



2015

Weapons of Mass Construction: The Role of Intellectual Property in Nigeria's Film and Music Industries

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WEAPONS OF MASS CONSTRUCTION: THE ROLE OF INTELLECTUAL PROPERTY IN NIGERIA'S FILM AND MUSIC INDUSTRIES

*Ana Santos Rutschman**

ABSTRACT

This article analyzes the role of intellectual property (IP) in the recent and extraordinary growth of the film and music industries in Nigeria. This growth, largely attributable to the introduction of digital technologies across sub-Saharan Africa, has also been shaped by an intricate interplay between unbridled piracy and market-induced compliance with IP norms within the same industry. As a signatory of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Nigeria is bound by standards of IP protection that are applicable to both developed and emerging economies. In developing countries, this kind of legal harmonization often translates into a rigid enforcement of IP that poses the risk of stifling industrial production. The film and music industries in Nigeria, however, have thrived by incrementally transitioning from non-proprietary to IP-based regimes. The article traces that evolution, arguing that a combination of initial levels of low IP protection with progressive “formalization into IP” benefits developing industries that rely on digital production and distribution of content.

The first part of this article provides background information on Nigeria's economic profile, with an emphasis on the country's digital infrastructure in connection with production and distribution of music and film. The second part focuses on Nigeria's music industry from the viewpoint of IP enforcement. The third part zooms in on Nollywood, Nigeria's domestic film industry and the second largest film industry in the world as of 2009. It analyzes the role that IP has played in the development of Nollywood, identifying three functions of IP norms and policies throughout the different growth stages of the industry. Finally, this article shows how Nollywood's progressive “formalization into IP” has influenced monetization of digital content in other systems of production and distribution of digital content in Western Africa.

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I. NIGERIA AT THE DAWN OF THE DIGITAL AGE: THE IMPLICATIONS OF BEING A MINT COUNTRY

Nigeria, we are increasingly told, is a MINT country.¹ Coined by Jim O'Neill, who years earlier had created the acronym BRIC,² the term applies to Mexico, Indonesia, Nigeria, and Turkey. These developing countries are densely populated and strategically located, with promising recent and prospective economic growth patterns. The most optimistic studies estimate that by 2050, the GDP of each of these four countries will be comparable to the projected numbers for the United Kingdom or Germany, and superior to Canada or Italy's GDP.³

Categorizations like BRIC and MINT, however, attract a fair amount of criticism, with questions surrounding the criteria used to aggregate such disparate economies, especially in the case of MINT countries.⁴ In the case of Nigeria, undeniably the second largest economy in Africa by general

¹ See Jim O'Neill, *Who You Calling a BRIC?*, BLOOMBERG VIEW (Nov. 12, 2013, 6:00 PM), <http://www.bloombergview.com/articles/2013-11-12/who-you-calling-a-bric>. For a survey of the use of the acronym MINT in the press and in colloquial discourse, see, e.g., Kyle Caldwell, *How to invest in the 'Mint' emerging markets*, THE TELEGRAPH (Jan. 17, 2014, 7:58 PM), <http://www.telegraph.co.uk/finance/personalfinance/investing/10580108/How-to-invest-in-the-Mint-emerging-markets.html>; see also Jackie Northam, *The Global Economy: A World Of Acronyms*, NAT'L PUB. RADIO (May 13, 2014, 3:04 AM), <http://www.npr.org/blogs/parallels/2014/05/13/311852601/the-global-economy-will-mint-countries-be-the-new-brics>. For a study on foreign direct investment in the MINT economies, see Uduak S. Akpan, Salisu R. Isihak & Simplice A. Asongu, *Determinants of Foreign Direct Investment in Fast-Growing Economies: A Study of BRICS and MINT* (Afr. Governance and Dev. Inst., Working Paper 14/002, 2014). The concept is also being adopted in specialized literature in the life sciences. See, e.g., Suzanne Elvidge, *The MINT Countries In Biopharma: Building On The BRICs*, LIFE SCI. LEADER (Apr. 20, 2014), <http://www.lifescienceleader.com/doc/the-mint-countries-in-biopharma-building-on-the-brics-0001>.

² The acronym BRIC originally encompassed Brazil, Russia, India and China. In 2011, South Africa formally joined the BRIC countries, which are now referred to either by the original acronym or by BRICS. See J.P.P., *Why is South Africa included in the BRICS?*, THE ECONOMIST (Mar. 29, 2013, 5:35), <http://www.economist.com/blogs/economist-explains/2013/03/economist-explains-why-south-africa-brics>. For an analysis of the role of intellectual property norms in BRIC countries, see generally Robert C. Bird & Daniel R. Cahoy, *The Emerging BRIC Economies: Lessons from Intellectual Property Negotiation and Enforcement*, 5 NW. J. TECH. & INTELL. PROP. 400 (2007).

³ See Jim O'Neill, *The Mint countries: Next economic giants?*, BBC NEWS MAGAZINE (Jan. 5, 2014, 19:36 ET), <http://www.bbc.co.uk/news/magazine-25548060>.

⁴ Roger Bootle, *The MINTs are very different and might not all see stellar growth*, THE TELEGRAPH (Jan. 12, 2014, 8:07 PM), <http://www.telegraph.co.uk/finance/comment/rogerbootle/10567196/Roger-Bootle-The-MINTs-are-very-different-and-might-not-all-see-stellar-growth.html>. See also Carolyn Cohn, *BRIC or MINT? Investors Suffer Acronym Anxiety*, REUTERS (Jan. 20, 2014), <http://in.reuters.com/article/2014/01/20/emerging-investment-acronyms-idINDEEA0J0DD20140120>. Even if flawed, artificial categorizations may actually yield some benefits for some of the targeted countries. In the case of Nigeria, which is the only MINT country that is not a member of the G20, it has been pointed out that the creation of the acronym could generate enough pressure for Nigeria to join the group. See O'Neill, *supra* note 3.

econometric standards, a close look at other studies is necessary to acquire a full picture of the economic and social dynamics of the country. The 2013 Global Innovation Index ranks Nigeria 120 out of 142 countries,⁵ between Malawi and Mozambique. According to the same index, Nigeria placed 101 for knowledge creation, 116 for knowledge diffusion, and 106 for creative goods and services.⁶ Nigeria also ranked 153 out of 187 countries in the 2013 Human Development Index Report, which places it in the “low human development” group, one place above Senegal, in a group that ranges from Republic of the Congo (142) to Niger (187).⁷ Nigeria is therefore in a dual position, an economic powerhouse in the making with consistently low levels of human and social development. This translates into a split in wealth allocation that leads to a very different economic climate than in any other sub-Saharan country.⁸ A recent Forbes article entitled *The 2014 Millionaire Race: Goodbye BRICs, Hello MINTs*,⁹ which built on a study by Spear’s Wealth Management Survey and the WealthInsight Intelligence Center, estimated that “MINT countries as a whole will perform better [creating more millionaires] than both the BRICs and the G8” together in 2014. Among the MINTs, Nigeria is expected to register a ten percent increase, a number that is only surpassed by Indonesia’s twenty-two percent estimate.¹⁰ The richest African person is Nigerian, as well as the richest African woman.¹¹ The problem in Nigeria is that poverty has also escalated in recent years almost as quickly as the

⁵ CORNELL U., INSEAD, AND WORLD INTELLECTUAL PROPERTY ORGANIZATION, *THE GLOBAL INNOVATION INDEX 2013: THE LOCAL DYNAMICS OF INNOVATION* xxi (2013).

⁶ *Id.* at 225.

⁷ THE UNITED NATIONS, *HUMAN DEV. REPORT 2013: THE RISE OF THE SOUTH: HUMAN PROGRESS IN A DIVERSE WORLD* 146 (2013).

⁸ See, e.g., Babajide Fowowe, *New Estimates of the Effect of Financial Liberalisation on Economic Growth in Nigeria*, 32 *SAVINGS AND DEVELOPMENT* 205 (2008); *Nigerians living in poverty rise to nearly 61%*, BBC NEWS (Feb. 13, 2012, 5:49 PM), <http://www.bbc.co.uk/news/world-africa-17015873>; see also *Nigeria Economic Outlook*, AFRICAN DEVELOPMENT BANK GROUP, <http://www.afdb.org/en/countries/west-africa/nigeria/nigeria-economic-outlook/> (last visited Jan. 24, 2015). For an analysis of Nigeria’s economic boom in a political and social context, see JOHN CAMPBELL, *NIGERIA: DANCING ON THE BRINK* (2013).

⁹ Dolia Estevez, *The 2014 Millionaire Race: Goodbye BRICs, Hello MINTs*, FORBES (Jan. 27, 2014, 1:27 PM), <http://www.forbes.com/sites/doliaestevez/2014/01/27/the-2014-millionaire-race-goodbye-brics-hello-mints/>; see Press Release, Wealth Insight Center, *The 2014 Millionaire Explosion* (Jan. 17, 2014), available at <http://www.wealthinsight.com/pressrelease/the-2014-millionaire-explosion-4161554>.

¹⁰ Turkey is expected to register an 8.5% increase in the number of millionaires, and Mexico, 7%. Wealth Insight Center, *supra* note 9.

¹¹ See *The Rainbow*, *Forbes: 12 top Nigerian millionaires worth \$65bn*, THE NIGERIAN VOICE (Nov. 15, 2013, 9:16 AM), <http://www.thenigerianvoice.com/nvnews/129085/1/forbes-12-top-nigerian-millionaires-worth-65bn.html>.

formation of the country's upper economic class.¹² Nearly 100 million Nigerians, almost sixty-one percent of the population, live on less than USD 1 a day.¹³ This extreme polarization of wealth makes Nigeria noticeably different from smaller African economies. An additional distinctive feature, and a major concern, is that Nigeria displays much higher corruption levels, a problem that impacts the investment environment and foreign aid, among other areas. According to the Perceived Corruption Index, Nigeria ranks 136 out of 175 countries, with a score of 27 out of 100.¹⁴ As a comparison, consider that Ghana and Senegal are in 61st and 69th places (with 46 and 41 points out of 100, respectively), and South Africa ranks 72nd (with 42 points).¹⁵ Political instability has also been a longtime problem in Nigeria,¹⁶ with acute manifestations in recent years.¹⁷ Nigeria is therefore a country that outperforms virtually every other African country in major economic categories, but that remains afflicted by the same social, infrastructural and—paradoxically—economic problems that affect sub-Saharan Africa.

