The Rise of Nollywood: Creators, Entrepreneurs, and Pirates

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Available at: https://works.bepress.com/o_arewa/20/
THE RISE OF NOLLYWOOD
CREATORS, ENTREPRENEURS, AND PIRATES

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Abstract

The rise of Nollywood illustrates the revolutionary potential of digital technologies in Africa. Nollywood, or the Nigerian video film industry, reflects technology leapfrogging that is increasingly prominent in Africa today. Such leapfrogging, however, may raise significant issues with respect to legal and other institutions. Film production had largely ceased in Nigeria by the end of the 1980s. Despite this absence, in the early 1990s, Nigeria started on a path that has led it to become the top producer of digital video films in the world. Nigeria is, however, an unlikely locale for the development of a major film industry. In addition to lacking fundamental infrastructures for the development of a film industry, Nigeria has not historically had robust intellectual property enforcement. As a result, Nollywood may be seen as a natural experiment for creativity in the relative absence of intellectual property. This Nollywood natural experiment reflects the actions of varied and at times overlapping roles, including creators, entrepreneurs, and pirates, all of whom have contributed to the growth of Nollywood and Nollywood distribution networks. The viral spread of Nollywood films has thus far been a key element of Nollywood successes. Nollywood films are watched, for example, throughout Africa and in African immigrant communities in Europe and the United States. The Nollywood example suggests the need for more nuanced understanding of the interaction between intellectual property and cultural production and greater recognition of potentially varied ways that intellectual property may influence the shape of cultural production. The unauthorized distribution of Nollywood films is part of wider patterns of increasing unauthorized dissemination of content in the digital era. Such unauthorized distribution has led to pervasive labeling of certain types of copying as piracy. Analyzing the rise of Nollywood can contribute to existing global intellectual property debates and highlight relevant business issues in contemporary contexts of cultural production. Further, consideration of Nollywood’s current growing pains suggests that, as Nollywood continues to grow, industry participants must separate the distinct yet interrelated problems arising from piracy from those emanating from Nollywood’s informality in doing business. This article suggests that in addition to intellectual property enforcement strategies to contain piracy, Nollywood participants must adopt business strategies that monetize piracy by extracting value from wide-

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reaching Nollywood distribution networks.

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INTRODUCTION

From humble beginnings in 1992, the Nollywood video industry now out-produces Britain, Italy, Spain and Germany by around eight films to one. It averages four times as many movies a year as France and doubles the output of China and Japan. Even before the recession, the United States trailed in its wake and now only Bollywood can match its phenomenal prolificity . . . It’s estimated that some 11,000 full-length features were produced for VHS and V-CD release in Nigeria between 1992 and 2009.¹

Nollywood refers to the Nigerian video film industry.² Nollywood is a cultural, economic, business, and technological phenomenon without precedence.³ Although only some twenty years old, Nollywood has become the second largest producer of films in the world (by films released), just behind Bollywood,⁴ and the world’s leading producer of digital video films.⁵ With production of some 1,000 films each year, Nollywood films have become pervasive and “wildly popular” in Africa,⁶ as well as among African diasporic communities.⁷ Lagos, the commercial capital of Nigeria, is the center of Nigerian filmmaking and distribution.⁸ The term Nollywood refers to distinct video film industry segments. Nollywood includes English language films, often produced in southeastern Nigeria, with principal production and marketing occurring in cities such as Enugu, Onitsha, and Aba, and film distribution that is integrated with the Lagos-based film marketing system.⁹ Nollywood also encompasses production of films in local languages, including Hausa language films produced in Kano (Kannywood) and Yoruba language films produced in Lagos.¹⁰ Although Nollywood films have in the past typically been

⁶ Babson Ajibade, From Lagos to Douala: The Video Film and Its Spaces of Seeing, 3 POSTCOLONIAL TEXT 1, 1 (2007); Enos Akpabio & Kayode Mustapha-Lambe, Nollywood Films and the Cultural Imperialism Hypothesis, 7 PERSPECTIVES GLOBAL DEVELOPMENT & TECH. 259, 266, 269 (2008) (finding in survey that close to 90% of respondents in Lagos had seen Nollywood films).
⁹ Haynes, supra note 8, at 134.
direct to video films that are not shown in theaters, some Nollywood films have begun to be distributed through a small but growing number of movie theaters in Nigeria.

Nollywood developed in a legal and business environment without strong intellectual property protection. Although Nigeria has enacted comprehensive copyright laws, intellectual property enforcement in Nigeria has not traditionally been robust. Given this legal milieu, Nollywood can be seen as a natural experiment for the types of creativity that may arise in the absence of strong intellectual property protection. Nollywood creativity thus has direct relevance to ongoing debates about appropriate levels of intellectual property protection and what creations might arise and be disseminated under weaker intellectual property frameworks.

The development of Nollywood is a complex story that may be told on multiple levels. Nollywood simultaneously reflects varied and at times contradictory narratives about disruptive technologies, diaspora, the democratization of culture, and entrepreneurship and development. Nollywood is first and foremost a technology story that reflects Nollywood directors’ and producers’ active utilization of technological innovations, particularly technologies of digital video production. Nigeria did not develop a robust film industry prior to Nollywood. However, small scale and informal video distribution of television programs existed by the mid-1980s. By the early 1990s, film production in Nigeria had shifted to less expensive video formats, with digital video becoming predominant at an early stage in industry development.

This paper will analyze the implications of the rise of Nollywood, focusing on issues surrounding Nollywood business models, particularly those relating to technology, piracy, and copyright. Part I will analyze cultural and institutional implications of technology leapfrogging and the implications of disruptive digital video technologies for film production in Nigeria. Part II will examine some positive and negative implications of unauthorized distribution of Nollywood films for Nollywood business models and will discuss recent calls for greater copyright enforcement as solutions. Finally, Part III will suggest that, as is the case with respect to digital era content more generally, industry strategies that rest solely on regaining (or in the case of Nollywood gaining) control of distribution and implementing stronger copyright enforcement strategies may fail to take sufficient account of digital era business and cultural realities. Rather, Nollywood distributors would benefit from adopting strategies that include stronger intellectual property enforcement, but that at the same time also attempt to monetize piracy, realize value from global Nollywood distribution networks, and address other significant business challenges confronting Nollywood.

11 Copyright Act, (Consolidation Ch. 68), 1988 (1999), No. 47 (No. 42)), as amended by the Copyright Amendment Decree No. 98 of 1992 and the Copyright (Amendment) Decree of 1999.
12 See infra notes 211 to 212 and accompanying text.
14 Parkinson, supra note 1, at
I. DISRUPTIVE TECHNOLOGIES IN AFRICA: NOLLYWOOD CREATORS AND NOLLYWOOD GROWTH

The economy was collapsing, military dictatorships imperiled the arts, and insecurity imprisoned Nigerians in their own homes. Though unable to go out freely, people still needed to be entertained. So they purchased VCRs to watch films in the safety of their homes. That was how the home-video industry began. As a trained film technician who knew the limitations of video technology, I was saddened by the decline of celluloid filmmaking. But rather than fold my arms and fantasize about celluloid, I chose to use video technology creatively.16

A. Nollywood Origins and Distribution Networks

Although use of the term Nollywood is fairly recent,17 many trace the origins of Nollywood to the success of the film Living in Bondage, an Igbo language film released in 1992, which sold hundreds of thousands of copies.18 Living in Bondage was written and produced by Kenneth Nnebue, an electronics dealer and film promoter, who had previously produced Yoruba language films.19 Kenneth Nnebue was trying to sell a large stock of blank videocassettes bought from Taiwan. He decided the videocassettes would sell better with something recorded on them and wrote and produced Living in Bondage, which depicts the story a man of power and wealth who kills his wife in a ritualistic murder but repents when she haunts him.20

Nollywood video films are highly commercial films that borrow style and texture from existing television and film traditions, including American soap operas and B movies and Bollywood films.21 Nollywood films are often quite melodramatic. Dangerous Twins,22 a 2004 Nollywood film directed by Tade Ogidan,23 stars Ramsey Nouah,24 a leading Nollywood star with a global

17 Haynes, supra note 8, at 132 (2007) (“In 2002, when the term Nollywood was coined, it met with opposition from Nigerians who thought it suggested that Nigerian filmmaking was only a copy of the American model, Hollywood.”).  
18 Id.  
21 See infra notes 113 to 114 and accompanying text.  
22 Dangerous Twins 1 (OGD Pictures 2004); Dangerous Twins 2 (OGD Pictures 2004); Dangerous Twins 3 (OGD Pictures 2004); Pierre Barrot, Film Profile No. 4, Dangerous Twins (Parts I, II and III), in NOLLYWOOD: THE VIDEO PHENOMENON IN NIGERIA 41, 41 (Pierre Barrot ed. 2008).  
following. Nouah plays a pair of twins, Taiwo and Kehinde, who decide to switch places. Taiwo, a businessman based in London, replaces Kehinde in Lagos, while Kehinde, who runs a business in Nigeria, replaces Taiwo in London. Taiwo gives Kehinde his passport and asks Kehinde to replace him because he believes he is sterile and wants his wife Judy to become pregnant. Although Kehinde is successful in running Taiwo’s business in London and Judy, not aware of the switch, becomes pregnant by Kehinde, the twin switch leads to calamity. Taiwo finds himself unable to adjust to living in Nigeria, ruins his brother’s business, friendships, and marriage and contributes to the death of his brother and sister-in-law’s two young children, whose murder by thugs is shown onscreen. Kehinde refuses to return to Nigeria, leading Taiwo to take desperate steps to reverse the switch and, ultimately, tragedy.

Nollywood films are syncretic cultural forms that map the cultural geography of Nigeria and the Nigerian diaspora. They reflect sociocultural values and concerns relevant in Nigerian and broader African contexts. Nollywood films depict aspects of contemporary life in Nigeria. Nollywood is increasingly a principal means by which images of Nigeria are disseminated. Nollywood and other video film industries in Africa thus represent a powerful force that enables African to tell African stories and disseminate such stories to a global audience.

