

**FOLKSONGS, PARODY AND GLOBAL MUSIC: INTERROGATING THE MUSIC  
COPYRIGHT QUESTION IN THE DIGITAL AGE IN NIGERIA**

**Arugha Aboyowa Ogisi**

*Delta State University, Nigeria*

[madaedun@yahoo.com](mailto:madaedun@yahoo.com)

**Tosin Peter Anifowose**

**C. O. Aluede**

*Ambrose Alli University, Nigeria*

coaluede@gmail.com

**Abstract**

This essay examines folksongs and its links with communities and cultures. It is this relationship which makes it look as a property of all. In this work, we reflected on metamorphosis of folksongs into parody and the height it has reached in Nigeria. It examines the new age of digitalisation which ought to be a blessing in Nigeria but looks more of a threat to intellectual property and its associated economic gains. It concludes that there is an urgent need to step up some substantive areas of property law to accommodate modern realities.

**Keywords:** *Folksong, Parody, Polyglot, copyright infringement; performers' rights.*

**Introduction**

Human beings naturally have penchant for innovations, this quest for improvement on previously established standards is the precursor of new developments. Music, being a vital part of the world's culture is not left out. For example, a lot of discoveries have characterised the musical world. Howard (2000: vii) talks of:

Guido of Arezzo and the invention of notation, the invention of Opera, the invention of equal temperament, Bartolomeo Cristofori and his amazing loud and soft machine (piano-forte) and the invention of recorded sound.

These inventions cannot come into being without a patent and its associated protection. Beyond that, the final product of such inventions is essentially sound. This in itself leads us to the issue of putting mechanisms in place to protect sound and other related creative activities. While examining the need for and protection of performers' rights, Wen Jiabao in Odunaike (2017:4) opines that intangible assets like knowledge, information, creativity and inventiveness have replaced tangible assets like land, labour and capital as the driving force of economic growth. To us, if a new order has replaced the old, the replacement has to be total in which case an expansion of the already existing mechanisms or an evolution of a more contemporaneous mechanism to protect creative works, performance and performers is a necessity.

The twenty-first century has also come with quite a number of technological breakthroughs. Without doubt, such discoveries are aimed at enhancing proficiency, reducing human stress and improving quality of life. As we speak today, we find iPods which have the capacity of accommodating over 1,700 tracks, flash drives and memory cards of high sizes, MP3s, Napster, P2P and other devices.

While it is thought that such discoveries are for the advancement of their users, there appears to be a concomitant challenge which evolves with the passing of each day- threat to creativity which manifests in the form of poor royalties accruing to intellectual property owners. This has turned popular stars into paupers, when one realises that they have lost financial grip of their hard work. In Nigeria, the scenario looks abysmally horrifying in that the people still finds it difficult to see the divide between the tenaciously held old fashioned beliefs of music ownership and current realities. It is in this direction that this paper tries to examine how community ownership of African arts particularly music has aided piracy. This is what we have captured as the journey of folksongs, parody and their final destination- global pool of world music. Within this paper, measures are suggested to checkmate this ugly trend.

### **Folksong and Folksong traditions in Nigeria**

Folksongs/ folk music has been defined by quite a number of music scholars depending on their own leanings. For example, Hadley (1980:286) says that “Folk music is the product of musical tradition that has evolved through the process of oral transmission”. Ofofu (1989:63) throws a brighter light on it when he says:

Folksong refers to any traditional song which is of obscure and indeterminate antiquity, but has passed into general currency and acceptance. By implication therefore the origin, in terms of composers or creators is not known. However, it is always closely bound to a culture within which it fulfils a positive functional purpose.

Interestingly, Microsoft Encarta (2009) also holds the view that:

Folksongs are primarily communal compositions—that is, they are anonymous expressions of the society or culture that produces them, although the melody and words of a specific song may have had their origin in a single, unknown individual.

The first definition of folksong considered in this paper talked of folk music. We argue that folksong and folk music can be used interchangeably. In the views of Ofofu (1989) and Aluede (2008) folksongs and traditional music could be interchangeably used in that they refer to the same thing. In all, the definitions above have relevant tendencies which should be emphasised for the purpose of this presentation and they are that:

- i) Folksongs are communal compositions
- ii) Folksongs are of obscure and indeterminate origin
- iii) The composers of folksongs are hardly ever known
- iv) Folksongs are orally transmitted from age to age
- v) Folksongs are culture bound

It is considered necessary to preliminarily note these tendencies because they are the pivot on which many other related matters will be further teased in this study.

