necessities to generate income to meet those needs. On the other hand, standard definitions treat livelihood as intimately related to human needs. In music literature, "livelihood" is primarily used in economic terms to describe how musicians can preserve incomes through a diverse portfolio of work. However, in this paper, the term "livelihood" will refer to the necessities of famous musicians and the aspects that give their lives meaning.

Access to capital assets and the vulnerability context influences livelihood strategies and outcomes, as does the structures and processes environment. Structures are public and private sector organisations such as NACZ, ZIMURA, and ZIMU that set and implement policy and legislation (The Copyright and Neighbouring Rights Act of 2000, Chapter 26.05, and the Censorship and Entertainment Control Act of 2001, Chapter 10.04), provide services, and purchase, trade, and perform a variety of other functions affecting musicians' livelihoods. Potential livelihood outcomes include extra revenue, increased well-being, reduced vulnerability, improved food security, more self-sustaining use of monetary backing from live shows and record sales, and restoring human dignity. Thinking outside the box is encouraged in the approach to sustainable livelihoods (Dodemaide et al., 2021).

This study's analysis is based on Bourdieu's (1986) cultural capital theory. He has argued that societies reflect and respond to the dominant class's cultural orientations. Thus, the elite class, strongly socialised at home to their class culture, are predisposed to distinctly "fit" the societal and cultural biases and are rewarded for their cultural orientations.



### **Intellectual Property, Copyright and Royalties**

Intellectual property comprises abstract intangible assets, something you create using your mind - for example, a story, an invention, an artistic work, or a symbol (Shpizner, 2012). W. Mushayi, Chief Registrar of Deeds, Companies and Intellectual Property (Personal communication, January 26, 2023) defines intellectual property as:

“Ideas, creations of the mind, intangible property that comes through inspiration, through your own thinking, sometimes even dreaming, and when you come up with such, you then reduce it to a book or a piece of music, an invention, a mark or sign, and that becomes a property”.

He says that once these creations have been made, they must be protected as “There are rights attached to the property, and those rights are not always obvious to people because people are used to the conventional property like real estate or movable property”.

For anyone to use such property, there are copyright issues involved. It means no one has a right to use such without the owner’s consent. Frith (1988) describes copyright as “an exclusive legal right that gives the owner of a literary or musical work the power to control and authorise its exploitation”. The Deputy Director of the Zimbabwe Music Rights Association, H. Mkumbe (Personal communication, November 17, 2022), describes the intellectual property as “a broad term that encompasses all works that are created by the mind” and “copyright as a section or fraction of intellectual property”. He further says it is the right that an artist has over the creation of his/her works. So, the “artist has certain authority over the exploitation of his/her works and can grant permission for use or can prohibit someone from doing certain acts over the use of his/her works. A royalty is a payment for the use of that work”. A royalty is a legally binding payment for exploiting or using someone’s property. It could be intellectual or physical. William (1981) describes royalties as funds paid for using intellectual property. We understand copyright to mean the right to copy given to a third party by the originator of the work or by someone authorised to do so by the rights holder. And we define royalty as money paid by the user of intellectual property to the owner of such intellectual property.

The origins of copyright law can be traced back to the early 1900s. Frith (1993) wrote about the origins of copyright law in the United States of America. According to Frith (1993), the first licensing statute was enacted in 1909, and it shielded music owners from piracy, which he defines as unauthorised copying. Copyright commoditised the songs, allowing them to be sold and purchased in marketplaces. According to Petersen (1993), copyright law lacked a mechanism for collecting royalties from public music performances. That gave way to collecting societies, whose primary function was to issue licences and collect revenue from the following activities: performances of songs, sales of original products, and money paid to publishers for their share of sales. The Copyright Office administers it in Zimbabwe under the provisions of Section 87 of the Copyright and Neighbouring Rights Act (Chapter 26:05) of 2000, which went into effect on September 10, 2004. This Act repeals the Copyright Act (Chapter 26:01), which replaced the Copyright Act, Chapter 201 of January 1, 1967, which was itself an advancement of the British Copyright Act of 1911, when Zimbabwe was a British colony.