Nollywood films have influenced forms of vernacular expression. Digital technologies have also facilitated the appearance of certain characteristics associated with the networked information economy, which Yochai Benkler, for example, notes improves the capacity of individuals to “do more for and by themselves [and] . . . enhances their capacity to do more in loose commonality with others” outside of “traditional hierarchical models of social and economic organization.” Nollywood directors have been largely self-taught, and Nollywood incorporates institutional structures facilitated by digital technologies. Nollywood is a result of broader access to technological tools of cultural production, which has in turn led to significant

27 Haynes, supra note 8, at 134 (“The image of the Nigerian nation, literally and metaphorically, is now largely shaped by these films, which have become wildly popular across the African continent and beyond. Video film is the primary expressive medium through which Lagos makes itself visible, both to itself and to external audiences.”).
31 Parkinson, supra note 1, at 1.
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democratization of access to culture.\textsuperscript{32} In contrast, during the colonial era, filmmaking in Nigeria and elsewhere in Africa was largely reserved for European directors and producers because films were thought to be too complex for Africans to produce or understand.\textsuperscript{33}

Although Nollywood films are distributed within Africa largely through sale of physical discs, many Nollywood films are available on YouTube and other Internet sites at no cost. Nollywood films are often shared, and Nollywood films are available in communal settings in Nigeria, which gives even those with limited financial resources access to Nollywood films. Despite extensive physical distribution of Nollywood films in Africa, Nollywood distribution networks as a whole have attributes that make them more akin to decentralized digital era digital distribution networks of virtual works than traditional pre-digital physical distribution networks for content. In the case of Hollywood films, for example, traditional distribution networks for commercial films that developed prior to the digital era were largely dominated by hierarchical and centralized industry controlled distribution models or models centered around movie studios as financing and distribution hubs.\textsuperscript{34} Nollywood production and distribution models have significant implications for unauthorized distribution of films that many characterize as “piracy.”\textsuperscript{35} Nollywood distribution models and lack of industry control over distribution have facilitated the viral spread of Nollywood films within Africa and among diasporic communities, which has given Nollywood a large global footprint in Africa, Europe, and the U.S.\textsuperscript{36}

In addition to being distributed around the world, in recent years, Nollywood networks have begun to expand globally on the creation and production side. For example, Nollywood star Stephanie Okereke has crossed over to Hollywood,\textsuperscript{37} while the 2008 Nollywood production, \textit{The Amazing Grace}, directed by Jeta Amata,\textsuperscript{38} starred British actor Nick Moran.\textsuperscript{39} Jeta Amata’s


\textsuperscript{34} James A. Robins, \textit{Organization as Strategy: Restructuring Production in the Film Industry}, 14 STRATEGIC MGMT J. 103, 104 (Summer 1993) (noting that productions were financed and distributed by the same firms in the 1950s and 1960s in the U.S. film industry); James Lampel & Jamal Shamsie, \textit{Capabilities in Motion: New Organizational Forms and the Reshaping of the Hollywood Movie Industry}, 40 J. MGMT STUD. 2189, 2196-97 (2003) (describing the shift in the Hollywood motion picture industry from an industry dominated by integrated hierarchical organizations from the 1920s to 1940s to a system in which studios operate as financing and distribution hubs).

\textsuperscript{35} Kelani Cries Piracy As Arugba Goes On General Release, NIGERIA DAILY NEWS.COM, June 5, 2010, http://ndn.nigeriadiailynews.com/templates/?a=30026&z=8 (noting revelation by famed Nollywood director Tunde Kelani that release of his film \textit{Arguba} was postponed three times because of heavy piracy).

\textsuperscript{36} Conners, \textit{supra} note 2.

\textsuperscript{37} Stephanie Okereke wrote, directed, and acted in the U.S. production of the comedy \textit{Through the Glass} (Next Page Productions 2008); Stephanie Okereke, Internet Movie Database, http://www.imdb.com/name/nm1760384/

\textsuperscript{38} See Jeta Amata, Internet Movie Database, http://www.imdb.com/name/nm1922660/.

\textsuperscript{39} Nick Moran portrayed John Newton, the clergyman and former slave trader captain, who wrote the lyrics to the hymn \textit{Amazing Grace}, in a Nigerian produced film that tells the Newton story from an African perspective. See The
films Black Gold (2011) and Black November (2012) include actors from both Hollywood and Nollywood.\textsuperscript{40} Tunde Kelani’s 2009 film, Arugba,\textsuperscript{41} has been screened at major international festivals.\textsuperscript{42} Lancelot Imasuen’s film,\textsuperscript{43} Home in Exile, premiered at the Odeon Cinema in London and was screened in 2009 at the Carlow African Film Festival.\textsuperscript{44} Chike Ibekwe’s Eternal shared the Écran d’or (best film prize) at the 14th annual Écran Noir Film Festival in Yaounde, Cameroon in 2010.\textsuperscript{45} The 2011 Subversive Film Festival in Zagreb, Croatia had a showing of multiple Nollywood films with the theme of Nollywood: Love and Magic.\textsuperscript{46} Other participants in the Nigerian television and film industry that have received attention outside Nigeria include Greg Odutayo,\textsuperscript{47} Kunle Afolayan, director of the film The Figurine (2010),\textsuperscript{48} and Obi Emelonye,\textsuperscript{49} director and writer of The Mirror Boy (2011).\textsuperscript{50}

Although Nollywood films are largely self-financed, Nollywood filmmakers have also received funding and support from external sources. The BBC World Service Trust in 2004 undertook a project in Nollywood that involved co-funding of film production and other activities.\textsuperscript{51} In 2007,
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Time Warner and Comcast formed a partnership with IAD to distribute Nollywood films. Other organizations have emerged to promote Nollywood, including the Nollywood Foundation, a nonprofit organization, which has sponsored conferences in Los Angeles that target movie insiders in the United States.

Dominant Nollywood business strategies in the early days of the industry involved high volume production of films of relatively low technical quality. These strategies reflected a Nollywood business environment characterized by a lack of formal film financing and widespread unauthorized distribution of Nollywood films. Nollywood films historically involved investments of as little as US$ 15,000, which minimized the financial impact of commercial failures of Nollywood films. Some commentators suggest that the Nollywood model is evolving into one that involves production of higher quality films. The evolution of the Nollywood model underscores that success in Nollywood terms is measured commercially, for Nollywood is above all commercial in orientation, which has led to criticisms of Nollywood on aesthetic grounds.

The commercial focus of Nollywood participants underscores the extent to which the development of Nollywood is also a story about entrepreneurship in the developing world that may turn common assumptions about what might be required to foster a film industry and business enterprises in developing countries on their head. Nollywood initially developed with little government support and few significant sources of private sector financing. Despite the lack of support from government and formal private sector financing sources, Nollywood has become a fast growing sector of the Nigerian economy. Nollywood generates an estimated US$ 250 million annually, which makes Nollywood the second largest export sector in Nigeria after oil, which accounts for more than 90 percent of Nigeria’s export earnings.


53 Arsenault & Castells, supra note 52, at 730.
55 Jeevan Vasagar, Welcome to Nollywood, March 23, 2006, guardian.co.uk, www.guardian.co.uk/film/2006/mar/23/world.features (“it is clear that Nigeria’s home video industry has no pretensions to high art . . . it’s all about money”).
58 Connors, supra note 2; Adedayo Ladigbolu Abah, One Step Forward, Two Steps Backward: African Women in Nigerian Video-Film, 1 COMM. CULT. & CRITIQUE 335, 335 (2008) (noting that Nigerian video film industry has reached nearly US$ 300 million a year).
59 Connors, supra note 2.
B. **Digital Technology Leapfrogging and The Development of Nollywood**

In recent years, people across Africa have experienced the impact of leapfrogging technologies.\(^{60}\) The Nollywood revolution highlights the potential promise and paradoxes of technology leapfrogging that many believe could ameliorate the digital divide between developed and developing countries.\(^{61}\) A leapfrogging technology could permit adopters of a new technology to bypass intermediate stages of technologies that might have preceded that new technology in other locales.\(^{62}\) For example, a country could move from Technology A to Technology C without adopting Technology B.\(^{63}\) Leapfrogging would thus enable a movement from traditional firewood stoves to use of liquefied petroleum gas, without adoption of improved charcoal and kerosene stoves.\(^{64}\) Mobile telephones have been characterized as a dominant leapfrogging technology in Africa to date. Africa has higher growth rates and greater digital mobile penetration than is the case in developed country markets.\(^{65}\) Nonexistent and unreliable fixed phone lines have contributed to high growth rates in African mobile subscribers, with mobile subscriber growth rates approaching 550% in Africa in the five years preceding 2009.\(^{66}\) Many in Africa have gone from having no telephone or having minimal fixed phone line service directly to digital mobile phones without experiencing analog mobile technology that came before digital mobile technology in many areas of the world. A 2007 report indicated that digital mobile phone subscriptions in Africa accounted for 95% of all mobile subscribers and made up 83% of all phone subscriptions (figures for Europe are 92% and 68% respectively).\(^{67}\)

Even if a positive force overall, technology leapfrogging has consequences for the development of institutions that merit greater attention and that may lead to technological, institutional and legal discontinuities. Such discontinuities may significantly impact adoption processes of

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\(^{60}\) AFRO@DIGITAL (Akangbé Productions and Dipanda Yo Films 2003).


\(^{64}\) Davidson, supra note 62, at 23.


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Nigerian filmmaking, which enjoyed a golden age in the 1980s, was largely moribund by the end of the decade as a result of economic considerations. This meant that Nollywood digital videos emerged in a context in which analog film production had largely ceased. The lack of a robust pre-digital film industry is a clear contrast to the Francophone countries such as Senegal, Mali, Niger, and Burkina Faso, for example, which have had pre-digital film production of aesthetically oriented noncommercial films that have traditionally targeted audiences outside of Africa. After independence, Francophone films gained an international reputation in the art film arena and have received acclaim as well as prizes in international competitions. Senegal has been described as the “founding father” of African cinema. Although critically acclaimed internationally, Francophone art films have been typically costly, often financed from overseas.

leapfrogging technologies. Leapfrogging may mean, for example, that business and legal infrastructures that may accompany intermediate stages of adoption of a technology may not be present when the move from Technology A to Technology C skips Technology B. Further, Technology B might have been associated with particular business configurations and legal infrastructures in other locales that experienced the transition from Technology A to Technology B to Technology C without significant leapfrogging. Nollywood reflects leapfrogging in the transition from little or no film production to a fully digital film production system. Technological discontinuities in the development of the film production business are evident in Nollywood, which has taken advantage of technological innovations in digital video film. Nollywood directors adopt new technologies as soon as they become available. Because Nollywood films are produced on a small scale, often with as few as three to five days of filming, digital technologies have been useful in streamlining the film production process. Nollywood postproduction is done using editing software applications such as Avid and Final Cut Pro.

