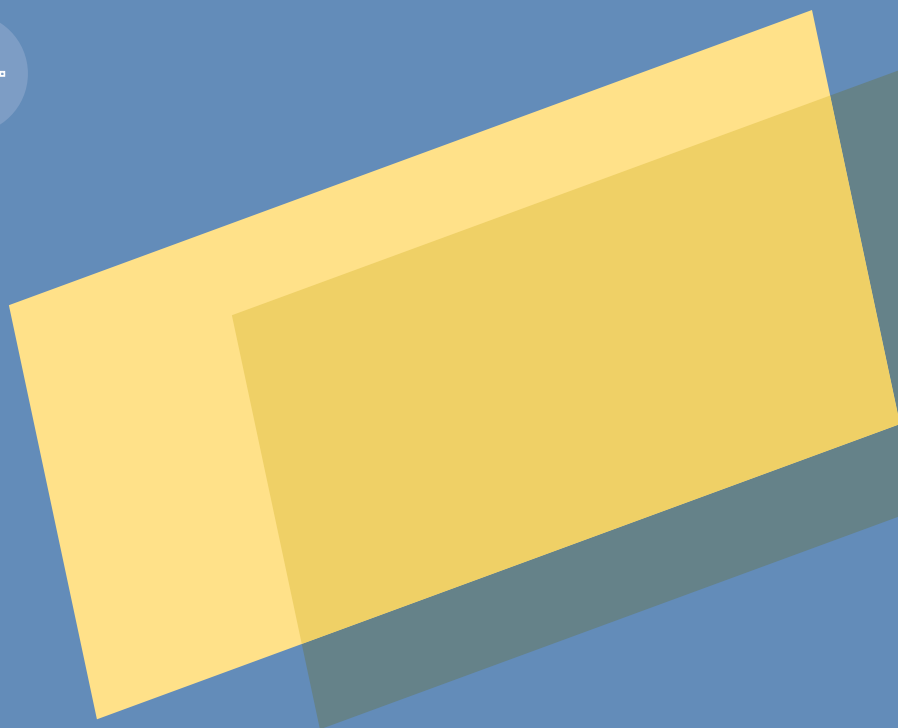




Creative Autonomy, Copyright and Popular Music in Nigeria

Mary W. Gani

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macmillan

Creative Autonomy, Copyright and Popular Music in Nigeria

“This book dissects the laws that hold the Nigerian music industry together. It is a crucially needed guide for building mutually beneficial and sustainable relationships.”

—Mai Atafo, *Lagos, Nigeria*

“Dr. Gani explores the reality of creative freedoms for music artists in Nigeria from a fresh and critical author-centric perspective. This is an important book, as it identifies necessary changes in copyright law and business practices which would foster fair and just protection for artists, and sustainability for music industries.”

—Gaetano Dimita, *Queen Mary University of London, UK*

“This is a very interesting book. There is neither much writing available on the Nigerian popular music industry, nor on Nigerian copyright law. On the question of creativity in this particular cultural context, creativity and creative autonomy are usually discussed in relation to European or North American music industries, so this book covers a new and important field.”

—Bankole Sodipo, *Babcock University, Nigeria*

“*Creative Autonomy, Copyright and Popular Music in Nigeria* is a welcome academic text, which offers a critical and well-informed perspective on the Nigerian popular music industry, and in particular the role of different legal provisions on the creative autonomy of performing authors (singer-songwriters). The global approach of the book offers theoretical discussions of copyright law, which are well supported with additional findings of an empirical study.”

—Metka Potočnik, *University of Wolverhampton, UK*

“This is an important and quite timely book, particularly in light of the recognition that African music has gained globally in recent years. This book presents well-thought-out arguments and is indeed a contribution to the body of knowledge in the area of copyright law and cultural industries. The book is elegantly constructed and addresses the pre-existing issues of creative autonomy, which are explored in detail, in chapters six, seven and eight. This book is essential for anyone who is interested in reading about the Nigerian popular music industry, especially in relation to creative autonomy, and is also interested in the framework of how copyright policies may be cultivated to address other issues which impact the Nigerian economy.”