Copyright Law implementation in Zimbabwe is a matter that necessitates special attention, particularly for authors and composers of music. Many of the works of musicians fail to meet the expectations of their owners because of people who violate the Copyright Law. The Copyright and Neighbouring Rights Act, Chapter 26.05, states that “...no one should perform a song without the owner's permission.” All establishments that play music must have a Music Copyright License. This



license guarantees that they are granted authorization to use music written by others. They do not have to go to each composer and ask for permission to use the music. ZIMURA permits on behalf of music composers.

However, there is a problem with paying the license because some individuals who own businesses that use music on their premises do not understand why they must pay. As a result, the public is unaware of the significance of Zimbabwe's Copyright Law. The responsible organisations, in this case, ZIMURA and Zimbabwe Intellectual Property Office (ZIPO), have been holding awareness workshops to educate the public on the significance of copyright law. Despite these awareness workshops, some members of society, particularly businesspeople, continue to undermine intellectual property rights laws by engaging in unlawful copyright-related activities. W. Mushayi, Chief Registrar of Deeds, Companies, and Intellectual Property (Personal communication, January 26, 2023) observes:

Businesses always want to reduce expenses but can easily avoid paying. As long as there is a way of avoiding payment, businesses will always try to avoid payment, not so much because they don't want to support the musician but simply because it's the nature of the business to avoid expenses.

P. N. Chimhini, Executive Director of ZIMURA (Personal Communication, January 31, 2023), says:

Businesses that deal with ZIMURA now know that there is something called intellectual property that they have to pay for. In the past six months, we have noticed that some businesses now call us when their license expires to say, "Can I have a new invoice? My license expired, and I want to know how much I should pay".

To ensure the future has citizens who understand and appreciate Intellectual Property Rights, ZIPO, in collaboration with Africa Regional Intellectual Property Office (ARIPO), has introduced IP clubs in three schools as a pilot project. The aim is to catch them young and raise awareness early. These are Victoria High in Masvingo, Evelin High in Bulawayo and Dzivarasekwa High in Harare. Officially IP is not on the school curriculum in Zimbabwe. P. N. Chimhini (Personal communication, January 31, 2023) says:

We only had a university in Zimbabwe offering an IP programme at the master's level when we had no university offering a first degree in IP. So, it means everyone who went for the master's degree had to do undergraduate IP studies outside the country, and we still have that problem.

The original owners of the copyright are authors and composers. According to Mhiripiri (2006: 82), "...the songwriter may own the copyright of something like the song lyrics and be entitled to royalties sometimes when their songs are published, while singers and instrumentalists may own the copyright in a specific recording." If two or more people collaborate to create a musical work, the copyright is shared by all of them. As a result, if these songwriters want to designate copyright to everyone, they must first reach an agreement amongst themselves.

Many Zimbabwean composers, particularly urban groves, have joint ownership. Africa Revenge, Mafriq, 2BG, and Extra Large are just a few of the composers. However, disagreements between joint songwriters of musical works may arise, and this, in some instances has led to splits. Africa Revenge, for example, has disbanded, and Willis Wattafi has gone solo. Although they have parted ways, the





songs they wrote together remain joint property, and they receive, each a percentage of the royalties from these songs depending on each one's input which is normally reflected through a signed split sheet.

Some agreements were viewed as unfavourable to musicians in some of these arrangements. Metro Studios, both music producers and music equipment suppliers, gave Freddy Manjalima (also known as Kapfupi) an advance in music equipment. In turn, he agreed, through a contract, to transfer, for eternity, all rights to his album titled Juice Card to Metro Studios. This agreement was exploitative in that Metro Studios was supposed to collect a percentage share of royalties for the album in question until the total amount of the music equipment could have been paid back. The music equipment is probably obsolete and no longer useful to Freddy Manjalima. On the other hand, the Juice Card album will continuously make money for Metro Studios. Let us say, hypothetically, one of the songs is picked for a financially juicy movie; owners of Metro Studios would laugh all the way to the bank while Manjalima continues to languish in poverty. The music industry is unpredictable. Metro Studios, too, could have lost all the money if the album flopped. C. Mukundu (Personal communication, July 13, 2022) says, "The music industry is like a lottery; it is gambling".

The other example is the case of Nash TV versus some recording musicians, where the contracts were viewed as unfair. Mandivengerei reports:

Local online telecast, Nash TV has bowed to public pressure and relinquished all its copyrights over the music it produced for artists after an "exploitative" contract leaked, drawing criticism from citizens. Artists were made to surrender all their rights over their music content to the collective Nash Group in exchange for promotions, video shoots and interviews. However, the contract valid from the date signed to infinity steered a public backlash.