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68. Fox, supra note 13 (“It’s [Nollywood’s] an entirely digital system, and in that sense it’s far ahead of what Hollywood is.”) (quoting Jamie Meltzer).
70. Nathan, supra note 3.
73. SPAAS, supra note 72, at 172 (discussing the film Borom Saret by Ousmane Sembene, which won the top prize at the International Film Festival in Tours in 1963, becoming the first African film to win a European prize); Onookome Okome, Film Policy and the Development of African Cinema, 1 GLENDORA REV. 46, 46 (1995).
74. SPAAS, supra note 72, at 172.
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and have generally not garnered large audiences within Africa. The high expense of film production has led film production in a number of African countries to be at a virtual standstill, which has left a void that has been filled in some instances by Nollywood videos, which are orientated toward domestic Nigerian and African markets. Although nascent video film industries have been evident in other African countries, including Ghana (Gollywood) and Kenya (Riverwood), none of these other industries has yet achieved the visibility of Nollywood.

In contrast to outward oriented African film production, Nigerian video films, which have been described by some commentators as the “AIDS of the film industry,” are cheap to produce. Although Nollywood films use advanced digital technology, the technical quality of Nollywood films is highly variable and some Nollywood films may have low production values and poor sound editing. The leap to digital technology in Nigeria has, however, facilitated the development of alternative Nollywood models of commercial film production and distribution. In particular, the lack of centralized, hierarchical industry structures organized around the creation, financing and distribution of physical films in Nigeria is in part due to the absence of large-scale cinemas in cities such as Lagos and dominance of home viewing. The dominance of home viewing has implications for business and legal structures that have arisen surrounding the Nigerian video film industry. In 2010, Nigeria had fewer than 50 movie screens in the entire country, mostly located in Abuja, Lagos, and Port Harcourt. Nollywood receives

79 Barrot, supra note 3, at 3.
approximately 98 percent of its revenues from home video distribution and 2 percent from other sources, including pay-TV. Nollywood revenue sources reflect patterns that are increasingly evident in Hollywood, which derives only 10 percent of its revenue from U.S. theaters, receiving a majority of revenue from so-called “backend” sources such as DVD sales, pay-TV, and network television licensing.

The lack of significant continuity between Nollywood and pre-digital film production in Nigeria means that the configuration of digital era industry legal and business structures in Nigeria does not have anything close to institutional overlay present in areas that developed robust and sustained pre-digital film industries. As a result, Nigeria has not had to undergo to the same extent the transition to digital film production and distribution that is now occurring in Hollywood and other film industries with significant pre-digital era film production sectors.

Nollywood leapfrogging, however, underscores the physical infrastructure and other institutional challenges that exist in Nigeria, including informal distribution and marketing networks, extensive piracy, poor production quality, lack of production, distribution, and exhibition infrastructure, lack of film studios, insufficient funding sources and venture capital, inadequate skills and training, industry fragmentation, and a lack of data necessary for planning and industry decision making.

These challenges and technological discontinuities underscore why Nigeria is an unlikely locale for the development of a video film industry and illustrate fundamental paradoxes of contemporary Nigeria. Lack of reliable electricity is yet another challenge confronting the Nollywood industry: Nigeria is one of the most inefficient producers of electricity in the world.

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85 EPSTEIN supra note 82, at 23.
86 Tom Rosso, Movies 2.0: Digital Effects Magic Explained, POP. MECH. (Jan. 2007), http://www.popularmechanics.com/technology/industry/4206983.html?page=1 (“The impact of digital technology on Hollywood has been gradual but all-encompassing. Today, a movie can be shot, edited and distributed — from camera to theater and beyond — without involving a single frame of film. The transformation is at least as sweeping as the introduction of sound or color in the early 20th century, and it is changing both the business and the art form of cinema.”); Nyay Bhushan, Bollywood Billions: Indian Distribution and Production Change with the Times, FILM J. INT’L (Dec. 1, 2008) (discussing the transition to digital cinema production in Bollywood); EPSTEIN, supra note 82, at 47-48 (discussing the economics of distribution of film prints that may in the future lead to a full transition to digital distribution of films to theaters).
88 Barrot, supra note 69, at 17.
with frequent black-outs and brown-outs and widespread reliance on self-generated electricity. Unreliable electricity is thought by many to be the biggest constraint in the Nigerian business sector. Chronic electricity shortages in Nigeria stall Nollywood production schedules. In addition, inadequacies in Nigerian road infrastructure inhibit the expansion of Nollywood distribution networks.

The accomplishments of Nollywood participants are all the more remarkable in light the infrastructural and other institutional limitations in Nigeria. Nollywood institutional structures involve a complex mix of unions, distributors, and other players, including the Filmmakers Cooperative of Nigeria, which has developed its own distribution outlet in Surulere Market in Lagos and established committees to improve the quality of Nollywood films, the Motion Pictures Practitioners Association, the Actors Guild, and the Nigerian National Film Corporation. Although unions and other institutions play a role in Nollywood, Nollywood participants in the initial stages of Nollywood growth have tended to be fragmented with a high degree of informality in relationships.

Technological and institutional discontinuities in Nollywood have also played an important role in the development and enforcement of Nigerian copyright laws. Although Nigeria has fairly comprehensive copyright laws, enforcement has traditionally been weak. Lack of copyright enforcement in Nigeria is due to a variety of factors, including a traditional lack of domestic copyright constituencies. Intellectual property laws in countries such as the United States reflect a legacy of centralized industry structures that have promoted and enforced particular intellectual property configurations. Cultural industry businesses in the United States have also long played a role in the development of intellectual property laws and enforcement strategies.

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90 Adeola F. Adenikinju, Electric Infrastructure Failures in Nigeria: A Survey-Based Analysis of the Costs and Adjustment Responses, 31 ENERGY POL’Y 1519, 1519 (2003) (“Poor electricity supply has proved to be the major infrastructure constraint confronting the business sector in Nigeria today.”); Iwayemi, supra note 89, at 18.
91 Connors, supra note 2.
92 Id.
94 Parkinson, supra note 1, at 5 (noting that the Filmmakers Cooperative has established the Quality Control Committee and the Committee for the Control of Film Releases to “improve the standard of Nollywood pictures by reducing output and combating plagiarism”).
95 Id.
96 Reminders for copyright owners in Nigeria include damages, injunctions, accounting of profits and delivery of copies or materials used to make copies. Nigerian Copyright Act, supra note 11, at §§ 16, 18, 19. Nigerian copyright law also provides for criminal liability. Nigerian Copyright Act, supra note 11, at § 18.
97 Connors, supra note 2; see infra notes ___ to ___ and accompanying text.
98 Connors, supra note 2 (describing a recent battle between the police and counterfeiters and noting that police in Nigeria are understaffed and bribe-ready, which leads to minimal copyright enforcement).
99 JESSICA LITMAN, DIGITAL COPYRIGHT 23 (2001) (“About one hundred years ago, Congress got into the habit of revising copyright law by encouraging representatives of the industries affected by copyright to hash out among themselves what changes needed to be made and then present Congress with the text of appropriate legislation.”).
The intellectual property frameworks advanced in the pre-digital era by cultural industry players in the United States have been stressed significantly in the digital era, particularly with respect to unauthorized distribution of digital content. Although Nollywood films are distributed in physical format, a general lack of industry control over distribution in Nollywood highlights how structures of distribution of Nollywood films are unlike traditional distribution structures of physical content in Hollywood. Although rampant copying of Nollywood films is a testament to their appeal, losses of revenue from the distribution of such copies are now thought by many to be a serious impediment to continued growth in Nollywood.


Nollywood reflects the experiences of Nigerian social, political, religious, and economic life. Nollywood films thus draw from the drama of daily life in Nigeria: “[c]ontemporary Nigeria provides its scriptwriters with material as exciting as the Wild-West or the prohibition-era films of Hollywood.” Nollywood has developed to a significant degree within the informal sector, which makes it difficult to assemble reliable statistics about Nollywood. Nollywood distribution is largely informal, and the vast majority of screenings in Nigeria are in informal settings such as home showings. Nollywood became prominent in Nigeria during a time in the 1990s of high crime rates and a general breakdown in the public order that made going to theaters at night too dangerous. An estimated 67 percent of homes in Nigerian urban areas have either VHS or VCD players. Even those without video players at home are able to watch Nollywood films in informal video parlors in which entry costs less than US$ 0.25, as well as in communal locations such as street stalls, hair salons, shops, bars, and other small businesses.

Nigeria has a large potential domestic market. It is the most populous country in Africa and potentially single biggest market in Africa, with an estimated population of more than 150 million, which is close to 50 percent of the population of West Africa and an estimated 25 percent of the population of Africa. Penetration of VHS, DVD, and VCD players gives Nollywood filmmakers access to a large domestic market for Nollywood films. An estimated 70

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100 Ukah, supra note 61, at 204
101 Barrot, supra note 69, at 20.
102 Haynes, supra note 8, at 134.
103 Barrot, supra note 69, at ___.
104 Haynes, supra note 8, at 135.
105 Barrot, supra note 69, at 15-16.
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million VCR and DVD players have been sold in Nigeria. Nigeria’s 2008 per capita income was an estimated US$ 1,080. The price levels of Nollywood films and varied ways of accessing such films permit significant numbers of Nigerians to have some access to video films. Nollywood has had a discernible impact on Nigerian business and society. In addition to demonstrating alternative paths to business success, Nollywood has changed the way Nigerians perceive acting and actors and has contributed to the making of Nigerian movie stars.

Viewers of Nollywood films attribute their appeal to a number of factors. For many in Africa and in the African diaspora, Nollywood films provide characters and stories with which they can identify and which show a cultural connection to issues relevant in Nigeria and elsewhere in Africa. Nollywood films are also highly commercial and melodramatic, and the most successful Nollywood films are melodramas most “filled with adultery, bribery and elements of local mysticism.” Nollywood films have displaced Hollywood films and other film genres in Nigeria and elsewhere in Africa. Nigerian video films are syndicated and shown on television across Africa, including in Kenya and Ghana, and on African satellite networks, as well as on

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television at least seven Francophone countries. Nollywood films have “become a staple on M-NET, the South African based satellite television network.”

