

CASE STUDY 2

COPYRIGHT PROTECTION: A NOLLYWOOD ANTI-PIRACY STRATEGY

Overview

Name:	African Artists Collaborative	Object of Protection:	Movies and Music Recordings Creative Arts
Organization Type:	NGO	Instrument of Protection:	Copyrights
Industry:	Film	Focus:	Branding, IP Management, Licensing
Country/Territory:	Nigeria (Federal Republic of)		

Background

The African Artists Collaborative (AAC) was established in the United States as a nonprofit organization to support the Intellectual Property Rights of African artistic products sold in the U.S., by creating access to US copyrights procedures and processes as well as legal representation through litigation of IP infringement of their works. AAC was established with three members of the Board of Directors of Filmmakers Association of Nigeria, USA (FAN): Tony Abulu (President & C.E.O.); Caroline Okolo (Director of Operations and IP Issues) and Samuel Adewusi (Legal Adviser).

It is pertinent to note that for the first time ever, Africans have been able to create a commercial product which has been accepted by large niche markets in the United States, the Caribbean and Europe. This is highly unprecedented! Within a five-year period (2003-2008), the African film Industry popularly referred to as Nollywood produced over 10,000 original film titles. Unfortunately, the Africans do not receive full financial benefits from the distribution of these films in the US due to massive piracy of their works. African Artists Collaborative (AAC) is poised to help reduce copyright infringement of African entertainment products in the United States.

The Copyright Problem

African artists have been at a disadvantage in comparison to their counterparts in the Americas and European nations. To date, 85% of music, film, and art, among other works, is being pirated openly in the United States and Europe, within niche market communities that boast that no legal repercussion will come out of their flagrant disregard of the United States copyright laws. Within the African communities in the US, it has become part of everyday business to patronize entities that publicly buy and sell pirated products to the public in the open market. This has caused great frustration to the IP rights owners as they travel the US to promote their work(s), frustrated that they have no access to representation or remedy to this very obvious drain on their earning capabilities. It is even worse among African musicians, who simply stand back and watch pirates buy one single copy, illegally replicate it and infinitely distribute the product, coast to coast in the US for profit, without any compensation to the artist.

In the past, FAN USA took on some obvious offenders by pleading with the store owners to work hand-in-hand with the artists to supply them with legitimate copies of their works for sale in the US.

The result was discouraging, as the number of pirates increased exponentially. The majority of US store owners that sell these pirated products suffer no repercussion, claim that the products were not copyrighted in the US, and therefore conclude that copyright laws cannot be enforced. To date, the niche market still continues in this practice of buying and selling pirated copies causing the loss of revenue to the artists, many of whom have been sadly forced to lose all hope and go out of business in Nollywood.

If this trend is allowed to continue, the bleeding of African arts revenue will eventually lead to the death of what is heralded as a major emerging film market in Africa with the potential of creating a sustainable and significant revenue stream for numerous developing nations. The rise and demise of Nollywood could very well be playing out before our eyes, unless measures are immediately put in place to safeguard the continuity of the Nollywood industry. It is interesting to note that the African music industry (many of whom have also approached FAN and AAC for help) is suffering the same fate.

Copyright Strategy

African Artists Collaborative (AAC) was able to articulate the problem as being an excessive pirating of Nollywood movies in the United States, specifically in local niche markets and the illegal online streaming on identified websites. By identifying the problem, AAC with PIIPA's support created a Copyright Registration Initiative and Online Infringement Removal Strategy as a frontline solution to mitigate the revenue losses for African filmmakers.

The IP Solution/Strategy

Highlights of AAC's copyright registration initiative goals and strategy are:

1. **Copyright Registration Drive:** With help from PIIPA-assigned law firms, AAC is currently registering many motion picture works of Nollywood filmmakers in the United States by utilizing *pro bono* legal representation. This initiative has helped encourage the good habit of copyright registration of Nollywood motion picture works in the United States, prior to publishing or distribution.

AAC has been working with PIIPA-assigned law firms to register filmmakers who reside in Africa and also in the Diaspora, whose works are being flagrantly violated in the marketplace. The lack of proper legal representation in the US has made it a free-for-all for pirates to duplicate and openly resell the artists works without repercussions.

2. **Digital Millennium Copyright Act (DMCA):** After copyrights registration and publication of the works in the US, AAC identifies infringing websites that illegally stream the artists' films. The list is compiled and turned over to the attorney's office. The DMCA is a great tool in helping persuade Internet Service Providers (ISPs) that the streaming work is in violation of the US copyright laws and is infringing on the artists' copyrights.