A. *Digital Infrastructure and Social Media*

Internet was introduced in Nigeria in the early 1990s, but it only became relatively widespread after military rule ended in 1999 and cybercafés began appearing in urban areas.¹⁸ In 2009, the Nigerian multinational telecommunications company Globacom financed the construction of 9200 kilometers of fiber optic cable from Europe to Lagos.¹⁹ Before the fiber optic expansion, only 7.2% of Nigerians had Internet access. By December 2012,

¹² Estevez, *supra* note 9. As the article further details: “Many countries, such as Nigeria, have seen a rise in poverty alongside an increasing millionaire population. Large inequality is a hallmark of the BRICs, which could also become a feature of the MINTs if corruption is not checked and philanthropy among the wealthy not encouraged.” *Id.*

¹³ See *Nigerians living in poverty rise to nearly 61%*, *supra* note 8.

¹⁴ *Corruption by Country/Territory—Nigeria*, TRANSPARENCY INTERNATIONAL, <http://www.transparency.org/country#NGA> (last visited Jan. 24, 2015).

¹⁵ Still, Nigeria manages to outperform countries like Somalia, Sudan, South Sudan, Guinea-Bissau, Equatorial Guinea, Chad and Eritrea. The only African countries with more than 50 points were Botswana, Cape Verde and Rwanda. *See id.*

¹⁶ See K.C. Anyanwu, *The Bases of Political Instability in Nigeria*, 13 J. BLACK STUD. 101 (1982).

¹⁷ See generally Ene I. Ene, Abam, Arikpo, J. Williams Jeffery & Y. Dunnamah Albert, *Corruption Control and Political Stability in Nigeria: Implication for Value Re-Oriented in Politics*, 13 GLOBAL J. HUM. SOC. SCI. 7 (2013).

¹⁸ FREEDOM HOUSE, FREEDOM ON THE NET 2012, available at <http://www.freedomhouse.org/report/freedom-net/2012/nigeria#.Uu8fChbbefQ> (last visited Feb. 12, 2015).

¹⁹ See *Nigeria's Internet Future*, NIGERIAN CURIOSITY (Feb. 2, 2009), <http://www.nigeriancuriosity.com/2009/02/nigerias-internet-future.html>.

that figure had climbed to 38%.²⁰ The number of Internet service providers rose from 18 in 2000 to 136 in 2011. Since 2004, it has been possible to access the Internet via mobile devices, and today there are four Nigerian providers of GSM²¹ mobile phone service—MTN, Globacom, Airtel, and Etisalat.²² As of May 2013, there were over 114 million mobile subscribers, which is a ratio of 69 phones per 100 inhabitants.²³ Computers remain the most popular form of accessing the Internet, with laptops being employed by 62% of Internet users; 49% connect to the Internet via mobile phone²⁴ and digital tablets are slowly on the rise, registering 24% as of August 2013.²⁵

Use of social media has also grown exponentially in the past three years.²⁶ YouTube has been available in Nigeria since 2005.²⁷ The latest available data show that YouTube viewership in the country increased by 125% in 2012, while uploads of content from Nigeria registered growth of 50%.²⁸ In 2013, the most watched videos were uploads of Nigerian music, followed by Nollywood content.²⁹ Non-African content is not represented in the overall top ten most watched videos; neither is it found in the music-specific category.³⁰ YouTube is the fifth most popular website in the country, after social networking platform Facebook, Google, Yahoo and Google Nigeria.³¹

²⁰ *Africa*, INTERNET WORLD STATS, <http://www.internetworldstats.com/africa.htm#ng> (last visited Feb. 13, 2015).

²¹ *Id.* GSM is the dominant standard for mobile phone service worldwide. *CDMA v. GSM—Difference and Comparison*, DIFFEN, http://www.diffen.com/difference/CDMA_vs_GSM (last visited Feb. 14, 2015).

²² *GSM Operators in Nigeria*, JIDAW SYSTEMS, <http://www.jidaw.com/telecom/gsm.html> (last visited Feb. 13, 2015).

²³ *See Subscriber Statistics*, NIGERIAN TELECOMM. COMM'N, available at http://www.ncc.gov.ng/index.php?option=com_content&view=article&id=125&Itemid=73 (last visited Feb. 14, 2015).

²⁴ *How Nigerians use social media*, BUS. DAY (Aug. 1, 2013), <http://businessdayonline.com/2013/08/how-nigerians-use-social-media/>. BlackBerry, Nokia and Samsung are the most popular cell phone brands. *See id.*

²⁵ *Id.*

²⁶ *See Social Media Will Reshape Nigerian Politics In 2014/2015*, CHANNELS TELEVISION (Jan. 5, 2014), <http://www.channelstv.com/2014/01/05/social-media-will-reshape-nigerian-politics-in-20142015-ahmed/>.

²⁷ *See Augustine Amnu, Google Official Says YouTube Views And Video Uploads In Nigeria Increased in 2012, 2013*, DAILY TIMES (Jan. 24, 2014), <http://www.dailytimes.com.ng/article/google-official-says-youtube-views-and-video-uploads-nigeria-increased-2012-2013>.

²⁸ *Id.*

²⁹ *See YouTube Rewind reveals most watched videos in Nigeria in 2013*, CP-AFRICA (Dec. 11, 2013), <http://www.cp-africa.com/2013/12/11/youtube-rewind-reveals-most-watched-videos-in-nigeria-in-2013/>. The Nigerian film industry is often referred to as Nollywood, after Hollywood in the United States and Bollywood in India. *See Part III.*

³⁰ *Id.*

³¹ *Top Sites in Nigeria*, ALEXA, <http://www.alexa.com/topsites/countries/NG> (last visited Feb. 14, 2015).

The YouTube Partner Program, which allows for monetization of content uploaded to YouTube, is also available in Nigeria.³² After the successful introduction of the standard YouTube platform in Africa, Google also decided to launch the YouTube Partner Program in selected sub-Saharan regions. Initially open only to countries in the Global North, the Partner Program was made available in five African countries in August 2013—Nigeria, Ghana, Kenya, Senegal, and Uganda.³³ The agreement differs from country to country, but the essential features allow anyone who subscribes to the program to monetize the content they upload on YouTube through advertisements, as well as paid subscriptions or sale of merchandise.³⁴ Because the agreement is non-exclusive, the content—be it a song or a music video—can be monetized anywhere else, irrespective of location.³⁵ In many sub-Saharan countries, the main source of revenue through this program has become advertisement, rather than subscriptions or merchandise.³⁶ In economies where it is not uncommon for musicians to switch professions due to a scarcity of possibilities of generating revenue, this recent opportunity for digital-based monetization means that African musicians now have an additional layer of incentives to create and promote new content: first, YouTube incentivized creation by increasing exposure to musical content; and, more recently, the Partner Program gave musicians the further incentive of accessing a new source of revenue through advertisements.

B. Digital Infrastructure and the Judiciary Information System

An important sign of the progressive maturity of Nigeria's digital infrastructure was the 2013 implementation of the Judiciary Information System (JIS) in Lagos.³⁷ Lagos, a city of 5.7 million inhabitants in 1991 (the reference year for the latest official data), is today the seventh fastest growing

³² Paul Solomon, *YouTube Partner Program Now Open to Nigerians to Make Money*, TECH360 (Aug. 19, 2013), <http://www.tech360ng.com/youtube-partner-program-now-open-to-nigerians-to-make-money/>.

³³ *Id.*

³⁴ *What is the YouTube Partner Program?*, GOOGLE, <https://support.google.com/youtube/answer/72851?hl=en> (last visited Feb. 14, 2015).

³⁵ *Id.*

³⁶ *Africa's Youth Boom in Internet Access is driving YouTube use across the continent*, BALANCING ACT (Aug. 3, 2013), <http://www.balancingact-africa.com/news/broadcast/issue-no161/top-story/africa-s-youth-boom/bc>.

³⁷ *Lagos State Judiciary Makes History, You Can Now File Your Case Online and Make E-Payments*, AFRICAN MUSIC LAW (Oct. 6, 2013), <http://africamusiclaws.com/lagos-state-judiciary-makes-history-you-can-now-file-your-case-online-and-make-e-payments/>.

urban area in the world³⁸ and the unofficial capital of Nigeria. Estimates about its current population vary wildly, from 11.2 million inhabitants (per the United Nations calculations in 2011)³⁹ to 21 million.⁴⁰ This abrupt rise in population further increased the workflow in Lagos courts, as in other urban areas in Nigeria, with the average duration of a lawsuit being eight to ten years.⁴¹ JIS is an encrypted system of electronic case management that is expected to significantly expedite cases dealt with by the Lagos Judiciary.⁴² The system allows for electronic filing of a case, online research, and real time report, as well as electronic payments via registered credit or debit card, or by direct bank transfer.⁴³ In addition to a more efficient and faster regime, the JIS should also be instrumental in increasing transparency and accountability, and, with online tracking of financial transactions, the Lagos Judiciary also hopes to increase its revenue stream.⁴⁴

II. THE NIGERIAN MUSIC MARKET: PIRACY AND INTELLECTUAL PROPERTY ENFORCEMENT STRATEGIES

A. *The Contemporary Musical Landscape*

Nigerian music revolves around ethnically diverse domestic traditions, blended with foreign genres acquired through contact with sailors, musicians from neighboring countries, and colonizers.⁴⁵ The twentieth century witnessed the emergence of a swirl of genres, ranging from modernized Nigerian percussion-based music in the 1920s and 1930s (jùjú), to Ghanaian highlife in

³⁸ *The world's fastest growing cities and urban areas from 2006 to 2020*, CITY MAYORS, http://www.citymayors.com/statistics/urban_growth1.html (last visited Feb. 12, 2015).

³⁹ John Campbell, *This Is Africa's New Biggest City: Lagos, Nigeria, Population 21 Million*, THE ATLANTIC (July 10, 2012), <http://www.theatlantic.com/international/archive/2012/07/this-is-africas-new-biggest-city-lagos-nigeria-population-21-million/259611/>.

⁴⁰ Elisabeth Rosenthal, *Nigeria Tested by Rapid Rise in Population*, N.Y. TIMES (Apr. 14, 2012), http://www.nytimes.com/2012/04/15/world/africa/in-nigeria-a-preview-of-an-overcrowded-planet.html?_r=2&.

⁴¹ Johnson Amadi, ENHANCING ACCESS TO JUSTICE IN NIGERIA WITH JUDICIAL CASE MANAGEMENT: AN EVOLVING NORM IN COMMON LAW COUNTRIES (Ctr. for Afr. L. & Dev., 2009).

