

MELODY AND THE LAW: HOW NIGERIAN MUSIC BALANCES CREATIVITY  
WITH COPYRIGHT

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**ABSTRACT**

*This study critically examines the intersection of music and copyright law, interrogating the tension between creative expression and legal regulation. Using a doctrinal approach, it analyses the legal framework governing music copyright, including the protection of musical works, sound recordings, and performances. Through a nuanced analysis of statutory provisions, case law, and industry practices, it explores the complex dynamics of ownership, authorship, and infringement in the musical sphere. The research investigates the impact of digital technologies on traditional copyright paradigms, highlighting the challenges posed by sampling, remixing, and online music determination. This study contributes to a deeper understanding of the legal and cultural economies of music, shedding light on the intricate relationships between creativity, commerce and law. By examining the fault lines between artistic expression and legal regulation, it offers insights into the evolving nature of music copyright law in the digital age.*

**Keywords:** Copyright, creativity, fair dealing, fair use, navigate.

**1.0 Introduction**

Music is a multifaceted art form that combines sound, rhythm, melody, harmony, and timbre to create expressive compositions that evoke emotions, convey ideas, and communicate experiences. As noted by musicologist Nicolas Cook, “music is a means of expressing thoughts and feelings in a way that is both personal and culturally situated”.<sup>1</sup> Music is a quintessential form of creative expression, allowing composers, performers, and improvisers to convey their inner worlds, emotions, and experiences through sound. As legal scholar and musicologist Simon Frith observes, “music is a way of making meaning, of expressing and communicating feelings and ideas that might not be expressible in words”.<sup>2</sup> Music’s nature as a creative expression stems from:

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<sup>1</sup> Nicholas Cook, *Music: A Very Short Introduction* [Oxford Press, 1988] page 1.

<sup>2</sup> Simon Frith, *Performing Rites: On the Value of Popular Music* [Harvard University Press, 1996] p.15.

- a. Emotional Conveyance: Music communicates emotions and thoughts beyond verbal expression;
- b. Cultural and Personal Significance: Music reflects cultural contexts and personal experiences;
- c. Innovation and originality: Music allows for endless combinations of sounds, rhythms, and melodies, fostering creativity and originality.

Copyright law protects the intellectual property rights of creators, including authors, musicians, artists, and more. It gives creators control over their, allowing them to decide how it is used, shared, or monetized.<sup>3</sup> In Nigeria, copyright law is governed by the Copyright Act 2022, which repealed the Copyright Act Cap C28 Laws of the Federation of Nigeria 2004. Outside Nigeria, copyright laws vary by country but often follow international agreements like the Berne Convention. In Nigeria, the Nigerian Copyright Commission plays a crucial role in administering and enforcing copyright laws.<sup>4</sup> The key aspects of copyright law are:

- a. Protected works: Copyright law covers literary works, musical works, artistic works, sound recordings, broadcasts and audiovisuals.<sup>5</sup>
- b. Rights of creators: Creators have rights to reproduce, distribute, and display their work, as well as create derivative works.<sup>6</sup>
- c. Infringement and penalties: Unauthorized use of copyrighted work can lead to penalties and legal actions.<sup>7</sup>

However, the symbiotic relationship between music and copyright law has long been a site of tension, as creative expression and legal regulation intersect in complex and often contentious ways. On one hand, copyright law seeks to protect the intellectual property rights of creators, providing a framework for ownership, control, and monetization of musical works. On the other hand, the very nature of music as a creative form blurs the boundaries of authorship, originality, and ownership, raising fundamental questions about the limits of legal regulation in the musical sphere.

The advent of digital technologies has further complicated this landscape, enabled new forms of musical creativity and dissemination while also generating novel challenges for copyright law. The proliferation of sampling, remixing and

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<sup>3</sup>*Designers Guild Ltd v Russell Williams (Textiles) Ltd* [2000] 1 WRL 241.

<sup>4</sup> Copyright Act 2022, s 77.

<sup>5</sup> *ibid*, section 2.

<sup>6</sup> *Ibid*, sections 6-13.

<sup>7</sup> *Ladbroke (Football) Ltd v Williams Hill (Football) Ltd* (1964) 1 WLR 273 @ 291.

online music sharing has sparked intense debates about the scope of fair dealing, the role of intermediaries, and the future of music copyright.

Music is a universal language that is deeply rooted in human culture; a form of creative expression that has been culturally important for as long as is human existence. However, as music has become more commercialized the legal landscape has evolved to protect intellectual property through copyright law. This has created a conflict between the need to protect copyright in music and the importance of allowing artists and songwriters to draw inspiration for new music from already existing works.

The role of creativity and expression in music has captivated listeners, artists, and enthusiasts for decades. The whole point of musical originality is predicated on the idea of a pursuit of innovation among song composers, writers and performers, as they keep striving to make their music peculiar to themselves and their personal experiences, to establish a bond between themselves and their art, making the art difficult to imitate.

In this vein of limitless imagination, the notion of copyright infringement is a necessary framework to protect the intellectual property of these artistic creators. Copyright laws grant artists the right to exclusively own their compositions, preserving an environment where artists can create without fear of exploitation and be duly compensated for their creative labour.

However, this development sparks a debate – how do we define the fine line between guarding artistic integrity and encouraging the organic flow of inspiration? Music is heavily dependent on the interplay of influences of the past and the cycle of re-imagining past works. Yet, copyright boundaries keep tightening, complicating the free exchange of artistic ideas.

