



# UNBUNDLING RIGHT COMPLEXITIES IN MUSICAL COPYRIGHT IN NIGERIA

**A distinction should be made between a 'musical work' and a 'sound recording' on the basis that while the former comprises recorded words and sounds**

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## Introduction:

One of the usual areas of conflict among contractual partners or parties is who owns what copyright in a musical work or body of works. The reason for this usual conflict or misunderstanding is not far-fetched. Copyright comes with a whole lot of benefits that only the copyright owner(s) or assignee(s) of such copyright can enjoy either for life or for a certain number of years.

In most cases, different degrees of rights are attached to a single musical work or a body of works, and these degrees are not the same in terms of the value they bear and/or pass to their owners. This explains the usual scrambling for partitioning of the different degrees of rights attached to a musical work by different stakeholders or right-scramblers, as one may call it. Unbundling the complexities usually inherent in the act of right owning or sharing of a musical work and offering a hint in that regard is what this article focuses on.

## What Qualifies as a Musical Work:

The Nigerian Copyright Act LFN 2010 defines a musical work as any 'composition, irrespective of musical quality and includes works composed for musical accompaniment'. The Act adopts an open-ended, inclusive definition which does not seem comprehensive. A musical work ranges from words woven together as rhythmic lyrics to words accompanied by monophonic or polyphonic sounds and/or effects, usually sung, performed or recorded.

A distinction should be made between a 'musical work' and a 'sound recording' on the basis that while the former comprises recorded words and sounds, the latter relates to recorded sounds without words. Still, both are copyrightable pieces. When words are dissociated from a musical work, it will most likely change the nature and copyright classification of the work from a musical work to a sound recording.

## The Various Components of a Musical Work:

A musical work usually embodies many direct and allied components. The components include:

- a. The lyrics
- b. The accompanying engineered sounds (masters); and
- c. The performance

Copyright ownership of each of these components can reside in different persons, even in respect of the same musical works — that is, the different components of a particular musical work can have different owners.

## Ownership of Components of a Musical Work:

What determines the ownership of the respective components of a musical work may be statutory or contractual. In instances where the Copyright Act confers ownership directly, it will be said to be statutory. Such owner will be a statutory copyright owner.





The law allows the statutory copyright owner to, by assignment, licensing or testamentary disposition (will), pass or share the statutory ownership to another person in perpetuity or a period of time. Once this happens, the person to whom the statutory ownership is passed or shared becomes a contractual copyright owner (partly or fully).

Copyright ownership in the components is as follows:

- a. The statutory copyright in the lyrics, being the first component of a musical work, is owned by the composer— in most cases, the artiste is the same as the composer. Most times, copyright to the use of the lyrics is usually assigned by the artiste/composer in a 360 contract to the record label, and the record label becomes the contractual owner of the copyright. The artiste/composer will still retain limited authorship right.
- b. The statutory copyright in the performance of the musical work is owned by the performer, which may be or not be the artist. The Copyright Act specifically recognizes the rights of the performer which may be different and distinct from the right the composer and/or the artistes where the performer is a different person. Copyright to the use of the performance can also be assigned to others contractually. Where an artiste/composer in a 360 contract is the same as the performer, the copyright in the performance is usually assigned to the record label ab initio. The artiste/composer will still retain limited authorship right.
- c. The statutory copyright in the masters of a musical work comes with a lot of ownership complexities unlike the aforementioned components. First, ownership of masters in a musical work is not directly provided for in the Copyright Act, as the Act does not make distinction between the components. Secondly, a lot of persons are involved in the making of the masters that can lay various claims different aspect of it, to wit— the artiste/composer (for singing the lyrics), the sound engineer (for providing the sounds/beat), contributing artiste (for his/her contribution), the instrumentalists (for their unique sounds/beats) etc. In a 360 contract, the copyright in the masters (master recording) is usually part of what the record label asks the artistes/composer to give up contractually. Most times, the record label also signs contracts with others involved in the masters to assign their copyright.

## Securing a Better Place:

In the light of the varying degrees of value that come with the different components of a musical work, securing a better place as artistes, composers, sound engineers, producers, record labels and contributing artistes go a long way to determine the monetary benefits one can derive from a musical work. It is not in dispute that master recording yields much more (in terms of commercial value) than lyrics and performance because of the streaming. Apart from expressly recognized statutory copyright ownership, the Act allows other participants in a musical work to determine by contract who holds and owns what.

For this reason, consultation and involvement of lawyers by artistes, composers, sound engineers, producers, record labels and contributing artistes at the point of entering into a musical work-related contract to negotiate contractual ownership (part or full) of the masters is very paramount in recent times.