Nash TV responded this way purely on moral grounds. Otherwise, they had all the legal right to keep the contract that way because the artists involved were not forced to sign. They signed willingly. This is because these artists are not willing to learn. When invited for workshops, most rarely pitch up, though the challenge is that most of them are fairly new in the industry and excitable by the idea of being signed on by a record deal.

Musicians are creators, and copyright law states that creators have the right to profit financially from their work. For example, if you write a song, you can charge money to use it in a movie, radio, or television show soundtrack. The law grants these rights as an inducement to create. When creativity is encouraged, the public benefits because more art becomes available. This viewpoint is shared by Sanchez (2007: 125), who believes that the true beneficiaries of the law are the public rather than the copyright holders; he says, "We are the massive beneficiaries... and none of us did anything to deserve so much." As a result, the public benefits from works they did not create.

### **Piracy**

Piracy is defined as the unauthorised downloading or reproduction of a composer's work. Piracy reduces composers' earnings because pirating CDs means the composers will not receive the profits they expect. Although composers' works are protected by Copyright Law, they also rely on the proceeds from CD sales. However, if the CDs are sold at a high price, consumers will be unable to purchase them, resulting in piracy. The price of CDs should be reduced so that they are affordable to



consumers, thereby reducing piracy. Many scholars have defined piracy and have different perspectives on how piracy affects the music industry.

Piracy is, in general, stealing. A simple example would be borrowing a friend's CD set and burning it for one's own use and enjoyment. Regarding digital recordings of copyrighted works, society believes they are legal and the right thing to do. According to Katers (2002: 134), "There is no difference between illegally obtaining or copying copyrighted music and stealing". "Music piracy typically involves a theft of intellectual property in the form of illegal distribution or obtaining music" (Budd, 1999: 87) adds. According to these definitions, piracy is a deleterious issue in the music industry's growth.

"Downloading illegal music is unethical because one will be taking away from the artist who would have spent finance and time recording the album and distributing it to the audience" (Sheena, 2004: 135) says of piracy. "Music piracy is the opening up and distributing unauthorised material, essentially music that has not been paid for" (Williams, 2001: 130). Taylor (2005: 167) defines piracy as "...the copying and distribution of copies of a piece of music without the composer's or recording company's consent." Nowadays, music can be found on many social media platforms and websites, but not in a profitable way. As a result, the sites make it unavoidable for people to obtain music files online. Because of the increased sharing of illegal music, piracy has become a trend, making it difficult for music composers to profit from their intellectual property. There are various types of piracy, which Williams discussed (2001: 130). He says these include pirate recording, bootlegging, counterfeiting, and online piracy. Only unauthorised duplications of the sound of legal recordings are considered pirate recordings. The unauthorised recording of musical broadcasts on radio, television, or live shows is known as bootlegging.

Counterfeit music is illegal pre-recorded and unauthorised duplication of a musical product's original labels and packaging. Finally, online piracy is defined as illegally downloading audio recordings from the internet. According to Vollweiler (2009: 167), "music piracy is wrong... bands that are trying to make it are losing their opportunity." Taylor (2005: 167) believes that while piracy harms artists, it also benefits them. "Piracy hurts the entire industry," he claims. "I believe there are opportunities for musicians to profit from it." This demonstrates that scholars differ on whether the music industry benefits or suffers due to piracy. Because of the advancement of technology, almost everyone has engaged in music piracy. Transferring music from one cell phone to another is a form of piracy, and it prevents composers from making money out of their works.

Although in most parts of the world, piracy is now largely happening online through illegal uploading and downloading of music, in Zimbabwe, a fairly significant amount of music piracy is still done the traditional way, through CDs. One cannot avoid seeing many counterfeit CDs on street corners or flea markets in various cities and towns. Customers prefer to buy pirated music over originals because all they want to do is listen to pirated music. However, such CDs are not durable, and the public is losing much money as pirated music does not last. Also, some of these customers are unaware that by buying pirated music musicians are not benefiting anything as they are losing a significant portion of their earnings.