⁴² Adebisi Onanuga, *Lagos Goes On-line*, THE NATION (Oct. 1, 2013), available at <http://thenationonlineng.net/new/lagos-goes-on-line/>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Golden notesDepths of soul and outstanding musicianship*, THE CAPITAL (Sept. 18, 2014), <http://thecapital.ng/index.php/sports/38-entertainment/368-golden-notes-depths-of-soul-and-outstanding-musicianship>.

the 1950s, to rock, soul and funk in the following decades.⁴⁶ With afrobeat, a blend of traditional drumming, highlife, funk and jazz popularized in the 1960s and 1970s by Fela Kuti, Nigeria became one of the original incubators of African hip-hop.⁴⁷ In the late 1980s and 1990s, hip-hop became the most popular genre in the country, both in its Americanized form and through reinterpretation of Western standards by Nigerian musicians.⁴⁸ The latter strand eventually led to the emergence of a specific Nigerian hip-hop genre, sometimes referred to as naija hip-hop,⁴⁹ the top selling and top playing musical genre in the country in 2013.⁵⁰ This phenomenon matches trends that are common to most sub-Saharan music markets, where genres that rely on digital technology—both as a creative tool and as a distribution mechanism—dominate the contemporary music production and distribution system.⁵¹

B. *The Nigerian Music Market*

In 2012, the music industry contributed USD 51.3 million to Nigeria's GDP.⁵² With the advent of digital technologies, the market has been expanding consistently since the mid-2000s, averaging a yearly growth rate of 2.7% for the 2010–2012 period.⁵³ Projected numbers indicate that that rate has probably shrunk to around 1.3% in 2013, which will mark the beginning of a trend of

⁴⁶ *The Music of Nigeria*, WORLD MUSIC NETWORK (Mar. 24, 2011), <http://www.worldmusic.net/guide/music-of-nigeria/>.

⁴⁷ See Derrick P. Alridge, *From Civil Rights to Hip Hop: Toward a Nexus of Ideas*, 90 J. AFR. AM. HIST. 226, 247 (2005).

⁴⁸ Maduabuchi Agbo, *Language Alternation Strategies in Nigerian Hip Hop and Rap Texts*, 9 LANGUAGE IN INDIA 34, 35 (2009).

⁴⁹ *Id.*

⁵⁰ See *Top Ten Nigerian Hip Hop Songs 2014*, BUZZNIGERIA, <http://buzznigeria.com/nigerian-hip-hop-songs/> (last visited Feb. 12, 2015).

⁵¹ See Johnston Akuma-Kalu Njoku, *Art-Composed Music in Nigeria*, in 1 GARLAND ENCYCLOPEDIA OF WORLD MUSIC 233 (Ruth M. Stone ed., Garland Publishing 1998). Already in 1997, at the time of writing of this article, Njoku described the impact of incipient digital technologies in music composition by Nigerian musicians:

Technological innovations, most commonly tape recorders, are changing the way musicians make their compositions. Computer programs—such as the Deluxe Music Construction, Professional Composer, Custom Composer, and Finale—are fast revolutionizing the art of composition. It is possible to record sounds straight into computers such as the Apple Macintosh, and generate subsidiary patterns. As more Nigerian-trained musicians and composers get exposed to such programs, they will probably make extensive use of these potentials.

Id.

⁵² PRICEWATERHOUSECOOPERS, THE SOUTH AFRICAN ENTERTAINMENT AND MEDIA OUTLOOK: 2013–2017 147 (4th ed. 2013).

⁵³ *Id.*

contraction until 2017.⁵⁴ This decline is essentially attributable to a sharp drop in sales of physical recordings (estimated to be around 9.1%).⁵⁵ Digital music, however, is expected to grow by 6.7%.⁵⁶

The projected deceleration of overall growth rates in the Nigerian music market is in consonance with global patterns. According to the International Federation of the Phonographic Industry, worldwide revenues from recorded music plummeted in the 1990s, registering continued negative growth rates between 1999 and 2012.⁵⁷ This phenomenon is attributable to massification of peer-to-peer technologies that have enabled widespread digital piracy, as well as to a shift in music consuming habits.⁵⁸ A contextual reading of Nigeria's expected performance in upcoming years would therefore suggest that the music market, fueled by the expansion of digital technologies, evolved quickly (and against global trends) over the few past years, having now reached a maturity plateau. The Nigerian music industry will still experience residual growth, generating approximately USD 43 million per year between 2013 and 2017.⁵⁹

Rather than volume, the critical shift within the music market is embodied by the transition from physical to digital formats.⁶⁰ Purchase of physical CDs and cassettes started shrinking in the mid-2000s.⁶¹ The rate of decline for the past few years has been approximately -8%, but that number is estimated to further decrease to -11% by 2017.⁶² Conversely, sales of digital music have soared since 2008 and should achieve a compound annual growth rate of 6.7% between 2013 and 2017, generating over USD 28 million in yearly revenue by 2017.⁶³ In the same year, digital recorded music will account for almost 70% of overall sales of music in Nigeria.⁶⁴

⁵⁴ See *id.* Projections indicate that overall recorded music in Nigeria will fall to 0.3% in the period between 2013 and 2017. *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Richard Smirke, *IFPI 2013 Recording Industry in Numbers: Global Revenue, Emerging Markets Rise; U.S., U.K., Germany Drop*, BILLBOARD (Apr. 8, 2013), http://www.ifpi.org/content/section_news/20130408.html. Even in 2012, worldwide growth in music markets did not go beyond a 0.2% rate.

⁵⁸ See RECORDING IND. ASSOC. OF AMERICA, LET'S PLAY: THE AMERICAN MUSIC BUSINESS 10, 13, available at http://www.ifpi.org/content/library/RIAA_Brochure_Final.pdf.

⁵⁹ See PRICEWATERHOUSECOOPERS, *supra* note 52, at 147.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

Despite the difference in size and sophistication of the market, live performance remains the principal source of revenue for Nigerian musicians.⁶⁵ For successful musicians, especially in hip-hop-related genres, endorsement deals and sponsorship have become the most profitable source of revenue,⁶⁶ at levels unheard of anywhere else in sub-Saharan Africa. Although numbers for specific musicians are notoriously hard to obtain, it is estimated that top hip-hop performers make as much as USD 10,000 for private, 10-minute appearances,⁶⁷ and up to USD 100,000 per concert.⁶⁸ A 2009 CNN documentary about hip-hop and rhythm and blues (R&B) music in Nigeria, focused on the duo P-Square, pointed out that “although their image may come from America, the money [they make] comes from Africa.”⁶⁹ Twin brothers Peter and Paul Okoye, who make up P-Square, state that they are being offered a fee of USD 10,000 per concert when they perform in America, in places like New York, New Jersey and Texas. For them, being offered this amount “is funny.”⁷⁰ In Africa, they make an average of USD 70,000-80,000 per concert.⁷¹ P-Square’s 2009 album, “Danger,” sold 3 million copies in the first month after it was released.⁷² Given the facts that piracy is rampant⁷³ and

⁶⁵ See PRICEWATERHOUSECOOPERS, *supra* note 59, at 148.

⁶⁶ See Jayne Augoye, *Young, Rich Rulers of Naija Music*, PUNCH (Sept. 27, 2013), <http://www.punchng.com/entertainment/e-punch/young-rich-rulers-of-naija-music/>. As the author explains:

Multinationals and telecommunications outfits, as well as other major events sponsors, have realised that the younger generation of music artistes represent the future of entertainment in Nigeria. With a good number of them aged between 20 and 25 years and a few others barely clocking 30, the sky seems to be the limit. Many of the emerging stars are not just rich; they flaunt their wealth at every given opportunity. It seems that the rewards for their modest efforts at making many Nigerians happy are without limit and they always come in the form of luxury mansions, sold-out concerts, huge fan base, state-of-the-art cars, bestselling albums, multi-million naira endorsement deals, chartered flights, big budget videos, custom-made outfits, ‘bling bling’ and generous airplay on terrestrial TV stations. Usually dressed in sagging pairs of trousers with expensive jewellery around their necks, many of them charge as much as N1.5m [approximately USD 9200] to mime to their songs for only 10 minutes at wedding parties or concerts. Many of them had to drop out of school to pursue a career in music.

Id.

⁶⁷ *See id.*

⁶⁸ *See* CNN, *Nigeria Music Industry (psquare)*, YOUTUBE (May 6, 2009), <https://www.youtube.com/watch?v=Dzz2nbgaTjc>.

⁶⁹ *See id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *See infra* text accompanying notes 74–77.

computation of royalties is not always transparent,⁷⁴ the duo—like every other successful Nigerian musician—makes money through concerts and endorsements, rather than CD sales.⁷⁵ Their endorsement deal with Globacom, the Nigeria-based, fastest growing telecommunications company in Africa,⁷⁶ is worth N240 million for four years.⁷⁷

There are several recording labels throughout every major city in Nigeria. Nigeria's five major labels have been averaging an annual income of N130 million, just under USD 800,000, while the costs associated with their business model amount to N80 million per year, just under USD 500,000.⁷⁸ Smaller labels have not fared so well since sales of physical CDs have begun to decline, and some have closed within the past two years.⁷⁹ As sales of digital music continue to expand in Nigeria, iTunes launched a Nigerian edition at the end of 2012, enabling secure and legal downloading of both international and local music content.⁸⁰ As of late 2013, it faces competition from the first Nigerian startup aimed at distributing music produced in Nigeria, MyMusic.⁸¹ Hoping to capitalize on the more than 100 million current subscribers of mobile phone service, MyMusic is a digital service that allows users to download and play Nigerian music into their mobile devices. Modeled after iTunes, it is the first "single source of aggregated Nigerian music of African origin,"⁸² in the words of one of the co-founders of MyMusic. Unlike iTunes, which requires a debit or credit card on file before allowing users to download songs, MyMusic draws money directly from mobile phone accounts, which can be paid for in advance with cash. As of early 2014, each song costs N0.5 to download, the equivalent of USD 0.31,⁸³ and the company is currently

⁷⁴ See Jonathan Band & Brandon Butler, *Some Cautionary Tales About Collective Licensing*, 21 MICH. ST. INT'L L. REV. 687, 703–04 (2013) (providing an overview of the problems surrounding collection societies in Nigeria).

⁷⁵ CNN, *supra* note 68.

⁷⁶ See *Globacom Leads Africa, Middle East Mobile Market With 5.8m Subscribers*, IT NEWS AFRICA (May 13, 2007), <http://www.itnewsafrika.com/2007/05/globacom-leads-africa-middle-east-mobile-market-with-58m-subscribers-2>.

