

Good for ‘New Nollywood’: The Impact of New Online Distribution and Licensing Strategies

Landé N. PRATT



Landé N. PRATT, Kingston University, UK

Dr. Landé N. Pratt is a Senior Lecturer in Media and Communication at Kingston University. Her research interests are primarily focused on creative industries, including: intellectual and cultural property rights, creative law (in the 21st century digital economy), and film and music distribution. She is also engaged in media practice and enterprise issues relevant to creative industries across cultures. Prior to Kingston, Landé project managed the production of www.screenonline.org.uk, the British Film Institute’s archive on the history of British film and television. She is called to the Bar of England and Wales. Contact: L.Pratt@kingston.ac.uk

ABSTRACT

The Nigerian video film industry has done well in the last two decades. UNESCO (2012) reported the industry (also known as ‘Nollywood’) was the second largest in the world based on the quantity of films produced per year. In its most recent report UNESCO (2013) excluded Nollywood from its analysis of emerging film markets, widely attributed to the presence of semi-professional/informal productions and high levels of piracy. Piratical and informal economies are, however, syncretic with the formal economy of Nigerian film. It has both benefitted and suffered from their impact. The emergence of ‘New Nollywood’, has sought to deal with these challenges. Opportunities have arisen which provide positive markers for emergent local and global markets in the sector. By close empirical analysis of Cinema Kpatakpata’s award winning feature *Confusion Na Wa*, this paper critically analyzes the role played by: digital disruption, day-and-date release, creative licensing, and Netflix expansion to African content. The findings show that: VOD and day-and-date have great potential to disrupt control of the value/distribution chain by infamous *marketers*. Independent filmmakers benefit from flexible and creative use of new distribution, and modernized IPR provisions capable of handling change.

Keywords: Global digital disruption, IPR and licensing, Piracies, Netflix and VOD, Day-and-date release

1. INTRODUCTION

This paper critically analyzes the impact of new technologies of distribution and hybrid licensing strategies on the emergent Nigerian film industry known as ‘New Nollywood’ (see below). The work focuses particularly on a recent turn within some sections of the Nigerian film industry to online video-on-demand (VOD) services. It looks at the flow of content beyond global borders to diasporan and international audiences, examining the precise impact of these new strategies on the Nigerian film industry and its returns on revenue, questions of piracy, and creative content.

This work forms part of a wider analysis of intellectual property rights (IPR) and distribution strategies used within creative industries of emerging markets. The analysis is based on a case study of recent work from the production company, Cinema Kpatakpata. Cinema Kpatakpata’s feature *Confusion Na Wa* (Gyang, 2013a) won Best Film and Best Nigerian Film at the African Movie Academy Awards in 2013. The case study observations are based on a series of interviews with the film’s producer Tom Rowlands-Rees. They are supported by the findings of focus group studies (involving the film’s director Kenneth Gyang), an interview with the film’s director of photography, Yinka Edward (also director of photography in Afolayan’s films, including *Irapada* (2006), *The Figurine* (2009) and *October 1* (2014)), and field-work interviews with the co-founder of Nollywood Workshops¹, Franco Sacchi (2014). This work is timely in that it takes place against the backdrop of the expansion of Netflix content (outside of Africa) to African and Nollywood movies within its International Movies category. *Confusion Na Wa* is one of the first films (along with Afolayan’s (2014) *October 1*) to appear in Netflix’s African and Nollywood Movies categories.

While recognizing that online distribution platforms such as Netflix and other VOD platforms directly working with Nigerian film content have

a growing power to disrupt traditional distribution patterns (Iordanova & Cunningham, 2012), it is acknowledged that this notion of disruption takes on a different meaning in the context of Nigerian film, in that ‘traditional’ distribution patterns were not, historically, the norm (Lobato, 2012). The industry in Nigeria was not characterized by a traditional Hollywood model of licensing for theatrical distribution and post-theatrical release-windows (Cunningham & Silver, 2013; Drake, 2008). These practices were not the norm but, as this paper will show and, as noted elsewhere, there has inevitably been a syncretic relationship between formal and informal practices (Lobato & Thomas, 2015). In this context, digital disruption may be important in destabilizing control of the supply and distribution chain by ruthless *marketers* (Paulson, 2012).

The focus here is on licensing for VOD within Nigeria, which in some respects has now leapfrogged widespread theatrical distribution. Certain traditional formal distribution patterns had not been present within Nigerian economies of film. As observed by the most recent biennial film statistics report from UNESCO (2013), African film markets are not known to have large theatrical distribution runs. “[T]he countries that had the fewest screens in 2007 were almost exclusively from Africa” (UNESCO, 2013, p. 22). In Nigeria theatrical screens were, historically, few and far between. Though there has been a recent push to build more multiplexes, “most are located in upscale shopping malls in affluent neighborhoods of Lagos, Abuja, Port Harcourt, Enugu and Oyo” (Haynes, 2014, p. 56). In 2007 the number of screens per capita within Nigeria stood at 0.08 (UNESCO 2013, p. 22). A similar trend was also found in South Africa (Karaganis, 2011). Instead, the Nigerian video film industry has tended to sustain a network of home DVD markets alongside video clubs and cafes. More recently, audiences access content using mobile technology (Flint Productions, focus group communication, July 29, 2015).

¹ Nollywood Workshops is a non-profit media agency based in Lagos, Nigeria with co-directors at the Berkman Center for Internet and Society at Harvard, Boston (<http://nollywoodworkshops.org/>). The non-profit agency was co-founded by Franco Sacchi, Bond Emeruwa, Robert Caputo, Aimee Corrigan and Amy Wry. They have organized workshops in Lagos and Enugu and recently co-produced the movie, *Hidden Hunger*, with Director Bond Emeruwa.