This strategy of removing the infringing materials from identified websites is a critical key to the survival of the Nollywood film industry. AAC has identified at least 14 habitual offenders that we hope can be prosecuted in the near future.

3. **Cease and Desist** letters issued to US store fronts: This strategy is to identify and possibly in the future, litigate major niche market stores and distributors in the US who are openly distributing pirated copies from their stores in the US.
4. **Copyrighted in the US Logo Initiative** was initiated in collaboration with Filmmakers Association of Nigeria, USA (FAN) and PIIPA representing attorneys. FAN USA brought major African film distributors in the US to the table, and they agreed in turn to utilize an approved logo that reads “*FAN USA: US Copyright Protected*” on the movie armory packaging, to clearly identify Nollywood films copyrighted in the US. This initiative has single-handedly sent a clear message to the pirates that the movies bearing the logo have been copyrighted in the US and are subject to full legal protection according to US copyright laws. The cost of the implementation of this Copyright logo campaign was born by the US-based African film distributors, even though it increased the product price. AAC has observed that the US pirates have avoided infringing on the films with the “FAN USA: US Copyright Protected” logo. There is no better advertisement or example of the power of copyright registration than the successful implementation of the logo initiative.
5. **Litigation(s):** On behalf of its member clients, AAC hopes to link the filmmakers to a US law firm that is willing to litigate identified egregious copyright infringement cases in the near future.

Business Results

In terms of the effect that our copyright initiative has had on the cash flow intake of the affected distributors, we can readily point to three major distributors who account for 90 percent of all Nollywood distributed films in America. They are: Sanga Entertainment, Executive Image African films, and Franco films. Based on the removal of the copyrighted films from the infringing websites, revenues have jumped 20 percent so far. They release an average of 30 films a month and the effort has only been able to copyright only a fraction of their films. With added copyrighting of other titles, it is believed that sales can jump exponentially.

Success Based on IP Protection and Copyright Enforcement

The AAC/PIIPA collaborative Copyright Registration Initiative and Online Infringement Project to-date has produced great success. We have registered over 100 African films and have removed infringing materials from over 50 identified websites, especially from the sites of habitual online offenders. Most importantly, it has sent an encouraging message to the African filmmakers, who are often skeptical about the practical application of Intellectual Property Rights to their works, that the AAC/PIIPA Copyright Registration Initiative can directly impact their revenue stream.

The vision and goals discussed were developed as a culmination of events and various attempts and struggles initiated by FAN USA in support of Nollywood. As the world draws closer to becoming one giant global market, Africa is left behind in the Intellectual Property Rights race because it has not successfully linked the IP initiative to a visible revenue stream that is easily understood in plain terms by its indigenes. With the emergence of Nollywood, (which is still largely unknown in the global marketplace), an enthusiasm to understand the importance of Intellectual Property Rights issues, and its economic impact as it relates to nation building, is now dawning on the African film industry. This is an opportunity that AAC and its legal collaborators must seize. There is a well of

opportunity for individual organizations that assist in correcting the massive piracy of the work of African artists and market share imbalance in the US market place.

As a direct result of AAC's efforts on November 4, 2010 in Brooklyn, New York, the Kings County District Attorney Charles J. Hynes announced an investigation into the counterfeiting and illegal sale of movies from the Nigerian film industry. Investigators executed search warrants at nine stores, from which they recovered more than 10,300 counterfeit DVDs; five multi-slot, high-volume disc duplicators; as well as hundreds of blank DVDs, disc cases and sleeves, and pre-printed media covers. DIs also recovered laptop computers, business records, checkbooks and bank records, from the various businesses. Those responsible could face charges including Trademark Counterfeiting and Forgery and could receive sentences of up to seven years in prison.

“The villains in this drama are the shop owners who peddle pirated DVDs, a crime that is tantamount to outright theft,” said District Attorney Hynes. “The sale of bootleg and counterfeit goods deprives the city and state of New York of millions of dollars in sales tax revenue, at a time when we all need it most, and it deprives the artists who made the movies of their well-deserved proceeds. I would like to thank Tony Abulu and the Filmmakers Association of Nigeria and the AAC for their support in this investigation.”

Sources, References and Related Links

Caroline Okolo, Executive Director, African Artists Collaborative

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