⁷⁷ Victoria Ige, *Exclusive- Psquare in N240m Deal With Globacom*, NET (June 30, 2010), <http://thenet.ng/2010/06/exclusive-psquare-in-n240m-deal-with-globacom>.

⁷⁸ Osagie Alonge, *Business Model Threatens Existence of Record Labels*, NIGERIAN ENT. TODAY (Aug. 19, 2013), <http://thenet.ng/2013/08/net-special-feature-business-model-threatens-existence-of-record-labels>.

⁷⁹ *Id.*

⁸⁰ See *Apple iTunes Store Finally Comes To Nigeria, South Africa, Kenya*, TECHLOY (Dec. 4, 2012), <http://techloy.com/2012/12/04/apple-itunes-store-launch-africa>.

⁸¹ Vladimir Duthiers et al., *'Nigerian iTunes' Dances to the Mobile Phone Beat*, CNN (Nov. 28, 2013), <http://www.cnn.com/2013/11/28/tech/nigerian-itunes-dances-mobile-beat>.

⁸² *Id.*

⁸³ *Id.*

acquiring new digital repertory in order to increase its presence in the Nigerian music market, while it begins contemplating a possible transnational expansion at a later stage.⁸⁴

With the exception of South Africa,⁸⁵ Nigeria has therefore the most sophisticated music market in sub-Saharan Africa and, by virtue of the sheer size of its population, the largest potential for growth of music sales in the near future. It is also the second largest economy in Africa, and is experimenting with new platforms that enable legal downloading of digital music. As the first Nigerian distributors of digital music emerge, the need to tailor Western-inspired business models to the specific configuration of local markets becomes apparent. As described in Part III, the role that intellectual property plays in enabling and facilitating transactions in these markets is also being redefined by the expansion of digital technologies across the country.

C. Music Piracy and Intellectual Property Enforcement Strategies

As of 2011, the Nigerian Copyright Commission estimated that piracy of entertainment goods is costing Nigerian creative industries over USD 3.5 million a year.⁸⁶ The phenomenon is particularly dramatic in the music sector, with Nigeria alone being responsible for a large percentage of the pirated CDs in the African continent.⁸⁷ With digital technology bringing the costs of marginal duplication significantly down, unlawful copies of an album sell at around USD 1, while legitimate retailers generally price their albums at USD 5.⁸⁸ In recent years, the unrelenting expansion of pirated music, associated with the emergence of the digital market, has driven many legitimate record labels out of business.⁸⁹ If there is indeed a short-term deceleration in the rhythm at which the music market is expanding, as current projections suggest,⁹⁰ and a regression in sales of physical music, the situation is likely to worsen quickly. Enforcement agencies are trying to counter this tendency by considering increasing the number of raids in markets, the epicenters of music piracy,

⁸⁴ *Id.*

⁸⁵ See Duthiers et al., *supra* note 81.

⁸⁶ Emily Wither, *Nigeria Pop Star 2Face Idibia Calls for Crackdown on Pirates*, CNN (Dec. 6, 2011, 8:49 AM), <http://www.cnn.com/2011/12/05/world/africa/nigeria-piracy-music/index.html>.

⁸⁷ See K.M. Waziri, *Intellectual Property Piracy and Counterfeiting in Nigeria: The Impending Economic and Social Conundrum*, 4 J. POL. & L. 196, 197 (2011) (indicating that Nigeria accounts for eighty percent of internationally pirated music CDs).

⁸⁸ See Alonge, *supra* note 78.

⁸⁹ *Id.*

⁹⁰ See *supra* text accompanying notes 58–63.

while pushing for harsher penalties for copyright infringement.⁹¹ The largest share of the Commission's resources is spent on Alaba market, the largest market in Nigeria, particularly (in)famous for music and film piracy. As an additional deterrent, the Copyright Commission's awareness campaign in Alaba included public burning of infringing CDs and DVDs in one of the market squares.⁹² Other demonstrations of similar inquisitorial propensity have occurred throughout the country over the past year, involving different kinds of copyrighted goods, as well as medicines.⁹³

Part of the problem with Nigeria's enforcement approach is that it might suit the initial stages of a digital era, when there are still plenty of physical (unlawful) copies of CDs in circulation, but it is much less effective when MP3 and MP4 technology becomes part of the equation. The offline commercialization of copyrighted content is fast altering the piracy landscape in Lagos, Abuja and other large urban areas.

Before MP3 technology was available in the country, wholesale copying of cassettes took place in "plants" located in urban areas.⁹⁴ Unlawful analogue copies were generally distributed in specific locations—primarily all-purpose markets, but also gas stations or other similar locations.⁹⁵ Illegal vendors sold cassettes significantly below market price⁹⁶ and tended to favor either "evergreen" music or whichever albums were the most popular in Nigeria at any given time. Wholesale copying has therefore been a problem since the pre-digital era, but the piracy cycle was fairly predictable, in the sense that relatively high fixed costs of both reproduction and distribution prevented the system from straying from recognizable structural and geographical patterns.⁹⁷ Piracy could grow quantitatively, but the business model remained essentially the same.

⁹¹ See *The COSON Summit on Digital Licensing*, TEXTHELAW (Aug. 14, 2013), <http://texthelaw.wordpress.com/2013/08/14/the-coson-summit-on-digital-licensing>.

⁹² *Id.*

⁹³ See *Media Reports on Actions Against Piracy, Counterfeiting & Substandard Products in Nigeria: January to July 2013*, 1 NLPW TRADEMARKS L. 10 (2013), available at <http://www.nlpw.com/a-quick-look-at-anti-counterfeiting-actions-in-nigeria-january-to-july-2013/>.

⁹⁴ See 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT 389 (Feb. 17, 2009), available at <http://www.iipa.com/rbc/2009/2009SPEC301NIGERIA.pdf>.

⁹⁵ See Oludayo Tade & Babatunde Akinleye, *We are Promoters not Pirates': A Qualitative Analysis of Artistes and Pirates on Music Piracy in Nigeria*, 6 INT'L J. CYBER CRIMINOLOGY 1014, 1016 (2012).

⁹⁶ The current cost of a pirated CD is approximately fifty cents. See *id.* at 1025.

⁹⁷ See *id.* at 1016.

Greater access to computers and the advent of digital technology introduced substantial changes throughout the 2000s.⁹⁸ The dissemination of computers led to the multiplication of sources of CD production, as it made the process less costly and more mobile.⁹⁹ It consequently increased the number of agents capable of making infringing copies, and thus the volume of pirated CDs in circulation. Until recently, distribution remained fairly static, with specific urban markets being the primary location where CDs were sold. Recently, however, MP3 technology has revolutionized the system and the figure of the offline downloader has emerged. MP3 technology allows for massive storage of digital files, which can be easily copied and shared without loss of quality. An inexpensive laptop will store thousands of individual files (ranging from individual CD tracks to entire films). These files can be downloaded into small, cheap portable data storage devices (like flash drives), from which, in turn, they can be uploaded to other digital devices.¹⁰⁰ The current strategy involves an individual downloader (increasingly a teenager or young adult) that spends part of the day at a busy market or other urban location, advertising music available for download. Anyone interested can acquire a mixed CD for N100-N150 (USD 0.67-1.00) or tracks thereof.¹⁰¹ The police periodically raid stations known for downloading activity, but scarce enforcement resources and the mobility inherent to such a business model make these raids highly ineffective.¹⁰²

Before the introduction of digital technology, acquiring original cassettes or CDs, making copies and introducing them into a pre-existing commercial

⁹⁸ The growing availability of digital technology impacted not only the music industry, but the film industry as well. See Abigail Fielding-Smith, *Piracy and illegal downloads hit Nigeria's film and music industries*, FINANCIAL TIMES ONLINE (May 4, 2014), <http://www.ft.com/intl/cms/s/0/e9cdd214-bb16-11e3-948c-00144feabd0.html#axzz3Qv7oDzpp>.

⁹⁹ See Tade & Akinleye, *supra* note 95, at 1016.

¹⁰⁰ For an overview of the "pirating process," see *id.* at 1021–23.

¹⁰¹ *Id.* at 1025.

¹⁰² A description of the recent efforts to curb piracy by the Nigerian Copyright Commission (NCC) can be found at the Commission's website. See Nigerian Copyright Commission, *Nigerian Copyright Commission Takes Piracy Zero-Tolerance Policy To Alaba Market*, NIGERIAN COPYRIGHT COMM., <http://www.copyright.gov.ng/index.php/news-and-events/105-nigerian-copyright-commission-takes-piracy-zero-tolerance-policy-to-alaba-market>. The Director of the NCC described the Commission's raid-based policy as the means to "build a proactive, intelligence-based copyright enforcement and regulatory system by creating an expanding network of strategic partnerships and alliances with key stakeholders at home and abroad." See Afam Ezekude, *Nigeria's Anti-Piracy Drive Yields Results*, WIPO MAGAZINE, June 2012, http://www.wipo.int/wipo_magazine/en/2012/03/article_0004.html. While the raids have resulted in several arrests, the levels of music piracy remain high. See Fielding-Smith, *supra* note 98. See also UNITED STATES TRADE REPRESENTATIVE, 2014 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 249, available at <https://ustr.gov/sites/default/files/2014%20NTE%20Report%20on%20FTB.pdf>.

stream required access to a reasonable amount of start-up and maintenance capital.¹⁰³ To a certain degree, it also implied a quasi-professionalization of many of the agents along the piracy cycle: cassette/CD carrier, owner of the duplication “plant,” market sellers, etc. An offline downloader accomplishes as much with little upfront investment and very low maintenance costs. It is also a much more mobile figure, capable of infringing copyrights faster and on a larger scale. Rather than a temporary trend, offline downloaders should be regarded as sophisticated players that have subjected music piracy in developing Nigeria to the same principles that govern digital file sharing throughout the developed world.

