

Legal and Commercial Implications of the Sale of Music Catalogue: **Justin Bieber** as a Case Study

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1.0 INTRODUCTION

On January 24, 2023, Justin Bieber reportedly sold all the rights to his music catalogue; including his masters, publishing rights and all monies generated from the writer's share of his public performance royalties, to Hipgnosis Song Management ("Hipgnosis"). The deal was valued at a whopping **\$200,000,000 (Two Hundred Million Dollars)**. Since his music career took off in 2010, Justin has had major international hits to his credit; like 'Baby', 'Stay', 'Sorry', among other singles and successful collaborations. These hits have spawned 6 studio albums and several compilation albums. His \$200M deal grants Hipgnosis, all Justin's rights to a catalogue containing about 291 songs released before December 31, 2021.¹

The sale of music catalogues is fast becoming a seemingly lucrative investment opportunity for artists all over the world. Bob Dylan, Neil Young, Tina Turner, Bary Manilow, Lindsey Buckingham, Imagine Dragons amongst others, are some of the artists who have exchanged the rights to their rich catalogue for immediate hard cash. But when such a renowned young, and still ascending pop sensation; barely 13 years into his career, joins the list, many questions beset the mind. **Why would an artist sell their music catalogue? What exactly is being sold? What are the implications of the sale? Does it make good commercial sense?** This paper will attempt answers to some of these questions.

2.0 UNDERSTANDING INTELLECTUAL PROPERTY RIGHTS IN MUSIC

According to the international *Convention Establishing the World Intellectual Property Organization*,² literary, artistic works, performances and many kinds of broadcasts and inventions are deemed 'intellectual property', and so, have certain intellectual property rights attaching to them. The national laws of most countries then go a step further to spell out the manner in which these rights can be protected and enforced.

Participants in 'making' music have an intellectual property right known as a copyright; and its neighbouring rights. Copyright is concerned with exclusive rights to creative works of authorship such as literary, and musical works, and the entrepreneurial rights to reap the financial benefits of such work. However, music copyrights come only from **literary works, musical works, and sound recordings**.³ Rights to musical works, are different and distinguishable from sound recordings – a distinction that becomes relevant for the purpose of this discussion.

A musical work comprises the composition created by a songwriter or composer, along with any accompanying lyrics. The owner of a musical work typically owns the publishing right, giving them the right to make and distribute copies of it, publicly perform or display it and make derivative works from it, including remixes etc.

A sound recording on the other hand is the "*fixation of a sequence of sound capable of being perceived aurally and of being produced*".⁴ In other words, the copyright in sound recordings is aimed at protecting the audio versions of a musical work, and the right is vested in the artist in whose name the recording is made. This could be the performer who is being recorded, the record producer who processes and fixes the sounds or even another entity if the work qualifies as a work made for hire.

¹ Justin Bieber sale his music catalogue to Hipgnosis, available at <https://www.google.com/amp/s/www.rollingstone.com/music/music-news/justin-bieber-sells-catalog-hipgnosis-1234651518/amp/> (accessed on February 11, 2023).

² See the Convention Establishing the World Intellectual Property Organization (WIPO) OF 1967.

³ <<https://copyright.unimelb.edu.au/shared/types-of-copyright-material/musical-works>> accessed June 30, 2023.

⁴ *Ibid*.

The original of a sound recording is known as a ‘Master’, and the rights vested in an owner of a sound recording are referred to as the ‘master rights’. The master rights holder can make and distribute copies of the work and make derivative works from it. Whoever owns the master recordings will earn royalties when the song is played or reproduced including on the radio, streaming and downloads.⁵ However, this does not include rights over soundtracks associated with a cinematograph film.

Either of these two categories of rights may be vested in the same person or a group of persons, depending on their technical or commercial participation in the work’s creation.

3.0 ASSIGNMENT OR TRANSFER OF INTELLECTUAL PROPERTY RIGHTS IN A MUSIC CATALOGUE

What rights are being Sold?

The parties to a music catalogue sale are at liberty to determine its scope. Sometimes, a music catalogue owner will assign all their rights in the catalogue; including the master, publishing, and neighbouring rights.⁶ At other times, only one category of rights is transferred and others are retained. Even percentages of rights can be transferred, with the remainder retained. And parties may yet agree to transfer the rights to works created within a certain period. Others even sell their future musical works.

Why Sell Music Catalogue?

