

COSON: CHIEF TONY OKOROJI MUST FOLLOW THE RULE OF LAW AND INTEGRITY- AUDU MAIKORI

By now some of you may have heard about the internal crisis rocking the Copyright Society of Nigeria (COSON) since December 2017 concerning who the legitimate chairman of the society is. In this piece, I intend to lay bare the facts and go back in time a little to educate the public about the importance of COSON not just to musicians but also to the economic empowerment of Nigeria as a whole. By its mandate, COSON is tasked with the duty of protecting and exploiting the intellectual property of a portion of the music industry of Nigeria- according to the Global Intellectual Property Center of the SU Chamber of Commerce 2017 report, there is a direct correlation between the level of Intellectual property protection/ enforcement and the GDP of the nation. In other words, the seriousness with which a country handles intellectual property industry by ensuring that rights are not only protected but enforced impacts how much money that country generates - it's a no-brainer really- we are in the era where intellectual property is the new real property. In my father's time, real estate was the best investment – buy a piece of land or property and you are good; today times have changed such that a company like Apple which essentially deals in intellectual property is worth over \$903 Billion dollars as at 2016. A substantial part of that having come from the company's foray into the music industry. The Nigerian people and her creative industries remain one of its greatest resources when one considers the quality of IP content that is being churned out by music, film or fashion creators, but the music industry we are proud of is a husk without dealing with copyright enforcement and protection!

NCC, COSON and the Regulatory Regime

The Nigerian Copyright Commission(NCC) is the statutory body authorized by virtue of the provisions of the Copyright Act of Nigeria 2004 to license Collective Management Organizations(CMOs) in Nigeria and in 2010 COSON became the first CMO licensed by the NCC after a 13 years period during which the commission had suspended the issuance of licenses. What do CMOs actually do you might ask? Well - Firstly they enable copyright owners to administer certain aspects of their rights effectively and cheaply in order to obtain a fair return for their work. Secondly, they provide a service to rights users by facilitating ready access to and licensing of copyright works, easily and cost-effectively.

So, for instance, each time a song is played on the local and foreign radio there is a royalty fee to be paid to the artist/label/publisher, the same goes for the use of music on TV and radio adverts and even in bars, clubs, and commercial vehicles. To put it into context, South African Music Rights Organizations (SAMRO) collected about \$25 Million dollars as royalties in 2016 alone. For perspective, remember that South Africa has a population of about 55 Million only. Nigeria with almost 4 times that population (200 million according to a recent projection) and with arguably more popular music has never even generated \$1 million dollars gross as royalties. Indeed, the highest amount COSON distributed to its members was N200 Million in 2016- just under \$551,000. Now how does a country with that number of people and quality/quantity of musicians generate less than five percent of what South Africa generates? The answers are multi-varied - but let's just say that poor copyright protection and enforcement have ensured that hardworking creators and copyright owners are not adequately compensated for their hard work. So, whereas the royalties generated by a hit song should be the

pension for the creators/copyright owners- the poor culture of enforcement and the ability to get content users to not just pay but also pay the artists fairly has always been an issue.

You see even the traditional institutions that should pay royalties do not pay for the music that makes their business thrive. Imagine taxis, hotels, bars, clubs, casinos, restaurants and radio stations with no music? Who would patronize their businesses? How many nightclubs and bars would stay afloat if they couldn't play music? Imagine that just for a moment.

The lack of payment of royalties is why musicians who were big hitmakers in the past died in abject poverty. When Paul Play Dairo fell ill a few years ago and almost died because of his ailment, it was charity, not his intellectual property that saved his life. How could an artist like Paul Play not have generated more than enough money from the hits he created as a producer and as a performer not be a millionaire in dollars today? If you wonder who Paul Play is, Google him.

ENTER COSON

This is exactly what COSON was licensed to do in 2010. Prior to this, the last time a CMO was operational in Nigeria was over 13 years ago. The 13-year-old lacuna was caused by the longstanding rift between the Musical Copyrights Society of Nigeria (MCSN) and Performing Rights Musical Society (PRMS) over which was the lawfully licensed organization to collect royalties within Nigeria. To go back into the history of this, MCSN was the first CMO in Nigeria, it was even operational before the first Copyright Act was passed in 1988. Chief Okoroji was on the board of MCSN but later broke away with a faction to form PMRS. Mayo Ayilaran and Tony Okoroji never saw eye to eye after that. Both leaders never settled their differences, while the NCC at the time was also caught in its own scandals around how the licenses were issued and withdrawn, conflicts of interest and unfair bias towards one or the other party. This resulted in a flurry of suits and countersuits by both parties- the NCC consequently suspended renewing either of the parties' licenses.

