

THE STREAMING WARS: A WIN FOR THE NIGERIAN ENTERTAINMENT AND MEDIA INDUSTRY

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Introduction

Online streaming has become a globally accepted means of accessing movies, shows and other video related content. This wide acceptance was spiraled by the Covid-19 pandemic which forced consumers to source for entertainment indoors due to lockdowns and imposed restrictions on movement. The consequential effect of the pandemic also intensified the ongoing battle (between top video streaming platforms) over subscribers and content in what has been termed “the streaming wars”¹. For context, the emergence of new companies in the global streaming industry launched a competition for people’s time, attention and money which translates to monthly subscriptions on these platforms.

On 17 May 2021, Discovery and AT&T announced a merger between Discovery and Warner Media to create a new company which aims to secure 400million streaming subscribers worldwide with US\$20billion spent on content yearly.² Not long after this announcement, Amazon declared its intention to acquire MGM studios (the owners of the James bond franchise) for US\$8.45billion³ thereby threatening the market position of strongholds such as Netflix and Disney+.

Now what does this mean for the Nigerian Entertainment & Media (“E&M”) industry?

¹ <https://www.theverge.com/2020/2/6/21126156/streaming-wars-disney-plus-netflix-wall-street-subscribers-hbo-max-peacock>

² <https://www.cnbc.com/2021/05/17/att-to-combine-warnermedia-and-discovery-assets-to-create-a-new-standalone-company.html>

³ <https://edition.cnn.com/2021/05/26/media/amazon-mgm-deal/index.html>

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In this article we discuss foreseeable impact of the streaming wars on the Nigerian E&M market.

Potential impact on the E&M market

The Nigerian movie industry (“**Nollywood**”) accounts for a huge part of films produced in Nigeria and in Africa. According to Statista’s report, the Nigerian film industry generates the largest share of box office revenue in anglophone West Africa, and only second to Hollywood in terms of most valuable cinematography productions in the region.⁴ Thus, given the global nature of the streaming wars, the current trend of acquisitions could extend to Nigerian movie studios who possess the ‘know-how’ for creating premium indigenous content.

As an alternative to outright acquisitions, most companies may opt to secure exclusive rights over indigenous films. Interestingly, the likes of Disney and Netflix already have a head start on this. In December 2020, Disney announced a landmark collaboration with Kugali media, a Nigerian-Ugandan company to develop a sci-fi series “Iwájù” (which means ‘the future’ in Yoruba). The animation series is set in the future city of Lagos and scheduled to premiere on Disney+ in 2022.⁵ Netflix on the other hand, has massively acquired media rights to contemporary and trendy Nollywood movies which are replete on its platform. These acquisitions could get more competitive with the entry of other video streaming platforms in the market.

Another foreseeable impact of the streaming wars is on the consumption of sports content. Sports is a huge source of entertainment in Nigeria and is mostly broadcasted by PayTV operators such as DSTV. Currently, in sports broadcasting, there is a gradual shift from traditional broadcasting to online streaming which is promulgated by video streaming platforms such as Amazon. The tech giant acquired media rights to show 20 English premier league games on Amazon prime⁶ while DAZN’s bid for the Italian Serie A rights was enough to oust the traditional PayTV bidders Sky Italia.⁷ That said, streaming platforms planning to win over Nigerian subscribers could leverage on the country’s love for sports (particularly football) by acquiring the right to broadcast prime sporting events in the country.

The streaming wars could also impact on the growth of local streaming companies and by extension the Nigerian E&M industry. Given the global exposure of Nigerian content (which is an ancillary benefit), investors could be encouraged to invest in local streaming companies with a niche in providing indigenous content on their platforms. This inflow of investment would mitigate access to capital which is a major issue for entrepreneurs in the Nigerian streaming industry. Further, a high demand for content begets a high demand for talent and content creators, thus, with premium content as the new goal, the streaming wars could

⁴ <https://www.statista.com/topics/7214/film-industry-in-anglophone-west-africa/>

⁵ <https://www.bbc.com/news/world-africa-55278034>

⁶ <https://www.nytimes.com/2018/06/07/business/media/premier-league-amazon-soccer.html>

⁷ <https://www.sportspromedia.com/news/serie-a-rights-dazn-italy-sky-domestic-contract>

create an opportunity for new talent to thrive in the industry while enhancing the quality of work produced.

Legal Considerations

The transfer of movie rights is primarily regulated by the Copyright Act (the “Act”) which protects authors of films/movies in Nigeria.⁸ The Act permits authors to license or transfer exclusive rights to third parties⁹ which is mostly in exchange for full consideration or a stake in the revenue generated from promoting the movie. However, to validly assign exclusive rights in a movie, the assignment or transfer must be in writing.¹⁰ Also, sequel to acquiring the right or license, it will be prudent to register the right with the Nigerian Copyright Commission i.e., for recognition and evidential ownership over the work.

As regards sports media rights, it is important to note that exclusivity is prohibited in Nigeria.¹¹ Also, sports media rights are subject to ratification by the National Broadcasting Commission (“NBC”) within two weeks of acquisition¹², failure of which renders the right void and the sporting event ineligible for broadcast in the Nigerian territory.¹³

Given the burgeoning demand for streaming services, and with the influx of new entrants into the local streaming market, the jostle for market share is inevitable. As is typical in such situations, we would expect increased enforcement of extant regulation and new regulation/reforms to meet the imminent economic growth. Thus, it is imperative that new platforms or intended mergers/acquisitions are launched under proper guidance. We have provided some key points to note when launching a video streaming platform in Nigeria:

- a. Incorporate a corporate entity – it is advisable to register a corporate entity to own rights to the streaming platform, this facilitates management, gives the business an organized structure and makes the franchise more appealing to investors.
- b. Comply with regulatory requirements – though from a practical perspective, video streaming platforms operate in the grey as regards licensing, the government recently directed the NBC to commence licensing of all OTT and social media platforms operating in the country.¹⁴ This directive seems to be predicated on the NBC’s power to issue licenses to TV stations and ANY other means of broadcasting as provided under section 2(1)(b)(i) NBC Act. It would therefore be prudent to adopt a proactive stance by engaging the NBC for clarity on the rules. Also, as data processing is typically

⁸ Section 6(1)(c) Copyright Act.

⁹ Section 11(1) Copyright Act.

¹⁰ Section 11(3) Copyright Act.

¹¹ Section 6.2.8 Addendum to the NBC Code.

¹² Section 6.2.3 Addendum to the NBC Code.

¹³ Section 6.2.4 Addendum to the NBC Code.

¹⁴ <https://fmic.gov.ng/fg-suspends-twitters-operations-in-nigeria/>

a key feature of streaming platforms, it would be necessary to comply with the provisions of the Nigeria Data Protection Regulation 2019.

- c. Protect your intellectual property rights (“IPRs”) – there are certain IPRs associated with video streaming platforms such as copyrights, trademarks, and patents. Therefore, it is important to ensure that these rights are protected by filing registrations for the IPRs at the appropriate registries.

Conclusion

The world is changing and the mode of consuming certain services along with it. As the streaming wars rage on, Africa could be a new ground for the top OTT media platforms to expand their film library and connect to the millions of people living on the continent as well as Africans spread across the world. In this event, Nigeria will be a prime target given the fast-growing entertainment industry and top talent spearheading the development. As such, creatives, media companies, tech developers etc. should be prepared and seek proper legal counsel in anticipation of the prospective investment in the E&M market.