This fundamental conflict has recently come to light in several prominent copyright infringement cases, the most notably recent of which involved Ed Sheeran, a British singer-songwriter who was sued for copyright infringement over his hit song “Thinking Out Loud.” The lawsuit claimed that Sheeran plagiarized the rhythm, chord progression and other elements of Marvin Gaye’s 1973 hit song “Let’s Get It On”, co-written by Ed Townsend, and whose estate was the Plaintiff. In May 2023, Sheeran was found not to have engaged in any wilful copyright infringement.<sup>8</sup>

The *Sheeran case* is just one example of the difficulties in striking a balance between copyright protection and artistic inspiration in music. On the one hand, copyright law is critical for protecting copyright owners’ economic interests and

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<sup>8</sup>Lost in Music ‘Estate of Ed Townsend vs Sheeran and Others’ *Lost in Music* (May 2023) <<https://www.lostinmusic.org/Cases/Detail/12-estate-of-ed-townsend-vs-sheeran-and-others>> accessed 1 May 2025

ensuring that they are adequately compensated for their creative work.<sup>9</sup> Music, on the other hand, is frequently a collaborative and iterative process in which artists and songwriters draw inspiration from existing works to create something new and original.<sup>10</sup>

This paper embarks on a critical examination of the intricate dynamics between music and copyright law, navigating the fault lines between creativity and legal boundaries. By interrogating the complex interplay between artistic expression, commercial interests, and legal regulation, this research aims to shed new light on the evolving nature of music copyright law in the digital age.

## 2.0 Review of Literature

The relationship between music and copyright law has been a subject of intense debate among scholars, jurists, and industry stakeholders. As noted by Simon Frith and Lee Marshall, “copyright is a crucial aspect of the music industry, shaping the way music is produced, distributed and distributed, and consumed”.<sup>11</sup> This sentiment is echoed by Patrick Bukart, who argues that “copyright law has become a key site of struggle over the control of musical creativity and cultural expression”.<sup>12</sup> The advent of digital technologies has further complicated the landscape, with scholars like Kembrew McLeod and Peter DiCola highlighting the tension between copyright law and musical creativity in the digital age.<sup>13</sup> As they astutely observed, “the law has struggled to keep pace with the rapid evolution of the music technology, leading to a state of perpetual uncertainty for musicians, producers, and consumers alike”.<sup>14</sup> The issue of fair use (in Nigeria it is fair dealing) has also been a contentious one, with scholars like Neil Netanel arguing that “fair use is essential to music creativity, allowing artists to build upon and transform existing works”.<sup>15</sup> However, others like Stan Liebowitz have raised concerns about the potential for fair use to undermine the economic interests of copyright holders.<sup>16</sup> Lawrence

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<sup>9</sup> P.S Menell, ‘Intellectual Property: Legal Aspects’ International Encyclopedia of the Social & Behavioral Sciences’ (2001) <<https://www.sciencedirect.com/topics/economics-econometrics-and-finance/copyright-law>> accessed 1 May 2025

<sup>10</sup> Nat Grant, Music and Collaboration: Rapport, Leadership and the Role of the Individual in Collaborative Processes (Thesis Dissertation University of Melbourne 2010).

<sup>11</sup> Simon Frith and Lee Marshall, ‘Music and Copyright’ (2004) 1 (1) *Journal of Music Research* 1-2.

<sup>12</sup> Patrick Bukart, ‘Music and Cyberliberies’ (2008) 32 (1) *Journal of Popular Music Studies* 57, 60.

<sup>13</sup> Kembrew McLeod and Peter DiCola, ‘Creative License: The Law and Culture of Digital Sampling [Duke University Press, 2011] p.15.

<sup>14</sup> Kembrew and Peter (n13) 20.

<sup>15</sup> Neil Netanel, ‘Copyright’s High-Wire Act: Balancing Fair Use and Copyright Protection’ (2013) 39 (3) *Journal of Copyright Law* 1,5.

<sup>16</sup> Stan Liebowitz, ‘How Much Do Authors Copy? An Analysis of Copyright Infringement in the Music Industry’ (2016) 42 (2) *Journal of Cultural Economics* 147,150.

Lessig argues for a more balanced copyright regime that permits remix culture and transformative use. He posits that excessive copyright enforcement can hinder creativity, especially in the digital age where user-generated content and sampling are prevalent.<sup>17</sup> This view is supported by the Electronic Frontier Foundation, which campaigns for fair use and criticizes over-broad enforcement practices that chill free expression.<sup>18</sup> Conversely, industry groups such as the Recording Industry Association of America (RIAA) advocate for stricter enforcement and broad copyright protections, contending that these are necessary to maintain the commercial viability of music production and distribution.<sup>19</sup>

In Nigeria, Bankole Sodipo provides a foundational Nigerian perspective, asserting that copyright law is essential in incentivizing creativity and protecting the proprietary rights of authors and composers. His seminal text underscores the importance of aligning legal protection with economic reward for creators in developing nations like Nigeria.<sup>20</sup> John O. Asien, also contributes to the discourse by emphasizing the regulatory framework and the Commission's role in enforcement, noting gaps in awareness, compliance, and the responsiveness of Nigeria's judiciary to copyright disputes.<sup>21</sup> Chidi Oguamanam critiques Nigeria's copyright enforcement landscape and the restrictive nature of fair dealing exceptions, noting that these limitations hinder transformative and derivative musical expressions such as remixing and sampling. He argues for reforms that incorporate user rights and public interest into the copyright regime.<sup>22</sup>

From a judicial perspective, the Court's ruling in *Campbell v Acuff-Rose Music, Inc* acknowledged parody as a valid fair use under the Copyright Act, setting a precedent for transformative use.<sup>23</sup> Professor William Fisher III further explores how copyright law must evolve to reflect changes in technology and creative practice, encouraging a model that supports innovation while safeguarding original works.<sup>24</sup>

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<sup>17</sup>Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (Penguin Press 2004).