In addition to undermining raids and other enforcement strategies devised by the Nigerian Copyright Commission, offline downloaders undercut traditional vendors of pirated CDs. To put things in perspective, consider how there have been complaints about downloading activity from vendors of pirated CDs at Alaba market.¹⁰⁴ That would be the equivalent of a complaint about counterfeiting originating from the sellers of faux Vuitton and Chanel bags in New York’s Canal Street. The continued expansion of digital technologies—and a probable transference of a significant portion of music piracy to the online environment—is not likely to offset these trends. In fact, the possible pathologic effect of this expansion is that, as it creates new opportunities for services like iTunes and MyMusic, the growth of the music digital market also incentivizes the spread of illegal systems of music file sharing via peer-to-peer and other similar technologies. With an estimated twenty-three percent of the Nigerian population having access to mobile Internet by 2017, the Internet could become Nigeria’s new Alaba market.¹⁰⁵

An additional problem with Nigeria’s current approach to copyright enforcement is that it does not consider piracy as a constructive force. A double-edged sword, piracy can hurt musicians by disrupting the flow of royalty collection, while at the same time increasing their overall revenue by making them more popular and creating non intellectual property-based revenue opportunities. Some Nigerian musicians claim that piracy can help

¹⁰³ This is particularly relevant with regard to the establishment and maintenance of optical disc plants, which by the mid-2000s were capable of producing nearly 200 million discs per year. See INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT: NIGERIA 391 (Feb. 17, 2009), available at <http://www.iipa.com/rbc/2009/2009SPEC301NIGERIA.pdf>.

¹⁰⁴ See *The COSON Summit on Digital Licensing*, *supra* note 91.

¹⁰⁵ See PRICEWATERHOUSECOOPERS, *supra* 59, at 148.

promote their careers by contributing to the formation of a fan base that will later support their concerts.¹⁰⁶ In fact, some musicians actively encourage piracy of their own work, by going to markets or bus stations and paying for their music to be included into pirated compilations.¹⁰⁷ Since concerts, and not revenue generated from the sale of hard copies or from royalties, remain the primary source of revenue in the Nigerian modern industry,¹⁰⁸ the argument seems plausible. A similar phenomenon, which I detail in the next Part of this paper,¹⁰⁹ occurs within the Nigerian film industry, where piracy has played an instrumental role in developing a market.¹¹⁰

III. THE RISE OF NOLLYWOOD: A REVISED ROLE FOR INTELLECTUAL PROPERTY NORMS AND POLICIES

The Nigerian film industry is currently the second largest in the world, behind Hollywood and ahead of India's Bollywood.¹¹¹ Nollywood, as it is often referred to, started with the emergence of a cult phenomenon surrounding a low-budget movie shot by a Nigerian amateur in the early 1990s.¹¹² From there, it has evolved into an informal system of distribution of cheap, low-quality physical copies of videocassettes and DVDs, to a massive industry attracting millions of dollars in foreign investment, to a well-oiled machine that is now beginning to tap into digital-based forms of monetization.¹¹³ Nollywood's initial development is largely attributable to the lack of

¹⁰⁶ Rachel Marusak Hermann, *Diverging Views On IPR Protection Needs In Africa Emerge At IP Workshop*, IP WATCH (Mar. 25, 2013), <http://www.ip-watch.org/2013/03/25/diverging-views-on-ipr-protection-needs-in-africa-emerge-at-ip-workshop/>. Nigerian musician J. Martins has commented that "Some musicians actually go to markets in Nigeria and pay pirates to get a song on one of their compilations." His manager, Tony Anifite, however, disagrees that piracy may contribute to boost the popularity of musicians. He states, "I don't normally like when people say, oh piracy helped us, took us far, I do not subscribe to that . . . In terms of IP, there's a great problem. We make money from shows, but collecting on royalties is a real issue." *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See PRICEWATERHOUSECOOPERS, *supra* 59, at 148.

¹⁰⁹ See *infra* Part III.B.

¹¹⁰ A final concern surrounding piracy in Nigeria—that I do not deal with in this work—is that it is tinged with a violence that does not exist in many other sub-Saharan countries. INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT: NIGERIA 391 (2009), available at <http://www.iipa.com/rbc/2009/2009SPEC301NIGERIA.pdf>.

¹¹¹ Tola Onanuga, *Hooray for Nollywood!*, THE GUARDIAN (Sept. 21, 2010), <http://www.theguardian.com/film/filmblog/2010/sep/21/nollywood-nigerian-film-industry>.

¹¹² See Andrew Rice, *A Scorsese in Lagos: The Making of Nigeria's Film Industry*, N.Y. TIMES (Feb. 23, 2012), http://www.nytimes.com/2012/02/26/magazine/nollywood-movies.html?pagewanted=all&_r=0.

¹¹³ See *infra* SACCHI & CAPUTO, note 129; see also *Nollywood Dreams*, *infra* note 128.

enforcement of intellectual property rights,¹¹⁴ an environment that allowed the Nigerian film industry to grow at an astonishing pace, deriving almost all of its profit from the sale of hard copies, while thousands of pirated versions circulated throughout Nigeria, and later throughout sub-Saharan Africa.¹¹⁵ This parallel circuit, rather than acting as a deterrent agent in the expansion of the emerging industry, catapulted it to unprecedented levels of popularity, thereby increasing demand for both legitimate and illegitimate copies.¹¹⁶ Eventually, Nollywood reached such a plateau of profitability that investors from countries with large diasporic Nigerian communities began co-financing high quality productions, aimed at international release.¹¹⁷ This new stage in the development of Nollywood has introduced significant changes at aesthetical and economic levels, accelerating the formalization of Nollywood's distribution chains. Intellectual property now plays a structural role in enabling monetization of Nigerian cinema.¹¹⁸ The originality and economic success of Nollywood are translatable into other creative industries in the global South, with some of the African music industries being the natural candidates for future monetization experiences.¹¹⁹

This Part starts by tracing the origins of Nollywood in the context of Nigeria's film history. It then describes the mature stage of Nollywood, addressing the shift in the role of intellectual property that accompanied the industry's growth. The following Part addresses a specific experience of digital distribution of Nollywood content, exploring the repercussions that Nigeria's experience with the film industry might have for music industries across Africa.

A. The Rise of Nollywood: From Local Origins to International Relevance

The history of the film industry in Nigeria is usually divided into four stages.¹²⁰ The Colonial period, which began in 1903, marked the introduction

¹¹⁴ See Arewa, *infra* note 138, at 23, 24.

¹¹⁵ See SACCHI & CAPUTO, *infra* note 129.

¹¹⁶ See *id.*

¹¹⁷ Sandra Oyewole, *A Peek Inside Nigeria's Film Industry*, WORLD INTELLECTUAL PROPERTY ORGANIZATION (Apr. 2014), http://www.wipo.int/wipo_magazine/en/2014/02/article_0001.html.

¹¹⁸ See *infra* Part III.B.

¹¹⁹ Although monetization of Nigerian digital music at levels that are comparable to those of Nollywood has yet to take place, there have been attempts in Nigeria to license and distribute musical works through the same models adopted by Nollywood content holders. See *infra* Part III.C.

¹²⁰ Uchenna Onuzulike, *Nollywood: The Birth of Nollywood: The Nigerian Movie Industry*, 22 BLACK CAMERA 1, 25 (2007).

of British documentaries in the country.¹²¹ It was more proto-history than true history, in the sense that content was of overwhelmingly Western origin, diffused in Nigeria eminently for political reasons.¹²² In 1960, the Independence period started, with the emergence of the Nigerian Federal and States Film Unit.¹²³ The Unit championed themes of local interest and promoted native filmmakers, but film production still focused primarily on documentarian formats.¹²⁴ A few directors, like Ola Balogun and Hubert Ogunde, attempted to create the first Nigerian dramas, but a lack of infrastructure and prohibitive production costs prevented the genre from truly developing.¹²⁵ During the Indigenization Decree period, between 1972 and 1992, Indian, Chinese and Lebanese films flooded the market, eventually dominating the distribution system. Nigerian filmmakers occasionally tried to jumpstart a domestic film industry, but the infrastructural shortcomings persisted, rendering their efforts futile.¹²⁶ That changed in the early 1990s when, by chance, Nollywood was born and the fourth chapter in the history of Nigerian cinema began.

The fourth stage of Nigeria's film industry began in 1992 when Kenneth Nnebue, an electronics trader, acquired a large stock of blank videotapes from Taiwan. Calculating that the tapes would sell better if there was something recorded on them, Nnebue made a low-cost, low-quality movie "Living in Bondage."¹²⁷ The themes explored by the movie which included domestic conflict, ritualistic murder and supernatural elements became the foundational structure of Nollywood plots to come. The first movie to ever depict modern Western Africa through Nigerian lens, "Living in Bondage" found a massive cult following, selling over 750,000 copies and single-handedly ushering in a new film era in Nigeria.¹²⁸ Nnebue's success likely triggered immediate imitations, all abiding by the same parameters: low budget, low quality,

¹²¹ *Id.*

¹²² *Id.*

¹²³ Jonathan Haynes, *African Cinema and Nollywood: Contradictions*, 4 SITUATIONS: PROJECT OF THE RADICAL IMAGINATION 67, 78 (2011).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ See Uchenna Onuzulike, *The Birth of Nollywood: The Nigerian Movie Industry*, 22 IND. U. PRESS 25, 25 (2007).

¹²⁷ See Andrew Rice, *A Scorsese in Lagos: The Making of Nigeria's Film Industry*, N.Y. TIMES (Feb. 23, 2012), http://www.nytimes.com/2012/02/26/magazine/nollywood-movies.html?pagewanted=all&_r=0.

¹²⁸ See *Nollywood Dreams: Nigerian Films Are So Successful that the Government Wants to Get Involved*, THE ECONOMIST (July 27, 2006), <http://www.economist.com/node/7226009>.

loosely scripted movies, shot within two to three weeks, with impromptu actors and crew.

By the late 1990's, digital video technology became the norm.¹²⁹ With market demand increasing at astonishing speed, a semi-professionalized circuit formed for film technicians, while amateur actors began achieving national recognition, which by the mid-2000s would culminate in full professionalization.¹³⁰ Between 2005 and 2009, Nollywood produced an average of 1093 films a year, a close second to India's 1178 movies during the same period.¹³¹ During this period of rapid expansion, average Nollywood budgets increased to USD 40,000, with average sales rounding 50,000 copies per movie.¹³² The biggest producers were able to roll out between twenty to forty movies every year, which were distributed by 139 professional distribution companies.¹³³ Approximately 97% of these companies were Nigerian-owned and catered primarily to the domestic market, although an informal network for distribution of Nollywood content started emerging at this time, first within Western Africa, and later throughout the entire continent.¹³⁴ At this point, the industry was deriving almost all of its profit from the sale of hard copies. Instead of undermining the system, the thousands of pirated versions circulating throughout Nigeria, and later across Africa, played a crucial role in catapulting Nollywood to unprecedented levels of popularity. Demand for both legitimate and illegitimate copies kept increasing, thereby helping the market grow to such a point that it would eventually capture the attention of international investors. In this sense, piracy had a constructive role in the development of the film industry in Nigeria.¹³⁵

¹²⁹ See FRANCO SACCHI & ROBERT CAPUTO, *THIS IS NOLLYWOOD* (Eureka Film Productions and the Center for Digital Imaging Arts at Boston University 2007).