What was the effect? Radio, TV and advert firms started using content without paying for the content. Their excuse? Well, there was no one to pay, or rather there was confusion as to who should be paid between the MCSN or PMRS. This culture permeated so much that clubs, discos, hotels, and places where music was being consumed refused to pay. Radio stations in Nigeria would pay for foreign music but frown at the suggestion of paying for local content- they felt they were doing local musicians a "favor" by playing their songs. Besides local music should be free right? Wrong! In Nairobi, Kenya for instance taxi cabs pay an annual fee of \$50 to play music in their cabs...imagine if every cab and Danfo bus in Lagos paid N18,000 per annum to the CMOs! How much would be generated for the musicians and even the government via taxes?

So, the need to get a CMO or CMOs licensed and operational was very key. Under new leadership, the NCC issued a Request for Proposals from organizations to apply to become licensed under the CMO regulations of 2007. Prior to this, I had joined an association called Association of Music Business Professionals (AM.B-PRO) which included people like Obi Asika, Efe Omorogbe, Edi Lawani, Bayo

Omisore etc. AM.B-PRO's mission was simple- to create a unified platform for the propagation, promotion, and development of the Nigerian music industry. So, AM.B-PRO decided to broker a reconciliatory meeting between PMRS and MCSN. The historic meeting which held at the Jade Palace Restaurant on Isaac John Street in Ikeja was attended by Mr Ayilaran and Mr Okoroji and other prominent music industry professionals including the iconic Onyeka Onwenu. After deliberating for about four hours, it became clear we had again reached a deadlock- the only person that shifted their position was PMRS which offered to merge with MCSN so collectively they could apply for the license. Mr Ayilaran was averse to having any dealings with PMRS.

To cut the long story short, COSON applied independently and emerged the licensee and Chief Tony Okoroji was appointed its Chairman. Me? I was ecstatic. I believed that this development would breathe a new lease of life for the Nigerian music industry. I also was excited because under the leadership of Chief Okoroji -who I used to tease that he knew more about copyright law and practice than most Nigerian lawyers –I believed we could effect far-reaching reforms. As a label owner and a person who has invested a great part of my time and resources in nurturing, creating and managing talent- a high performing CMO, meant more money for the artists, the label for the whole ecosystem as well. I was in heaven.

COSON: The Early Days

COSON started off with an aggressive media and sensitization campaign. Next stage was issuing demand notices to defaulters who usually didn't take the notices seriously. It was only after COSON slammed many of these companies with lawsuits did they sit up. The COSON strategy was simple, we needed compliance with the laws and in a tough environment like ours, the courts were better persuaders than benign letters of demand. And the strategy began yielding the desired results. Chief Okoroji led the charge and was constantly in the media, he was constantly in the meetings to educate and enlighten the public. Supported by a highly motivated board and management team, all the hard work slowly began to yield results. By the time Banky W, Obi Asika, Baba Dee and I joined the board of COSON in 2012, the focus had shifted to collective bargaining and advocacy with the government to get their support for COSON's activities.

One thing that concerned me was how Chief Okoroji seemed to act like he was the CEO of COSON and not the Chairman of the board. I have served on several boards in various capacities in my career and I understand the need for the Chairman of a board to set the vision, direction, and objectives of the organization. The actual job of executing that vision is the job of the COO or General Manager. According to Article 61 of the COSON memo and articles of association "The Management Board shall appoint a General Manager who shall be the chief executive of the society with responsibility for the day-to-day activities of the society and to whom the Management Board may delegate any of its duties. The General Manager shall not be a member of the society"

In practice, however, Chief Okoroji was/is in TOTAL control of everything in COSON from hiring to firing. From award of contracts to disbursement of payments- at first, I thought it was unfair that he was usurping the role of the General Manager /CEO of COSON Mr Chinedu Chukwuji- little did I know that this was actually the duo's modus operandi since their days at PMRS – Chinedu was head of operations while Chief was the Executive Chairman, and this didn't change under COSON.

