

## **Public Performance Royalties from Film Music**

Music serves several purposes in film productions. Producers depend on it to interpret their stories and set the ambiance for scenes. In doing so, they either choose pre-existing music or hire composers to create original music in return for a fee. Independent of the fee, the composers and their publishers are entitled to public performance royalties when the film is shown in cinemas, television and/or streamed.

Public performance royalties from audio-visual productions are often misconstrued by many participants in the music and film industry. This advisory is aimed at providing an overview on the subject.

### **1. What is public performance royalty?**

The Nigerian Copyright Act grants owners of musical compositions the exclusive right to perform their compositions in public. When a film containing musical compositions is shown in public, such compositions are being performed to the audience watching the film. Thus, the exhibitors of the film require public performance licence from the owners of the musical compositions.

Note that public performance licence is different from synchronisation licence. Synchronisation licence give producers the right to use recorded music in a timed synchronisation with visual image, while public performance licence gives exhibitors the licence to publicly play the music integrated in the film. Producers generally pay a flat fee for synchronisation licence, while exhibitors such as cinemas pay a percentage of the box office receipt for public performance licence.

### **2. What are the major sources of income for public performance?**

- a) Theatres: Cinemas pay (or ought to pay) public performance royalties for motion pictures containing music shown in their theatres. The sum payable is usually between 2% to 5% of the box office receipt. The rate is set by the local performing rights organisations (PROs) and it varies in each territory.
- b) Television Networks. Television networks generally obtain blanket licence from PROs to cover all the music played on their networks. The sum payable for a blanket licence varies, depending on the category of the television network (e.g. free-to-air, and pay services).

- c) Video-On Demand: the same principle as the television networks, online platforms such as Netflix and IrokoTV have or should have blanket licence from PROs to cover all the music integrated in films shown on their platforms.

### ***3. Are composers entitled to public performance royalties when they have assigned their copyright to a production company?***

Yes. When an original music is created for a film and the composer is under work made for hire agreement, the composer assigns all his/her copyright in the music to the production company, making the production company the publisher of the music. Irrespective of the assignment, the composer is entitled to 50% of the public performance royalties from their PRO (called "writer's share"). Note that composers' entitlement to 50% of the public performance royalties is not governed by the Copyright Act. It is an entitlement established by custom and practice in music industry.

For pre-existing music, the production company is granted licence to use the music. Thus, the music publishers remain the copyright owners and entitled to publisher's share of public performance royalties.

Public performance royalties are one of the major reasons why many composers create film music or authorise the use of their music in a film for less than their usual fees because performance income could be significant if the movie is successful. It is a back-end income for composers and publishers.

### ***4. Who collects public performance royalties?***

Composers and publishers can collect public performance royalties. However, in practice, it is an onerous task for them to police the use of their works, issue separate licence to each user, and collect royalties in all parts of the world. The same difficulty applies to music users if they have to go to every composer and publisher to obtain licence. As a result, composers and publishers sign up with PROs to monitor and administer the use of their works. The Copyright Society of Nigeria (COSON) and Music Copyright Society Nigeria (MSCN) are the two PROs approved by Nigerian Copyright Commission.

When a Nigerian film is shown outside of Nigeria, the PROs of the foreign country collect public performance royalties and remit it to the home PROs who turn it over to the composers and publishers. The same principle applies to foreign films shown in Nigeria. COSON has reciprocal agreements with numerous PROs around the world authorising them to collect royalties on their behalf.

### **5. How does the PROs allocate royalties?**

The PROs divide the royalties between the composers and publishers listed on the music cue sheets. Music cue sheets provide details of all the musical compositions used in the film, including the title of the music, composers, publishers, and affiliated PROs.

Production companies generally prepare and file music cue sheets with the local PROs. The local PROs forwards them to their foreign counterparts where the films are shown.

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