Despite having arisen from technological discontinuities in the early adoption of digital video technologies, Nollywood films reflect important cultural continuities. Significant domestic popular culture sources for Nollywood melodramas are evident in Igbo Onitsha Market literature, Yoruba juju music, and Yoruba traveling theater, for example, which reflect a similar orientation to Nollywood films. Nollywood films have had a significant impact on and may in some instances have contributed to the demise of pre-Nollywood cultural forms.

The broad transnational distribution of Nollywood films is facilitated by the dominance of films made in English and other languages spoken outside of Nigeria. Forty-four percent of Nollywood films distributed between 1997 and 2003 were in English. These English speaking films are distributed worldwide, including in both English and French-speaking countries in Africa. Yoruba language films represented 31% of Nigerian film production between 1997 and 2003, with an audience primarily in southwestern Nigeria and neighboring Benin and Togo. Hausa language films, which reflect a significant Bollywood influence, constituted 24% of production during this time, also found an outside audience among Hausa speakers in a number of West African countries. Nollywood films may also be made in other local languages, including Edo and Effik/Ibibio. Although a large number of Nollywood producers and distributors are Igbo, the proportion of films made in Igbo is relatively small, and Igbo producers prefer films made in English, which gives them access to a bigger market in Nigeria.

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116 Barrot, supra note 77, at 43.
117 Evuleocha, supra note 135, at 408.
118 Barrot, supra note 76, at 6 (noting that a few dozen celluloid films have been shot in Nigeria since 1970 as compared with 9,000 video films).
120 Oloruntoba-Oju, supra note 119 (describing the rise of video films as the last straw for literary theater already adversely affected by the television industry).
121 Moradewun A. Adejunmobi, Nigerian Video Film as Minor Transnational Practice, 3 POSTcolonIAL TEXT (volume 2) 1, 4-5 (2007).
122 Nigerian Film Corporation (NFC), Analysis of Nigerian Films Released into the Market between 1997 and 2003, Nigeria: Department of Planning, Research and Statistics (PRS), nigfilmcorp.com/pdf/Film%20Analysis.pdf.
125 Adamu, supra note 10, at 77; Abdalla Uba Adamu, The Influence of Hindi Film Music on Hausa Videofilm Soundtrack Music, in GLOBAL SOUNDTRACKS: WORLDS OF FILM MUSIC 152, ___ (Mark Slobin ed. 2008).
and elsewhere. 128 Although Igbo language films have not been made in large numbers since the late 1990s, recent efforts have sought to begin making Igbo language films for mainstream markets. 129

Nollywood films are watched throughout Africa and in African immigrant communities in Europe and the United States. African immigrant communities have played an important role in the rise of Nollywood. A number of Nollywood films including Dangerous Twins and Osuofia in London, 130 draw attention to the Nigerian diaspora, particularly the burgeoning numbers of African immigrants in the United States. 131 The number of Africans in the U.S. has grown close to ten-fold since 1960, from 0.4% of all foreign born to 3.7% of all foreign born immigrants in 2008. 132 In 2005, more Africans had come to the U.S. since 1990 than in the two preceding centuries. 133 Further, voluntary immigration to the U.S. from Africa has surpassed the numbers of those who came to the U.S. as slaves, 134 with Census figures indicating that the population of African-born persons in the U.S. grew from 364,000 in 1990 to 900,000 in 2000 and an estimated 1.4 million in 2008. 135 Nigerians are the largest single group of African immigrants in the U.S., with an estimated population of 185,787 or 13.1% of African immigrants in the U.S. 136 African immigrants in both the United States and the United Kingdom have the highest levels of educational attainment, which may have implications for the types of continuity such immigrants choose to maintain with their places of origin. 137

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128 Barrot, supra note 124, at 33.
129 Ojiego, supra note 126.
130 OSUOFIA IN LONDON (Kingsley Ogoro Productions 2003); OSUOFIA IN LONDON 2 (Kingsley Ogoro Productions 2004); see also MY AMERICAN NURSE (Pascal Atuma Productions 2006); MY AMERICAN NURSE 2 (Pascal Atuma Productions 2006) (depicting the struggles of Shehu, a Nigerian cab driver in the U.S., who returns to Nigeria to find a wife whom he expects to be compliant, only to be surprised by his wife learning what are identified as the “ways of African American women”).
134 Id.
136 Terrazas, supra note 132.
137 U.S. CENSUS BUREAU, PROFILE OF THE FOREIGN-BORN POPULATION IN THE UNITED STATES: 2000, at 37 (Dec. 2001) (noting that, in 2000, 94.9 percent of the foreign born in the U.S. from Africa had completed high school or more education, in comparison with a foreign born average of 67 percent and averages for Europe, Asia, Northern America, and South America that were between 79.6 and 85.5 percent); African-Born U.S. Residents Have Achieved the Highest Levels of Educational Attainment, 4 J. BLACKS HIGHER EDUCATION 10, 10-11 (1994) (noting that U.S. residents of African origin have the highest levels of educational attainment in the U.S.); Theodore Cross, Black Africans Now the Most Highly Educated Group in British Society, 3 J. BLACKS HIGHER EDUCATION 92, 92-93.
The popularity of Nollywood films among African immigrant communities may reflect patterns of transnational migration in which Nollywood and other African video films form a basis for transnational communities based on “shared beliefs, evaluations, and symbols expressed in a collective identity.”

African immigrants also have disposable income to spend on entertainment: in 2008, the mean income of African-born persons in the U.S. was US$ 69,978, just below the general population mean income of US$ 71,128, giving African immigrants in the U.S. funds to spend in African-owned shops and wholesale markets that sell Nollywood and other types of African video films.

D. Nollywood, Censorship, and the Democratization of Culture

In addition to its impact on the African diaspora, digital video has enabled decentralized and grass roots film production within Nigeria that has contributed significantly to the democratization of cultural production. Nollywood practices are rooted in the Nigerian television industry, which may explain the Nollywood penchant for melodrama. The Nigerian television industry and other forms of cultural production also provided human and other resources that have facilitated the development of Nollywood.

As has been the case elsewhere in the world, digital technology may give people access to tools that can create cultural content. The lower cost of digital video productions thus broadened participation:

“The new technology has empowered us. Now we have fair access to means of production. When it was celluloid, everything was imported from abroad and it was very expensive but today, anybody could have a personal computer, install an editing software

(1994) (noting that British residents of African origin have the highest level of educational attainment in the United Kingdom); Leslie Casimir, Bachelor’s and Beyond, HOU.S. CHRON, May 20, 2008, http://www.chron.com/disp/story.mpl/front/5791096.html (noting that, according to Census figures, Nigerians are the highest educated racial or ethnic group in the U.S., with 37% of the population having bachelor’s degrees, 17% with master’s degrees, 5% with professional degrees, and 4% with doctorates).


139 U.S. Census Bureau S0504, supra note 135 (indicating that the median African income was US$ 49,367 in 2008); United States Census Bureau S1901, American Community Survey, Income in the Past 12 Months (In 2008 Inflation-Adjusted Dollars), http://factfinder.census.gov/servlet/STTable?_bm=y&-geo_id=01000US&-qr_name=ACS_2008_3YR_G00_S1901&-ds_name=ACS_2008_3YR_G00&-_lang=en&-redoLog=false-&format=&-CONTEXT=st (indicating that the median U.S. income for households in 2008 was US$ 52,175).

140 Bráulio Santos Rabelo de Araújo, O Direito Autoral, a Economia Colaborativa e o Creative Commons, in PROPRIEDADE INTELECTUAL, VOL. 2, 195, 247-48 (Patricia Luciane de Carvalho ed. 2008) (noting the decentralized nature of Nollywood film production model of inexpensive films produced in large number and distributed directly to audiences through a network of street vendors).


and start makeing [sic] films. So on the one hand, it is may [sic] has ‘democratized’ the means of production. That’s what ignited nollywood.”

By virtue of its small scale and grassroots production, Nollywood has extended film production outside the “reserve of the so-called ‘cultured classes,’” Thus Nollywood developed with no large studios, no projectors or screens, and no reels of film. Film production in local languages and the use of music as an “integral communication element of Nollywood productions” have brought Nollywood closer to grassroots audiences.

Although many Nollywood films deal with predictable themes, others offer social commentary that may criticize those in authority. This potential role in social commentary is significant given the role of censorship in Nigerian film production and history of authoritarian governments in Nigeria. The National Film and Video Censors Board (NFVCB) is a primary institutional force in the Nigerian film industry. The NFVCB registers new releases, calculates annual turnover, monitors the content of films, and restricts distribution of films that are deemed to cause social harm. The mission statement of the NFVCB sets forth its role as contributing “to the positive transformation of the Nigerian society through censorship and classification of films and video works whilst balancing the need to preserve freedom of expression within the law” in order to “limit social harm caused by films.” The NFVCB classifies and censors content of videos and films, using measures of both content and technical quality. The NFVCB censored 4,600 films between 1994 and 2005, and put in place complete embargoes against films with themes involving cannibalism and lesbianism, and films with indecent, obscene, or overtly sexual scenes. The 2004 film, The President Must Not Die, led to a six-month battle over the title of the film between director Zeb Ejiro and the NFVCB. The original title of the film was The President Must Die, which was highly controversial in Nigeria, where almost half of the heads of

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144 Barrot, *supra* note 33, at xi.


146 Esan, *supra* note 141.

147 Abah, *supra* note 56, at 731.

148 Established pursuant to the National Film and Video Censors Board Decree (Decree 85 of 1993), National Film and Video Censors Board Act, Cap N. 40 (hereinafter “NFVCB Decree”).

149 See *infra* notes ___ to ___ and accompanying text.


151 Paul Ugur, *Censorship and the Content of Nigerian Home Video Films*, 3 POSTCOLONIAL TEXT 1, 2, 11 (2007) (noting that content based restrictions on public performances in Nigeria date back to the colonial era in 1912, when the colonial government adopted laws requiring licenses for performances or exhibitions).