—Folashade Adeyemo, *University of Reading, UK*

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Copyright
and Popular Music
in Nigeria

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macmillan

Mary W. Gani
Independent Scholar
London, UK

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*For my mother, Taiwo, and the memory of my father, Bitrus... for their
unwavering love and support, and for teaching me to think.*

FOREWORD

Many works have discussed the notion of creativity within the music industry, as well as the contours of copyright law within that industry. There is a dearth of works, however, which draw upon empirical findings emanating from field work undertaken within the industry; and less so on detailed analysis of one of the most popular world music industries, namely the Nigerian popular music industry, which has been forefront in the international growth of the Afro-Pop or Afrobeats genre. Dr. Mary Gani's work fills this lacuna by offering a well-analysed critical account of the concept of creative autonomy and its effect on copyright law. The work offers a fresh perspective on music industries as a whole and a rare glimpse into the modern Nigerian popular music industry that was hitherto unavailable.

The book explores the theoretical foundations of copyright law and weaves these concepts in support of the concept of "creative autonomy" as a means of measuring the creativity of authors. The link between copyright and creativity has been discussed in many previous works by several scholars. Dr. Gani's work goes further and escalates the notion of creative autonomy into a tool—using it to gauge the efficacy of copyright law in incentivising musical creativity, and to determine how existing recording and business practices can be changed to allow more authentic creative expression.

This work is a *tour de force*, combining philosophical theory with copyright law, within the dynamic context of the contractual practices in the

music industry. It derives from Mary's doctoral dissertation which I supervised together with Dr. Gaetano Dimita at Queen Mary University of London. Her enthusiasm for the subject was clearly born from her early internships in the Nigerian popular music industry, her profession as a lawyer and from foresight about the industry's international economic potential.

The book shows a commitment to presenting a critical and balanced view of stakeholders' opinions. Indeed, it does not sanctify the performing author or demonise the record label. It will be a valuable read for policy makers, lawyers, musicians and music managers.

London, UK
May 2020

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Deputy Director, Queen Mary Intellectual
Property Research Institute, Queen Mary
University of London

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I am grateful to have received kind audience from interviewees on this project, especially Professor Bankole Sodipo, Audu Maikori, Cobhams Asuquo, Honey Onile-Ere, Ruby Gyang, Praiz, Abraham Kolo and Jesse Jagz, among others.

My kind-hearted proofreaders entertained my interruption of their busy schedules, and I deeply appreciate the effort and time it cost: Professor Taiwo Gani, Grace Gani, Ayemere Umane and Dr. Arinola Adefila.

I have been, in no small way, enabled and enthused by the love, cheer and kindness of my family: Mum, Grace, Margaret and Peter!!!! Very importantly too, Uncle Chris and Auntie Kehinde Umane, Uncle Sam and Auntie Lande Akinluyi, Christine Atafo, Ayo Akinluyi (!), Tolu Akinluyi, Uncle Bishop and Auntie Gloria Kwashi, Auntie Remi Iseko, Auntie Rebecca Ogunbiyi, Uncle Reuben and Auntie Hajara Danladi, Uncle Charles and Auntie Uche Ononiwu, and Eyza Anga, among many others.... It would be impossible to enumerate the innumerable times they have called, encouraged and given of themselves and their resources towards the progress of this book.

I am indebted to my friends; Antoinette Kwegan, Dr. Monique Charles, Dr. Tendayi Bloom, Nicole Nwasike, Matthew and Hannatu Gabriel, Olohi Omidiji, Dolly Fagbemide, Maryam Olusola-Sowoolu, Kemi Saleh, Shanu Omole, Dr. Muiwa Oyinlola, Aibe Dangana and John and Danni Trombi, among many others, who were supportive and encouraging even when my schedule was overwhelming. Regular chats with my Y.W.A.P. family, C.A. family, and my classmates from Air Force (Girls') Military Schools, have kept me sane and sociable despite the pressure of writing deadlines. The bonds are old, deep and precious, and I am grateful for them. To my many relatives and friends who have patiently understood and forgiven the unreturned phone calls, and endured the "so happy to see you, but I've got to leave" moments of my life in the last few years; I am grateful for their understanding and steadfast love.