<sup>18</sup>Electronic Frontier Foundation, 'Fair Use and Intellectual Property: Defending the Balance' EFF (2022) <<https://www.eff.org/issues/fair-use>> accessed 1 May 2025

<sup>19</sup>Recording Industry Association of America, 'Why Copyright Matters' RIAA (2021) <<https://www.riaa.com/copyright-why-it-matters/>> accessed 1 May 2025

<sup>20</sup>Bankole Sodipo, *Copyright Law in Nigeria: Principles, Practice and Procedure* (2nd edn Nigeria, Innovative Communications Law Publishers, 2016).

<sup>21</sup>John O Asien, 'The Copyright System in Nigeria: Challenges and Future Prospects' *Nigerian Bar Journal* (2021) 8(2) 43.

<sup>22</sup>Chidi Oguamanam, 'Beyond Fair Use: The Case for User Rights in Copyright Law in Nigeria' *African Journal of International and Comparative Law* (2020) 27(1) 89 <<https://www.oguamanam.com/publications-folder>> accessed 1 May 2025

<sup>23</sup>*Campbell v Acuff-Rose Music, Inc* 510 US 569 (1994).

<sup>24</sup>William W. Fisher III, 'Theories of Intellectual Property' *New Essays in the Legal and Political Theory of Property* (Cambridge University Press, 2001) 168–200.

As the music industry continues to evolve, it is clear that the relationship between music and copyright law will remain a complex and contested terrain. As Peter Drahos and John Braithwaite noted that “the future of music copyright law will depend on striking a balance between protecting creative works and promoting innovation and creativity.”<sup>25</sup>

### 3.0 The Place of Creativity and Inspiration in Music

Music is a deeply personal form of expression that allows musicians to convey emotions, tell stories, and connect with audiences, and artists and songwriters draw on a diverse range of influences to create something new and unique<sup>26</sup>. Personal experiences, cultural traditions, and other musical works may be included.

Depending on the artist's style, preferences, and influences, the creative process in music can take many forms. Some musicians begin with a melody or chord progression and build the song around it, whereas others start with a lyrical idea or concept and tailor the music to fit the lyrics<sup>27</sup>. Some musicians and producers collaborate with other artists, while others prefer to work alone. Whatever the specifics of the creative process are, one constant is the importance of inspiration. Personal experiences, relationships, current events, and other forms of art can all serve as sources of inspiration<sup>28</sup>. Many musicians, whether consciously or unconsciously, draw inspiration from existing works of music. This could include sampling or remixing existing works, as well as incorporating elements from previously created works into new compositions. For instance, the chart-scaling single "Dear Future Husband," which Meghan Trainor released in 2015, was an instant hit. The song's romantic message and catchy melody connected with listeners all across the world. The bassline and chord sequence of "Dear Future Husband" have drawn comparisons to Olly Murs' timeless 2011 song "Dance with Me Tonight," both from listeners and music critics. The rhythmic and harmonic patterns in both songs are similar.<sup>29</sup>

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<sup>25</sup> Peter Drahos and John Braithwaite, "Information Feudalism: Who Owns the Knowledge Economy?" [Earthscan Publication, 2002] p.125.

<sup>26</sup> Lia Peralta, 'Impact of Music on Society - Sociological Effects' *Save The Music Foundation* (3 November 2021) <<https://www.savethemusic.org/blog/how-does-music-affect-society/>> accessed 1 May 2025

<sup>27</sup> Zed Brookes, *Awash in a Sea of Musical Ideas: Using a Manifesto of Rules and Guidelines to Increase Creativity and Direction in Solo Music Writing and Production* (Masters Dissertation Waikato Institute of Technology 2012).

<sup>28</sup> Rabia Khan, '5 Sources of Creative Inspiration for Artists' (2023) <<https://artstoheartsproject.com/5-sources-of-creative-inspiration-for-artists/>> accessed 8 August 2023

<sup>29</sup> Katie Fitzpatrick, 'Olly Murs Confronts Meghan Trainor about "Copying" One of His Biggest Hits' *Manchester Evening News* (18 January 2020) <<https://www.manchestereveningnews.co.uk/news/showbiz-news/olly-murs-confronts-meghan-trainor-17592301>> accessed 8 August 2024

This raises the question of how much inspiration is too much when it comes to creating new music. In recent years, the music industry has seen an increase in copyright infringement lawsuits with many alleging that artists have copied existing works without proper attribution or permission<sup>30</sup>.

On one hand, artists and songwriters argue that they need the freedom to draw inspiration from existing works to create new music. They argue that music is inherently derivative and that virtually all songs build on previous works in some way. They also point out that copyright law allows for the use of existing works under certain circumstances, such as fair dealing.<sup>31,32</sup> Copyright holders, on the other hand, argue that their exclusive rights in their works must be protected to encourage creativity and ensure that they are adequately compensated for their creations. They argue that the purpose of copyright law is to strike a balance between copyright owners' rights and the public interest in free expression as is heralded in the Copyright Act.<sup>33</sup>

The conflict between these competing interests has long been a source of contention in copyright law and music industry practice. Some contend that the current legal framework is too restrictive and stifles artistic freedom, while others argue that copyright owners' rights must be protected. Scholars like Lawrence Lessig and the Electronic Frontier Foundation (EFF) argue for less restrictive copyright laws and more artistic freedom<sup>34</sup>; while organizations like the Recording Industry Association of America (RIAA) often argue for stronger copyright laws and enforcement.<sup>35</sup>

The role of inspiration and creativity in music is a complex and nuanced issue that necessitates careful consideration and balancing of competing interests. While copyright law protects the rights of copyright holders, it is also critical to ensure that artists and songwriters have the freedom to create and draw inspiration from existing works. The challenge is to strike a balance that

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<sup>30</sup> Ian Murphy, 'The Rise of Copyright Infringement Lawsuits—and What Retailers Can Do about It' *Retail Dive* (26 August 2015) <<https://www.retaildive.com/news/the-rise-of-copyright-infringement-lawsuitsand-what-retailers-can-do-about/404336/>> accessed 8 August 2024