On the other hand, if CDs are sold at a high price, consumers will be unable to purchase them, leading to music piracy. The price of CDs should be reduced so that they are affordable to consumers, thereby reducing piracy. There are some reasons why people choose to pirate music rather than purchase a legal and licensed copy of music, as these have consequences that have made it hard for songwriters



to survive in the music industry. According to Frost (2004: 81), "tightening copyright laws should help to dramatically reduce music piracy." Stealing music is illegal, and it betrays the composers and record labels who create it. Piracy destroys the careers of aspiring composers and bands. It also threatens the livelihoods of the entire music industry, including composers, engineers, producers, and retailers. The music industry also suffers financial losses because of lost revenue. W. Mushayi, (Personal communication, January 26, 2023, Harare) indicates that "the poor person pushing the CD on the street is not the real pirate, there is a big business behind that guy .... As long as we are treating it as petty crime, we will not be able to control piracy". He says the government is losing much money through piracy, although no statistics are available to quantify it.

Piracy harms artists who would have spent time and money discovering, developing, and promoting their talents. Composers are so concerned about piracy that they have written songs to discourage people from illegally acquiring music. Music composers participated in an anti-piracy campaign in March 2010, with various artists marching in Harare. They created a song called "Stop Piracy," which featured Joyce Simeti, Busi Ncube, Dingimuzi Phuti, and Emmanuel Thomas, to name a few. The song urges people to stop pirating music because it kills the industry. According to an article published in the News Day on Saturday, March 17, 2012, Afro-jazz musician Daniel Ngwira released a song titled "Tine Basa," which features two popular music sensations Alexio Kawara and Diana Samkange. "Tine Basa addresses piracy issues, the musician as a role model, and the need for artists to understand it is their responsibility to keep revellers entertained," T. Sibanda writes. People are failing to respond to music composers' calls to stop piracy so that they can profit from their works.

### **The Zimbabwe Music Rights Association**

ZIMURA, the collecting society in Zimbabwe's creative sector, is an association of composers and music publishers established in 1982. The only other one, which never collected royalties on behalf of authors of literary works in its existence of over 20 years, Zimcopy, was de-registered by Zimbabwe Intellectual Property Office for inactivity. Zimcopy tried for so many years, but nothing came to fruition as writers of literary works are still unable to earn royalties from their creations. Yet, the country has so much book piracy, especially by educational institutions. (W. Mushayi, Personal communication, January 26, 2023):

Zimcopy did not survive. Zimcopy did not do enough to mobilise the constituency. The constituency remains fragmented, unenthusiastic and sceptical about the whole issue of CMOs.

We are not doing enough together; everybody is doing a lot separately; let's do enough together.

The role of ZIMURA is to collect royalties from music users and then distribute them to rights holders. The organisation is affiliated with international bodies, including World Intellectual Property Organisation (WIPO) and The African Regional Intellectual Property Organisation (ARIPO). It is also registered with The International Confederation of Societies of Authors and Composers (CISAC). ZIMURA has nearly 4000 rights holders who are its members. It protects slightly over 250 000 works that are registered with it. ZIMURA is registered with the Ministry of Justice, Legal and Parliamentary Affairs through Zimbabwe Intellectual Property Office (ZIPO).

Zimbabwe is a signatory to the Berne Convention, signed on 9 September 1886, to protect literary and artistic works and their authors and publishers. There are reciprocal agreements among all countries that are signatories to the Berne Convention to ensure all creative works are protected across the globe. Each country has a Collective Management Organization (CMO), sometimes called a Collecting





Society. These CMOs are responsible for administering Intellectual Property Rights in the creative sector. Suppose a song by a Zimbabwean composer is used in anyone of these countries for commercial purposes. In that case, the composer and publisher of that song will get his/her royalties through ZIMURA, and vice-versa. There are many exclusive rights that are protected under the Berne Convention. Some of these include the right to translate, perform in public, broadcast, reproduce and make adaptations, among other rights.

ZIMURA protects performing and mechanical rights as provided in the Copyright and Neighbouring Rights Act Chapter 26:05. Many other rights, like related or neighbouring rights, are not protected in Zimbabwe in the music sector. ZIMURA started distributing mechanical rights on digital platforms in 2018. Licensing digital platforms such as Spotify, Facebook, YouTube, and others are done through the arrangement with the South Africa Composers, Authors and Publishers Association (CAPASO).