I can't pinpoint when things began to shift for the worse, but I guess some of the signals were there when some board members resigned of their own volition or failed to be re-elected for some strange reason. Some of us didn't dig deeper than what we were told because of our belief in Chief Okoroji's passion for the growth of the industry. You see Chief Tony Okoroji is not only charismatic but resourceful and experienced so even when complaints are raised, he was always ready with answers.

THE COSON WEEK SAGA

The COSON Week had been started as a means to sensitize the country about the mandate and activities of COSON so that we could bring more interaction between the government, the private sector, and the music stakeholders. The week's events were varied and ranged from religious services to sporting activities, a COSON ball, and even a COSON Song Award. The COSON Week was sponsored by COSON and over the years had become not just expensive but didn't yield the required return on investment. Sometime in 2015 the board met to review the COSON Week and were presented with a bill of another N8, 000,000 that was due to the event organizers. The Chairman presented a motion to approve the payment of the N8 Million to a certain Tops Management Limited. Some of the board members who were more conversant of the project resisted the extra payment. After the review, the board decided that the COSON Week should be suspended until we could generate money from sponsors to defray the costs of executing the event. Indeed, the real reason why the board has approved the appointment of an "independent consultant" was to source for sponsorship from the private sector to defray the heavy costs that were being born by COSON members. It was during one of such meetings that I was informed that Tops Management the company in charge of executing most of COSON's events was actually owned by Chief Okoroji!

I was shocked at the brazen way in which he not only appointed them (AKA him) as contractors/consultants to COSON while sitting as chairman but was still the one advocating for the payment of their huge bills. The board frowned at this but admittedly at the time, we should have done more. Eventually, we sort of did. This was what led to the board suspending COSON WEEK in 2016. But alas in 2017, it happened again! This time Chief Okoroji presented a bill for N26, 200,000.00 as cost incurred by his company, TOPS Limited in the execution of the 2017 COSON WEEK!!!

Now even prior to this several letters had been written by various stakeholders and members of COSON in protest of some of the goings-on in COSON. And in spite of repeated consultations during the board meetings, it would seem the issues were no closer to getting solved due to a heavy resistance by the chairman who believed that any criticisms were born out of some personal issues and not from legitimate concerns.

For brevity here is a list of infractions on Chief Okoroji's part:

1. The continued engagement of companies owned by fellow Directors /board members of COSON Miss Azeezat Allen and John Udeagbunam, who are currently engaged as paid consultants to COSON, contrary to Article 3(6) of the COSON MEMART.
2. Chief Okoroji personally responded to an earlier petition by Premier Music Publishing Company Ltd (Foremost record label in Nigerian history and owners of over 1,000 musical works and sound recordings) querying some of the association's disbursements and formula for calculating the royalties they received. This in all fairness wasn't the first time we had complaints about the sharing formula and how it was calculated, even my company had complained about the formula but in this instance, Chief Okoroji (not the GM) responded to the letter without referring the letter to the board for their input.
3. Chief Okoroji unilaterally claimed and approved a standard of 10% commission on all licensing income deemed to have been "brought in" by him without recourse or approval of the board. This is contrary to the objects of the society itself- why should the Chairman of a board get a commission for collecting revenue that is the core purpose which the board was instituted for? And why should the copyright owners have to bear that cost? This not just unethical but totally unheard of!
4. Chief Okoroji unilaterally decided (ostensibly in connivance with his crony Chinedu Chukwudi the GM of COSON) to pay to himself a 15% commission through his company TOPS limited and/ or Creative Legal (a law firm he unilaterally hired as COSON's legal advisor) from MTN's settlement payment for royalties. Indeed, the commission, which amounted to about N22, 500,000.00 (Twenty-Two Million, five hundred Thousand Naira) was paid out without the knowledge, approval, and signature of both the finance committee chairman, Mr Joel Ajayi, and other board members. As a rule, any and all payments above N2,000,000,00 require board approval. This was flouted as usual.
5. When protests were being mounted about Chief Okoroji's activities, he hurriedly and unilaterally dissolved all standing committees without ensuring that the mandatory quorum as stipulated in Article 42 of the COSON MEMART was adhered to.
6. Finally, as stated earlier, the request for payment of the sum of N26,000,000 in favor of TOPs Management as their fees/costs for the execution of the 2017 COSON Week – an event which the board had suspended because of the high cost of running the event.

