

**PUBLIC PERFORMANCE LICENSING:
HIGHLIGHTING THE DECISION OF THE FEDERAL HIGH
COURT IN M.C.S.N. LTD/GTE & ANOR V PYRAMID
REGAL SERVICES LTD (FHC/L/CS/1103/2021)**

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P a g e s C O N T E N T

2 Introduction

2 Summary of The Case

3 Decision of The Court

**3 Analysis of the Decision and Key Issues for
Consideration**

**6 A Possible Solution: A Glimpse of the US
Model**

8 Conclusion and Recommendations

1. Introduction

On January 17, 2025, the Federal High Court sitting in Lagos (the “Court”) delivered judgment in *Musical Copyright Society of Nigeria LTD/GTE & Anor v Pyramid Regal Services LTD*¹ holding that music users subscribed to licensed broadcasting services are not required to obtain additional licences from collection societies for the use, broadcast, and performance of copyrighted music. Several reactions have followed the court's decision; some have welcomed it as a positive step in balancing the rights of music owners with the right to access music, while others have strongly criticised the judgment for overlooking the nuances in music licensing and potentially jeopardising the intellectual property rights of music owners, especially their rights to fair compensation.

In this article, we will examine the decision, highlight key issues, and explore possible solutions.

2. Summary of The Case

The Musical Copyright Society of Nigeria (MSCN) and Broadcast Music Incorporated (BMI), both collection societies based in Nigeria and the USA, respectively, instituted an action at the Federal High Court, Lagos, against Pyramid Regal Services Ltd, which is the owner of George Hotel (the “Hotel”). MCSN alleged that the Hotel had infringed on the rights of their licensees as protected under the Copyright Act, 2022 (the “Act”) by publicly performing and playing their songs within its premises without obtaining licenses from them. MCSN sought, inter alia, damages of N153,605,018.25 (One Hundred and Fifty-Three Million Six Hundred and Five Thousand and Eighteen Naira Twenty Five Kobo) as well as an injunction restraining the Hotel from further infringement of their licensees' rights.

The Defendants opposed this claim, arguing that they were only exercising their lawful access to music through a valid DSTV subscription and that such a subscription does not constitute copyright infringement. They also argued from the perspective of double compensation, holding that since DSTV already compensates the Plaintiffs for licensing content, granting them further compensation would amount to double compensation. Essentially, the

¹ Unreported Suit No. FHC/L/CS/1103/2021.

Defendants claimed that, since they had already subscribed to the DSTV service, they had the right to transmit all active channels and stations within their premises without paying for an additional license to use the content contained in those channels.

3. Decision of The Court

The Court in its judgment dismissed MCSN's action, asserting that MCSN's rights were not infringed since the Hotel was lawfully transmitting the content through a valid DSTV subscription. In the decision, the Court held:

...the alleged musical works and sound recordings were offered from the TV channels ...; therefore, the Defendants cannot be held liable for offering DSTV services in its Hotel, having lawfully subscribed for the services. I am also in agreement with the submission of defence counsel...that George Hotel's subscription to DSTV and accessing the subscribed stations in its Hotel cannot amount to infringement of the plaintiff's alleged copyright. George Hotel's License to access and use the D.S.T.V. Stations in its Hotel was duly obtained upon its subscription.

4. Analysis of the Decision and Key Issues for Consideration

It is common practice for public venues, bars, restaurants, hotels, and entertainment hubs to enhance their business by using music to create suitable atmospheres for their customers. Some of these businesses rely on broadcasting services (like DSTV, GoTV etc) or subscription services (such as Spotify, YouTube, Apple Music, etc) to access content and songs that would be appealing to their customers.

Generally, copyright in music protects the song composers, performers and recording owners from unauthorised performance (live and digital), broadcast, and communication of their work.² Rightsholders may enforce their rights (personally or through their licensees, such as collection societies) against any infringer by instituting an action against them to seek relief, *such as damages*,

2 Sections 9 & 12, Copyright Act, 2022.

*injunction, accounts, or as is available in any corresponding proceedings in respect of infringement of other proprietary rights,*³ through appropriate legal channels. Therefore, a business is expected to obtain a license under section 30 of the Act to play songs in its premises; otherwise, it runs the risk of liability to the song owners for copyright infringement.

The Court's decision raises important questions about the nature and character of licenses and the relevant licensing authority regarding the use of music in public places. The Court, while recognising the rights of music owners, observed that the Hotel, having paid its DSTV subscription to access DSTV-licensed content, was already covered for any further approvals to use songs played from the DSTV channels. The implication of this view is that, in Nigeria, legal access to music may be sufficient to use it in any manner, subject to other possible limiting factors.