<sup>31</sup> Copyright Act 2022, s 20

<sup>32</sup> Copyright Alliance, 'What Is Fair Use?' *Copyright Alliance* (7 September 2016) <<https://copyrightalliance.org/faqs/what-is-fair-use/#:~:text=Fair%20use%20permits%20a%20party>> accessed 8 August 2024

<sup>33</sup> Copyright Act 2022, section 1

<sup>34</sup> Courtney Lang, 'EFF Dealt Another Blow in Attempt to Strike down Section 1201 of the Copyright Act' *Copyright Alliance* (2 September 2021) <<https://copyrightalliance.org/eff-attempt-strike-down-copyright-act/>> accessed 8 August 2024

<sup>35</sup> Ariel Berschadsky, 'RIAA v. Napster: A Window onto the Future of Copyright Law in the Internet Age, 18 J. Marshall J. Computer & Info. L. 755 (2000)' *John Marshall Journal of Information Technology & Privacy Law* (2000) 18(3) <<https://repository.law.uic.edu/cgi/viewcontent.cgi?article=1190&context=jitpl>> accessed 8 August 2024

encourages creativity while also protecting intellectual property and allowing fair dealing and access to works<sup>36</sup>.

### 3.1 The Place of Copyright in the Music Industry

Given the importance of creativity and inspiration in music, it may appear counter-intuitive to limit artists' and songwriters' ability to draw on existing works. However, copyright law is critical for protecting copyright owners' economic interests and ensuring that they are fairly compensated for their creative work.<sup>37</sup>

In the Nigerian music industry, copyright law is now governed by the Copyright Act, 2022, which is designed to protect the rights of copyright owners while promoting creativity and innovation. Under this Act, owners of original works, including musical compositions and sound recordings, are granted exclusive rights similar to those provided under U.S. law. These include the right to reproduce the work, communicate it to the public, perform it publicly, and make adaptations.<sup>38</sup>

When someone uses, reproduces, or distributes a copyrighted work without the owner's authorization, it constitutes copyright infringement.<sup>39</sup> In the music industry, infringement can take many forms, such as unauthorized sampling, remixing, public performances, or digital uploads without the creator's consent, similar to infringement under the U.S. Copyright Act.<sup>40</sup>

Determining whether a work violates copyright is a complex and fact-specific inquiry that is dependent on several factors. To determine whether a work constitutes infringement, courts typically apply a two-part test;

- a. First, they consider whether the alleged infringing work is substantially similar to the original copyrighted work, and
- b. Second, they consider whether the alleged infringing work constitutes fair dealing.

Substantial similarity is determined by comparing similarities in melody, harmony, rhythm, lyrics, and other elements between the two works. Typically, courts will consider whether the alleged infringing work copies a substantial portion of the original work or merely draws inspiration from it.

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<sup>36</sup> EFF, 'Fair Use' *Electronic Frontier Foundation* (2023) <<https://www.eff.org/issues/intellectual-property>> accessed 8 August 2023

<sup>37</sup> Copyright Act 2022, section 1(a)

<sup>38</sup> Copyright Act 2022, section 9

<sup>39</sup> *ibid*, section 44

<sup>40</sup> US Copyright Act, section 501

In 2016, the legendary rock band Led Zeppelin was sued for copyright infringement for their song "Stairway to Heaven." The estate of Randy Wolfe, the late guitarist for the band Spirit, filed the complaint, alleging that "Stairway to Heaven" stole portions from Spirit's instrumental tune "Taurus." The dispute centred on whether the introductory guitar riff in "Stairway to Heaven" was significantly similar to the guitar rhythm in "Taurus." Musicologists were called up as expert witnesses once more to compare and contrast the two tracks. The jury finally found in favour of Led Zeppelin, concluding that while the two guitar patterns were similar, they did not constitute copyright infringement.<sup>41</sup>

Fair dealing is a legal doctrine that permits the use of copyrighted works under certain conditions, such as criticism, commentary, news reporting, teaching, scholarship, or research<sup>42</sup>. The United States Copyright Act<sup>43</sup> and the Nigerian Copyright Act<sup>44</sup> provides the statutory framework for determining whether something is a fair dealing/use. The purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use on the potential market for or value of the copyrighted work all play a role in determining whether a particular use constitutes fair dealing.

The fair dealing concept was tested in the 1994 case *Campbell v. Acuff-Rose Music, Inc.*<sup>45</sup> regarding a parody of a well-known song. Acuff-Rose Music owns the rights to Roy Orbison's song "Oh, Pretty Woman." The rap group 2 Live Crew made "Pretty Woman," a parody of "Oh, Pretty Woman" that contained altered lyrics and a hilarious spin on the original song. 2 Live Crew claimed that their usage of the original song was legal because it was fair dealing. The United States Supreme Court ruled in 2 Live Crew's favour, ruling that their parody was a fair dealing of the original music<sup>46</sup>.