### **Parody in Contemporary Nigeria**

In this segment, we shall attempt to define parody and further discuss the height it has reached in Nigeria. Parody as a term has been visited and revisited. So as to save some time for certain aspects of this discussion, two definitions of epochs apart are here presented. While defining parody, Apel and Daniel (1960:216) opine that it is “in modern usage, a satirical imitation of a serious work, produced e.g., by substitution of a comical text or by caricaturing version of the music. In earlier practice the term simply means reworking, without any satirical implication”. Shortly after, Apel (1969:203) defined the term “*contrafactum* as a vocal composition in which the original text is replaced by a new one, particularly a secular text by a sacred text, or vice versa”. According to Turkson (1992:66)

Parody is a satirical imitation used in music either by replacing the original text with a comic one, or by changing the character of the composition in a comical manner. In earlier days, it was the practice to replace text with or without the implication of caricature. This process, often referred to as parody as in the songs of Lully’s operas, is properly called *contrafactum*.

Having examined the divergent views in the works above, little or no difference exists between parody and *contrafactum*. In terms of etymology, while parody is of French origin, *contrafactum* is Latin and they all refer to issues bordering on musical adaptation. Thus parody which is a more common term will be adopted in this paper so as to reduce the incidence of less common words in this presentation. While trying to define folksongs in the preliminary pages of this paper, the attributes of folksongs were highlighted thus: “folksongs are communal compositions, are of obscure and indeterminate origin, their composers are hardly ever known, are orally transmitted from age to age and are culture bound”

Before subjecting these attributes to some degree of analysis, it is considered important to share the thoughts of Okwilagwe (2002:105) here where he opines that:

Music in Nigeria, essentially, derives its origin and versatility from the oral traditions or the folklore of the different ethnic groups that make up the Nigerian nation. The varying musical styles observed within these large cultures in Nigeria are truly enormous, rich; exciting.

Worthy of note in the pedigree of folksongs in Nigeria is that they are orally transmitted, communally owned, of indeterminate origin and of unknown composers. These features surrounding folksongs in Nigeria have made them vulnerable. Hence they are used under any social climes with audacity. The idea that folksongs as no one's property has blurred into the general perception of recorded works. Even when aspects of such songs have been rearranged and recorded, they are still seen as the people's collective treasure which can be borrowed from at will devoid of restraints.

### **Copyright laws and music in Nigeria**

The Nigerian Copyright Act strictly defines performance in artistic terms. According to Section 26 (2) of the Act, performance includes a dramatic performance, a musical performance, a reading or a recitation of literary act or any similar presentation which is, a live performance given by one or more individuals<sup>1</sup>. In a swift reaction to the above position, Odunaike (2017:15) observes that: The Nigerian Copyright Act did not define a performer and that the first three international instruments on performers' rights the subject matter of protection is 'performance' not 'performer'.... According to Bakan (2012:25) Support and ownership of music are major facts that influence how music lives in communities, cultures, and societies. Some music is regarded as the property of a family lineage (e.g. in India) or an entire village community (e.g. in Bali). Other music is not regarded as property at all, rather being thought of as an integral facet of communal life that is absorbed into the broader fabric culture.

In some Nigerian societies, who plays the drum, dances to a particular piece of music, watches a performance and sings selected tunes are regulated by traditional laws. Aside these, when and where to sing are equally regulated. This explains why music making is socially controlled to contain possible abuse and misuse (Aluede, 2013). Metaphorically, in the land

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<sup>1</sup> Nigerian Copyright Law and Practice , 2<sup>nd</sup> Edition, Books and Gavel Limited (2012) at Pp 336-337