To You, Rohi! Thank You for being there at the beginning and for being here now at this end.

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ABBREVIATIONS

A&R	Artist and Repertoire
ASCAP	American Society of Composers, Authors and Publishers
BMI	Broadcast Music Inc
CJEU	Court of Justice of the European Union
COSON	Copyright Society of Nigeria
CPI	<i>Code de la Propriété Intellectuelle</i> (Intellectual Property Code, France)
ECHR	European Court of Human Rights
FRN	Federal Republic of Nigeria
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFPI	International Federation of the Phonographic Industry
LFN	Laws of the Federation of Nigeria
MCSN	Musical Copyright Society of Nigeria
NCC	Nigerian Copyright Commission
PMAN	Performing Musicians Employer's Association of Nigeria
PRS	Performing Rights Society
TRIPS	Trade Related Aspects of Intellectual Property
UDHR	Universal Declaration of Human Rights
UrhG	<i>Urheberrechtsgesetz</i> (Copyright Act, Germany)
VARA	Visual Artists Rights Act
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Office
WPPT	WIPO Performances and Phonograms Treaty

LIST OF STATUTES, CONVENTIONS, DIRECTIVES, DECREES AND REGULATIONS

Agreement on Trade Related Aspects of Intellectual Property Rights 1994
(TRIPS Agreement)
Beijing Treaty on Audiovisual Performances 2012
Berne Convention for the Protection of Literary and Artistic Works 1886
Code de la Propriété Intellectuelle (CPI) 1992 (Intellectual Property Code,
France)
Constitution of the Federal Republic of Nigeria 1999
Consumer Contracts (Regulation of Unfair Terms) Bill 2010 (Nigeria)
Copyright (Amendment) Decree No 42 of 1999 (Nigeria)
Copyright (Amendment) Decree No 98 of 1992 (Nigeria)
Copyright (Collective Management Organizations) Regulations 2007
(Nigeria)
Copyright (Dispute Resolution Panel) Rules 2007 (Nigeria)
Copyright (Optical Discs Plants) Regulations 2006 (Nigeria)
Copyright (Reciprocal Extension) Order 1972 (Nigeria)
Copyright (Security Devices) Regulations 1999 (Nigeria)
Copyright (Video Rental) Regulations 1999 (Nigeria)
Copyright Act 1911 (Great Britain)
Copyright Act 1968 (Australia)
Copyright Act 1970 (Nigeria), Decree No 61 of 1970
Copyright Act 1976 (US)
Copyright Act 1985 (Canada)
Copyright Act, Chapter 28, Laws of the Federation of Nigeria 2004

- Copyright Act, USSR Laws 1925, No 67 (January 30, 1925)
Copyright Act, USSR Laws 1928, No 246 (May 16, 1928)
Copyright and Duration of Rights in Performances Regulations 2013
(UK)
Copyright Decree 1988 (Nigeria)
Copyright, Designs and Patents Act 1988 (UK)
Customs and Excise (Copyright) Regulations 1973 (Nigeria)
Directive 2006/116/EC of the European Parliament and of the Council
of 12 December 2006 on the Term of Protection of Copyright and
Certain Related Rights
Directive 2009/24/EC of the European Parliament and of the Council
of 23 April 2009 on the Legal Protection of Computer Programmes
Directive 93/13/EEC on Unfair Terms in Consumer Contracts
Directive 96/9/EC of the European Parliament and of the Council of 11
March 1996 on the Legal Protection of Databases
EU Directive 2011/.../EU, amending Directive 2006/116/EC on the
Term of Protection of Copyright and Certain Related Rights, avail-
able at [http://ec.europa.eu/internal_market/copyright/docs/term/
2011_directive_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/term/2011_directive_en.pdf)
European Convention on Human Rights 1950
Federal Act on Collecting Societies 2005 (Austria)
Human Rights Act 1988 (UK)
Intellectual Property and Omnibus Communications Reform Act 1999
(US)
International Bill of Human Rights 1948
International Convention for the Protection of Performers, Producers
of Phonograms and Broadcasting Organisations (Rome Convention)
1961
International Covenant on Civil and Political Rights 1976
International Covenant on Economic, Social and Cultural Rights 1976
Interpretation Act C123, LFN 2004 (Nigeria)
Labour Act L1, LFN 2004 (Nigeria)
Nigerian Copyright Commission (Appointment of Copyright Inspectors)
Notice 1977 (Nigeria)
Statute of Anne 1710, 8 Anne, c19 (UK)
Statute of Monopolies 1624, 21 Jac, c3 (UK)
The Constitution of the United States
UNESCO Convention on the Protection and Promotion of the Diversity
of Cultural Expressions 2005