The above formed the contents of a petition that was submitted to the Nigerian Copyrights Commission for its consideration and intervention in its role as regulator of COSON.

Following the above, board members felt the need to formally address the issues raised as they were clearly affecting not just the transparency of the operations of the board, but also the amount of money available to be distributed to the owners of the money itself - COSON members. Consequently, the members called for an emergency board meeting, which held on the 7th of December 2017 at the COSON headquarters. In attendance at the meeting was the NCC representative Mr Chuks Ezeilo who by virtue of the provisions of the CMO regulations of 2007 had to be present for all statutory meetings of COSON.

At the meeting, these allegations were raised and Chief Okoroji was asked to respond to the above-stated allegations. Chief Okoroji couldn't justify any of the issues satisfactorily. Instead, he pleaded with the board to give him time to "resolve" the pending issues. The board then moved a motion to remove Chief as Chairman of the board and Mr Efe Omoregbe was voted the new Chairman. The said meeting was witnessed by Mr Ezeilo the representative of the Nigerian Copyrights Commission. The vote was 6: 4 in favor of Chief stepping down. The NCC representative abstained as was the tradition.

The new board immediately set up meetings with Price Waterhouse Coopers and KPMG to do a forensic audit of COSON activities. The boards resolve was to assess the status of COSON, review and fix all its operations especially in the area of reconciliation of logs and cue sheets and review the royalty distribution figures. A faction of the board had toyed with the idea of exposing the deeds of Chief Okoroji, but the board collectively decided that we shouldn't bring any further disrepute to COSON at this stage by opening up old sores, but decided that once the audit results were out, we could revisit the matter if the audit revealed excessive discrepancies in the financial statements of COSON.

COSON had already slated a general meeting on the 19th of December 2017, which is usually called the annual distribution AGM- this is when members gather from all parts of the country for the declaration of the sums to be distributed as royalties for the year. The newly reconstituted board was contemplating whether to suspend the distribution temporarily in order to allow the auditors determine the actual sums generated and how much was due to be distributed but the consensus was to allow the distribution to continue for the year and start off 2018 on a clean slate. The meeting held as slated.

On the day of the meeting the scene that played out was something that would make most Nollywood writers applaud. On arrival Efe Omoregbe the new Chairman and some members were diverted upstairs at the COSON office for "an urgent matter" while Chief and his team had already mobilized a crowd to attend the event in droves. Before Efe could return to chair the meeting, they had appointed Sir Victor Uwaifo as the "acting chairman" of the meeting and the general assembly vetoed the last Board meeting and "returned" Chief Okoroji as chairman. They also proceeded to "sack" the entire board, only

returning Azeezat Allen and Chief Udegbelam as Directors from the “former board”. Now a couple of points have to be established- that nothing in the Memo and articles of COSON gives the AGM powers to remove a board without following the processes outlined in the constitution. As the Efe, Obi Asika and other board members rejoined the meeting, Chief Tony Okoroji hurriedly announced the distribution amount and quickly adjourned the meeting. The whole thing was a disgrace.

Following this the legally constituted board, wrote a petition to the Nigerian Copyrights Commission in early January, laying out the facts of the case and demanded that the NCC intervene in the matter. In the meantime, Chief Okoroji in his usual manner had hurriedly put together a new board made up of his acolytes. He also launched an assault on us the board members and filed lawsuits against Mr Efe Omoregbe all in a bid to ensure that the matter will be tied up in the courts.

Reprieve, however, came on the 19th of February 2018, when the NCC wrote in response to our petition. The letter was signed by the Director General of the NCC and directed to the General Manager of COSON and both The Chairman Efe Omoregbe and the Former Chairman Chief Tony Okoroji were copied. I have attached a copy of the letter for ease of reference. In the main, the purported EGM of the 19th of December 2017 was declared null and void and of no effect. The COSON General Manager was directed not to give any such resolutions at the said EGM any effect except the matter of the distribution of royalties. The NCC also directed that a proper AGM should be held within 60 days of the said letter, which is the proper forum for any such board elections. The letter ended with a stern warning that the GM should comply with the directives as stipulated under the Copyright Acts and the CMO regulations of 2007. We received the news with a measured celebration because by now it was clear to all of us the Chief Okoroji was a dogged relentless fighter especially when it concerns something he considers as his source of livelihood.