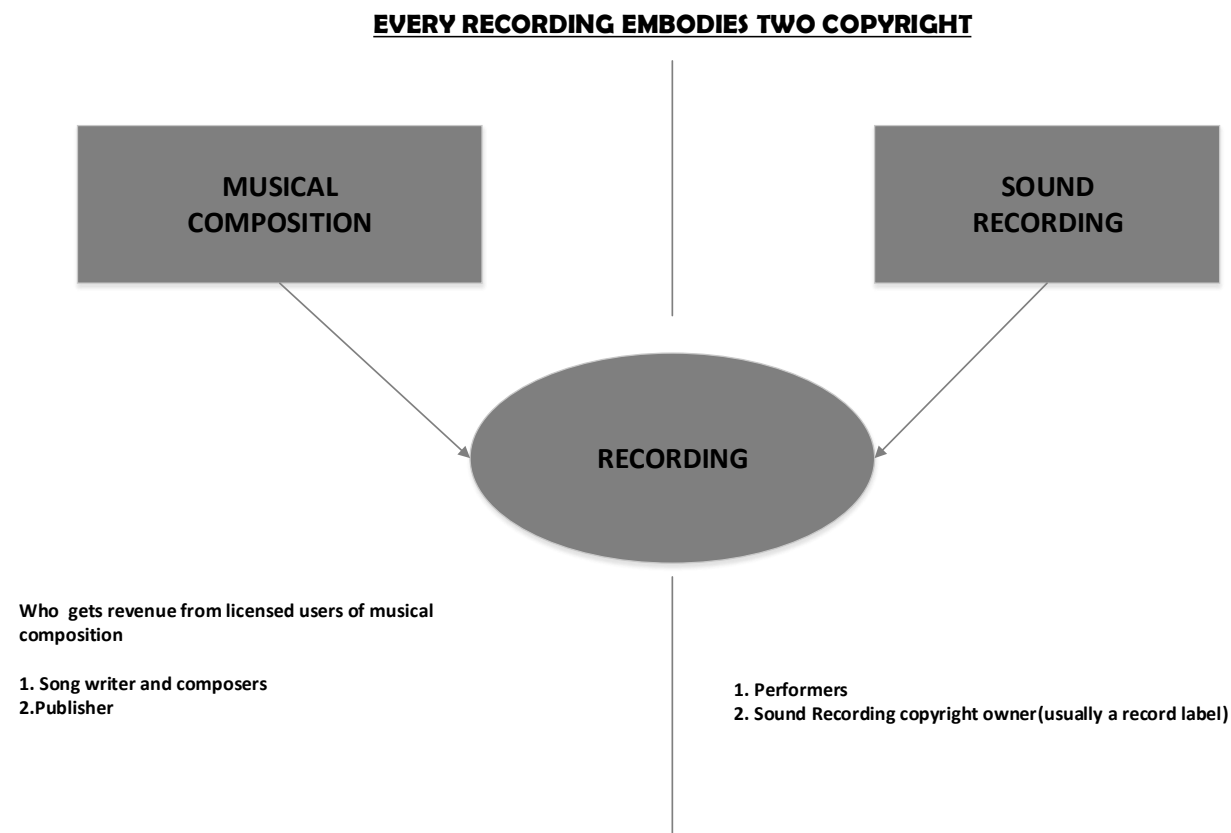
where there are rules and regulations governing the strict use of music, reckless adaptation of texts, rhythms and melodies are condoned to a life threatening degree. Copyright is creative artist's control of original work, it is the legal right which a person has over the use and reproduction of his original property. For the purpose of copyright, the work to be protected must be rendered in some tangible form in which, or by means of which other people may perceive it. Thus, musical work may be fixed on tape or in sheet music. The lyrics alone without intelligible notation would be protected as a literary work but not as music. Fixation is even more important because works that have not been fixed would be hard to prove in the event of dispute as to their ownership (Ekpo, 1994).

In simple terms, piracy is the use of copyrighted materials without permission. At this point, we need to re-emphasise that where there is no proper documentation, any work cannot be said to be pirated. By this, it is meant that when any work or literary work is not presented in some form to enable one assert ownership over it, rights of ownership cannot be said to be infringed upon. Sadly, though, rights are infringed on and abused without recourse in the musical scene on daily basis. While discussing a recent trend in Nigeria, Aluede (2010:12) says that:

A polyglot is one who can speak several languages. By this term, the Nigerian polyglot gospel musicians, we refer to these Nigerian musicians who sing a tune in more than one language. In the last three decades, we have seen quite a number of songs in English with Hausa, Yoruba and Ibo translations. Some other musicians have even used other minority languages like Urhobo, Ijaw, Itsekiri, and Esan to translate songs that were originally English.