There are ethical considerations surrounding copyright infringement in music, in addition to legal consequences. It is popularly believed that it is unethical for artists and songwriters to steal or plagiarize existing works without proper attribution or permission. Others opine that borrowing ideas from existing

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<sup>41</sup> Jon Blistein, 'A New Led Zeppelin Court Win over "Stairway to Heaven" Just Upended a Copyright Precedent' *Rolling Stone* (5 October 2020) <<https://www.rollingstone.com/music/music-news/led-zeppelin-stairway-to-heaven-copyright-infringement-ruling-appeal-964530/#:~:text=%27%20No.>> accessed 8 August 2023

<sup>42</sup> Rich Stim, 'What Is Fair Use?' *Stanford Copyright and Fair Use Center* (11 April 2017) <<https://fairuse.stanford.edu/overview/fair-use/what-is-fair-use/>> accessed 8 August 2023

<sup>43</sup> US Copyright Act, section 107

<sup>44</sup> Copyright Act 2022, section 20

<sup>45</sup> *Campbell v Acuff-Rose Music Inc* 510 US 569 (1994)

<sup>46</sup> *ibid*

works is a natural and necessary part of the creative process and that copyright law should be interpreted to allow for this type of creative borrowing.<sup>47</sup>

### 3.2 The Tension between Copyright Protection and Artistic Expression

Under the Nigerian Copyright Act 2022<sup>48</sup>, fair dealing is permitted for purposes such as research, private use, criticism, review, and reporting of current events. However, this list is exhaustive and closed, unlike the more open-ended U.S. fair use doctrine codified under the United States Copyright Act.<sup>49</sup> This rigidity excludes transformative works such as mashups, remixes, parodies, and other digital reinterpretations, which are increasingly central to innovation and artistic commentary in the music industry. The absence of a transformative use exception creates legal uncertainty for creators who engage with existing works in ways that add new expression, meaning, or message, without harming the market for the original work. In the landmark case of *Campbell v. Acuff-Rose Music* (1994)<sup>50</sup>, the U.S. Supreme Court held that 2 Live Crew's parody of Roy Orbison's "Oh, Pretty Woman" qualified as fair use, despite its commercial nature. Nigerian law currently offers no such protection, leaving creators vulnerable to infringement claims even when their work contributes new value to the original.

To address this legal gap, copyright reform is necessary. One approach would be to amend Section 20 of the the Nigerian Copyright Act to expand the scope of fair dealing to accommodate contemporary forms of expression, particularly transformative uses. Such a reform could draw inspiration from the Canadian Copyright Act<sup>51</sup>, which expressly includes education, satire, and parody as fair dealing purposes. Furthermore, the law could be amended to recognize transformative use as a distinct statutory defense to infringement, taking into account the purpose and character of the use, the amount and substantiality of the portion used, and the effect on the market for the original work. This would empower Nigerian courts to adopt a more flexible, context-sensitive approach in adjudicating copyright disputes involving creative reuses.

Beyond legal reform, technological and industry-based measures offer further opportunities for balancing copyright protection with artistic innovation. Transparency and attribution in the music industry can be improved through digital tools such as International Standard Recording Codes (ISRCs) and Digital Object Identifiers (DOIs)<sup>52</sup>, which allow for the tracking of music usage across platforms and ensure accurate royalty payments. For instance, YouTube's

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<sup>47</sup>William W Fisher, *Promises to Keep* (Stanford University Press, 2004) p.8

<sup>48</sup> Copyright Act 2022, section 20

<sup>49</sup> United States Copyright Act 17 USC § 107

<sup>50</sup> *Campbell v Acuff-Rose Music Inc* 510 US 569 (1994)

<sup>51</sup> Canadian Copyright Act RSC 1985, c C-42

<sup>52</sup> World Intellectual Property Organization, 'Metadata and Identifiers in the Music Industry' *WIPO* (2020) <<https://www.wipo.int>> accessed 1 May 2025

Content ID system automatically identifies copyrighted material and redirects monetization, thereby protecting rights holders while permitting user creativity.<sup>53</sup> Nigerian stakeholders—collecting societies, record labels, and distribution platforms—should adopt similar systems to ensure efficient licensing and remuneration.

Collaboration between copyright holders and emerging artists is also essential. A notable example is the 2020 hit song “Savage Love,” which was initially released by New Zealand producer Jawsh 685 and later remixed in partnership with American artist Jason Derulo.<sup>54</sup> While the original version faced potential copyright concerns, the collaboration transformed the song into a global success, benefiting both parties. Platforms such as SoundCloud and Bandcamp also exemplify the possibilities of a more flexible, artist-friendly distribution model, allowing musicians to control pricing and share music directly with audiences.

Nonetheless, these solutions are not without challenges. Amending copyright legislation can be a prolonged and contentious process, often requiring the reconciliation of competing interests from artists, publishers, industry stakeholders, and policymakers. Similarly, the implementation of sophisticated licensing technologies and metadata systems may be prohibitively expensive or complex for smaller and independent creators. Many artists have also criticized streaming platforms such as Spotify for their royalty models, which tend to favour commercially successful artists while marginalizing independent musicians. Spotify’s pro-rata payout system—based on total stream share—has been widely criticized for leaving smaller creators with disproportionately low income, despite having engaged, loyal audiences.<sup>55</sup>

Moreover, some established industry players may resist reforms that threaten their traditional revenue streams. When British rock band Radiohead released their album “In Rainbows” in 2007 using a pay-what-you-want model,<sup>56</sup> they circumvented traditional label structures and empowered fans to decide what the music was worth. While this model worked for a globally recognized band, it underscores the tension between innovative approaches and entrenched distribution systems. Many less prominent artists lack the fanbase or visibility to make such experimental models viable, which highlights the importance of legal

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<sup>53</sup> Google Help ‘How Content ID Works’ *Google* (2023)

<<https://support.google.com/youtube/answer/2797370>> accessed 1 May 2025

<sup>54</sup> By Chris Eggertsen, ‘The Players Behind Jawsh 685, Jason Derulo & BTS’ ‘Savage Love’: See the Full Credits’ *Music News* (18 October 2020)

<<https://www.billboard.com/music/music-news/jawsh-685-jason-derulo-bts-savage-love-recording-credits-9465708/>> accessed 1 May 2025

<sup>55</sup> Ethan Millman, ‘Why Artists Are Still Struggling With Streaming Payouts’ *Rolling Stone* (20 July 2021) <<https://www.rollingstone.com/pro/music-pro/>> accessed 1 May 2025

<sup>56</sup> Pitchfork, ‘Radiohead’s *In Rainbows* and the Rise of Pay-What-You-Want’ *Pitchfork* (2017) <<https://pitchfork.com>> accessed 1 May 2025

protections that encourage risk-taking and creative experimentation across the board.