153 (_________ 2004).

state since independence have died under violent circumstances. In addition censorship at the national level, a separate censorship law applies in Kano to Kannywood films and is overseen by the Kano State Censorship Board. The Kano censorship system was instituted in 2001 after the adoption of Islamic Shar‘ia law in Kano. In 2007, a cell phone sex video involving a Kannywood actress led to a tightening of film censorship in Kano, including a 6-month ban on all film production, a ban on singing and dancing in Kannywood films, and arrests and prison terms for Kannywood participants.

The NFVCB was formed by a 1993 Decree but was not the first film censorship body in Nigeria. Legal frameworks adopted just following independence established the Film Censors Board, which specifically applied to film production, but which did not encompass video. In contrast, the 1993 Decree establishing the NFVCB, which repealed the Cinematograph Act of 1963-64, specifically applies to both film and video. The Nollywood industry arose in large part by taking advantage of regulatory gaps. At the time of emergence of the Nigerian video film industry, the Cinematograph Act of 1963-64 did not cover the video genre, which likely facilitated the development of the Nollywood industry. Further, because Nollywood films are targeted at the home video market, Nollywood films are usually not screened publicly and often not shown on television, which enables Nollywood producers to “sidestep” regulatory restrictions on content. The Film Policy Law of 1993 and film nationalization policies in the 1970s also encouraged the development of a domestic Nigerian film industry.

In a continent where free expression is not infrequently suppressed by governments and censorship of films is widely practiced, Nollywood has been described as “one of the most...
impressive signs of freedom of expression in Africa.”\textsuperscript{166} Nollywood directors have thus not hesitated to deal with sensitive and controversial issues, including HIV/AIDS, corruption, crime, drugs, prostitution, witchcraft, adultery, politics, religion, vaginal fistula, and female genital mutilation.\textsuperscript{167} For example, the 2006 Kingsley Ogoro film, \textit{The Widow},\textsuperscript{168} draws attention to legal and moral issues that may arise from the treatment of widows, particularly under some customary law frameworks in which widows do not have inheritance rights.\textsuperscript{169} \textit{Black Gold} (2011) and \textit{Black November} (2012), directed by Jeta Amata, draw attention to current conditions in the oil producing Niger Delta region of Nigeria.\textsuperscript{170}

II. PROFITS AND PIRATES: NOLLYWOOD BUSINESS MODELS

Then there are distribution problems and piracy. Our distribution system is very poor, and piracy is endemic. Video clubs don’t buy any rights. They just buy video films, just as they probably did \textit{Titanic}, and dub them for sale. The studios—Universal, Paramount, Fox, Warner—lose money on their films to piracy, and so do we. To see how this affects video filmmaking today, let us do the math. Since they [Nollywood films] often barely break even, producers have taken to cutting production costs . . . [and become] willing to compromise production values by investing less in its production.\textsuperscript{171}

A. The Cultural Industries, Intellectual Property, and Development

In addition to providing new avenues for cultural expression, Nollywood may also represent an alternative model for the development of cultural industry businesses. As UNESCO noted in 2009: “the explosive growth of Nollywood attracts considerable attention, especially in developing countries looking for alternatives to the U.S. or European models of film production and distribution, which require considerable investment.”\textsuperscript{172} The rise of the film sector in Nigeria runs counter to existing trends in the film sector in which developing countries, which produce 1.2 films per million inhabitant annually, lag developed countries, which produce 6.3 films per million inhabitants annually.\textsuperscript{173} At current Nollywood production levels, Nigeria produces approximately 6.7 films per million inhabitants annually.\textsuperscript{174} Bridging the developing country film production gap remains challenging, particularly because the optimal ways to create domestic film industries remain elusive in many instances. Prior to the proliferation of Nollywood films, at least one commentator suggested that government takeover of the film industry would be the only means by which Nigeria could develop a film industry.\textsuperscript{175}

\begin{thebibliography}{9}
\bibitem{166} Barrot, \textit{supra} note 77, at 46.
\bibitem{167} Id. at 43; Akpabio, \textit{supra} note 152, at 91; Akintunde Akinyemi, \textit{Oral Literature, Aesthetic Transfer, and Social Vision in Two Yoruba Video Films}, 38 \textit{Res. Afr. Lit.} 122, 122 (2007) (discussing the social vision in two Yoruba films).
\bibitem{168} The Widow (Kingsley Ogoro Production 2006).
\bibitem{169} Abah, \textit{supra} note 56, at 740-43.
\bibitem{170} \textit{Black November} is a reshoot of substantial portions of \textit{Black Gold}. Hoad, \textit{supra} note 40.
\bibitem{171} Esonwanne, \textit{supra} note 16, at 38 (quoting Nollywood cinéaste Amaka Igwe)
\bibitem{172} UNESCO, \textit{supra} note 57.
\bibitem{173} UNCTAD, \textit{supra} note 87, at 125.
\bibitem{174} This figures assumes annual production of 1,000 films per year and a Nigerian population of 150 million.

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Notably, although many countries have sought to incentivize particular types of film production through direct government funding, subsidies, or film protection schemas involving film quotas, many of these industries have not been commercially viable in the absence of subsidies or other support schemes. In contrast, Nollywood has created significant volume of local video film content with virtually no government involvement or subsidies. The 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. Nollywood now may employ as many as 200,000 people directly with estimates of indirect employment as high as 1 million. The market-driven Nollywood approach is less costly than existing models of film production and distribution and may offer a new model for developing countries that wish to develop domestic film industries.

The Nollywood experience also highlights the variable role that intellectual property laws may play in the development of cultural industries. 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. Unauthorized distribution of Nollywood films have led to calls in recent years for greater intellectual property enforcement against Nollywood pirates. Discussions that attempt to place events in Nollywood within a broader global discourse about piracy may significantly oversimplify the role of unauthorized uses in Nollywood. Further, low levels of copyright protection that existed in the earliest stages of Nollywood development may be instructive in considering what constitutes optimum levels of intellectual property both in instances of developing business sectors, as well as in developing countries generally.

The experiences of Nollywood underscore the potential benefits in thinking about levels of intellectual property protection in a flexible manner that takes account of the stage of development of the industry and country. Historical examples suggest that flexible application of intellectual property frameworks may serve as an effective development strategy. German industrial development in the nineteenth century may be attributable at least in part to a lack of comprehensive national copyright protection, which led to a proliferation of books and knowledge that was the basis for German industrial power. Similarly, the flexible approach of the United

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States in the nineteenth century with respect to global rights frameworks contributed to its economic development: “[t]his calculus [of balancing private welfare and social welfare] ensured that the legal system reinforced the rights of intellectual property holders while reducing the social costs of exclusion.”\(^{181}\) Similarly a number of countries in Asia have followed a similar strategy of weak intellectual property (in many instances patent law) as a mechanism for facilitating the adaptation and imitation of foreign technologies, which was used as a means by which to develop technological, scientific, and commercial capacity.\(^{182}\) The U.S. development model represents an important one for developing countries today. In the copyright arena, for example, the U.S. followed a developing country approach toward intellectual property enforcement that took account of the needs of the local context with respect to access to knowledge and considered widespread copyright piracy of foreign authors to be international fair use.\(^{183}\)

Historical experiences of developing countries highlight the potential benefits of flexible intellectual property frameworks. Similarly, emerging businesses sectors may also benefit from flexibility in the application of copyright, for example. As Nollywood illustrates, businesses in development stages may actually benefit and gain brand recognition and market share as a result of low levels of intellectual property protection.\(^{184}\)

### B. Nollywood Business Models, Brand Value, and Piracy

As an emerging industry sector in the earliest years of its development, Nollywood likely benefited from widespread unauthorized distribution of Nollywood productions. Widespread unauthorized distribution enabled viewers to sample Nollywood films and helped solidify recognition of Nollywood products among a wide network of Africans on the continent and in the diaspora.\(^{185}\) In the early days of Nollywood’s market penetration, losses from sales were ameliorated by increases in the intangible value of the Nollywood brand. Now, however, many consider piracy to be the biggest constraint on the future development of Nollywood.\(^{186}\)

As Nollywood businesses have matured, this value equation appears to have changed, and Nollywood has reached a point where higher levels of copyright enforcement would be beneficial.

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182 LINSU KIM, LEARNING AND INNOVATION IN ECONOMIC DEVELOPMENT (1999).


184 Arewa, supra note 15, at ___.

185 Brian Larkin, Degraded Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy, 16 PUBLIC CULTURE 289, 290 (2004) (“These Nigerian videos are a legitimate media form that could not exist without the infrastructure created by its illegitimate double, pirate media.”).

to further development of the Nollywood industry. Recent discussions of Nollywood draw attention to the losses that Nollywood producers suffer from piracy, which make it harder for Nollywood films to recoup costs and make a profit, which many believe will circumscribe the ability of Nollywood directors and producers to get financing. As has been the case in other arenas such as digital music in the digital era, many may assert that intellectual property enforcement can help solve the problems of unauthorized distribution. As is the case in other arenas, hopes about the potential of intellectual property enforcement to make up for fundamental problems with business models may constitute a mirage that misses other potentially lucrative sources of value for certain types of content.

Although unauthorized distribution of Nollywood films has facilitated Nollywood brand recognition, unauthorized distribution has also reduced profits to producers, directors, and distributors of Nollywood films and thus may also serve as a harbinger of future limitations of existing Nollywood distribution and business models. Current Nollywood business practices result in production of more content than will likely be successful. The potential risks of this strategy are at least partially ameliorated because of the relatively low cost of each individual Nollywood film. In the early days of Nollywood development, Nollywood creators typically did not invest extra money in increasing the quality of films, but rather quickly released movies and see which releases become popular. The pressure for quick releases may thus itself a business response to piracy.