The obvious benefit to an artist of a catalogue sale, is the lump sum upfront payment rather than a steady but gradual accrual of royalties over a period of time.⁷ A catalogue sale could also facilitate tax or succession planning. In the latter case it obviates potential difficulties with administering the catalogue of a demised owner. In the words of Travis Tritt, ‘*I’d rather leave them (family) cash.*’⁸ As a tax planning tool, it could reduce the income tax liability that would otherwise accrue over potentially decades of royalties, in place of a one-time capital gains tax on profits.⁹ Justin Bieber reportedly sold 100% of his masters, publishing, and neighbouring rights in respect of all his songs ever released up until December 2022.

Why Buy Music Catalogue

Contemporary music stars have attained a status and celebrity their peers of several decades ago could have only dreamed of. Music is virtually a currency in today’s world, with Information Technology (IT) constantly recasting how music is promoted and distributed to ever increasing audiences. Streaming music platforms like Apple Music, Spotify and YouTube generate billions of dollars in annual revenue for themselves and their associates; Be they the artists themselves or other rights owners. Little wonder that businesses are diversifying their investment portfolios into this category of property. A newly minted musical catalogue owner could even expand revenue streams by licensing rights to third parties for use on TV shows, radio shows, etc. – even where the original owner may not have even explored this revenue stream. Put plainly, the buyer can do as they please with their catalogue purchase subject to the agreement of parties.

⁵ <<https://www.amuse.io/en/content/owning-your-masters?cn-reloaded=1>> accessed June 30, 2023.

⁶ <<https://www.brunel.ac.uk/news-and-events/news/articles/Justin-Bieber-sells-his-back-catalogue-%E2%80%93-why-artists-give-up-rights-to-their-music#:~:text=Bieber%2C%20at%20the%20age%20of,under%20the%20age%20of%2070.%E2%80%9D>> accessed June 29, 2023.

⁷ <Justin Bieber Sells his Music catalogue to Hipgnosis, available at <https://www.google.com/amp/s/www.rollingstone.com/music/music-news/justin-bieber-sells-catalog-hipgnosis-1234651518/amp/>> accessed on February 11, 2023.

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<<https://www.newsweek.com/david-crosby-stupid-spotify-ban-songs-he-does-not-own-travis-tritt-joe-rogan-covid-misinformation-1676179>> accessed on June 29, 2023.

⁹

<<https://www.dontmesswithtaxes.com/2022/02/tax-savings-likely-are-part-of-why-popular-musicians-are-selling-their-catalogs.html>> accessed on June 29, 2023.

4.0 SALE OF MUSIC CATALOGUE IN NIGERIA

The concept of transferring copyrights in musical works is not at all alien to the Nigerian legal jurisprudence. Section 30 of the Copyright Act of Nigeria, 2022 deems a copyright to be a moveable property capable of being transferred by way of assignment, testamentary disposition, or operation of law. This translates to the fact that a copyright holder may choose to assign its copyright or license the same. But while licensing of musical rights has been fairly commonplace, the same cannot be said for outright transfers. The reasons why artists in particular have not been in a position to exploit catalogue sales for a major payday, may be particularly homegrown to the Nigerian environment. For one thing, it reflects the prevailing sentiment that artists are subjugated to their recording labels.

Who Owns the Music?

In Nigeria, artists have historically signed away the rights to their music to their record labels, at the very inception of their careers. These artists are later prevented from exploiting the rights attached to their music; unlike many of their foreign counterparts. Record labels for their part, have cited the need to secure their investments in their Artist. It stands to reason then, that the very first step for artists in benefiting from music catalogue sales, is to retain ownership of their rights to the music. There are several other ways a record label could secure its investment, without the artist signing over the rights to their music.

How is the quality?

Musical quality goes a long way in determining its value and the eventual price a potential investor would be willing to pay. Value may be measured in terms of appeal to broad audiences, and previous consistency of revenue from the body of work over a period of time. Some songs have stood the test of time and their value only increases each year. Mariah Carey's "*All I Want for Christmas is You*" is a perfect example. Every year at Christmas, this song has been virtually guaranteed to top musical charts around the world, generating massive royalties for its maker. Should Mariah Carey ever intend to sell her rights to this song, this precedent would be considered a strong bargaining chip in her favour.

5.0 CONCLUSION

The transfer of rights to music catalogues represents a promising opportunity for Nigerian artists to achieve liquidity while capitalizing on their creative output. To achieve this, artists must not only strive for quality and timeless musical output but must educate themselves on the rudiments of musical rights ownership. Quality legal representation, secured at the onset of their careers, will help artists avoid blindly assigning their creative parties to opportunistic parties.

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