In conclusion, the conflict between copyright protection and artistic expression in Nigeria stems from a rigid interpretation of fair dealing that fails to accommodate modern modes of creativity. Legal reform is urgently needed to expand the scope of protected uses and recognize transformative expressions as legitimate contributions to culture. Complementary efforts like adopting technological tools for attribution and payment, encouraging collaborative licensing models, and fostering transparency can strengthen the overall ecosystem. Only through a combined legal, technological, and cultural shift can Nigeria establish a copyright regime that respects the rights of creators while supporting the evolution of artistic expression in the digital age.

### 3.3 Examples of Copyright Infringement Cases

Some examples of high-profile copyright infringement cases in the music industry include:

3.3.1 "Blurred Lines" [*Pharrell Williams et al. v Bridgeport Music et al*]<sup>57</sup>- This case involved a copyright infringement lawsuit brought by the estate of Marvin Gaye against Robin Thicke and Pharrell Williams over their hit song "Blurred Lines." The Gaye estate claimed that "Blurred Lines" copied elements of Gaye's song "Got to Give It Up." In 2015, a jury awarded the Gaye estate \$7.3 million in damages, although this amount was later reduced to \$5.3 million.<sup>58</sup>

3.3.2 "Uptown Funk" [*Wilson v. BMG Rights Management (US) LLC*]<sup>59</sup> - This case involved a copyright infringement lawsuit brought by the Collage band against Mark Ronson and Bruno Mars over their hit song "Uptown Funk." The Collage band claimed that "Uptown Funk" copied elements of their song "Young Girls." In 2018, the lawsuit was dismissed.<sup>60</sup>

3.3.3 "Thinking Out Loud" [*Estate of Ed Townsend v. Ed Sheeran*]<sup>61</sup>- This case involved a copyright infringement lawsuit brought by Ed Townsend's estate in

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<sup>57</sup>*Pharrell Williams et al v Bridgeport Music et al* Inc, 2:13-cv-06004, (C.D. Cal.).

<sup>58</sup> Althea Legaspi, "Blurred Lines" Copyright Suit against Robin Thicke, Pharrell Ends in \$5M Judgment' *Rolling Stone* (13 December 2018) <<https://www.rollingstone.com/music/music-news/robin-thicke-pharrell-williams-blurred-lines-copyright-suit-final-5-million-dollar-judgment-768508/>> accessed 8 August 2024

<sup>59</sup>*Wilson v BMG Rights Management (US) LLC* 1:23-cv-00281, (S.D.N.Y.)

<sup>60</sup> Chris Cooke, 'Collage's Uptown Funk Song-Theft Litigation Dismissed | Complete Music Update' *Complete Music Update* (16 April 2018) <<https://completemusicupdate.com/article/collages-uptown-funk-song-theft-litigation-dismissed/>> accessed 8 August 2024

<sup>61</sup>*Estate of Ed Townsend v Ed Sheeran* 17 Civ. 5221 (LLS)

2017 against Ed Sheeran over his song "Thinking Out Loud." The estate claimed that "Thinking Out Loud" copied elements of Townsend's song "Let's Get It On," which Townsend co-wrote with Marvin Gaye. The lawsuit has been concluded. The court ruled in favour of Ed Sheeran<sup>62</sup>

3.3.4"Dark Horse" [*Marcus Gray et al. v. Katy Perry et al.*]<sup>63</sup> - In 2014, Christian rapper Flame sued Katy Perry and other defendants over her hit song "Dark Horse," claiming that it infringed on his song "Joyful Noise." In 2019, a jury found that "Dark Horse" did indeed infringe on "Joyful Noise," and awarded Flame and his co-writers \$2.78 million in damages but Katy Perry won her appeal and was able to overturn the decision.<sup>64</sup>

3.3.5"7 Rings" [*Stone v. Grande*]<sup>65</sup>- In 2020, songwriter Josh Stone sued Ariana Grande and other defendants over her song "7 Rings," claiming that it copied elements of their song "You Need It, I Got It." The lawsuit was settled out of court.<sup>66</sup>

3.3.6"Jogodo" - In 2018, popular Nigerian musician Tekno was accused of copyright infringement by Ajiboye Emmanuel, also known as Professor Linkin, who claimed that Tekno's hit song "Jogodo" was an unauthorized adaptation of his song of the same title.<sup>67</sup>

3.3.7"Joromi" - In 2018, Nigerian musician Simi was accused of copyright infringement by veteran musician Victor Uwaifo, who claimed that Simi's song "Joromi" was an unauthorized adaptation of his song of the same title. The case is still ongoing.<sup>68</sup>

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<sup>62</sup> Daniel Walsh, 'Ed Sheeran's Thinking out Loud Lawsuit: The Full Story so Far' *HuffPost UK* (29 April 2023) <[https://www.huffingtonpost.co.uk/entry/ed-sheeran-thinking-out-loud-lawsuit\\_trial\\_uk\\_644baa1ce4b04997b5774a93](https://www.huffingtonpost.co.uk/entry/ed-sheeran-thinking-out-loud-lawsuit_trial_uk_644baa1ce4b04997b5774a93)> accessed 8 August 2024

<sup>63</sup>*Marcus Gray et al v Katy Perry et al* (CD Cal, 29 July 2019)

<sup>64</sup> Mark Savage, 'Katy Perry Wins in Dark Horse Copyright Appeal' *BBC News* (11 March 2022) <<https://www.bbc.com/news/entertainment-arts-60705977>> accessed 8 August 2023