Unfair Contract Terms Act 1977 (UK)

Unfair Terms in Consumer Contracts Regulations 1999 (UK)

Universal Declaration of Human Rights 1948

Urheberrechtsgesetz (UrhG) 1965, as amended 1998 (Copyright Act of Germany)

Visual Artists Rights Act 1990 (US)

WIPO Copyright Treaty 1996

WIPO Performances and Phonograms Treaty 1996

Work Made For Hire and Copyright Corrections Act 2000 (USA)

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HH Rep No 94-1476, 94th Cong, 2nd Sess 56 (1976)

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The Significance of Measuring Creative Autonomy for Copyright Law

1.1 INTRODUCTION TO THE PROBLEM

The central arguments this book makes are based on performing authors (singer-songwriters) and impediments to their creative autonomy, particularly in the Nigerian music industry. However, some have argued that there is no music industry in Nigeria.¹ These arguments often appear to be centred on the concern for a clearly defined structure in what is

¹Bez is an alternative soul singer in Nigeria, who reportedly had this view, “Nigerian Music Industry or Nigerian Music Scene, Which One Exists?” (2012), available at http://www.nigeriamusicnetwork.com/articles/read-nigerian-music-industry-or-nigerian-music-scene-which-one-exists_136.html (accessed 8 May 2013); the same view was held by Clarence Peters, a renowned music video director, Agunanna, C, “There’s Nothing Like a Nigerian Music Industry!—Clarence Peters” (2009), available at <http://chileik.wordpress.com/2009/11/08/> (accessed 9 May 2013); Steve Rhodes was a widely respected veteran musician and broadcaster in Nigeria, who argued that the industry featured minimal division of labour and no specialised departments for various business skills, Rhodes, S, “Reflections on Nigerian Music Industry”, available at <http://www.livingprojectslimited.com/steverhodes/biography-music-industry.htm> (accessed 10 May 2013); <http://stampededecora.blogspot.com/2008/06/steve-rhodes-art-stampede-sunday-june.html> (accessed 28 November 2019); Onuoha, F, “‘There Is No Music Industry in Nigeria’—Ade Bantu” (2011), available at <http://www.busesseyenigeria.com/business-news/entertainment/there-is-no-music-industry-in-nigeria-ade-bantu> (accessed 8 May 2013).

generally referred to as the Nigerian music industry.² In discussing the Nigerian ‘scene’, Clarence Peters who is a music video producer working in the industry, is reported to have said:

There is no structure. People are just getting shows and getting paid but it’s temporal. We all know that. Everybody is getting paid by the corporate and they are always looking for the next best thing. As soon as they find it, they carry their money and move there.... Until we can find recording artists that are true to what they are doing no matter the kind of music it is and there is a market that will pay you for your work; a market that will respect your intellectual property, then we cannot lay any claims to a music industry.³

Although this book is not primarily concerned with the semantic or structural argument as to whether or not a music industry or scene exists in Nigeria, it is important to briefly define the concept of a music industry in order to set the background for the issues this book will consider. The notion of a popular music industry has been conceptualised as a set of processes, which feature the fusion of ‘capital, technical and musical arguments... [in] a form of communication which determines what songs, singers and performances are and can be’.⁴ The international music industry is also traditionally described as comprising of the three subsystems of recording, publishing and live music,⁵ but there is nothing to indicate whether the underdevelopment of any of these subsystems invalidates the designation of the term ‘industry’.