These polyglots without permission reproduce *verbatim et letariturum* already recorded works using the same texts, instrumentation and melodies and perhaps the only palpable innovation in their effort is rendering the song in an additional language other than that which was originally used.

As it stands today, any recorded music in Nigeria swiftly gets into a journey. This journey in presented in the diagram below showing the recording process and what happens after the process.



The music industry consists of the companies and individuals that make money by creating and selling music. Among the many individuals and organizations that operate within the industry are: the musicians who compose and perform the music; the companies and professionals who create and sell recorded music (e.g., music publishers, producers, recording studios, engineers, record labels, retail and online music stores, performance rights organizations) and for those that present live music performances (booking agents, promoters, music venues, road crew); professionals who assist musicians with their music careers (talent managers, business managers, entertainment lawyers); those who broadcast music (satellite, internet and broadcast radio); journalists; educators; musical instrument manufacturers; as well as many others. This therefore portrays the fact that the enterprise of music production is a web which connects very many fields and sub-fields of human endeavours. As many as the units and individuals are that are connected with music production, so are the different degrees of infringements that could evolve from the exercise. Before going any further, certain terms will be defined within the context of this presentation

so that every reader could follow the trajectories in this work and they are: music law, copyright, copyright infringement and online copyright infringement.

1. Music Law refers to legal aspects of the music industry and certain legal aspects in other sectors of the entertainment industry. The music industry includes record labels, music publishers, merchandisers, the live events sector and of course performers and artists.

2. Copyright is a legal concept, enacted by most governments, that grants the creator of an original work exclusive rights to its use and distribution, usually for a limited time, with the intention of enabling the creator of intellectual wealth.

3. Copyright infringement is the use of works protected by copyright law without permission, infringing certain exclusive rights granted to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works. The copyright holder is typically the work's creator, or a publisher or other business to whom copyright has been assigned.

#### Infringement of Performers' Rights

The Nigerian constitution, section 28 (a) of the Act provides that a performer's right is infringed by a person, who without the consent of the performer or authorization in writing, records the whole or substantial part of a live performance, provide that where the consent sought is for the purpose of making a recording of the work for research, private or domestic use, such consent shall not be unreasonable refused (Odunaike, 2017: 110).

4. Online Copyright Infringement. Accessing music via digital services is an area of growth for the music industry. In quarter one 2012 digital income accounted for over half of all recorded music income for the first time.

This growth is threatened as new services have to compete with websites that offer music illegally for free. Seven million people in the UK admit to visiting sites that offer illegal content. There have been attempts by Government to improve the enforcement of copyright infringement, otherwise known as piracy, via measures such as the Digital Economy Act,



which deals with peer-to-peer file sharing. Outside of legislation, the music industry is proactive in working with the advertising and payment sectors to ensure that providers of such services do not support illegal sites.<sup>2</sup>

### **Copyright laws and modern realities in Nigeria**

According to Cecil-Turner (1941:342), ownership is the exercise of mastership in form of unlimited physical control over a thing. While discussing how much the global internet piracy costs the recording industry, an analysis by the institute for policy innovation concludes that global sound recording piracy causes:

\$12.5 billion in economic losses every year. 71,060 U.S jobs lost (of the amount, 26,860 jobs would have been added in the sound recording industry or in downstream retail industries, while 44,200 jobs would have been added in other U.S industries). Loss of \$2.7 billion in workers earning (of this total, \$1.1 billion would have been earned by workers in the sound recording industry or in downstream retail industries while \$1.6 billion would have been earned by workers in other U.S industry), loss of \$422 million in tax revenues, loss of \$291 million in personal income tax and loss of \$131 million in corporate income and production taxes<sup>3</sup>

America without doubt is a more organized economy than ours. This in turn makes it easy and possible to generate and retrieve data without much strain. If America as an economy which is better informed and properly policed is beset with this challenge in music business what then is likely to be the situation in Nigeria? For example, one of the lead author's former students recorded an album and was marketing it personally in local markets and other outlets. But sadly, one fateful day, he met an Ibo man who had pirated his work selling it in the same market. He arrested the Ibo man using the police but the offender was bailed having paid out some money to the law enforcement agents. Utterly disappointed, he had to let the

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<sup>2</sup> <http://www.ukmusic.org/policy/licensing-solutions/online-copyright-infringement>

<sup>3</sup> [www.narn.com/2008Covn/Stateoftheindustry.pdf](http://www.narn.com/2008Covn/Stateoftheindustry.pdf)

matter go. This testimony is just one of the many lots that are poorly managed to the advantage of the fraudsters.

