Book Review: Review of Oriakhobga's Copyright, Collective Management Organizations and Competition in Africa

By:

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Modern Africa has seen a significant amount of development in both the output of creative industries into the international sphere and across the continent itself. It is no surprise, therefore, that the regulations regarding the use, distribution and collective management of rights have become more pertinent in this modern context. Intellectual property law and policy are constantly developing even as ideas and approaches change across the world. This has resulted in an exciting and pivotal point of change in Africa. Oriakhogba in this seminal work examines the issues in the regulation of collective management organizations and competition relating to copyright in Nigeria, South Africa and Kenya. This book is a product of Oriakhogba's scholarly research towards a Doctor of Philosophy and provides an examination of the interrelationship of competition law and collective management practices in copyright.

The author makes an analysis of the concept of CMOs, the different models as well as competition law and its interrelation with the operations of the CMOs, and in so doing presents a useful reference point for the creation of policies which can improve the working of the systems for the general benefit of all users. The added advantage is that this knowledge can be utilized in three different countries. The book is divided into seven chapters and moves from the introduction to general issues in collections management to models of collections management and then to the discussions on the historical contexts and emergence of collective management in the sample countries and the application of competition law within the context of copyright protection and management.

The work importantly looks at the rationale for collective management agencies and whether they can be argued as being outside the scope of competition law since their use of blanket licensing can result in or be considered to be in the nature of price fixing. The author argues that since collective management practices arose from the necessity to protect the copyright of creators, such an arrangement could not be viewed as counter to the provisions of competition law except where it stymied or suppressed competition. However, in my view, while competition law has some relevance to copyright and its management, it does not necessarily follow that the substantial rules of that area of law may be applicable to it in all ramifications. CMOs and their regulation are most suitably situated within the contexts of the law of contract and copyright law, a point which the book also makes in its analysis of the national regulation regimes it considered.

The author gives an in-depth examination of the different models of CMOs as they obtain in the sample countries ranging from voluntary rights management to mandatory and the hybrid extended collective management system and evaluates the efficacy of the systems in the countries. This is especially valuable for the creation of policies which can impact the systems as they now exist and serve other territories that may wish to create effective CMOs that properly balance the interests of legality and fairness. More broadly, the book provides extensive developmental history of the CMO’s in the sample countries of Nigeria, South Africa and Kenya, and gives detailed explanations of the current laws and other regulations which apply to them, as well as discussions on the regulating agencies and the scope of their work. It discusses the various

policy positions and offers advice on the proceedings as they now exist. Students of this area would find Oriakhogba's detail of the applicable case law useful in relation to the current operations of the executing agencies. Internal management, transparency and accountability are also covered in some detail.

Dispute resolution outside of the court system is, however, not examined to any degree which would inform the reader about how other mechanisms are used to settle issues which may arise using arbitration, mediation or conciliation. There is no substantive discussion of how ADR is used and its effectiveness, which, given the current trends across the world and in Africa, is a very important component of the management of disputes on copyright matters. This is understandable as the focus of the book, as indicated in chapter one, is on the operation and regulation of collective management from a copyright and competition law perspective in Africa with specific attention to Nigeria, South Africa and Kenya. Thus, the application of alternative dispute resolution (ADR) mechanisms to collective management was discussed only as they find relevance within the national regulation regimes considered as shown in chapter four that examined the Nigerian situation. Nonetheless, it is notable that the African Intellectual Property Organization (ARIPO) and the World Intellectual Property Organization (WIPO) offer ADR services, which parties to IP disputes can utilize.

The author in the final chapters create a linkage between competition law and regulations to copyright issues in general and to the collective management agencies. He discusses the complementarity approach in which these two distinct fields find common ground in the aim of supporting creativity and consumer welfare. The author further argue that copyright and competition laws mainly interact where copyright issues involve allegations of market dominance by the rights holder. There are discussions of the case law related to restrictive agreements and how copyright issues might at times fit within this category and this may be of some interest to scholars of IP law.

One outstanding feature of this book is that it provides significant historical information on the operations of CMOs in the sample countries and discusses some important cases in CMO management even as it highlights the nexus between the operation of CMOs and the application of competition law to their regulations. The book is to be recommended to students and specialists in the field of law, especially IP and Competition law in Africa and the rest of the

developing world. Dr. Oriakhogba in writing this book, has made a valuable contribution to the discourse in this area and laid the foundation for further study of it.

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