Despite the criticism that suggests there is no ‘music industry’ in Nigeria, Clarence Peters’ description of the Nigerian music industry bears similarities with Frith’s,⁶ as they both feature competing interests in the

²Nwokocho, U and Aluko, S, “Nigeria: A Case for Multiple Collecting Societies for the Nigerian Entertainment Industry” (2010), available at <http://www.mondaq.com/x/102580/Copyright/A+Case+For+Multiple+Collecting+Societies+For+The+Nigerian+Entertainment+Industry> (accessed 3 May 2013).

³Agunanna, C, “There’s Nothing Like a Nigerian Music Industry!—Clarence Peters”, *op. cit.*

⁴Frith, S, *Music for Pleasure* (Routledge, New York, 1988), p 12.

⁵Wikstrom, P, *The Music Industry: Music in the Cloud* (Polity Press, Cambridge and Malden, 2009), p 49.

⁶Agunanna, C, “There’s Nothing Like a Nigerian Music Industry!—Clarence Peters”, *op. cit.*

interactions between creative and corporate- commercial elements. Essentially, the interactions between these two elements are the basis on which this book explores and analyses creative autonomy within copyright law. The book identifies the extent to which copyright law influences the interactions between the creative elements performing authors (also referred to as singer-songwriters),⁷ and corporate elements record label executives.⁸ It then shows how the dynamics of such relationships can affect the creative autonomy of performing authors.

While creative autonomy for performing authors is the central concern of this book, empirical evidence collected for the purpose of this book suggests that the issue also has national economic significance.⁹ This book depicts how affronts to the creative autonomy of performing authors can result in reduced cultural output, and in turn, result in an industry that is unable to reach its full economic potential.

This book makes the case for creative autonomy by using a broad, two-pronged approach: the first five chapters of the book investigate the unique interplay between the creative and commercial elements of popular music industries, and culminate in an analysis of creative autonomy within copyright theory. The second part of this book then explores the ways in which current copyright law, unregulated business models, and recording contract policies contribute to the fragile existence of creative autonomy for performing authors in the Nigerian music industry.

The fragility of creative autonomy may be considered a naturally associated problem in popular music industries worldwide. However, in establishing the justification for this book, this chapter will illustrate the significance of undertaking this study, particularly on the Nigerian popular music industry. For the purpose of clarity, the scope and limitations of the book are specified in this chapter, and the sources and materials used are also discussed. The methodology and approach used in collecting and analysing the data used in this book will be explained, and the chapter will establish an overview of key elements within copyright law that directly pertain to the music industry.

⁷ *Infra*, Sect. 1.2.2; the term “singer-songwriters” is often used in pop-culture parlance, to refer to individuals in the music industry who function in the dual roles of performer and author; (authors are often referred to as composers).

⁸ Record label executives represent the capital and technical aspects of popular music production, Frith, S, *Music for Pleasure*, *op. cit.*, p 12.

⁹ *Infra*, Sect. 4.5.1.

1.2 ILLUSTRATION OF THE PROBLEM

The central concern of this book is the creative autonomy of performing authors in the Nigerian popular music industry.¹⁰ The problem for performing authors plays out in what may be described as a three-tiered manner-

- a. Uniform sounds and the interplay between creative and commercial elements in the music industry;
- b. The ‘performing author’ and the intersection between creating and performing a work; and
- c. The role of copyright in relation to creative autonomy.

1.2.1 *Uniform Sounds and the Interplay between Creativity and Commerce*

With regard to the dynamics of the interaction between creativity and commerce, one view conceives of both concepts as being opposed in principle, while another view considers commercial prospects and rewards as a motivating factor in creative endeavour, and yet another considers commerce and creativity as functionally intertwined and inseparable.¹¹ Be that as it may, the adoption of any of these concepts may depend on varying individual circumstances where performing authors’ views may differ from the views of record label executives, in degree if not in substance.¹² Notwithstanding the foregoing, academic investigation may be necessary when the products of this interaction appear or sound homogenous and hardly distinct from each other. In this regard, blog articles and chat forums on Nigerian music industry have, at various points, been unanimous in their criticism of Nigerian popular music as having a

¹⁰The research questions for this book are discussed subsequently in this chapter, *infra*, Sect. 1.5.