We were right, Chinedu Chukwudi the GM of COSON and longtime crony of Chief Okoroji-, wrote back to the NCC stating that the matter was now subject of litigation and basically stating that they would not comply with the directive.

Despite the pronouncement by the NCC of the legitimacy of our board, and the directive that COSON GM should revert to the status quo i.e. operate under the validly constituted Chairman and board, attempts by the board to hold a meeting at the COSON office to begin audits of the books of the organization were thwarted by the GM of COSON who had clearly taken sides with his boss. The Board members comprised of Efe Omoregbe, Obi Asika, Dare Fasasi, Obi Asika, Joel Ajayi, Sikiru Agboola (represented by Oby Egbe) and Seyi Lawal who represented me were denied entry into the COSON house. Pictures are all over the internet and this for me was the last straw.

The key issue in this matter is not even the matter of the allegations against Chief Okoroji and his cohorts – it is a question of obedience to the rule of law and the laws that guide and regulate the operations of COSON. When a regulator issues a directive and the licensee ignores or acts in total disregard of the directive- there is bound to be anarchy. This is the lack of protection and enforcement, I mentioned earlier in the article that has robbed the Nigerian economy and Nigerians of what is rightfully due to them. This is a risk for any would-be investors or stakeholders in the industry – the fact that laws are largely ignored.

Chief Okoroji had previously won the respect of many people in the music industry over the years- sadly it may seem that the adulation he once enjoyed has gotten into his head such that he now believes he is above the law and that the laws don't apply to him anymore. If I were Tony Okoroji, I would simply have resigned in the face of these grave allegations for the sake of COSON. Instead, Tony has utilized COSON funds to wage a media war against Efe Omoregbe and the board members that voted him out of office. The funny thing about his misdirected campaign is that Efe Omoregbe was unwilling to take the position of Chairman of COSON- it was the repeated pressure from many songwriters, artists, and labels that led to him reluctantly accepting to chair COSON. The fight over the leadership of COSON is to ensure we can build a world-class Collection society that matches up with the potentials of such an important copyrights market like Nigeria.

The other side of the story is this, if Chief Okoroji believes that he is the only man in Nigeria that can successfully chair COSON, then he should simply comply with the NCC directive and wait for the next AGM and recontest. One thing is clear, an illegal act will not be condoned by the Nigerian music industry any longer- we will not go back to the dark days of royalties collection that arose due to the war between Chief Okoroji and Chief Mayo Ayilaran in the past.

We saw what happened to Robert Mugabe, who clung unto power desperately until he was disgraced out of office. This is the plight of Chief Tony Okoroji who one expects should be playing a fatherly and advisory role in the music industry, instead, he is busy fighting with Efe Omoregbe a man he is old enough to father, all in a bid to hold on to something that he erroneously believes is his birthright. Nothing could be further from the truth - COSON was built by the collective effort of the Nigeria music industry and its stakeholders. Admittedly, it may not have performed credibly or efficiently as it ought and for that we (myself include) must be held accountable for any failures that have occurred. You see when there is repeated bad management, the only thing to do is replace the management - starting from the leadership (and that includes me) in a bid to ensure that the greater good is served. This is our position.

As I end I would like to call upon the Nigerian music industry and broad stakeholders to take a stand and demand that Chief Tony Okoroji complies with the directive of the Nigerian Copyrights Commission for the good of the Nation. Just last week, he tried unsuccessfully to have the COSON Chairman Efe Omoregbe and Joel Ajayi another (member of the board) to be arrested and detained overnight at a Lagos Police station. His plan(s) failed. I am convinced that he will do anything to stop any audit of

COSON's books and activities at this stage. He will also deploy all resources available to him – yes I mean monies that should be used in paying royalties to hardworking creators and publishers- in order to achieve his nepotistic aims. But rest assured that justice may be delayed, but it surely won't be denied.