Although reliable figures about Nollywood are difficult to obtain, existing data from the mid-2000s suggests that Nollywood films cost approximately US$ 15,000 to US$ 40,000 to make, are often financed by friends and family, and have an average production time of approximately 7 days. A Nollywood film may thus be shot in as few as one to two weeks and edited and packaged for sale in another week. Nollywood business models employ significantly different financing models than is the case with traditional film creation and distribution models in Hollywood and Bollywood:

The marketer or producer is a businessman. In Hollywood, you have big corporations like Banks, when you want to shoot a film, you send in your proposal and they finance it. Do you know how we shoot films in Nigeria? If you are my uncle and you have money, I would walk up to you and say, borrow me 2 or 3 million [Naira] [or approximately $US 13,000-$US 20,000]. Let’s be sincere with ourselves, how many banks would loan you that kind of money. Like Ameze [Imarhiagbe], she sold her mother’s land to shoot

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187 Haynes & Okome, supra note 19, at 69.
188 Arewa, supra note 15, at ___.
189 Connors, supra note 2 (stating average cost of Nollywood film productions as between $15,000 to $25,000); UNESCO, Global Opportunities for Internet Access Developments, at 34, Feb. 2008, http://www.olis.oecd.org/olis/2007doc.nsf/NEWRMSFREREF/NT00005BFA/SFILE/TO03239667.PDF (stating average cost of Nollywood film productions to be between $15,000 and $40,000 and noting 7 day typical production time).
190 Marston, Woodward & Jones, supra note 81, at 54.
Films are finished quickly and are then roughly edited; producers then rent or sell films to distributors (called marketers), who market the video and pay producers. Primary Nollywood distribution centers are located in Idumota Market on Lagos Island and in Upper Iweka Road in Onitsha in Anambra State in southeastern Nigeria. Because the success of films may be difficult to gauge, initial Nollywood runs tend to be small, with initial production of 15,000 DVDs with no copy protection that are distributed largely through informal networks. Distributors, who tend to be powerful driving forces in Nollywood, in turn rely on networks of small-scale sellers at kiosks, temporary spaces, and street corners, who receive a commission for sales and return stock not so sold to distributors. Because they may invest in the production of video films, Nollywood distributors may also play a greater role in determining the content of films than may be the case in film industries elsewhere in the world.

Producers and distributors often cannot meet demand for hit films, which leads to significant copying of hit films and revenue losses to Nollywood producers. Popular Nollywood films are often rapidly copied, at times by marketers entrusted with distributing the film. The inability of producers to keep up with demand may give an opening to bootleggers who can meet such demand. Some commentators suggest that bootleg copies of Nollywood films are made in China and then sold in Nigeria and elsewhere in the world. Nollywood business models already embed mechanisms to deal with the problem of unauthorized distribution. In addition to relying on speed and lead time, Nollywood creators often stay ahead of pirates by relying on remakes and multiple sequels. Remakes and multiple sequels can be seen as yet another business mechanism for dealing with problems of unauthorized distribution because they enable better prediction of potential demand for particular movies. Unsuccessful movies should thus be less likely to lead to sequels.

An average Nollywood film may sell about 50,000 copies, while successful films may sell 400,000 or more copies. The most successful Nollywood film to date is said to be the comedy

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192 Osei-Hwere & Osei-Hwere, supra note 109, at 7; Akpabio, supra note 152, at 96.
193 African Movie Channel, supra note 115.
194 Connors, supra note 2.
195 Connors, supra note 2.
196 Osei-Hwere & Osei-Hwere, supra note 109, at 7
197 Id.
198 Id.
199 Haynes & Okome, supra note 186, at 69.
200 Connors, supra note 2.
202 Barrot, supra note 113, at 43.
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*Osuofia in London*, which is estimated to have sold more than 800,000 copies,\(^{203}\) with estimated sales revenues likely in excess of US$ 9 million.\(^{204}\) *Osuofia in London* is a Nigerian version of the country bumpkin comes to the city movie theme.\(^{205}\) In this film, Osuofia travels to London following the death of his brother, who had amassed a fortune in London, and meets his brother’s English fiancée, Samantha. In both London and Nigeria, where the action moves in Part 2 of *Osuofia in London*, Samantha schemes to take Osuofia’s brother’s inheritance from him. *Osuofia in London* benefits from the comic skills of its star, Nigerian comic Nkem Owoh, winner of the 2008 African Movie Academy Award for Best Actor.\(^{206}\) Nkem Owoh later starred in a film featuring the same character entitled *Bonjour (Osuofia Speaks French).*\(^{207}\)

The rise of Nollywood raises significant questions about the meaning and uses of intellectual property laws in varied contexts of cultural production. Viral Nollywood distribution results from a lack of industry control over distribution channels.

Discussions of piracy in Nollywood demonstrate the need for finer distinctions in discussions of unauthorized copying and distribution more generally and greater focus on types of unauthorized distribution that represent the biggest business threats. More fine-grained analysis is needed because the success of Nollywood is likely attributable at least in part to rampant unauthorized global distribution of Nollywood films. The Nollywood story may not fully conform to dominant assumptions about incentives often made in intellectual property discourse about the relationship between intellectual property protection and cultural production. The Nollywood example suggests the need for more nuanced understanding of the interaction between intellectual property and cultural production and greater recognition of potentially varied ways in which intellectual property may influence the shape and business of cultural production.

C. *Nollywood Networks and Distribution: Control, Pricing, and Intellectual Property*

Unauthorized distribution of Nollywood films is part of a wider pattern of increasing unauthorized distribution in the digital era. Widespread unauthorized copying in the digital era has led to pervasive labeling of all types of unauthorized copying as piracy.\(^{208}\) Although Nollywood films are still largely distributed in physical format in Africa, unauthorized distribution of Nollywood films underscores the pricing consequences of loss of control over

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\(^{204}\) Barrot, *supra* note 113, at 43; Parkinson, *supra* note 1, at 4.

\(^{205}\) Parkinson, *supra* note 1, at 4 (“Directed by Kingsley Ogoro, *Osuofia in London* (2003) stars Nkem Owoh as a country bumpkin whose shortcomings are exposed when he goes to London to discuss his late brother’s will and becomes convinced that white sister-in-law Mara Derwent is part of his inheritance. Some protested at Ogoro's unpatriotic mockery of Nigerian attitudes. But sales reached an unprecedented $8.9 million and a sequel followed to chronicle Derwent's culture clash misadventures in Owoh’s village.”).


\(^{207}\) *BONJOUR (OSUOFIA SPEAKS FRENCH)* 1 (Great God Productions 2004); *BONJOUR (OSUOFIA SPEAKS FRENCH)* 2 (Great God Productions 2004).

\(^{208}\) Arewa, *supra* note 15, at ___.

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distribution chains that have become pervasive in the digital era more generally.\textsuperscript{209}

The informal structure of Nollywood distribution makes unauthorized distribution of Nollywood films fairly easy to do. Although Nigeria has a copyright law that protects Nollywood creators and a Nigerian Copyright Commission that visibly and prominently focuses on preventing piracy,\textsuperscript{210} copyright enforcement in Nigeria remains weak, and significant counterfeiting occurs in Nigeria.\textsuperscript{211}

Industry officials and government agencies have started paying closer attention to piracy, but so far there hasn’t been much of an effect. A recent police raid on a well-known DVD-copying operation resulted in a brief confrontation between police and piracy-ring leaders. The pirates stood their ground and burned a police truck, then went back to work making knock-off Nollywood copies. The only repercussion for the offenders? A bill for the damage to the police vehicle.\textsuperscript{212}

However, a 2010 raid and seizure of more than 10,000 counterfeit Nollywood DVDs in Brooklyn may give indications of greater future Nigerian copyright vigilance, which may benefit Nollywood creators.\textsuperscript{213} Weak copyright enforcement in Nigeria may be at least in part a legacy of technology leapfrogging in Nigeria that essentially skipped the “film” stage of the film production business by going straight to video and moving early to digital video. The development of the film business as a video business in Nigeria means that industry structures based on centralized distribution and control that promoted and enforced particular intellectual property configurations did not develop in Nigeria. These differences in film industry institutional structures make it relatively more difficult for Nollywood participants to assert control over Nollywood film distribution.

Nollywood creators suffer from two types of distinguishable yet related unauthorized copying and distribution. The first is associated with counterfeiters, who duplicate popular films and resell them, directly depriving Nollywood creators and distributors of revenue. The second is associated with retail distributors, who may sell or rent films that come from counterfeit sources but who may also themselves copy and distribute video. The first type of unauthorized copying can be addressed to a significant degree by copyright enforcement strategies. The second type of unauthorized copyright also implicates copyright but is also closely connected to industry organization and manners of doing business. Counterfeiting of Nollywood films is facilitated by the low price point and quality of Nollywood videos, which gives distributors little flexibility in pricing.\textsuperscript{214} Although price estimates vary significantly, Nollywood films can sell for as little as

\textsuperscript{209} Id.

\textsuperscript{210} Nigerian Copyright Act, supra note 11.


\textsuperscript{212} Connors, supra note 2.


\textsuperscript{214} Osei-Hwere & Osei-Hwere, supra note 109, at 8.
US$ 2-4 dollars in Nigeria. Some suggest that audiences are not willing to pay greater amounts for improved quality. As Nollywood matures and achieves greater scale, lost revenues from unauthorized distribution are an increasing problem that requires both legal and business solutions.

III. **BEYOND COPYRIGHT: ENTREPRENEURS, LAW, AND THE FUTURE OF NOLLYWOOD**

Problems that complicate doing business in Nigeria include crumbling roads and bridges, erratic telephone service, recurring shortages of fuel, water, electricity and social unrest in some parts of the country.

Although formal legal rules clearly matter, in part because such rules constitute official game rules that govern business transactions, the effective operation of such rules of the game depends to a significant degree on informal rules and the manner of play by which businesses actually undertake their activities. The manner of play thus encompasses how industry participants navigate within or outside of existing formal rules, and may underscore ways in which formal legal rules constrain or enable particular activities.


Unauthorized distribution is one of many challenges that Nollywood participants must confront. Given this, Nollywood strategies that focus on copyright law and enforcement alone, without appropriate attention to issues related to Nollywood business models, are unlikely to significantly change the state of affairs in Nollywood. Rather, the problems of Nollywood that are identified as a consequence of piracy are also in part a result of an absence of business and financial institutions that can facilitate the further development of Nollywood. That said, Nollywood participants have accomplished much in developing a commercially viable film production industry that has achieved global status and attention. Further, Nollywood is the “only economically self-sustainable film industry in Africa.”