¹¹Negus, K, and Pickering, M, *Creativity, Communication and Cultural Value* (Sage, London, Thousand Oaks, et al., 2004), p 47.

¹²*Infra*, Sect. 4.5.1.

uniform sound and creative approach.¹³ In the earlier part of this decade, trends in music creativity were criticised thus-

Save for a few Urban musical artists like 2Face, MI... amongst a few others that have found a way of making music that's both critically and commercially acclaimed, the rest of the artists are caught up in the loop of having to choose between compromising their standards and cashing in, or staying true to the art and wallowing in penury. The third option which is not so much an option since only a select few can function in this regard, is balancing the act by making music that can serve both purposes.¹⁴

In the same vein, it has been asserted that the beats and backing tracks for many Nigerian popular songs also sound the same,¹⁵ and the lyrics of

¹³In discussing the music scene in 2012, Inienger argues that 'it became monotonous and stale, fans complained about loss of excitement towards "Nigerian Music" and at some point it began to look like music coming out of Nigeria was about to peak out due to this stagnation', Inienger, V, "Progress: 13 Things Nigerian Artists and the Nigerian Music Industry Need to Improve on in 2013" (2013), available at <http://www.jaguda.com/2013/01/07/progress-13-things-nigerian-artists-and-the-nigerian-music-industry-need-to-improve-on-in-2013/> (accessed 3 April 2013). Around the same time, Yomi Black observed that 'they all sound alike and hide under auto tune and sample beats'; he responded to the problem by initiating a radio and online show intended at objectively reviewing Nigerian popular songs, "A Letter from Yomi Black: Why I Do Radio Hit Show" (2012), available at http://radiohitshow.tumblr.com/post/32959030825/a-letter-from-yomi-black-why-i-do-radiohit-show#disqus_thread (accessed 3 April 2013). The same concern has been expressed on Nigerian chat forums, "Nigerian Music Is Sounding the Same: Same Beat!" (2010) *Nairaland Forum*, available at <http://www.nairaland.com/474824/nigerian-music-sounding-same-same#6342740> (accessed 3 April 2013); Ewoma, U, "The Industry: Problems with the Nigerian Music Industry" (2013), available at <http://www.lumeviews.com/2013/03/20/the-industry-problems-with-the-nigerian-music-industry/> (accessed 3 April 2013).

¹⁴Layode, D, "Bring Back the Listening Habit" (October 12, 2012) *Nigerian Sounds Editorial*, available at <http://nigeriansounds.com/archives/10708> (accessed 9 April 2013).

¹⁵However, Ewoma does not consider this phenomenon problematic as reference is made in his article to a similar phenomenon in the Jamaican music industry. The difficulty with accepting the rationalization of this writer is that this assessment of the Jamaican music scene is made without any analysis of the veracity of this trend in Jamaica, or its effects on the economics of the Jamaican music industry. It also does not include any scholarly references on the Jamaican music industry, Ewoma, U, "The Industry: Problems with the Nigerian Music Industry", *op. cit.*

many songs have been described as duplicates of each other.¹⁶ Explaining this trend, some think that the uniformity of the sound may be a reflection of the urgency in making financial gain among some artists, as well as at the corporate levels of music business.¹⁷ Furthermore, the reason for the similarity of sound has been attributed to structural problems of the industry that give rise to the menace of piracy, which in turn, introduces and popularises peculiar values in music. In this regard, Larkin argues that piracy creates its own artistic values to which compliance is demanded from the creative individuals in the societies in which piracy thrives.¹⁸

The rationale for homogenous music from an industry appears multifaceted, but there may indeed be cause for concern when artists feel pressured to alter the creative direction of their work in an effort to conform to commercial trends. While it may be argued that some artists, like Dbanj and Terry G, who appear to have switched the creative direction of their careers to the more popular genre of Afro-Pop may actually be aligning with their authentic authorial intentions in doing so,¹⁹ the problem for this book is the reverse of this situation and its prevalence. It appears that while the careers of some artists in the industry are based on

¹⁶“Commercialism... the Gift and Curse of Nigerian Music Industry” (2012), available at <http://dashysofresh.blogspot.co.uk/2012/07/commercialism-gift-and-curse-of.html> (accessed 9 April 2013).