### **Membership and Structure**

ZIMURA has a membership of nearly 4000 who meet once every year at an Annual General Meeting (AGM) to review progress and look at audited accounts. Every third AGM is an elective one when the General Assembly elects seven office bearers who would formulate policy and ensure the smooth running of the organisation. The seven members then appoint a lawyer with copyright knowledge to be part of the Board, bringing the total number of the Board to 8. The Board oversees the work of the Secretariat, which is headed by the Executive Director, who is answerable to the Board. The Secretariat implements the policies that the Board formulates. ZIMURA has 32 employees and four offices in Harare, Bulawayo, Gweru and Mutare. The bulk of the employees are licence inspectors. These are largely the ones who bring revenue as they licence various music users nationwide.

There have been varying requirements for one to register with ZIMURA as a member. Previously one needed to have at least eight original songs to register. Alternatively, one needed at least two songs that were enjoying airtime to register, plus a copy of the national identity card. Due to a 40<sup>th</sup> anniversary promotion, ZIMURA is registering members for free. However, ordinarily the registration fee is \$30.

### **Collection of Royalties**

Each time a song is played on the radio, it must be written on a log sheet as proof that it was played. Details about the presenter, date, time, and length of time the song was played are indicated on the log sheet. However, most broadcasters have migrated from the manual logging system to a digital one, making it easy to identify music played daily. These log sheets are regularly sent to ZIMURA, which calculates how much each station owes. Each broadcaster has a contract with ZIMURA, which enables it to play music. These licenses are not necessarily uniform. Some broadcasters prefer to pay a percentage of their audited accounts. S. Matiza, Head of Licensing at ZIMURA (Personal communication, February 3, 2023):

This ranges from 1% to 3.5%, with the lowest being 3KTV paying 1%. The highest is ZiFM Stereo which pays 3.5%. Apart from the percentage route, we do have those who prefer a “pay per-play” agreement, and among them is Zimbabwe Television Network (Prime), which pays \$0.55 per play.

Some are charged based on advertising revenue, and others on gross revenue. However, efforts are being made to move to gross revenue for those who prefer the percentage route.



In addition to collecting revenue from various broadcasters in the country, ZIMURA has a team of license inspectors in various parts of the country who collect royalties from unmonitored places. These include bars, restaurants, hotels, and public transportation facilities like buses. There are times when license inspectors must seek the services of the Zimbabwe Republic Police due to resistance by some business operators. However, this aspect is becoming less problematic due to various efforts made by ZIMURA to educate the public on the importance of IP laws. P. N. Chimhini (Personal communication, January 31, 2023):

We have gone into partnership with broadcasters and newspaper houses. We currently have a programme running on Classic 263 (radio station). It's called Music and the Law. Every week one of our guys goes there, and they look at different topics regarding IP and copyright. They talk about what ZIMURA does as a collecting society, how it benefits the artists, and what artists should do to make their music businesses successful. That programme doesn't just serve the artists, it also serves business communities and people who listen to the radio.

Regarding royalty collection, the Deputy Director of ZIMURA, H. Makombe, indicated that ZIMURA's revenue collection varies yearly, but it has been consistently growing. In 2022 "we are estimating US\$1.2 Million". Regarding tariffs, the Copyright Act provides that the CMO develops the licensing tariffs. These are then sent to the Ministry of Justice, Legal and Parliamentary Affairs for approval.

### **Distribution of Royalties**

ZIMURA distributes royalties following the usage of works by broadcasters who are the major users of music. It is a contractual obligation that broadcasters should, monthly, compile and submit performance report sheets (log sheets) which form the basis of ZIMURA's distributions.

Successful distribution depends on distributable revenue, user log sheets, and documented data in ZIMURA's systems. At a given period, performance report sheets are matched with documented data in its system to determine royalties payable to each rights holder whose works would have been reported on the performance (log) sheets.