Discussions of piracy and Nollywood often conflate problems of piracy with problems of informality. This conflation matters because different types of solutions may exist for each of these problems. Further, because Nollywood films are largely self-financed and Nollywood distribution is both opaque and semi-formal, the development of formal structures surrounding Nollywood production and distribution are a necessary first step in putting Nollywood on firmer ground for continued business development and growth. Such formal structures are the basis by which Hollywood has developed and are particularly important in contemporary contexts where

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215 Id. at 8; but see Mackay, supra note 7 (suggesting that authentic Nollywood films sell for $7 and unauthorized copies sell for $4).
216 Osei-Hwere & Osei-Hwere, supra note 109, at 8.
219 Bisschoff, supra note 33, at 453.
220 Ogunyemi Paper, supra note 84, at 8-9.
backend sources of revenue are increasingly important and, in the case of Hollywood, now dominant sources of revenue.\(^{221}\)

The semi-formal nature of Nollywood business activities is characteristic of business activities in Nigeria more generally.\(^{222}\) Nigeria has a large informal economy that in 1999-2000 was estimated to comprise more than half (57.9 percent) of Nigerian Gross National Product, which is the third highest percentage in Africa. The size of the Nigerian informal economy contrasts with an OECD average informal economy size of 18 percent and a developing country average informal economy size of 41 percent.\(^{223}\) Informality in Nollywood is evident in a number of practices that are likely to assume even greater significance as Nollywood continues to expand. Contracts are rarely signed in Nollywood, which means that underlying intellectual property rights are often not clearly delineated or allocated.\(^{224}\) Nollywood participants also typically do not have access to formal financing mechanisms, and any bank financing obtained does not rely on intellectual property as collateral but rather is typically secured by the borrower’s personal assets.\(^{225}\)

Nollywood is among the most prominent arenas for economic growth in Nigeria outside of the oil sector.\(^{226}\) The location of Nollywood business activities in the informal economy is a response to the Nigerian business environment. Nigeria ranks in the bottom half of the world in most global measures of ease of doing business. Nigeria’s 2012 ranking for overall ease of doing business was 133 out of 183.\(^{227}\) Of most relevance to Nollywood are the national rankings for ease of starting a business (Nigeria’s rank 116, down from 108 in 2011), registering property (Nigeria’s rank 180), getting credit (Nigeria’s rank 78), and enforcing contracts (Nigeria’s rank 97). Nigeria ranks number 176 in getting electricity, which is an important element of film and other industries.\(^{228}\) Surprisingly, areas of Nigeria with the most commercial activity in many instances rank in the bottom half of Nigerian sub-regions. For example, Lagos, the commercial capital of Nigeria, ranks 25 of 37 Nigerian sub-regions in ease of starting a business.\(^{229}\) Abuja, the capital of Nigeria, which ranks 15 of 37 among Nigerian sub-regions, is the highest ranked major city in Nigeria for ease of starting a business.\(^{230}\)

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\(^{221}\) Epstein, supra note 82, at 23.

\(^{222}\) Lobato, supra note 106, at [4] (noting that Nollywood is a product of the informal economy).


\(^{224}\) Ogunyemi Paper, supra note 84, at 8.

\(^{225}\) Id. at 8-9.

\(^{226}\) Lobato, supra note 106, at [11-12].


\(^{230}\) Id.
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Many of the activities contributing to Nigeria’s low rank in ease of doing business indicators are ones that could facilitate the development in the formal sector of emergent and high growth entrepreneurial activities like those in Nollywood. Nigeria’s ranking in the bottom half of countries for many of these activities reflects the number of procedures, time, and cost of undertaking such business activities and potential uncertainty of allocations of property rights. Starting a business in Nigeria requires 8 procedures, takes 34 days, and costs more than 70 percent of annual per capita income. Enforcing contracts in Nigeria is similarly slow and costly, involving 40 procedures, taking 457 days with a cost of 32 percent of the contract claim being enforced.

Nollywood creators, participants, and other entrepreneurs in Nigeria must weigh these high costs of formalizing a business against the costs and benefits of operating on a semiformal or informal basis. Although individual businesses operating on an informal basis may yield short term benefits from avoidance of tax and employment costs, informality may have a negative impact on institutional development, economic growth, and employment in the long run. At the current state of Nollywood’s development, the benefits of formality and costs of informality are becoming increasingly apparent. For example, operating in the informal economy imposes significant opportunity costs with respect to financing, which is difficult for informal economy enterprises to obtain. Further, Nollywood would benefit to a significant degree from greater formalization, which could then serve as a basis for the continued development of Nollywood as a global film industry. However, the high costs of starting a business in Nigeria are likely to be a disincentive for creators and entrepreneurs who start in the informal economy to move into the formal economic sphere.

B. Nollywood Manners of Play: Informality, Institutions, and Development

The high costs of starting a business in Nigeria skews entrepreneurs’ decisions with respect to starting formal businesses and is an impediment to scaling of entrepreneurial activities. In general, entrepreneurs take advantage of formal business organizations in large part because of limited liability. By making the costs of forming businesses high, current Nigerian regulatory frameworks give incentives for entrepreneurs to remain in the informal economy, and thus impede the development of robust entrepreneurial businesses in the formal economy. Because businesses may stay in the informal economy to a greater extent than is optimal, current regulatory structures also make financing entrepreneurial businesses more difficult, which has

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231 INT’L FIN. CORP., supra note 227, at 117.
232 Id.
234 Id.
237 Leora Klapper, Luc Laevena & Raghuram Rajan, Entry Regulation As a Barrier to Entrepreneurship, 82 J. Fin. Econ. 591, 598 (2006) (“[A] big and common carrot behind registration as a corporation is limited liability, which allows entrepreneurs and investors to take risks”).
direct bearing on Nollywood future growth prospects.

Other limitations in Nigerian legal and regulatory frameworks further hinder the growth potential of the Nollywood industry. Property rights are difficult to register in Nigeria, which has one of the least efficient property registration systems in the world.\footnote{\(\text{238}\) Heritage Foundation, 2010 Index of Economic Freedom: Nigeria 327, 328 (2010), http://www.heritage.org/index/pdf/2010/countries/nigeria.pdf.} Property ownership in Nigeria is also highly centralized. Under the Land Use Act of 1990, ownership of all property in Nigeria is vested in the governor of the state or local government in which the property is located or, in the case of the Federal Capital Territory, the Nigerian federal government.\footnote{\(\text{239}\) Land Use Act (LUA) Cap. 202 (Laws of the Federation of Nigeria), 1990, at § 1, http://www.nigeria-law.org/Land%20Use%20Act.htm (“Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.”).}

Uses of intellectual property in Nollywood for financing and other purposes are limited. Systems for registering ownership of intellectual property so as to establish a clear chain of title with respect to ownership and recording security interests in films need to be improved.\footnote{\(\text{240}\) Ogunyemi Paper, supra note 84, at 9-10.} Education of Nollywood participants about copyright law and copyright best practices will also be an important part of any attempts to improvement copyright enforcement in Nollywood.\footnote{\(\text{241}\) C.M. Adelowo, A.A. Egbetokun, I. Oluyi, D.A. Abolaji, & W.O. Siyanbola, The Management of Copyright in the Creative Country Industry in Nigeria: Nollywood Experience, University of Malaysia Conference, http://umconference.um.edu.my/upload/43-1/papers/286%20Adelowo_Egbetokun_Oluy_Abolaji_Siyanbola.pdf.} Nollywood business activities also need improvement of formal documentation and accounting of profits.\footnote{\(\text{242}\) Ogunyemi Paper, supra note 84, at 10-11.}

Discussions of the problems confronting Nollywood focus to a significant degree on problems related to unauthorized distribution of Nollywood films and piracy. Although Nollywood does need to develop strategies for dealing with unauthorized distribution, many of the long-term challenges facing Nollywood relate to other aspects of business and legal institutions and infrastructures. Modifications of existing legal and regulatory regimes could do much to facilitate the future development of Nollywood as a high growth segment of the economy that is incorporated to a greater extent in the formal sector. For example, decentralization of company registration, at least to the extent of creating company registration frameworks more suited to entrepreneurial companies, might help foster the formalization of entrepreneurial business activities.

In the case of Nollywood, the Nigerian federal government could develop regulation targeted at entrepreneurial business activities in the film sector that is either centralized at the federal level, or even better, decentralized with authority given to the states to undertake company registration of entrepreneurial companies within specified parameters. Nigeria currently faces a number of issues relating to the allocation of power between the federal government and the 36 Nigerian...
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State level registration, if structured properly, could provide a decentralized framework that promotes regulatory competition among Nigerian states targeted at types of entrepreneurship associated with specific localities. Any regulatory reform should be structured in light of this relationship with a goal of encouraging each state to develop competence in promoting the development of entrepreneurial business sectors within Nigerian states. Any alternative entrepreneurship-focused registration systems should be crafted to meet specified performance parameters. For example, applicable regulations could provide for the continuing collection and analysis of regulatory performance data with a requirement that these alternative regulatory frameworks meet specified ease of doing business criteria at least at the level of OECD country average levels. These alternative company regulatory frameworks could also include specific requirements with respect to disclosure, transparency, and corruption from the perspective of both regulators and the regulated that are in line with specified best practices internationally. Entrepreneurial companies could be encouraged to participate in alternative company regulatory frameworks through tax and other incentives that would make the benefits of participation in such alternative regimes more appealing.

C. Creating a New Nollywood Playbook: Monetizing Piracy through Nollywood Networks

Discussions of the piracy problem in Nollywood are based upon goals for control of distribution that may simply not be viable for Nollywood given current institutional structures and manners of doing business. In addition to dealing with piracy and issues of control of distribution, Nollywood participants should undertake focused strategies to address varied business and legal impediments. The development course of Nollywood, which in fact increasingly moving to digital distribution outside of Africa, and events in other arenas, suggest that the battle to control piracy will not be an easy one. Further, to the extent that webs of unauthorized uses enmesh consumers and end users, seeking to impose desired pricing in the face of rampant unauthorized distribution, or even the possibility of such distribution, may be futile, particularly given broad nature of Nollywood distribution networks. This ultimately may mean that price reductions may be one way to deal with problems of piracy, particularly to the extent that Nollywood participants can effectively harness other sources of value. Nollywood participants thus far have focused to a significant extent on the value of Nollywood content, which may obscure other potential sources of value to Nollywood participants. For example, the network of viewers reached by Nollywood films may be valuable to advertisers and others who may be willing to pay to have access to such viewers. The value of these Nollywood networks may actually be far greater than the value of the content itself.