Allen and Cecily (2009:55), assert that:

We almost note that copyright does not protect ideas or concepts, but rather the expressions of ideas or concepts. Copyright protect works from unauthorised copying. When you place a compact disc into your computer and create a file of music on that CD, you are technically creating a copy of the music. So why don't music companies seem to care about this type of copying.... Technically, it may be a violation of copyright law, but as long as you don't share the copy (I wonder if this is ever possible!) If it's for personal use only, meaning that record labels seem less concerned about copying a CD into a different format than copies created and distributed.

Without contradiction, man as a biological creature has much affection for music and music in the Nigerian culture requires collectivism in performance and aesthetic enjoyment. Therefore, sharing a piece of music via any channel is really a matter of goodwill and elongations of those core values of the mantra: "There is joy in sharing" This sharing is done without recourse to the financial implication and contemporary ethical reality of such an act.

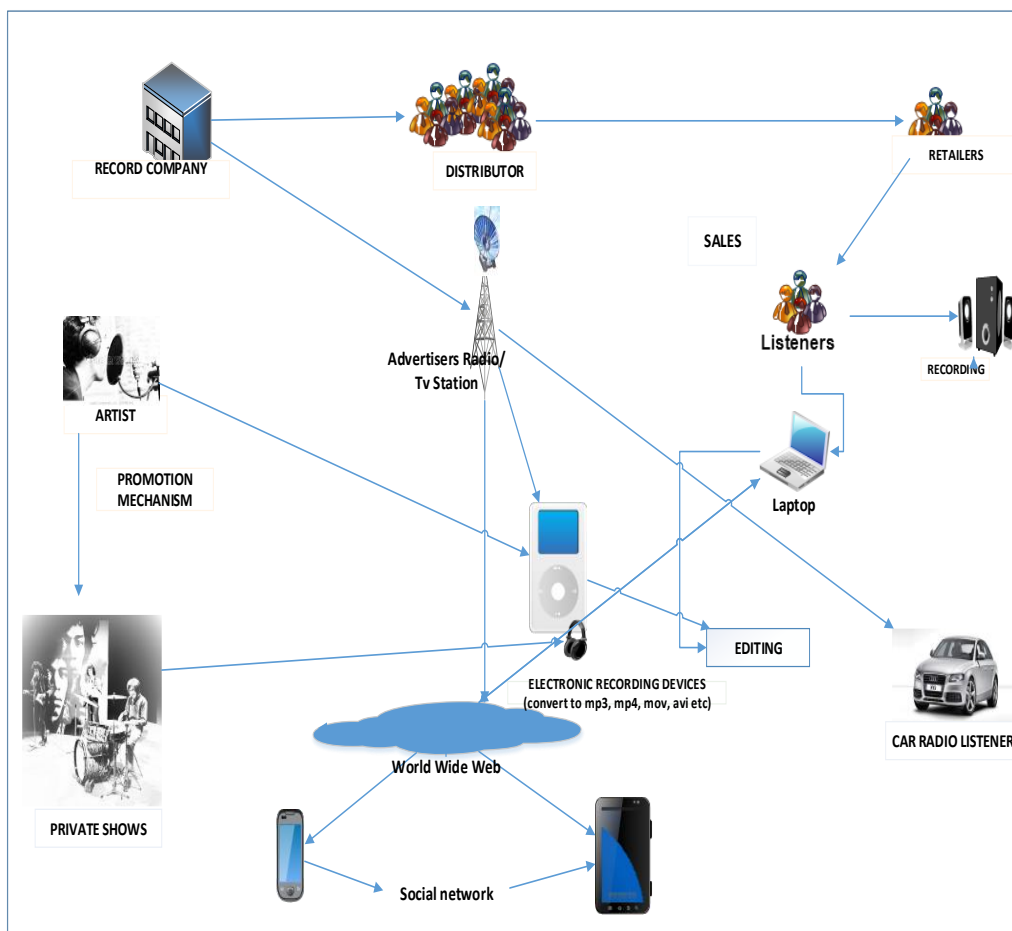
The music industry continues to find innovative ways to tackle problems associated with online infringement. Recent legal actions have been won to block websites which offer illegal content. The industry also continually monitors the way illegal content is listed in search engine rankings following concerns that infringed material sometimes outranks legal offerings.