Some members of ZIMURA strongly feel that general distribution should be done equally, regardless of whose work was played if one is a member. The argument is that when it comes to general distribution, there is no proof that if broadcasters play a song five times, it means it has been played once in a public space. Most of those who favour this notion are mainly that whose music is not appealing to the broadcasters as indeed to the public and is not being used by broadcasters. For that reason, owners of such music are either getting very little in terms of royalties or nothing at all. Close examination has shown that it does not matter that music was recorded and released way back or has just been released. Some music published some time back still enjoys airplay better than recently released music. Explaining "general distribution", (P. N. Chimhini, Personal communication, January 31, 2023) says:

It is a distribution done based on unmonitored places. It means that we do not have proof of whose music was playing in those places - bars, hotels, restaurants, shops, anything else that uses muses which is not a broadcaster. Surveys conducted in the past proved that more than half the times, the artists who are played by the broadcasters are the artists who enjoy airplay in unmonitored places, why because people tend to listen to what they know. So, members of



the public mostly identify these songs from the broadcasters. It is very rare for a song to become a hit when it's just being used in unmonitored places and the broadcasters are not playing it. So that is the rationale. In terms of paying everyone equally, I subscribe to the notion that it is not fair to those who get airplay.

The argument is that, primarily, paying royalties is based on using one's intellectual property. To say royalties must be paid on an equal basis is to miss the whole point of ownership of intellectual property. A Collective Management Organization (CMO) member does not give one entitlement to other people's properties. That kind of scenario encourages laziness and should be discouraged at all costs. A popular female gospel musician who chose to remain unnamed (Personal communication, February 2, 2023, Harare) says:

The question of how we measure comes in. It is assumed. The things we assume may not be one hundred per cent correct, but we must work with an assumption. So, the assumption is if it's popular on the radio or it's being played on YouTube (social media), it's playing in unmonitored places.

Statistics show the top ten royalty earners in 2016, 2018 and 2022. Some musicians earning good amounts of money passed on some time ago, Solomon Skhuza, Tongai Moyo, Marshal Munhumumwe, James Chimombe, Simon Chimbetu and Oliver Mtukudzi. On the bottom, many either earned royalties of either less than USD10 or nothing at all. Some of those are recent releases.

How is the amount calculated per play?

Calculating the amount per play is determined by dividing the distributable revenue by the total number of works performed and reported at a given period:

Formula:

Amount per play = Distributable Revenue divided by the total number of works

For example:  $\frac{\text{ZWL } 200\,000.00}{142\,027 \text{ works}} = \text{ZWL } 1.41/\text{play}$

The example given means that if someone's work has been played ten times (ZWL1.41x10), it will fetch ZWL14.10. If the work has been used by a radio station 100 times, it will fetch ZWL141. For work that has been used 1000 times, it will fetch ZWL1 410, and for one that has been used 10 000 times, it will get ZWL14 100. Therefore, the more the work gets exploited and reported on the log sheet, the more royalties to that work.

Recently ZIMURA migrated to a more advanced system for its documentation and distribution. The web-based system called WIPOCONNECT was developed by the World Intellectual Property Organization (WIPO), an improvement from WIPOCOS, which the WIPO also developed. Previously ZIMURA used WIPOCOS, but this could only be accessed on a local server with limited connectivity, access and accessibility. In contrast, WIPOCONNECT can be accessed remotely without an internet connection. This application is multi-functional as it does the following: Documentation and management of rights holders and works data, Management of music usage logs for royalty



processing, Calculation and allocation of royalties, Interlinking data exchange with other CMOs via WIPOCONNECT Shared, and Cloud storage.

#### Broadcasting and General (Performing Rights)

This is the main distribution and is based on the log sheets from broadcasters who are the major users of music. It is based on the fees collected from broadcasters as well as the general license fees which is the money collected from public spaces such as bars, restaurants, shops and other public music users. R. C. Banda, Head of Documentation and Distribution at ZIMURA, (Personal communication, November 17, 2022):

A study carried out by ZIMURA revealed that by and large, music played by broadcasters is also the same as in unmonitored places. Therefore, on a pro rata basis, the general fees are allocated to stations participating in a distribution that given period and calculations are based on what is reported on the log sheets.

Based on that, it is assumed that a song played five times on the radio will likely play at least once in a public place. Broadcasting royalties used to be distributed once a year (1 June), but due to high inflation, they are now done twice per annum.

#### Mechanical rights royalties (Digital platforms)

This is the payment for using songs on digital platforms such as YouTube, Google, Facebook, Deezer etc. ZIMURA partnered with the Composers, Authors, and Publishers Association (CAPASSO) in South Africa which licenses these digital platforms on behalf of the African region. The Head of Documentation and Distribution at ZIMURA, R. C. Banda (Personal communication, 17 November 2022, Harare): “We normally encourage members to notify us of their new works as soon as they release them for ZIMURA to be able to notify CAPASSO on their portal. Mechanical rights distributions are done quarterly”.