Nollywood creators could benefit from greater attention to distinguishing problems of piracy from problems of unauthorized distribution related to informality. Nollywood participants should then follow an approach that encourages better copyright law enforcement to deal with bootlegging but that seeks to also monetize to the greatest extent possible the unauthorized distribution that will no doubt occur. Strategies that may help facilitate monetization of Nollywood creations include development of Nollywood product differentiation and branding strategies, improvement of control over distribution chains, and identification of mechanisms for harnessing greater revenues from Nollywood networks. Monetizing Nollywood networks will require assembly of detailed and specific data and other information about the composition of Nollywood distribution and viewer networks. A clear need exists for far greater market intelligence about the scope, scale, and pricing of the Nollywood business, including Nollywood distribution networks. Existing technologies, including crowdsourcing and mobile applications, if implemented with appropriate incentives, may provide a basis for beginning to assemble data about the Nollywood business, even in the absence of effective industry control over such networks.

Discussions about the future of Nollywood should seek to move beyond discussions of copyright and piracy to fundamental reconsideration of a broader range of business and legal issues. Nollywood business models would also benefit from greater attention to intellectual property rights other than copyright. Nollywood participants should consider establishing multiple levels of Nollywood video brands distinguished by both film quality and pricing. This may already be occurring to some extent because the return of cinemas to Nigeria has led to the creation of films shot in 35 millimeter for viewing on large theater screens. The 2008 Nollywood release, *Amazing Grace*, was shot on 35 millimeter and shown in movie theaters. Further, some of these films are pushing Nollywood into new genres and production techniques. In 2010, for example, *Kajola*, a Nollywood science fiction film, premiered in theaters in Nigeria but was pulled from cinemas in Lagos after customer complaints. The negative reception of *Kajola* by...

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248 *Producers Who Changed Nollywood*, supra note 246.

at least some viewers suggests that the expansion of Nollywood films to new arenas will need to be handled with care. The manner of Kajola’s withdrawal from theaters also draws attention to questions of formality and compliance with contracts in Nollywood.\textsuperscript{250}

The Nigerian film industry would benefit from more targeted branding and marketing of films. For example, the types of video films that have come to characterize Nollywood in its early phases could be branded as “Nollywood Original” or “Nollywood Classic” and could continue to reflect fairly inexpensive pricing and low cost production models. Nollywood Classic business models could seek to monetize piracy by garnering value from the distribution networks Nollywood Classic movies reach through transactions that generate up-front revenues. Nollywood participants could then take a two-pronged approach to dealing with unauthorized distribution and piracy by focusing enforcement on bootlegging. Nollywood participants could then seek to brand a higher quality level of production that could have a higher price point. These videos or films could be branded “Nollywood Select” and would reflect higher production values and film content. Nollywood Select productions could also realize up-front revenues but would also receive significant revenues from sales of the content itself. Approaches that incorporate a Nollywood Select strategy would require more vigilant intellectual property enforcement and greater formalization of Nollywood business activities, including with respect to allocations of intellectual property rights, and signing contracts to enforce such rights.

Other branding focused approaches might involve some group of Nollywood creators focusing on developing affirmative branding strategies that seek to minimize the impact of unauthorized distribution. Nollywood creators could, for example, join together and establish mechanisms for creating a collective Nollywood logos and certification with affirmative branding strategy that seeks to identify, promote, and encourage consumers to only buy videos identified as “real” Nollywood films. Although education of Nollywood fans and viewers is likely to be a blunt and rather ineffective instrument, Nollywood stars should be engaged to undertake a public relations campaign that seeks to encourage consumers to buy “real” Nollywood films.

Part of any Nollywood branding strategies should involve recognition that copyright should not be the only intellectual property right of concern to Nollywood. Branding strategies involve uses of trademark. Trademark filings in the United States do not reveal significant recognition of Nollywood brand value. In contrast to the term “Hollywood,” which in February 2012 had 2,854 dead and live marks in the U.S. Patent and Trademark Office Trademark Electronic Search System (TESS),\textsuperscript{251} and the term “Bollywood,” with 95 such marks, as of February 2012, one trademark had been granted in the United States for the term “Nollywood” for Nollywood Film Critics Star Ratings.\textsuperscript{252} Other than this single mark, the word mark “Nollywood” is only evident in two dead trademark applications that were filed in 2008 and 2009 and abandoned in each case.

\textsuperscript{250} Kajola Sparks Trouble at Silverbird, supra note 249.
\textsuperscript{251} The U.S. Patent and Trademark Office Trademark Electronic Search System (TESS) is available here: http://tess2.uspto.gov/bin/gate.exe?f=tess&state=4003;gugaud.1.1.
\textsuperscript{252} See U.S. Patent and Trademark Office, Trademark Application Serial No. 85360037 (filing date June 28, 2011).
in the year following the trademark application filing. In addition to utilizing trademarks and undertaking more aggressive branding strategies, Nollywood participants should also consider to the greatest possible extent whether uses of technology in Nollywood could be the basis for any patent filings.

In addition to branding, Nollywood producers need to professionalize the distribution chain and improve industry responses to supply and demand signals so as to anticipate and meet the demand for hit films. As part of Nollywood network revenue harvesting, Nollywood producers could, for example, attempt to develop greater understanding about Nollywood consumers globally through surveys and use of prizes to give consumers incentives to provide information. Information concerning Nollywood consumers could be used as a basis for determining the best courses of action for developing pre-production revenue sources.

In developing additional revenue streams, Nollywood creators should be encouraged to strike deals that leverage the value of Nollywood distribution networks by utilizing technologies that will enable them to sign deals that entail receiving upfront compensation based on distribution through sales of individual films or portfolios of films. A number of mechanisms could be used to monetize Nollywood networks, including embedded advertising on “real” Nollywood DVDs, product placement within Nollywood videos, and sponsorship deals. Nollywood could then operate with a range of models, including ones that seek to price based on the value of content. Other Nollywood models could target consumers that might be willing to exchange cheap content prices for advertising and other alternate sources of revenue.

The reality of future large-scale Nollywood distribution over the Internet makes modification of Nollywood business and revenue structures a particularly pressing concern. Even with minimal distribution over the Internet, Nollywood faces concerns that are similar to those distributing digital content on the Internet. Development of alternate sources of revenue and new business models can enable Nollywood to have a more robust future that reflects monetization of the potential new sources of Nollywood value.

Nollywood can also teach us something about broader digital era disputes outside of the Nigerian context. Discussions about digital era piracy not infrequently treat all unauthorized uses as piracy, which raises questions of morality or even criminality. Blanket uses of the term piracy obscure the presence of at least two different types of unauthorized uses that may require different legal and business approaches. On the one hand, a broad range of content owners face the threat of broad based unauthorized uses, some of which may involve criminality. On the other hand, many content owners face a struggle with respect to both potential licensees of

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Nollywood content and end users about the value and price of Nollywood content, which are fundamentally different issues than the piracy associated with bootlegging. More robust copyright enforcement should be undertaken immediately with respect to bootlegging, but should come together with greater formalization of business activities with respect to potential licensees and distribution sources by which end users obtain Nollywood films. Issues of bootlegging and formalization of business activities may be connected to the extent that consumers and potential licensees elect to purchase content from counterfeit sources that do not result in compensation to creators of content. The problem of counterfeiting is one that stronger intellectual property enforcement may help, although the business reality of widespread loss of control over distribution of content by cultural industries makes dealing with counterfeiting increasingly difficult.

Unauthorized copying, distribution, and other uses by potential licensees, consumers and end users require different approaches in part because debates about unauthorized uses often conceal fundamental disagreements about the appropriate price of content. Industry approaches that conflate counterfeiting and all unauthorized uses as forms of piracy may also fundamentally diminish recognition of the most critical threats to industry business models. Such approaches may at the same time delay necessary adjustments in business models to address changes in the business and cultural landscape that have lessened industry control over content in many cultural industry sectors.256

The loss of control over distribution associated with digital content (or in the case of Nollywood informal distribution and lack of control over distribution to begin with) has in many instances diminished the ability of creators and distributors of content to control pricing. The business, technological, and cultural realities of the digital era suggest that industry business strategies that rely on recourse to stronger intellectual property protection may in some instances be a mirage that hides the fact that intellectual property enforcement represents at best a partial solution to problems of control of the distribution chain. Copyright enforcement may be much more difficult with content, digital or otherwise, distributed through broad reaching networks as is the case of Nollywood.

CONCLUSION

Nollywood business model problems categorized under the rubric of piracy require multiple strategies that seek to simultaneously reduce and monetize piracy. Pre-digital cultural industry distribution models outside of Nigeria could impose pricing that in part reflected the value of effective control of the distribution network. Digital era business and cultural realities have shifted many cultural industry participants along the control continuum in a direction of less control. A content control continuum might have no control at one extreme, which would encourage widespread distribution of content and might lead to dense networks of distribution that may be nonlinear and difficult to predict. The content owner would likely have little control over pricing, which suggests that the volume of distribution would be higher than if the owner had pricing control and could impose a higher price. Absolute control over distribution would be

256 Arewa, supra note 15, at ___.
on the opposite extreme of this continuum and would enable a content owner to absolutely control all uses of content, with commensurate reductions in volume. Intellectual property rights permit exertion of high levels of control over content control in theory. However, digital era technologies may effectively nullify or significantly reduce any ability for such control of distribution of content. This represents a significant digital era shift with which cultural industry participants are still grappling. Pre-digital era industry business practices in the U.S., for example, reinforced and gave teeth to the control rights granted under copyright laws. The Internet has compromised effective control over a broad range of cultural industry distribution networks, making control over content increasingly difficult for many content owners. Control over content would make the composition of the network highly predictable and likely less dense, assuming that the content owner could completely control the network and all uses of the content.

The digital era has in many instances moved creators of content closer to the no control side of the content control spectrum. Given the lesser control of the composition distribution networks that this move entails, creators in Nollywood and elsewhere should seek to develop new models that seek to garner greater value from the distribution network itself. This means moving away from pricing models that seek to profit from the value of content itself and developing business models that seek to profit from distribution networks themselves and other sources of value related to such content. For example, if content creators could monetize the distribution network itself, that creator could confound pirates by giving away the content for free. This strategy would of course require that the content owner could harvest other sources of revenue from the distribution network or other uses of content. In the case of Nollywood, in confronting the challenges of the digital era, Nollywood participants should focus on adopting flexible business models that can be a basis for sustained future growth of the Nollywood film industry.