¹³⁰ See *id.*

¹³¹ See Chris Kay & Chris Spillane, *Moviemakers Beg Banks for Cash as Nollywood Goes Global*, BLOOMBERG (Aug. 13, 2013), <http://www.bloomberg.com/news/2013-08-12/moviemakers-beg-banks-for-cash-as-nollywood-goes-global.html>.

¹³² *Id.*

¹³³ See UNESCO, UNESCO INSTITUTE FOR STATISTICS, *Analysis of the UIS International Survey on Feature Film Statistics 2* (2009), available at http://www.uis.unesco.org/FactSheets/Documents/Infosheet_No1_cinema_EN.pdf.

¹³⁴ *Id.* at 2.

¹³⁵ See Arewa, *infra* note 138, at 23.

The Nollywood case draws attention to the potential benefits of low levels of intellectual property protection, particularly in the case of emerging industry sectors. Nollywood now has significant brand value and is distinguished from video film production elsewhere in Africa by virtue of its brand. Low levels of copyright protection were an important factor in the early widespread dissemination of Nollywood films.

B. Nollywood, Part Two: Channeling Hollywood's Model; The Emergence of Intellectual Property

As of 2013, Nollywood generates yearly revenue of approximately USD 800 million.¹³⁶ Film production has increased to over 2,000 movies per year, which puts the Nigerian film industry ahead of Bollywood for the first time in history.¹³⁷ An average movie sells around 50,000 physical copies throughout Nigeria, while blockbusters can sell between 400,000 and 800,000 copies.¹³⁸ The initial financial success of Nollywood sparked job creation within the industry, and an unusually large market base keeps fueling it. At the top- and middle-tier of Nollywood, professionalization is now complete, with full-time actors, directors, producers and distributors.¹³⁹ The domestic growth of the industry also enabled its international expansion, with formal channels of distribution now in place across Africa¹⁴⁰ and in Europe and the United States, catering to the African Diaspora audiences.¹⁴¹ The influence of Nollywood's business model per se has also extended to other countries in sub-Saharan Africa, with incipient to medium-sized film industries developing now in places like Ghana, Uganda, and Kenya.¹⁴² Very recently, however, Nollywood's immense cultural and financial success have likely started generating paradoxical effects, with increasing financing mechanisms seemingly progressively stripping the Nigerian film industry of the more distinctively Nollywoodesque elements. *Last Flight to Abuja*, the most profitable Nigerian film of 2012, had an official premiere in London in addition to the Nigerian premiere, which took place in Lagos.¹⁴³ The film had a budget of USD 250,000—six times the average cost of a Nollywood production—and generated \$350,000 in movie theaters.¹⁴⁴ In 2013, *Half of a*

Id.

¹³⁶ See Kay & Spillane, *supra* note 131.

¹³⁷ See *Nollywood Dreams*, *supra* note 128.

¹³⁸ See Olufunmilayo Arewa, *The Rise of Nollywood: Creators, Entrepreneurs, and Pirates* 26–27 (U. Cal. Irvine Sch. L. Working Paper No. 2012-11, 2012).

¹³⁹ See Sylvain Béletre, *Nigeria: Nollywoodweek Paris–Nigerian Film-Makers Look to a New Opportunity for Expansion With Francophone Audiences of 300 M*, ALLAFRICA (June 20, 2013) <http://allafrica.com/stories/201306242455.html?page=2>.

¹⁴⁰ See *infra* Part III.C.

¹⁴¹ *Id.*

¹⁴² See UNESCO *Feature Film Statistics*, *supra* note 133, at 2.

¹⁴³ See Vladimir Duthiers, *Last flight to Abuja: Nollywood Thriller Campaigns for Safer Skies*, CNN-AFR. VOICES (Sept. 4, 2012, 6:42 AM), <http://www.cnn.com/2012/09/04/world/africa/obi-emelonye-nollywood-abuja/>; see also Kay & Spillane, *supra* note 131.

¹⁴⁴ See Kay & Spillane, *supra* note 131.

Yellow Sun, which cost USD 8 million, was screened at the London¹⁴⁵ and Toronto film festivals.¹⁴⁶ Nigerian investors provided 70% of the funding, with remaining the 30% coming from the British Film Institute and investors in the United Kingdom.¹⁴⁷ In addition to popular Nollywood actors like Genevieve Nnaji, *Half a Yellow Sun* starred Chiwetel Ejiofor, a 2014 Oscar nominee for Hollywood's *12 Years A Slave*.¹⁴⁸ This crossing over will likely broaden the appeal of Nollywood material, even beyond the English-speaking world. Already in 2013, a film festival was founded in France to showcase Nigerian cinema.¹⁴⁹ During the four-day long event, entitled *Nollywood Week/Paris*,¹⁵⁰ 1,500 international spectators screened seven movies—among which *Last Flight to Abuja*—and attended panels featuring Nigerian directors, actors and producers, as well as film industry professionals based in France.¹⁵¹ A second edition will take place in June 2015, in Paris' Latin Quarter.¹⁵² On a more

¹⁴⁵ See Jenny Soffel, 'Half of a Yellow Sun': Thandie Newton, typhoid and a tale of civil war, CNN (Oct. 21, 2013, 8:26 AM), <http://www.cnn.com/2013/10/21/showbiz/half-of-a-yellow-sun/>. See also Kay & Spillane, *supra* note 131.

¹⁴⁶ See Kay & Spillane, *supra* note 131. (Yewande Sadiku, one of film's executive producers, has stated one of the main reasons for going to Toronto was to sell the film to international distributors.)

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*; Chiwetel Ejiofor—Biography, IMDB, http://www.imdb.com/name/nm0252230/bio?ref_=nm_ov_bio_sm (last accessed Feb. 13, 2015).

¹⁴⁹ See Serge Noukoue invite the Nollywood Week in Paris, COURRIER INT'L (May 30, 2013, 11:39 AM), <http://welopeafricanfilms.blogs.courrierinternational.com/archive/2013/05/30/serge-noukoue-parle-de-la-nollywood-film-week-de-paris.html>.

¹⁵⁰ See Sylvain Béletre, *supra* note 139.

Asked why he chose Paris for the festival, co-founder and executive director of 'Nollywood Week/Paris,' Serge Noukoué, merely stated that it was '[b]ecause Paris is a cinema capital and has one of the largest numbers of cinema theatres in the World. It also has a large population of film lovers. Questioned about the goals of the festival, he added that: "Nollywood Week Paris was set up in order to foster Nollywood distribution opportunities in the Francophone regions and in further markets. We screen some of the most popular Nigerian films from last year to raise international awareness. There are two sides to the event: raise awareness among the public and attract professionals to clinch distribution and investment deals. On the professional front, the debate that took place here highlighted the challenges and what can be done to share films with the widest audience. Professionals were invited so that they can fund, co-produce, broadcast and distribute Nollywood films in France and further out. We want to become one of the marketing platforms of Nollywood in Europe. Marketing Nollywood better and setting up international cooperation really is what the Nigerian film industry needs right now.

Id.

¹⁵¹ See Qudus Onikeku, *When Nollywood Invaded Paris By Qudus Onikeku*, SAHARA REPS. (June 27, 2013), <http://saharareporters.com/press-release/when-nollywood-invaded-paris-qudus-onikeku>.

¹⁵² See *The Festival*, NOLLYWOODWEEK, <http://www.nollywoodweek.com/the-festival/> (last visited Feb. 8, 2015).

permanent basis, a French IPTV¹⁵³ channel has been exclusively broadcasting high-quality Nollywood content since late 2012.¹⁵⁴ Nollywood TV¹⁵⁵ offers a combination of series and feature movies dubbed in French, currently reaching approximately 140,000 households in France.¹⁵⁶

The revised role of Nollywood for both Nigeria's economy and for its international image has prompted the Nigerian president to pledge a grant of N3 billion (around USD 18.5 million) for the development of the film industry.¹⁵⁷ This amount, announced in March 2013, adds to an ongoing loan scheme of N200 million (USD 1.23 million) that the government began disbursing in 2010.¹⁵⁸ Coordinated between the Ministries of Economy and Tourism, the grant plan includes a training fund in the amount of N150 million (around USD 920,000), "dedicated to training and skills acquisition for Nollywood practitioners in all competencies along the entire value chain of the industry."¹⁵⁹ Another N150 million is allocated into a capacity development fund, which will provide grants "to existing Nigerian-owned private institutes that offer training courses, programmes, and technical certification in the movie industry."¹⁶⁰

In this new environment, intellectual property emerges as a rule of the game that Nollywood can no longer afford to ignore. In the initial stages of large-scale filmmaking in Nigeria, lack of intellectual property enforcement increased transaction flows and helped the industry acquire a durable foundation. With the new configuration brought about by sizeable revenue streams and international business relationships, intellectual property assumed a systemic role, enabling and facilitating more complex transactions between a

¹⁵³ See Robert Andrews, *Why France Leads The IPTV World—But Isn't Winning The Race*, GIGAOM RES. (Dec. 18, 2012), <http://paidcontent.org/2012/12/18/why-france-leads-the-iptv-world-but-isnt-winning-the-race/>. A system of Internet-based television, IPTV stands for Internet Protocol Television. France is currently the largest market in the world for "internet television." *Id.*

¹⁵⁴ Robert Briel, *Thema brings Nollywood to France*, BROADBAND TV NEWS (Oct. 8, 2012, 8:12 AM), <http://www.broadbandtvnews.com/2012/10/08/thema-brings-nollywood-to-france/>.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *FG Approves N300m for Capacity Building for Nollywood*, THE VANGUARD (June 17, 2013), <http://www.vanguardngr.com/2013/06/fg-approves-n300m-for-capacity-building-for-nollywood/>.

¹⁵⁸ Emeka Anuforo, *Nigeria and Kenya Unite Over Special Fund for Filmmakers*, DEEP DISH WAVES OF CHANGE (June 2, 2011), <http://www.deepdishwavesofchange.org/blog/2011/06/nigeria-and-kenya-unite-over-special-fund-filmmakers>.

¹⁵⁹ The main activities listed under the training fund are "[s]criptwriting, directing, production and production design, special effects, lighting, sound, HD techniques, acting, cinematography, make-up and editing, among others." *FG Approves N300m for Capacity Building for Nollywood*, *supra* note 139.