This perspective raises several issues that have divided opinion within the industry. These concerns not only relate to legal principles and the application of law but also encompass the long-standing debate over the extent to which the public performance of music can be considered an infringement.

4.1. *Right to Access v Right to Use*

The Act grants owners of songs different rights that subsist independently of each other. Under sections 9 and 12 of the Act, owners of musical compositions and recordings have the exclusive right to, amongst others:

- broadcast the work;
- publicly perform the work; and
- communicate the work to the public;

The salient issue to raise is whether payment of a subscription fee to a service provider for access to copyrighted works can operate as a license to further perform the work publicly. Simply, is the right of access akin to a right to use?

The right granted to service providers like DSTV to broadcast content to their subscribers gives them the necessary authority to grant access to content. Where the subscriber is a business, such as a bar, restaurant, hotel,

3 Section 37(2), Copyright Act, 2022

gym, or any other establishment that hosts the public, exercising the right to access content may invariably serve as a performance of the content to those within the premises. This issue is further exacerbated by the argument that these establishments generally use music to enhance the delivery of their services, thereby raising eyebrows about whether there is some form of commercial exploitation beyond their permitted use of the content as subscribers. This was the position of the Director General of the Nigerian Copyright Commission (the “NCC”) during a colloquium on Copyright Licensing of Public Performance Rights, in Commemoration of the 2025 African Copyright and Collective Management Day held on September 24, 2025. He also recognised that the scope of the license granted to subscribers by the broadcast service providers does not automatically confer rights of public performance in commercial spaces. He further noted that the Copyright Advisories issued by the NCC 2023 strongly recommended compliance with licensing obligations for music users from approved Collective Management Societies.⁴ This stance by the regulators sends a strong signal to music users to eschew all forms of unlicensed public use of music.

4.2. *Fair Dealing: Private Use v Public Use*

Another issue that arises from this decision is the fine line between private and public/ commercial use. Generally, entertainment subscription-based services license copyrighted works for the benefit of their subscribers, allowing them to enjoy these works privately. The restriction on public use, as argued by the plaintiff in the suit, is a part of the service's terms and conditions. The Director-General of the NCC also acknowledged this by charging subscription broadcast services to “*make full disclosure to their commercial subscribers on the limits of the licence granted at the point of subscription*”. However, the question may then arise, when does private use graduate to infringing public/ commercial use? Generally, it is not all seemingly infringing use of works that amounts to infringement. There are instances in which the unlicensed use of a work will be regarded as fair dealing, such as private use.⁵ Therefore, when one uses a work solely for private purposes, such use will not be regarded as infringing. Conversely, where the use of the work extends to granting access to the public, especially for commercial exploitation, one may well say that such use is likely to be

4 Punch Newspaper publication, “Pay for music, film usage, NCC urges hotels”, (2025), <[Hotels Must Obtain Music, Film Copyright Licenses - NCC](#)>, accessed October 8, 2025.

5 Section of the 20(1)(a), Copyright Act, 2022.

infringing. The law does not clearly distinguish between private and public use. No prescribed manner of use is designated as either private or public in the Copyright Act, 2022 or any extant law, code or regulation.

4.3. *Free Access v Just Compensation*

Section 1 of the Act lays out the objectives of the statute as follows:

“The objectives of this Act are to —

- a. protect the rights of authors to ensure just rewards and recognition for their intellectual efforts;
- b. provide appropriate limitations and exceptions to guarantee access to creative works...”

This provision clearly denotes that, even though the law seeks to ensure that authors are justly compensated for the use of their works, the access to the results of creativity is equally recognised as valuable. There is a need to balance the economic prosperity of copyright owners and the right of the public to access copyright works freely. To this end, it may not be far-fetched to embrace the Defendants' argument on double compensation.

One may argue that, on the contrary, the nature of the license DSTV obtained is different from that which the Hotel should have obtained, and since the exclusive rights afforded by copyright exist independently of each other, a benefit from the exploitation of one right does not extinguish any potential benefits that could be derived from the exploitation of another. The benefit derived from the right given to DSTV to broadcast their content does not compensate for the benefit the Plaintiff stands to derive from the Hotel or any other public place publicly performing their content. Hence, a double compensation defence may not be tenable.

5. A Possible Solution: A Glimpse of the US Model

Based on the Court's decision, businesses need not obtain a separate license from music owners to play music publicly if such music is played through a subscription-based broadcast service, specifically the likes of DSTV. However,

there is much that is left undefined regarding the extent to which the use of music in this manner is proper.

