Multi-sided music platforms and the Law: Reflections on the panel discussion on the digital creative economy

By:

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Multi-sided music platforms are part of the digital creative economy consisting of the various aspects and processes through which creative works are made/produced, distributed and used. In this reflective post, I will discuss the questions posed in the book talk and panel discussion I organised titled "The Digital Creative Economy in Africa: Copyright, Law and Policy". Having written a book that focused on music content as a copyright-protected work and how Nigeria and South Africa may apply copyright, competition and privacy laws to address the activities of multi-sided music platforms that use these music content, it was imperative to have a wider discussion that involved other kinds of creative content within the specific context of Africa.

How should the activities of digital platforms shape copyright law in Nigeria?

What are the contributions of digital platforms in shaping regulatory frameworks and the creative economy? Do digital platforms control too much (within the creative economy)? What kind of enforcement frameworks is most relevant for the Nigerian digital creative economy? These are some of the questions explored at the panel discussion moderated by John Onyido. Speakers responded from the perspective of their various sub-sectors: film (Ekene Som Mekwunye); copyright regulation (Obi Ezeilo); music (Muna Martins); enforcement (Bisi Olabanji); media and entertainment (Wangi Mba-Uzoukwu) and law, research and policy in the creative industry (**Chijioke Okorie**).

I got the conversation started in response to **John Onyido**'s first question: How has/should the activities of digital platforms shape copyright and IP laws in Nigeria? Platform firms are driven by profits. The use of copyright-protected content is deployed to make profits. That should inform copyright law's response to the activities on/of digital platforms. In this regard, balance is key. Copyright law should protect the interests of copyright owners whilst ensuring that it does not stifle innovation and the business of platform firms and other copyright users.

Obi Ezeilo reminded us that the key objectives of copyright law are to get creators/authors to keep creating and, to get creative works out there to the public. In this regard, digital platforms have brought about a revolution both in terms of how works are created and how works get to the public. The current copyright law in Nigeria (i.e. Copyright Act 1988 as amended) is not adequately primed to respond to this revolution hence the drafting of the (Nigerian) Copyright Amendment Act, which seeks to address the digital space particularly the ease of reproduction and distribution. Whilst reproduction is the same whether in the physical or digital space, the process of identifying the infringement and enforcing the law varies depending on the space.

'Bisi Olabanji brought the benefit of her work with the IP Enforcement unit of the US Department of Justice at the US Embassy, Abuja. Territorial boundaries have been shifted with the digital revolution. It used to be that copyright was enjoyed to the extent of each country's territorial boundaries. With digital platforms, technology and copyright become even more interwoven and with changes in technology, copyright law gets the chance to evolve and change

too. The question then is how copyright law should respond to technology and technological disruptions. Within Nigeria and across the African continent, the impact of training judges and law enforcement agencies can only be effectively measured by developments in copyright and IP jurisprudence.

In terms of the best contributions of digital platforms, **Wangi Mba-Uzoukwu** opined that authors get to build their brands quickly: people get to know creators and their work much more speedily. You produce a short film, upload it online and someone engages you to produce their new movie project. It is easier for the ecosystem to find you as an author. Because it is easy for authors to be reached, it is also easy for authors to reach (consumers) as well and go direct to consumers without needing middlemen. The best contribution of digital platforms is connected to its "worst" contribution: enabling piracy. Just as authors are able to reach and be reached by consumers and customers, any one can copy and reproduce creative works. The solution is to study how pirates and infringers are benefitting/profiting from using technology to access protected works.

Ekene Som Mekwunye sees piracy as an opportunity for deeper market access. People in rural areas in Nigeria get to watch Nigerian films sometimes only because of piracy. For him, this means that one of the biggest challenges of the digital creative economy is distribution. **Wangi Mba-Uzoukwu** agreed with this statement and added that one viable solution is to create a thriving ecosystem through increased investments in the distribution infrastructure. PayTV should be at the bottom of the chain such that by the time a filmmaker or content producer is coming to PayTV, he/she literally should have made his/her money back.

Muna Martins echoed similar sentiments from the music industry. Digital platforms have engendered a revolution in the way music content is distributed. What is now important is for artists, recording and publishing companies to understand how revenue is generated and distributed on these platforms. In this regard, distribution reports should be taken seriously and analysed appropriately.

All the discussants agreed that a conversation about the digital creative

economy in Nigeria is long overdue. The conversation is not a one-off conversation but a continuing one. For me, the panel discussion was successful on many fronts. Apart from the insights provided by the discussants, the Q&A session threw up many interesting questions and responses.

To conclude, I will highlight two. In responding to the question about what kind of partnerships and collaborations are crucial for the digital creative economy, **Wangi Mba-Uzoukwu** stated that apart from partnerships for conversations such as the panel discussion, there is need for partnership to help evolve our creative content through collaborations with bigger studios that have the efficiencies of scale. There is also partnership for investment. As Africans and Nigerians, we have stories to tell. A brand story as told through an advert is film! [The African Magic Viewers' Choice Awards recognizes a "best short film or online video"] Also, there is a collaboration that should happen between the big brands and the creative sector. For example, a bottle of Coca-Cola travels even to the rural areas. How do you use that brand to transport our stories to the rural areas?

We know our IP rights and we know we can enforce and protect them in court and/or assert them in contractual negotiations…what are we (artists) afraid of? This was the gist of the question posed by one of the attendees – a music artist. **Ekene Som Mekwunye** believes that it is economic suicide to sue the entities that are responsible for distribution and that as an author; it is wisdom rather than fear that makes one refrain from going to court. The best regulatory and enforcement framework is one that supports authors to create and distribute their works and generate revenue therefrom. **John Onyido** shared his experiences representing clients in IP cases stating that sometimes courts fail to take the available opportunities to rule on issues that will grow our (Nigeria's) IP jurisprudence and instead rely on technicalities to dismiss claims. **Bisi Olabanji**'s institution (IP Enforcement Unit at the US Department of Justice, US Embassy Abuja) has collaborated with the Ministry of Justice in many countries to train Judges and public enforcement officers on IP enforcement. The impact of such trainings can only be measured when authors and stakeholders in the creative economy approach these entities to enforce their rights.

I found this question and the responses very interesting because it speaks to my current research offering arguments in favour of a restructured copyright judicial system in Nigeria and South Africa. It is also the subject of a paper due to have been presented at the 39th Congress of the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP) 2020 (now postponed to 2021 due to the coronavirus pandemic). In essence, a rethinking of our IP enforcement systems in Nigeria (and Africa, I dare say) is imperative if we are to have a system that appropriately balances the rights of copyright owners and users.

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