¹⁶⁰ *Id.*

larger quantity of agents within the enlarged architecture of Nollywood.¹⁶¹ This phenomenon has led to the formation of two tiers of film production and distribution: a low-budget tier, in which the paradigms and dynamics of old Nollywood persist; and a top tier, with higher budgets and better technical quality leading to an aesthetic revision of cinematographic patterns.¹⁶² Occasional blockbusters, created with a blend of Nigerian and international funding, will continue to emerge from this tier, which nonetheless is likely to expand to accommodate increasing quantities of medium-budget movies, aimed at television and/or online distribution.¹⁶³ Low-budget movies are likely to continue to be produced in massive quantities, co-existing in both semi-formalized and informal chains of distribution. The sheer size of Nigeria's population, in conjunction with pervasive levels of poverty, dictates that many potential consumers will not be able to afford content originating from Nollywood's more sophisticated chains of production and distribution, but will guarantee the maintenance of a viable base for low-end products. Taking into account Nigeria's rigid posture on enforcement,¹⁶⁴ it is likely that this tier will be progressively impacted by the new role of intellectual property, with the bigger players in the low-end market being forced to comply with newly accepted standards of social and institutional recognition of the role of copyright. However, given the foreseeable continuing limitations on resources at the disposal of the Copyright Office and related entities, neither voluntary compliance nor diligent enforcement will be enough to eradicate piracy in decades to come.

C. Monetizing Digital Content "Made in Africa": iRoko and the Consolidation of the Role of Intellectual Property

In 2010, Jason Njoku, an English entrepreneur of Nigerian heritage, started iRoko, an online business selling Nollywood movies. The target customers were African immigrants in the Diaspora, who at the time could not possibly have access to the physical copies of movies being distributed almost

¹⁶¹ Chidi Oguamanam has called piracy in Nollywood an "[o]pportunity for systemic initiation of Nigeria into a hardcore dogmatic and context neutral approach to [intellectual property]." Chidi Oguamanam, *Beyond 'Nollywood' and Piracy: In Search of an Intellectual Property Policy for Nigeria*, 1 NIALS J. INTEL. PROP. 1, 9 (2011).

¹⁶² See generally Daniel Seiffert, NOLLYWOOD–VON DEN VOLKSOPERN DES KLASSISCHEN YORUBA-WANDERTHEATERS ZU DEN SEIFENOPERN DER NIGERIANISCHEN VIDEOFILMINDUSTRIE (2004), <http://www.grin.com/de/e-book/112982/nollywood-von-den-volksopern-des-klassischen-yoruba-wandertheaters-zu>.

¹⁶³ Nollywood itself will likely evolve into a digital-based business model of content production and worldwide distribution. This point is further developed in Part III.D.

¹⁶⁴ *Nigerian Copyright Commission*, *supra* note 102.

exclusively in Nigeria.¹⁶⁵ With help from a German investor, Bastian Gotter, Njoku traveled to Lagos, where he acquired a large stock of DVDs, which he then resold in the United Kingdom. The initial investment cost around GBP 150,000 (USD 228,600), but did not generate a profit.¹⁶⁶ Rather than continuing to purchase more products, Njoku and Gotter decided to invest in revamping the digital infrastructure of the business and use YouTube, which had recently been acquired by Google, to expand iRoko online. They created a YouTube channel, entitled Nollywood Love, where they planned to upload full-length movies, selected among the copies Njoku had acquired—but not licensed—in Nigeria.¹⁶⁷ This exceeded YouTube's maximum of 15 commercial-free minutes per upload, but in October 2010 Njoku and Gotter nonetheless uploaded each one of the movies in its entirety. The videos, which were streamed with interruptions for commercial breaks every quarter of an hour, quickly generated millions of monthly views.¹⁶⁸ For Njoku and Gotter, the next challenge was to monetize the content, which implied addressing the underlying intellectual property issues. They found out that YouTube allowed licensed movies to be played without commercial interruptions, in addition to paying 50% of revenue generated by advertisements on licensed distribution channels.¹⁶⁹ Njoku flew back to Nigeria, where he acquired distribution rights to several of the movies playing on his YouTube channel, paying as little as USD 100 per title.¹⁷⁰ The popularity of Njoku and Gotter's YouTube channel kept increasing, which triggered interest from international investors. In 2011, Tiger Global Management, an American investment company, approached Njoku and Gotter with a USD 3 million offer. iRoko launched iRoko TV, invested heavily in content acquisition and opened offices in Lagos, Johannesburg, London and New York, becoming the largest distributor of Nollywood movies worldwide.¹⁷¹ Tiger Global poured another USD 3 million into the company and an additional investor, Swedish company Kinnevik,

¹⁶⁵ See Oyeniyi Adegoke, *How To Make A Million Bucks Out Of Nollywood*, VENTURES-AFR. (Sept. 14, 2013).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ In the words of Bastian Gotter: "Eventually we got to know YouTube was running this program that allows owners of licensed movies to become partners, upload full-length movies without the 15-minute restriction and get paid 50 percent of revenue from YouTube ads on their channel." Jason Njoku adds, "[o]nce we knew that piece existed, we thought, 'Hold on, we can do our business the right way'. We'd had some conversations with movie producers and they were willing to sell their distribution rights cheaply." *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* See iROKO PARTNERS—ABOUT US, <http://www.irokopartners.com/about> (last visited Feb. 6, 2015).

provided an additional USD 2 million.¹⁷² iRoko initiated a second wave of expansion and, in a very short period of time, the reintroduction of DVD sales—Njoku and Gotter’s initial goal—into the business model, licensing content for movie theater, TV and airline distribution.¹⁷³ The YouTube channel, still branded as Nollywood Love, attracts as many as 8 million views per month, generating over USD 1 million per year in advertisement-based revenue.¹⁷⁴ With distribution rights costing now between USD 10,000 and 25,000 per movie,¹⁷⁵ iRoko is currently in the process of creating niche online sub-markets capable of generating additional revenue. In a strategy that mimics techniques used in the United States by companies like Netflix and Hulu with their premium subscription model, Njoku and Gotter created a website offering access to the most recent Nollywood content at USD 5 per month.¹⁷⁶ Although there are no official figures yet, the two founders claim that the website has a customer base between “15,000 and 25,000 [subscribers] and it’s growing very fast.”¹⁷⁷

A striking aspect of iRoko’s business model is that there is no apparent reason it should only apply to the monetization of film content through digital platforms. Music—as Apple’s iTunes pairing of film/TV content with album and song sales demonstrates—seems to be a natural candidate for a similar treatment. However, monetization of Nigerian music at the scale that has been achieved for Nollywood content has yet to materialize. In 2011, iRoko attempted to extend its services to encompass digital distribution of Nigerian music, creating a platform named iRoking.¹⁷⁸ Nevertheless, the new platform has developed at a modest pace, with far less investment and corporate attention than iRoko TV received in its initial stages. Internal power struggles within iRoking and failure to generate profits in its first twenty-three months have partially undermined the image of the company,¹⁷⁹ which nonetheless has struck agreements with YouTube, iTunes, French video-sharing platform Dailymotion, and music streaming providers like Spotify, among others.¹⁸⁰ In

¹⁷² *Id.*

¹⁷³ See Adegoke, *supra* note 165.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* In 2013, the company’s budget for content acquisition was USD 3 million.

¹⁷⁶ See Adegoke, *supra* note 165.

¹⁷⁷ *Id.*

¹⁷⁸ See Ann Brown, *Jason Njoku Taking the West African Tech World By Storm*, THE NETWORK J. (Apr. 27, 2012), <http://www.tnj.com/entrepreneurs/jason-njoku-taking-west-african-tech-world-storm>.

¹⁷⁹ For Njoku’s response to this criticism, see Jason Njoku, *Jason Njoku: No, iRoking is Not Dead*, YNAIJA.COM (Dec. 2, 2013), <http://ynaija.com/jason-njoku-no-iroking-is-not-dead/>.

¹⁸⁰ *Id.*

December 2013, Jason Njoku was appointed CEO of iRoking,¹⁸¹ a move that might indicate that there will be renewed efforts to monetize Nigerian and Western African music in the near future. Adding to that possibility, a former iRoko developer has joined a Nigeria-based project exclusively dedicated to digital distribution of Western African music. The resulting online service, Freeme Digital, was launched in late 2013, offering worldwide distribution and partnerships with iTunes, Amazon MP3, Google Play, and Spotify.¹⁸² While it is too soon to assess the impact that newcomer Freeme Digital and the new leadership at iRoking will have on digital music distribution, it is undeniable that there is an enormous potential for market growth and that serious efforts to monetize digital music are currently underway. A common denominator between companies engaged in these efforts is that intellectual property is now a structural component of their monetization cycles. iRoko's initial plan to monetize Nigerian films was motivated by continuous violations of copyrights. As the rise in licensing fees from USD 100 to USD 10,000-25,000 indicates, the first wave of content acquisition by iRoko likely benefited from a gross undervaluation of intellectual property by Nigerian producers, filmmakers, and other rights-owners. It is even possible to argue that, without that undervaluation, iRoko would not have been able to gather the massive amount of Nollywood content that eventually attracted significant external investment. The existence of companies like iRoking and Freeme Digital, on the other hand, is entirely predicated on licensing agreements with major international players. This means that, besides having intellectual property as a *sine qua non* condition of viability, emerging business models will be negotiating copyright licenses at much higher market prices. There is therefore a new, level playing field for newcomers, recalibrated by more accurate valuation of intellectual property. Because large-scale digital monetization of African music will have to emerge from the shadow of online-based film distribution, nascent music distributors will not be able to avoid accounting for the costs and role of intellectual property when developing their business models.

¹⁸¹ See Jason Njoku New CEO of iROKING, SCREEN AFR. (Dec. 3, 2013), <http://www.screenafrica.com/page/news/business/1637474-Jason-Njoku-new-CEO-of-iROKING>.

¹⁸² Freeme Digital's advertisement reads: "Distribute your music worldwide for just N7,500 [around USD 37.52] first year per single, N12,500 [around USD 62.53] for an EP and N15,000 [around USD 75.04] first year per album. At Freeme Digital, we ensure that you are given value for money as an artist. We have direct agreements with digital music services such as Apple iTunes to guarantee higher revenue and quick and efficient digital distribution of your music. We also offer various extra services at no extra cost such as album/single artwork, promotional support and marketing via our partner platforms." FREEME DIGITAL, <http://www.freemedigital.com> (last visited Jan. 20, 2015).