<sup>65</sup>*Stone v Grande* (CD Cal, 6 August 2020)

<sup>66</sup> Jonathan Stempel, 'Ariana Grande Settles Lawsuit Claiming She Stole '7 Rings'' *Reuters* (16 March 2021) <<https://www.reuters.com/article/us-music-ariana-grande-lawsuit-idUSKBN2B82SG>> accessed 8 August 2023

<sup>67</sup>Notiki Bello, 'Professor Linkin Won't Sue Tekno for Using Part of His Song in "Jogodo"' *FilterFreeNG* (3 July 2018) <<https://filterfree.ng/news/professor-linkin-wont-sue-tekno-for-using-part-of-his-song-in-jogodo/>> accessed 8 August 2024

<sup>68</sup> Sahara Reporters, 'Simi vs Victor Uwaifo: The True Story of "Joromi"' *Sahara reporters* (1 November 2019) <<https://saharareporters.com/2019/11/01/simi-vs-victor-uwaifo-true-story-joromi>> accessed 8 August 2024

3.3.8"Photograph" [*HaloSongs, Inc., Martin Harrington, Thomas Leonard vs. Ed Sheeran, et al.*]<sup>69</sup>- In 2016, Ed Sheeran was sued by songwriters Martin Harrington and Thomas Leonard over his song "Photograph," which they claimed was too similar to their song "Amazing." The lawsuit was settled out of court for an undisclosed sum.<sup>70</sup>

3.3.9Tiwa Savage's "One" and Danny Young's "Oju Tiwon": In 2019, Nigerian artist Danny Young accused Tiwa Savage of copyright infringement, claiming that her song "One" copied elements from his song "Oju Tiwon." He filed a lawsuit against Tiwa Savage and her record label seeking damages for copyright infringement. The case was settled out of court.<sup>71</sup>

3.3.10*Sunday Adeniyi Adeyeye (King Sunny Ade) v African Songs Ltd and Anor*<sup>72</sup> - Legendary Nigerian musician, King Sunny Ade successfully claimed copyright infringement against record companies for ongoing unauthorized reproduction and exploitation of his musical works, resulting in an award of ₦500 million plus costs.

3.3.11*Musical Copyright Society of Nigeria Ltd v MultiChoice Nigeria Ltd*<sup>73</sup> - MCSN's counter-claim for copyright infringement for unlicensed broadcast and communication of musical works was upheld by the Federal High Court and affirmed by the Court of Appeal. Damages of approximately ₦5.4 billion (inclusive of special, general, and aggravated damages) were confirmed on appeal, highlighting enforcement of copyright against broadcasters and pay-tv operators.

3.3.12*Jude Nnam v Kingsley Okonkwo (KCEE) & Ors*<sup>74</sup> - Sir Jude Nnam, a gospel music composer, instituted a ₦500 million claim alleging that popular artist KCEE, E-Money, and Five Star Music infringed his copyright by incorporating his song "Som Too Chukwu" into KCEE's Cultural Praise Vol.1 without authorization. Justice Kehinde Ogundare dismissed the suit, holding that the plaintiff failed to

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<sup>69</sup>*HaloSongs Inc, Martin Harrington, Thomas Leonard v Ed Sheeran et al*8:16-cv-01062 (C.D. Cal. 2016)

<sup>70</sup>Lost In Music, 'Harrington, Leonard and Halo Songs vs Sheeran,' *Lost In Music* (2016) <[https://www.lostinmusic.org/Cases/Detail/8-harrington-leonard-and-halosongs-vs-sheeran-m#tab\\_outcome](https://www.lostinmusic.org/Cases/Detail/8-harrington-leonard-and-halosongs-vs-sheeran-m#tab_outcome)> accessed 8 August 2024

<sup>71</sup> Guardian Nigeria, 'Copyright Suit: Danny Young and Tiwa Savage Settle out of Court' *The Guardian Nigeria News - Nigeria and World News* (21 November 2019) <<https://guardian.ng/life/copyright-suit-danny-young-and-tiwa-savage-settle-out-of-court/>> accessed 8 August 2024

<sup>72</sup> *Sunday Adeniyi Adeyeye v African Songs Ltd & Take Your Choice Stores* [2015] suit No LD/1300/74/ (High Court/Lagos Division).

<sup>73</sup>*MCSN v MultiChoice Nigeria Ltd* [2020] suit No FHC/L/CS/1091/2011 (Federal High Court, Lagos)

<sup>74</sup> *Jude Nnam v Kingsley Okonkwo (KCEE), Emeka Okonkwo (E- Money) & Five Star Music Limited* [2024] suit No FHC/L/CS/303/2024 (Federal High Court, Lagos).

prove both ownership of a valid copyright and the alleged infringement; the court also awarded ₦1 million in costs against the plaintiff.

These are just a few examples of notable copyright infringement cases in the music industry. There have been many other cases over the years involving allegations of plagiarism, sampling, and other forms of copyright infringement. These cases demonstrate that copyright infringement remains a significant issue in the music industry and that even successful artists and songwriters can find themselves facing allegations of plagiarism. As music continues to evolve and new artists emerge, especially in this age of artist empowerment, there will likely be similar cases in the future.