In the United States of America, this issue is addressed by §110 of the U.S. Copyright Act, particularly in light of the amendment to the U.S. Copyright Act by the Fairness in Music Licensing Act. This section establishes precise parameters and boundaries around certain uses of music. Relevant features of §110 are:

- a. ***Private Use Exception:*** The transmission of music is generally allowed using a single apparatus (TV or radio) within private homes, provided that a direct charge is not made to see or hear the transmission and the transmission is not further transmitted to the public.⁶
- b. ***Non-Food Service or Drinking Establishments:*** The amendment provides that the only grounds under which a non-food service or drinking establishment would be legally permitted to transmit music through a TV or radio broadcast without being liable for copyright infringement will be if the premises have less than 2,000 gross square feet of space, excluding car parks. In situations where the premises exceed 2,000 square feet and the performance is delivered solely by audio means, it should not utilise more than six loudspeakers, with no more than four loudspeakers located in a single room or an adjoining outdoor space. Where the performance is by audiovisual means, transmission should be restricted to not more than four audiovisual devices, of which not more than one audiovisual device should be in one room, and no such audiovisual device has a diagonal screen size greater than 55 inches. The audio is also restricted from transmission by more than six loudspeakers, of which not more than four loudspeakers are in any one room or adjoining outdoor space.⁷
- c. ***Food Service or Drinking Establishments:*** For establishments engaged in food service and drinking, like restaurants, cafes, bars and the like, they can legally transmit music through TV-based subscriptions provided that the premises are less than 3,730 gross square feet, excluding car parks. Where the premises exceed this threshold and the performance is by audiovisual means only, it is permitted only if it is done through not more than six loudspeakers, of which not more than four loudspeakers are in any 1 room or adjoining outdoor space. Where the performance is by audiovisual

⁶ 17 U.S.C §110(5A)

⁷ 17 U.S.C §110(5B)(i)

means, transmission should be restricted to not more than four audiovisual devices, of which not more than one audiovisual device should be in one room, and no such audiovisual device has a diagonal screen size greater than 55 inches. The audio is also restricted from transmission by more than six loudspeakers, of which not more than four loudspeakers are in any one room or adjoining outdoor space.⁸

- d. ***Vending Establishments:*** Performance of a music by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, or of the audiovisual or other devices utilized in such performance, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring is permitted.⁹
- e. ***Religious use:*** Generally, the use of music of a religious nature in the course of a service at a place of worship or other religious assembly is permissible. However, this exception does not extend to the recording or broadcasting of the work through live stream or any other means. This exception does not extend to commercial use of the music of a nature, as it is restricted to use in the course of service at the place of worship.¹⁰

Unlike the Nigerian Act, the US Act carefully considers potential grey areas in the public use of music and attempts to strike a necessary balance to maintain the key objectives of copyright protection. This is certainly a desired feature of the Nigerian copyright protection framework to prevent the undue exploitation of the Court's decision by establishments that indeed utilise music in the furtherance of their business.

6. Conclusion and Recommendations

The complex nature of music licensing, particularly in this era of rapidly evolving technology and access to copyrighted works, seems to be outpacing the law. The application of the law to nuanced circumstances appears to be falling short in effectively addressing the various issues that arise. Much is left to be desired. However, as copyright owners continue to take steps to ensure they receive their

⁸ 17 U.S.C §110(5B)(ii).

⁹ 17 U.S.C §110(7).

¹⁰ 17 U.S.C §110(3).

due reward for their efforts, the same regard should be given to ensuring that necessary limitations are put in place to guarantee access to works.

Given the widespread use of music in everyday life, there is a need to protect creators while maintaining reasonable access to music. To this end, the following recommendations are made to strike this much-needed balance:

- a. ***Promulgation of Regulation:*** It appears that the appeal made by the Director General of the NCC, as noted earlier, is in contrast with the position of the Federal High Court regarding public performance of music through television broadcast. To adequately address the fine lines in this issue, and since there has been a recent enactment of the Copyright Act, the NCC should consider exercising its powers under section...of the Act to outline in detail the acts that are permitted with regard to public performance of music. Like the US Copyright Act, this regulation should consider fair uses, such as religious use, non-commercial use, and small-scale use.
- b. ***Stakeholder Frameworks and Industry Collaboration:*** Deliberate programs should be put in place to encourage the collaboration of broadcast service providers and CMOs. A more coordinated stakeholder mechanism could ensure that broadcast service providers deliver clear information to consumers on what they are licensed for and, where possible, harmonise procedures related to licensing. In addition, to avoid administrative barriers and enhance compliance, CMOs should develop simplified, multi-tiered, or one-stop licensing models, which could even be incorporated into subscription systems like DSTV.
- c. ***Public Awareness and Compliance Education:*** Most of the users of music, like hotels, restaurants, and other establishments, are still unaware of their full obligations under the Act. The NCC, in collaboration with CMOs, should consider running sensitisation campaigns within the public and issue advisories periodically regarding the scope of public performance rights and what subscription-based licences will not cover. This would raise awareness and encourage voluntary compliance.

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