D. “*Weapons of Mass Construction*”: *The Role of Intellectual Property in Fostering Industrial and Cultural Growth*

In its coverage of Nollywood/Paris, Spain’s largest daily newspaper, *El País*, dubbed Nollywood a “weapon of mass construction.”¹⁸³ While success at the scale achieved by Nollywood is probably unrepeatable, there are several emerging film industries in sub-Saharan Africa. The industries in Uganda¹⁸⁴ and Kenya¹⁸⁵ are particularly noteworthy. Even countries that are not especially renowned for their contemporary cinema are developing micro-industries, like Ghana’s emerging Gollywood industry.¹⁸⁶ While the lessons that Nollywood yields are certainly a source of inspiration for film industries across Africa,¹⁸⁷ the model provided by Nollywood is also of interest to other creative industries in the global South. This is especially valid in the case of music industries, the only other sector in the global Southern creative economy where it is possible to find national industries with a similar potential of becoming agents of mass construction at cultural and economic levels.¹⁸⁸ In matters related to intellectual property, the Nigerian model offers these industries a possible pathway for growth in three stages:

¹⁸³ See *Nollywood, un Arma de Construcción Masiva*, EL PAÍS (June 14, 2013), <http://blogs.elpais.com/africa-no-es-un-pais/2013/06/nollywood-un-arma-de-construccion-masiva.html>.

¹⁸⁴ See Ivan Okuda, *The Rise of Uganda’s Film Industry*, DAILY MONITOR (Aug. 29, 2013), <http://www.monitor.co.ug/artsculture/Theatre---Cinema/The-rise-of-Uganda-s-film-industry/-/691234/1971898/-/7qoggmz/-/index.html>. For a description of the annual Uganda Film Festival, which takes place in Kampala and was created in 2013 by the Uganda Communications Commission, see *Latest News Highlights*, UGANDA COMMUNICATIONS COMMISSION, <http://www.ucc.co.ug/data/dnews/16/Uganda-Film-Festival-2014-Kicks-Off.html> (last visited Feb. 10, 2015).

¹⁸⁵ Kenya’s film industry is also known as Riverwood. See *Riverwood, The Heart of Film in Kenya*, FILM KENYA (July 30, 2013), <http://www.filmkenya.co.ke/film-in-kenya/riverwood-the-heart-of-film-in-kenya>. A Nairobi-based International Film Festival was created in 2012. See *Kenya Celebrates Booming Film Industry*, BBC NEWS (Oct. 25, 2012), <http://www.bbc.com/news/world-africa-20087049>. The Kenya Film Commission was established as early as 2005. *Who We Are*, KENYA FILM COMM’N, <http://www.kenyafilmcommission.com> (last visited Jan. 20, 2015).

¹⁸⁶ See *About Us*, GHANA FILM INDUSTRY, <http://www.ghanafilmsindustry.com/about-us/> (last visited Feb. 10, 2015).

¹⁸⁷ See Jyoti Mistry & Jordache A. Ellapen, *Nollywood’s Transportability: The Politics and Economics of Video Films as Cultural Products*, in *GLOBAL NOLLYWOOD: THE TRANSNATIONAL DIMENSIONS OF AN AFRICAN VIDEO FILM INDUSTRY* 46, 47 (Matthias Krings & Onokome Okome eds., 2013).

¹⁸⁸ See, e.g., UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *CREATIVE ECONOMY: A FEASIBLE DEVELOPMENT OPTION* 111, UNCTAD/DITC/TAB/2010/3 (Dec. 14, 2010). Although it is hard to verify the econometrical accuracy of studies suggesting that enhanced intellectual property rights in developing economies would produce specific kinds of economic and non-economic development, it is nonetheless undeniable that music and film industries consistently rank as the largest and more stable systems of cultural production across the Global South.

1. *Capacity-Building Stage: Loose Regulatory and Intellectual Property Structures May Benefit Nascent Creative Industries*

The absence of regulatory power, in its many derivations—including intellectual property—played a preponderant role in the development of Nollywood.¹⁸⁹ Analyzing the success of Nollywood and iRoko is particularly relevant for African countries with emergent or medium-sized markets, like Ghana, Senegal or Uganda, which are struggling to calibrate intellectual property frameworks and policies. An exercise in retroactivity would demonstrate that the application of a maximalist intellectual property framework to Nigeria in the early 1990s would have created a legal environment hostile to the development of Nollywood. The first business model with a similar structure to iRoko would have likely appeared only years later and, drawing from a reduced pool of content, would probably not have developed to its full potential. Therefore, it may be the case that low levels of intellectual property, when combined with a loose regulatory framework, may create an environment that best fosters the growth of incipient creative industries in the global South, and ultimately pave the way for future formalization and legal consolidation.

2. *Stage of Expansion and Consolidation: Factoring in Intellectual Property Has the Potential to Enable Large-Scale Monetization at the Top of the Market, While the Bottom Still Relies on Informal Networks*

Once an environment consisting of relatively light intellectual property has allowed the formation of wide flows of demand and supply, the potential for regional and/or international expansion arises.¹⁹⁰ Entry of non-local or other extraneous agents promotes monetization through intellectual property chains, at least within a relevant segment of the industry.¹⁹¹ Domestic markets are likely to split into high-end and low-end sectors, with the bottom of the market continuing to develop on partially informal networks.¹⁹²

¹⁸⁹ As Olufunmilayo Arewa points out, “[t]he success of Nollywood may in many respects be attributable to a lack of government involvement and its decentralized nature, which has permitted Nollywood participants to be highly entrepreneurial, adaptive and innovative.” See Arewa, *supra* note 138, at 23.

¹⁹⁰ See *infra* Part III.D.3.

¹⁹¹ As indicated by the exponential growth of Nollywood’s upper segment, which currently attracts millions of dollars in foreign investment. See Fisher, *supra* note 117.

¹⁹² The success of the Nollywood model, capped by formalization into a compliant IP network, has not translated into eradication of piracy within the industry. See Mairi Mackay, *Nollywood loses half of film profits to piracy, say producers*, CNN (June 26, 2009, 11:57 PM), <http://www.cnn.com/2009/SHOWBIZ/Movies/06/24/nollywood.piracy/>.

3. *Stage of Sophistication: Higher Intellectual Property Protection Needed*

Distribution agents are likely to rely heavily upon digitally based business models. Intellectual property is required not only in international or regional relationships, but also within the domestic market. With the exclusion of creative industries in South Africa, very few other sub-Saharan industries have reached this plateau. Before deploying any intellectual property arsenal against piracy, developing countries with vibrant creative industries should therefore conduct an empirical assessment of the potential impact of specific legal provisions, especially in the field of technological protection measures.

Even Nollywood, with its capacity for creating and maintaining significant revenue streams, remains economically underexplored. Digital technologies have originated myriads of niche markets that have yet to be monetized.¹⁹³ Sub-Saharan music industries would benefit from seeking out uncharted markets, in both the digital and the analogue worlds. As digitally based distribution of Western African music is beginning to emerge with iRoking and Freeme Digital in Nigeria, this market solution is likely poised to become the most sought-after path to monetize African music. This likely means that transaction costs associated with intellectual property will make the digital music market more expensive for African creative upstarts. Freeme Digital is currently charging USD 37.52 for worldwide distribution of a single and USD 75.04 for albums,¹⁹⁴ amounts that might be too steep to allow participation by many musicians in countries with smaller economies. Nevertheless, it should be highlighted that many of these less economically powerful nations have higher GDPs per capita than Nigeria: that is the case for countries like Ghana,

¹⁹³ Talking about iRoko's recent expansion into the inflight entertainment sector, Njoku and Gotter noted that: "[i]t is a ridiculous state of affairs that flights in or out of Africa usually have 92 to 95 percent of Africans but the content catalogue on these carriers is mostly Western movies. They are not what the passengers actually want to watch." Realizing this, the pair approached several airlines, which embraced the concept of featuring Nollywood movies onboard. "They are ordering and reordering. That adds another layer of profit to the industry," says Njoku. "Nollywood has not monetised itself," says Gotter. "The industry has reduced itself to DVD and television. We came along and opened up the Internet distribution channel. We are now opening up other channels for Nollywood to be seen to fully monetise the whole spectrum of what the industry can be." He went on. "If that is not done, the industry could die because of insufficient revenue generation. We're here to make enough money for the industry and through that expand Nollywood and our business. Now when I approach local movie producers and pay for their online distribution license," continuing, "I tell them on top of that, I'll pay extra for their airline and TV distribution rights. That's on aggregate more money than that guy is ever getting paid from DSTV!" See Adegoke, *supra* note 165.

¹⁹⁴ See FREEME DIGITAL, *supra* note 182.

Angola and Namibia.¹⁹⁵ In 2012, Nigeria's projected GDP per capita was USD 2742.2, while Ghana's exceeded USD 1600. Angola, home of a business model for music production and distribution that emulates several of the main characteristics of Nollywood, registered a whopping USD 5539.80. Namibia, which is now beginning to experiment with a music business model (imported from South Africa), has GDP per capita of USD 5770.30.¹⁹⁶ There is therefore no reason to assume that, in the future, centralized distributors of digital African music might not be able to garner a regional clientele. If anything, expansion of digital technology in Africa opens the door to the creation of more music-oriented online businesses, and regional competition would drive prices down.

CONCLUSION

The introduction of digital technologies across sub-Saharan Africa has dramatically and permanently reconfigured the traditional channels of mass production and distribution of cultural goods, particularly in the areas of music and film. There is no more emblematic embodiment of this change than the recent growth of the music and film industries in Nigeria.

The Nigerian film industry, initially a local circuit of low-quality cassette piracy, has evolved into a massive industry attracting millions of dollars in foreign investment. Lack of enforcement of intellectual property rights was crucial during the initial stages of the industry, but increased international interest in Nollywood jumpstarted the formalization of the upper echelon of Nollywood's distribution chains, which now operates in compliance with TRIPS-mandated standards of intellectual property protection. This compliance makes intellectual property a structural feature in the monetization of Nigerian cinema, and the example set forth by Nollywood is currently being successfully replicated by other music industries in Western Africa.

As digital technologies continue to expand across the continent, we are likely to see an incremental number of industries experiencing similar or equivalent patterns of growth and consequent formalization into intellectual property regimes. After an initial stage in which these industries operate in violation of international standards of intellectual property protection,

¹⁹⁵ And, naturally, South Africa, with a projected GDP per capita of over USD 7,500 in 2012. *See Data: GDP Per Capita (Current US\$)*, THE WORLD BANK (2014) <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (last visited Feb. 10, 2015).

¹⁹⁶ *See id.*

progressive compliance with TRIPS norms may actually enable large-scale monetization of these industries, potentially followed by near-complete adherence to internationally harmonized intellectual property regimes.