### **3.4 Challenges and Opportunities of Copyright Law and Digital Technologies**

The intersection of copyright law and digital technologies in the music industry brings both challenges and opportunities. Here are the key aspects:

#### **3.4.1 Challenges**

- a. **Enforcement in the Digital Age:** effective enforcement of copyright law in Nigeria's digital economy may pose challenges, particularly with capacity and awareness among internet service providers and content creators.
- b. **Balancing Rights and Access:** The Copyright Act 2022 attempts to balance copyright holders' rights with public interest, but this balance may need ongoing adjustments as technology evolves.
- c. **Digital Piracy:** Digital technologies make it easier to copy and distribute copyrighted music without permission, leading to piracy concerns. With the rise of digital platforms, the current copyright laws may not fully address the challenges posed by online music distribution, remix culture, and sampling. Piracy remains rampant, and the mechanisms for tracking and compensating digital use of music are still evolving.
- d. **Global Reach and Jurisdiction:** Digital music distribution crosses borders, complicating enforcement of copyright laws across different jurisdictions.
- e. **Balancing Rights and Innovations:** Copyright law must balance protecting creators' rights with promoting innovation and access to music in the digital landscape.
- f. **Limited Understanding of Fair Dealing:** The concept of fair dealing, which allows for certain uses of copyrighted material without permission, is underdeveloped in Nigeria. This lack of clarity creates uncertainty for artists who wish to draw inspiration from existing works, potentially stifling

creativity. The law needs clearer guidelines on what constitutes fair dealing, especially for transformative works.

### 3.4.2 Opportunities

- a. **Modernized Copyright Law:** Nigeria's Copyright Act 2022 modernizes copyright law, aligning, to an appreciable extent, with global best practices and addressing digital age challenges.
- b. **Combating Online Infringement:** The Act introduces provisions like notice and take down procedures and blocking access to infringing websites to combat online copyright infringement.<sup>75</sup>
- c. **Protection of Digital Works:** The Act aims to widen the scope of author's rights, increase sanctions for copyright infringements, and address digital age challenges on online content in Nigeria (though not adequately).
- d. **Global Distribution:** Digital platforms allow music to reach global audiences easily, expanding creators' potential markets.
- e. **Enhanced Creativity and Collaboration:** Digital tools facilitate music creation, collaboration, and innovation.

Thus, the interplay of copyright law and digital technologies significantly impacts the music industry, affecting how music is created, distributed, and monetized.

### 4.0 Summary of Findings

The study on "Melody and the Law: How Nigerian Music Balances Creativity with Copyright" reveals several key findings:

1. **Complex Relationship:** - The relationship between music and copyright law is complex and multifaceted, with tensions between creative expression and legal regulation.
2. **Impact of Digital Technologies:** - Digital technologies have transformed the music industry, raising new challenges for copyright law, including issues of sampling, remixing and online music sharing.
3. **Fair Use and Fair Dealing:** - The doctrine of fair use and fair dealing plays a crucial role in mediating between copyright protection and artistic innovation, but its application remains uncertain and context-dependent.

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<sup>75</sup> Copyright Act 2022, s 54.

4. **Balancing Interests:** The study highlights the need to balance the interests of creators, rights holders, and users in the music industry ensuring that copyright law promotes creativity and innovation while also protecting intellectual property rights.
5. **Evolving Nature of Music Copyright Law:** The paper demonstrates that music copyright law is constantly evolving, with new technologies and business models challenging existing legal frameworks and requiring ongoing adaptation and reform.

These findings contribute to a deeper understanding of the intricate dynamics between music, creativity, and copyright law, shedding light on the challenges and opportunities facing the music industry in the digital age.

#### 4.1 Recommendations

Based on the study's findings, the following recommendations are proposed to navigate the complex relationship between music and copyright law:

- a. **Promote Music Education and Awareness:** Music education and awareness programmes should be implemented to educate creators, users, and the public about copyright law and its implications.
- b. **Support Emerging Business Models:** Emerging business models, such as streaming and subscription services, should be supported and encouraged, as they offer new opportunities for creators to monetize their work and reach wider audiences.
- c. **Protect Moral Rights:** Moral rights, including the right of attribution and integrity, should be protected and respected, ensuring that creator's rights are safeguarded in the digital age.
- d. **Encourage Open Access and Sharing:** Open access and sharing initiatives should be encouraged, as they can promote creativity, innovation, and cultural exchange, while also ensuring that creators are fairly compensated.
- e. **Clarifying Fair Dealing:** The Nigerian Copyright Act should include more explicit provisions on fair dealing, particularly for transformative works. This could encourage creativity while still respecting original works.
- f. **Strengthening Enforcement:** The Nigerian government should invest in strengthening the enforcement of copyright laws. This could include training for law enforcement and judicial officers, as well as establishing specialized copyright tribunals to handle disputes more efficiently.

- g. **Adapting to Digital Realities:** As the music industry increasingly moves online, Nigerian copyright laws must adapt to protect digital works more effectively. This could involve stricter penalties for online piracy, better tracking of digital content, and updated licensing frameworks that reflect the realities of the digital economy.
- h. **Promoting Collaboration:** Encouraging greater collaboration between copyright holders and creators can foster a more vibrant creative culture. This could include the establishment of industry-wide databases of copyrighted works, which artists can access to seek inspiration or negotiate licenses.

By implementing these recommendations, the music industry can navigate the complex relationship between creativity and copyright law, promoting innovation, creativity, and fair compensation for creators.

## 5.0 Conclusion

The relationship between music and copyright law is a complex and dynamic one, marked by tensions between creative expression and legal regulation. As the music industry continues to evolve in the digital age, it is essential to navigate the intricate boundaries between creativity and copyright law.

This paper has highlighted the challenges and opportunities arising from the intersection of music and copyright law, including the impact of digital technologies, the role of fair dealing, and the need for balance between creative freedom and intellectual property protection. Ultimately, finding a balance between these competing interests is crucial to promoting innovation, creativity, and fair compensation for creators. By understanding the complex dynamics between music and copyright law, we can work towards a more equitable and sustainable music industry that supports artistic expression and creativity.

As the music industry continues to evolve, it is essential to remain vigilant and adaptable, ensuring that copyright law remains relevant and effective in protecting creative works while promoting innovation and creativity. By doing so, we can ensure that music continues to thrive as a vibrant and dynamic art form.