#### **The Blank Tape Levy-Prospects of Increasing Revenue Collection**

It is important and possible that ZIMURA can double or even treble its revenue collection through the Blank Tape Private Levy. ZIMURA has, for a long, been pushing the government for the introduction of this levy, but it does seem like the government is dragging its feet. According to W. Mushayi (Personal communication, January 26, 2023), “The Blank Tape Private Copy Levy is being looked into because of revenue leakage. We are reviewing legislation to accommodate that”. P. N. Chimhini (Personal communication, February 31, 2023):

It is a good idea that our government has neglected. In countries where it has been implemented, artists are making money. These include Malawi, Ghana, Algeria, Algeria, Burkina Faso and Ivory Coast. The idea is that every gadget where artistic work can be stored pays at the point of entry to the country before it reaches the person who will use it. These gadgets include mobile phones, flash sticks, blank CDS and DVDs, computers and laptops.

Apart from paying rights holders their royalties, part of that money can be used to develop the creative and music industries. Most public performance venues that used to be a hive of activity nationwide are dilapidated and have no prospects of recovery. Government on the other hand claims to be broke as there are no active grants or even loans given to the creative and cultural sector.



### **Challenges faced by ZIMURA in implementing copyright law**

There are numerous challenges that the organization has faced and continues to face. It has been observed that, due to high inflation it is difficult to maintain a fixed licencing tariff. For that reason, tariffs keep on changing to keep up with changing economic circumstances. “The other major challenge is economic instability which has seen the value of our currency fluctuating, resulting in the erosion of value on collection as well as multiple tariff reviews”, Head of Documentation and Distribution at ZIMURA, R. C. Banda (Personal communication, November 17, 2022):

Because licensing business is seen as a cash cow, there are now too many licensing organisations/authorities, which tends to overburden the music industry. In addition to ZIMURA, these include the Zimbabwe Broadcasting Corporation, the Censorship Board, the National Arts Council of Zimbabwe, the Broadcasting Authority of Zimbabwe, and of course, local and health authorities in the case of shops and restaurants, among many others.

Because this is seen as a tree with low-hanging fruits, ZIMURA has persistently had problems with bogus organisations that continue to sprout nationwide. These organisations and individuals go around shops and restaurants demanding licensing money, claiming they are members of ZIMURA. P. N., Chimhini (Personal communication, February 31, 2023):

Different individuals go to the field, some claiming to be coming from ZIMURA. It will take the client who knows us who will phone us and say, “I have people here who are claiming to be coming from you. We ask, where are you, and then they say we are in Chakari, and we tell them, no, we did not send anyone there. That’s how they then figure out that these are bogus. We asked the person who called to report them to the police. But usually, when this person says I am calling ZIMURA, they quickly disappear.

Some of these organisations go by the names Music and Visual Anti-Piracy Organization of Zimbabwe (MVAPOZ), Anti-Piracy Organization of Zimbabwe (APOZ), Trade Union of Music and Arts Industry (TUMAI), National Anti-Piracy Organization of Zimbabwe (NAPOZ) and lately, Anti-Piracy Task Force and Piracy Prevention in Zimbabwe. These are individuals who, like chameleons changing colour, keep changing names. ZIMURA correspondence to the Commissioner General of Zimbabwe Republic Police and ZIPO (March 9, 2020) reads:

We have noticed that these organisations changed names more frequently over the past few years; when the newly adopted name’s reputation is tainted, they are quick to rename and then continue with their operations with the same or a few of the previous team.

Due to economic challenges and the facts stated above, some businesses are shutting down, with others removing music completely from their business premises as they see it as an unnecessary expense. According to correspondence from ZIMURA, affected premises included, but are not limited to, Power Sales, Chicken Inn outlets, Electro Sales shops and Transerve outlets. This scenario, in turn, “has resulted in ZIMURA losing substantial revenue meant for royalties meant to be paid to rights holders in the country and beyond”, according to the same ZIMURA correspondence (March 9, 2020).