¹⁷Inienger, V, “Progress: 13 Things Nigerian Artists and the Nigerian Music Industry Need to Improve on in 2013”, *op. cit.*; Layode, D, “Bring Back the Listening Habit”, *op. cit.*; Ewoma, U, “The Industry: Problems with the Nigerian Music Industry”, *op. cit.*

¹⁸Larkin, B, *Signal and Noise; Media, Infrastructure, and Urban Culture in Nigeria* (Duke University Press, Durham and London, 2008), p 218; Nevertheless, what had previously been known as copyright piracy in the Nigerian music industry appears to have been transformed into a legitimate marketing and distribution scheme with artists and record labels exchanging distribution rights in their work for monetary payments, *infra*, Sect. 3.3. The legality, objectivity and verifiability of the processes employed by these marketers appear doubtful at best, “Pirated Movies and Music from Alaba Market Used to Be Found Across the Whole of Nigeria” (2012), available at <http://www.colormagazine.com/stories/magazine/85/story/alaba-piracy-industry> (accessed 19 April 2013); Layode, D, “Bring Back the Listening Habit”, *op. cit.*; Tade, O and Akinleye, B, “We Are Promoters Not Pirates: A Qualitative Analysis of Artists and Pirates on Music Piracy in Nigeria” (2012) 6 (2) *International Journal of Cyber Criminology*, pp 1014–1029, p 1019.

¹⁹Dbanj and Terry G have been cited as examples of Nigerian artists whose creative personalities reflect Afro-Pop music, and they have both built successful careers in this genre even though their careers initially commenced with unsuccessful projects in the RnB genre, Layode, D, “Bring Back the Listening Habit”, *op. cit.*

what they independently want to sing and portray, many others may be engaged in creative directions that they have been pressured to adopt.

Comments about the industry thus suggest the presence of an interplay between creative and commercial elements that appear to be embroiled in a form of rivalry. It is the effect of this rivalry on the creative autonomy of artists that forms the motivation for this book. It may be surmised that the rivalry between creative and commercial elements in the determination of songs to release as part of an artist's music career is primarily played out in the authorial process. This dilemma may be more acutely experienced by authors who also perform their original works as popular artists. The next subsection will therefore consider the intersection between creating and performing a musical work, as it may be necessary to define the central role in the authorial exercise that results in popular music.

1.2.2 *The 'Performing Author' and the Intersection between Creating and Performing a Work*

Mr (Justice) Arnold identifies some issues in the business of recorded music that may pose complexities for copyright law, one of which, pertinent to this book, acknowledges that there are different methods of creating a work.²⁰ With regard to creation, he asserts that creation of musical works may occur by composition distinct from performance, or by composition effected through performance.²¹ In addition to these identified methods, however, composition that occurs distinctly from performance may be made with the intention of personal performance.

In relation to this third angle, Nigerian copyright law defines the author of a musical work as 'the creator of the work',²² and the bundle of rights that constitute the author's copyright include the right to 'perform the work in public'.²³ In light of the acknowledged fusion of the role of composers and performers in popular music, this book refers to the fused

²⁰ Arnold, R, "Reflections on the Triumph of Music: Copyrights and Performers' Rights in Music" (2010) 2 *Intellectual Property Quarterly*, pp 153–164, p 156; he also asserts that there are different methods of fixation, the implications of which are discussed further, *infra*, Sect. 6.2.2.

²¹ *Ibid.*, p 156.

²² Section 51 (1), paragraph 4, Copyright Act C28, LFN 2004 (Nigeria).