#### **Examples of Online Copyright Infringement:**

- You make an MP3 copy of a song because the CD you bought expressly permits you to do so. But then you put your MP3 copy on the Internet, using a file-sharing network, so that millions of other people can download it.

- Even if you don't illegally offer recordings to others, you join a file-sharing network and download unauthorized copies of all the copyrighted music you want for free from the computers of other network members.
- In order to gain access to copyrighted music on the computers of other network members, you pay a fee to join a file-sharing network that isn't authorized to distribute or make copies of copyrighted music. Then you download unauthorized copies of all the music you want.
- You transfer copyrighted music using an instant messaging service.
- You have a computer with a CD burner, which you use to burn copies of music you have downloaded onto writable CDs for all of your friends.
- You record music played at a media house as an advertisement copy and you record using a digital record and share with friends.

Below is a flow diagram on how music can flow/move from one point, device to another, from one city, nation to another without being authorized.



A diagram showing the flow of recorded music

### The Task before the Copyright Society of Nigeria (COSON)

Safeguarding creative works of arts is an onerous task. The need to do so cannot be overemphasised in that failing to do so will leave the artist empty handed or stripped of any financial gains that may be accruable to him from his lifelong toil and craftsmanship. The Nigerian clime appears to uncongenial for artists, according to Okafor (2002:115)

The society under which the copyright law operates in Nigeria is under the strain of certain external and internal forces. First, the cultural base of the Nigerian society provides that a work of art or craft, in any form, may have its origin in an author, but is essentially communal in usage and eventual ownership. Under this system, different people in the society could introduce modifications and

adaptations, and sometimes, use the work in the manner not originally intended by its creator. Even where the work enjoys certain protection, provided by its intended ritual or ceremonial usage, certain variations, which do no harm to the original intentions, were permitted.

Observing further the challenges mentioned above, he further opines that, the principal organ for guarding and enforcing copyright law in Nigeria is the Nigerian copyright commission. This commission has its national headquarters and its zonal offices in the six geo-political zones of Nigeria- south- south, south- west, south-east, north- east, north- west, north-central. Its supervising ministry is the ministry of culture and tourism- a big improvement from the times when copyright was under the ministry of commerce, much detached from the productive and creative sectors of information, culture and tourism. The Nigeria police force has been directed to establish Anti- piracy desks at designated areas in their commands while every state has an anti-piracy committee in which artists, artistes (mainly public performers), authors, the police will be members (Okafor, 2002:116).

Of concern is the fact that as we speak, this committee is yet to be put in place. For about half a decade now COSON has been struggling for recognition and an instrument for administration even though it has been legally recognised. More disturbing is the litigation it has with other sister arms in the music industry in Nigeria and so implementation of its supposed laudable programmes is entrapped.

## **Conclusion**

In this paper, we examined folksongs and its links with communities, cultures, and societies. It is this relationship which makes it look as a property of all. We also looked at parody and further discussed the height it has reached in Nigeria with the evolution of the roles of polyglot musicians. The age of digitalisation which ought to be a blessing in Nigeria is yet to be truly so judging from our appraisal of the present situation. Intellectual property law suffers, perhaps more than any other substantive area of law, from an inability to keep up with innovation. As technologies continue to develop and enter the market place at an exponential rate, current laws and guidelines struggle to keep up and protect rights holders while encouraging innovation. Copyright law is no exception (Allen and Cecily, 2009:87). To

evolve a more a more pragmatic mechanism of safeguarding the works of arts should be the primary concern of everyone irrespective of one's race and clime.

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