What worsens the situation is that there is lack of political will on the part of government and politicians who seem to be putting intellectual property at the bottom of their priority list and they





see music as something that should be consumed for free. Copyright infringement penalties are not stiff enough to deter offenders. Equally, there is ignorance of Copyright Law from the law enforcement agents, in this case Zimbabwe Republic Police as well as the judiciary leading to delayed justice when there is Copyright Law infringement. The Deputy Executive Director of Zimbabwe Music Rights Association, H. Makumbe (Personal communication, November 17, 2022) asserts, “corruption” also plays its part within the judiciary and the law enforcement systems”.

To talk about music piracy would be a cliché as copyright infringement seems to be the “new normal”. People are selling pirated music discs virtually daily and everywhere with the police as onlookers. To make matters worse, the rights holders and consumers are ignorant of copyright issues. “Added to all these challenges is non-compliance and ignorance of the Copyright Law by emerging broadcasters, both online and those that are not online” (Deputy Executive Director of Zimbabwe Music Rights Association, H. Makumbe (Personal communication, November 17, 2022)).

The Deputy Executive Director of ZIMURA expressed his worry over the lack of a monitoring system to monitor airplay on all broadcasters 24 hours “so that our collection and distribution is effective” (Personal communication, November 17, 2022). He explained that some composers claim their music is being played, yet they are not receiving royalties. Verifying that claim is difficult since there is no monitoring system. On the other hand, the price of one is so exorbitant that it is almost out of reach for the organisation financially. The good thing, though, is that most broadcasters are now digitalised, and for that reason, it makes it easy to verify with some stations.

Also, despite the numerous campaigns on various media platforms, including radio, television, newspapers and social media, there is still some measure of resistance from some public music users in some pockets of the country to respect intellectual property by paying for its use.

Other challenges include poor administration of log sheets by broadcasters (lots of omissions that impact negatively on the accuracy of distributions) and failure by members to notify ZIMURA of their new works on time, thereby slowing down the distribution process. If some members change pseudonyms, they are not updating ZIMURA, resulting in data duplication and affecting distribution accuracy. Also, the lack of music copyright knowledge gives birth to increased copyright conflicts on share splits. Some members do not have active bank accounts to enable the smooth transfer of royalties. “Each time royalties are ready, we have to contact members to confirm or update their banking details, and this prolongs the whole distribution process”, Head of Documentation and Distribution at ZIMURA, R. C. Banda (Personal communication, November 17, 2022):

### **Conclusion**

Intellectual Property Rights are viewed in contempt by various Stakeholders in Zimbabwe. Intellectual property rights are a new phenomenon in Zimbabwe. Generally, most businesspeople in Zimbabwe do not see why they should pay for playing a song on their business premises. Music enhances people’s businesses in shops, restaurants, hotels, bars, buses, taxis, aeroplanes, shops, soccer matches, festivals, etc. Equally, music is being used by broadcasters regularly. They too are reluctant to pay royalties to rights holders, although the majority understand why they should pay. The general feeling by broadcasters in Zimbabwe is that a musician should be grateful if they play his/her music as they are promoting his/her music. Ordinarily, music in Zimbabwe is treated even by ordinary people, as common or public property that every Zimbabwean should have a right to use without



having to compensate the rights holder. This notion is perhaps taken from the feeling that traditional songs have been used publicly by everyone without anyone having to claim payment for them. On the other hand, other forms of property like livestock, vehicles, and houses have always been respected as belonging to specific owners.

The study uncovered that piracy is seriously affecting the music business in Zimbabwe. Vendors sell pirated CDs on street corners in urban and rural centres and get away with it. The ZRP is famous for its catch-and-release approach in which perpetrators pay bribes and return to continue their illegal actions. Internet shop operators charge about a dollar for fifty or sixty songs by different artists and upload music on flash discs for consumers. This music is played on private and public transport and the musicians realise no financial benefit from their intellectual property. Intriguingly, some musicians were observed selling pirated copies of their own music, arguing that such a move would propel them to popularity.

Implementing Intellectual Property Rights in Zimbabwe by the Zimbabwe Music Rights Association faces many challenges. Economic instability has fuelled inflation, which makes it difficult to maintain a fixed licensing tariff. The presence of numerous licensing organisations overburdens the Zimbabwe music industry. Copyright infringement legislation is not punitive enough to deter offenders. Corrupt law enforcement agents do not help the musicians' cause either. Log sheets are not always very accurate, and that loophole leads to the leakage of funds that could potentially benefit artists.

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