²³ Section 6 (1) (a) (i–ix) Copyright Act C28, LFN 2004 (Nigeria) provides for the general nature of copyright in music by specifying a list of exclusive rights, and the exercise

role as the ‘performing author’, and particularly focusses on authors who create musical works with the intention to personally perform them.²⁴ Popular music industry parlance may colloquially refer to people in this role as ‘singers-songwriters’, and the role may be further understood by Hyde’s argument that inherent in the creative exercise is the desire to express it and to share it.²⁵ It has been asserted that

there is only one real deprivation, I decided this morning, and that is not to be able to give one’s gift to those one loves most... The gift turned inward, unable to be given, becomes a heavy burden, even sometimes a kind of poison. It is as though the flow of life were backed up.²⁶

of the combination of these rights with particular emphasis on performing rights, may constitute the description of a “performing author”-

6. General nature of copyright

- (1) Subject to the exceptions specified in the Second Schedule to this Act, copyright in a work shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is-
 - (a) in the case of a literary or musical work, to do and authorise the doing of any of the following acts-
 - (i) reproduce the work in any material form;
 - (ii) publish the work;
 - (iii) perform the work in public;
 - (iv) produce, reproduce, perform or publish any translation of the work;
 - (v) make any cinematograph film or a record in respect of the work;
 - (vi) distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement;
 - (vii) broadcast or communicate the work to the public by a loudspeaker or any other similar device;
 - (viii) make any adaptation of the work;
 - (ix) do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-paragraphs (i)-(vii) of this paragraph.

The rights of authors under copyright law are further elucidated, *infra*, Sect. 1.8.2.

²⁴The ability of such persons to execute musical performances of their works is assumed and is not questioned in this book.

²⁵Hyde, LW, *The Gift: How the Creative Spirit Transforms the World* (Canongate, Edinburgh, New York, et al., 2006), p 148.

²⁶Sarton, M, *Journal of Solitude*, cited in Hyde, LW, *The Gift: How the Creative Spirit Transforms the World*, *op. cit.*, p 148.

Accordingly, where an author of musical works is restricted from performing songs they have authored, the import of Hyde's assertion is that there may be both individual and cultural ramifications. Such restrictions may occur when a performing author in contract with a record label is required to obtain the label's approval for the performance and release of songs during their contractual engagement. In this regard, the focus on the role of the 'performing author' in this book is based on the intersection between creating a musical work and performing it as dual parts of a career in the popular music industry, and how the one may influence the other. The role of the performing author as a creative player in the popular music industry is further emphasised in Chapter 2 of this book.²⁷

1.2.3 *Copyright and the Status Quo*

The question of copyright's role or responsibility in the interaction between commercial and creative components of popular music authorship may then be asked,²⁸ especially in light of the apparent importance placed on creative autonomy by copyright law and its justification theories.²⁹ The problem is whether there are certain aspects of copyright law that are capable of undermining the creative autonomy of performing

²⁷ *Infra*, Sect. 2.3.2.3.

²⁸ This is because copyright law is purportedly primarily centred on the role of the author; it has been argued that authorship 'is arguably the most central, and certainly the most resonant, of the foundational concepts associated with Anglo-American copyright doctrine,' Jaszi, P, "Toward a Theory of Copyright: The Metamorphosis of 'Authorship'" (1991) 1991 (2) *Duke Law Journal*, pp 455–502, p 455; It has also been asserted that 'copyright [is]- a legal regime that is supposed to define the rights controlled by creators and their delegates', Liebowitz, SJ and Watt, R, "How to Best Ensure Remuneration for Creators in the Market for Music? Copyright and Its Alternatives" (2006) 20 (4) *Journal of Economic Surveys*, pp 513–545, p 513; this is evident in the legal position of the author as the first owner of copyright *prima facie*, Section 10 (1) Copyright Act C28, LFN 2004 (Nigeria); the author's life is also the framework upon which the computation of copyright duration is made, First Schedule, Copyright Act C28, LFN 2004 (Nigeria); moreover for the purpose of this book, it may be relevant to note that the inclusion of moral rights in the framework of copyright law suggests that the law attributes importance to the safeguarding and preservation of the integrity of authorial expression, Section 11 Copyright Act C28, LFN 2004 (Nigeria); the importance of authorial autonomy has been part of early parliamentary discourse on the duration of copyright law, HC Deb 05 February 1841, vol 56, col 341–360.

²⁹ The concept of creative autonomy in the bifurcated deontological and consequentialist copyright justification theories will be discussed in further detail in Chapter 5 of