

The New Practice (TNP)

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Music Licensing: A reminder from the Universal Music Group and TikTok Scuffle

On Tuesday 30th January 2024, Universal Music Group (UMG), the world's largest music label released an open letter¹ to its artists and songwriters stating that all music owned by the label and its artists would soon be taken off TikTok² due to disagreements with TikTok on compensation, Artificial Intelligence (AI) infringements and harassment. UMG's statement was immediately followed by a response from TikTok, labelling the statement as a "false narrative" and by the following day, most of the recorded music under UMG's catalogue had been removed from TikTok, affecting the placement of about twenty-one (21) of such tracks on the TikTok Billboard Top 50 chart.

A row of this nature is however not unfamiliar territory for TikTok, given that in its early days, it took several lawsuits from industry heavyweights like Netflix over its romance series "Bridgerton," for the now viral platform to pay attention to the copyright intricacies of its business³. To mitigate these risks, TikTok entered strategic licensing arrangements with the major labels i.e. Sony Music Entertainment, Warner Music, and UMG (who amongst themselves own and control the most valuable music catalogues in the world) for the right to use music owned by these major labels or their artistes. However, TikTok has since grown exponentially and drawn greater scrutiny to the terms by which it leverages music for the success of its business.

These events prompt a need to revisit and understand music licensing which has been a part of the music business for as long as music in a stored medium has existed; what exactly music licensing entails, and the major components of a licensing agreement.

What is Music Licensing?⁴

Music Licensing simply is the transfer of exclusive or non-exclusive rights,

authorisation or permission to another person, allowing them to reproduce, publish, perform, make translations or adaptations, broadcast or distribute a musical composition or sound recording for commercial purposes, usually for a period of time and subject to revisionary interest. This process requires negotiating agreements and determining the terms under which the music can be utilized by an intended licensee. Music licenses vary and the sort of license required will be determined by their intended use and scope, individual artists, record labels, and organizations. For example, Public Performance licenses will be required for the use of music in public spaces such as restaurants, bars, and live events, while Synchronization licenses permit the use of music in visual media like movies with the approval of the master right holders. Mechanical licenses on the other hand are required when reproducing and distributing music in physical and digital formats while Master licenses focus on the rights linked to the actual sound recording, providing permission for the use of specific recordings.

The Process of Music Licensing

Under Nigerian law, the Nigerian Copyright Act (the "Act"), deems the transfer of copyright or the grant of an exclusive license over a copyrighted work as legally effective when in writing – usually through what is known as a licensing agreement. Licensing agreements typically define the terms and conditions of music usage by parties, what rights are granted, fees, the terms of remuneration and this is mostly uniform across various jurisdictions, save for the distinct nuances of each jurisdiction's copyright regime on subject matters such as compulsory licenses and term of copyrights etc. In this instance, UMG and TikTok prior to now explored a partnership which enabled TikTok's end users incorporate music owned by UMG or its artistes within their content, and while initial impressions of their fallout may suggest a commercial difference, underneath the scuffle, there are a plethora of issues which ultimately underscore the significance of adept negotiations.

Negotiation and understanding, or rather the lack of this, is the central theme in this narrative. As the music industry continues to evolve, the tug between traditional powerhouses like UMG and TikTok will also evolve, particularly given the limitation of foreseeability and how much dynamism can result from the use of technology.

Negotiating Licensing Terms

Negotiating the terms of a music license can be a delicate process, especially where decisions must align with budget constraints. Each agreement requires careful consideration of diverse narratives, the same, if tailor-made between the relevant license holder and a prospective licensee should aim to avoid surprises down the road. How the music is going to be used, as well as compensation are vital parts of the license and must be addressed and set out during the negotiation stage.

Picture a scenario where a musician receives a fixed payment for the use of their music as the theme song of an advertisement but subsequently, the said song gains more popularity than the musician could have envisaged and the income generated from the advertisement would then turn out to be too little in comparison to the enormous success of the advertisement and popularity of the song. This underscores the importance of being mindful of such possibilities when

negotiating a license and very often, song writers and artistes will opt for a lower license fee in exchange for royalty points instead as royalties speak better to the overall success of the music in the future. Anticipating the potential success and broader usage of the music is crucial to negotiating a fair and equitable agreement that aligns with the long-term value and impact of the work. The case of Pusha-T and the McDonald's advert is a classical case in point.⁵

The important clauses in a licensing agreement are license terms, services and use, host platform, payment obligations, intellectual property rights, indemnification, and a few others. Considerations should also be given to matters such as AI and issues that surround derivative AI in music. As much as we are aware, AI was not fully anticipated during the initial negotiations between UMG and TikTok, hence to address potential AI-related issues, infringements and harassment, parties must consider future developments. Drafting clauses that allow for renegotiation, and placing obligations that ensure the licensee safeguards the licensed music or the host platform amongst other matters.

If nothing else, this significant development of removing recorded music under UMG's catalogue, highlights ongoing challenges in the music industry surrounding fair revenue distribution and licensing agreements with major digital service platforms.

Conclusion

As the industry grapples with evolving digital service platforms, it's imperative to prioritise artists and composers through renegotiating (where permissible) licensing deals that truly reflect their contributions appropriately. This moment calls for a re-evaluation of industry norms to ensure that artists and creators are fairly compensated in the modern music ecosystem.

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¹ <https://www.universalmusic.com/an-open-letter-to-the-artist-and-songwriter-community-why-we-must-call-time-out-on-tiktok/> accessed on 5th February 2024.
² TikTok is a short-form video hosting service owned by ByteDance.
³ <https://edition.cnn.com/2022/10/22/tech/copycats-new-media-gets-sued-over-ip-copyright/index.html>
⁴ <https://musicgoat.com/importance-of-music-licensing#:~:text=When%20music%20is%20licensed%20before,the%20person%20who%20deserves%20it> accessed on 5th February 2024.
⁵ <https://frotech.com/pusha-t-artists-spy-5th-disc-mcdonalds/>

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