Audiences are sustained now, notwithstanding the lack of formal distribution and the paucity of effective global licensing contracts (Jedlowski, 2010). Nollywood is consumed both locally and globally. For example, the consumption hotspots outside Nigeria for the now popular iROK0tv.com include North America, Canada, the United Kingdom and parts of Eastern Europe, notably Russia (Alexa.com, 2015). It is important, in the light of such growth, to look at the recent appearance on Netflix of African and Nollywood Movies and consider the value proposition of this development for New Nollywood. Scholars are beginning to debate the impact of a pattern of *presence* and *absence* of Netflix within Africa and how it values African content in the online world (see Cunningham and Silver (2013) for a critical discussion of the increasing importance of the new “King-Kongs” of the online world, Google, Facebook, and Netflix, in screen distribution online).

The paper is organized into two main parts. First, an introduction to the growth of the Nigerian video film industry with a discussion of the challenges and opportunities it has faced. The section provides a contextual and critical framework for discussing the *value proposition* of Nigeria’s recent turn to VOD distribution. The emergence of VOD is a characteristic of a global trend of ‘digital disruption’/disintermediation (Iordanova & Cunningham, 2012), and, also arguably, a response of the New Nollywood movement to an industry characterized by informality and hybridity, including lost returns on revenue due to piracy, weak regulation of the industry’s marketers, and weak enforcement of intellectual property law (Bud, 2014; Jedlowski, 2010; Lobato, 2012; Lobato & Thomas, 2015).

The second part of the paper discusses the case of *Confusion Na Wa* (Gyang, 2013a). The relationship between the film’s creative content and its distribution strategy is inherently interesting (Rowlands-Rees, 2015). This part provides key observations about content and distribution

which impact consumption in markets outside of Nigeria. The relationship between the cultural capital of the Afrobeat genre (founded by Fela Kuti and Tony Allen), the film’s creative content, and its distribution is worth exploring. *Confusion Na Wa*’s eventual distribution strategy was not one that was necessarily detailed in advance. However, an exploration of how the film came to develop its ‘hybrid distribution pattern’ (Broderick, 2008) highlights the importance of a flexible, non-hierarchical integrated strategy often missing in ‘old world’ distribution. Old world distribution is often vertically integrated, fixed, and rigid. Particularly on the level of global licensing, with its limited ability to split intellectual property rights and allow content owners and rights holders to retain partial control (Broderick, 2008). Further, the case example illustrates that ‘digital disruption’ (Iordanova & Cunningham, 2012) takes on a different meaning in the context of Nigerian film, where traditional distribution patterns have not been the norm (Bud, 2014). It explores how *Confusion Na Wa* came to be present on Netflix and other VOD services and considers the effect of that presence on the activities of Nollywood’s marketers and others in the industry. The paper discusses this development as part of a framework of *countervailing strategies* for dealing with challenges and opportunities in Nigerian video film distribution and consumption. The paper concludes with a discussion about legal reform and the value that disintermediation trends bring (Perren, 2013) to such production companies as Cinema Kpatakpata, along with the growing impact of transnational rights in non-Hollywood film (UNESCO 2013).

2. GROWTH AND CHANGE IN THE NIGERIAN FILM INDUSTRY AND ITS MARKETS

The Nigerian video film industry has enjoyed an exponential rise in popularity both nationally and within global markets over the last two decades (Miller, 2012; Krings & Okome, 2013; Sacchi,

2007). UNESCO's Institute of Statistics (2012) reported that Nigerian video film had emerged as the second largest film industry in the world, second behind Bollywood and ahead of Hollywood, by quantity of films released (the report was silent on the comparative size of Nigeria's 'film market'). Digital technologies (especially video disc distribution, digital recording technologies and, more recently, High-Definition video with lighter and affordable production kits) were highlighted as a key reason for the rapid and sustained growth of Nigerian video film production (Krings & Okome, 2013; Lobato, 2012; Zuckerman, 2010). However, the quantity of films released was based on numbers being reviewed by Nigeria's National Film and Video Censorship Board (NFVCB) before release and thus may not have included films which were not reviewed (Bud, 2014; Jedlowski, 2010). These caveats should be taken into account when interpreting UNESCO's 2013 findings. The power of these local narratives for Nigerian and diasporan audiences and the drive to share those narratives has been significant. Improved access to those narratives within the African diaspora and beyond has sustained an exponential growth and interest in Nigerian film content.

2.1 Informality and the Question of Piracy

The exponential 'rise' of 'Nollywood' since Kenneth Nnebue's *Living in Bondage* (Ogunjiofor & Rapu, 1992) is well documented (Jedlowski, 2010; Miller, 2012; Okome, 2013). However, that growth has gone hand in hand with concerns about illicit dealings in film and piracy. The UNESCO (2013) report documented the continued impact of piracy and informality on the industry. Though 1,074 films were produced in Nigeria in 2010, only 117,563 tickets representing just 26% of the market were sold (UNESCO, 2013). There has been a slowing of growth in the 'market' share of film in Nigeria (Haynes, 2014), usually explained by piracy and over-saturation. The large number of films produced has begun to create a 'stagnation' effect on content flow, supply, and demand within

the market (Haynes, 2014; Jedlowski, 2010). Haynes (2014, p. 54) observed that, "Piracy has only gotten more aggressive over time: the director Tunde Kelani estimates that there are now five or ten pirated copies of films in the market for every legitimate one". Franco Sacchi (personal communication, 2014) noted that about 70% of lost revenues in Nigerian film are due to piracy. The enforcement of national copyright law and the NFVCB's attempt to regulate marketers who deal in film (many of whom were alleged to have been unscrupulous in their dealings) through a new licensing framework has not had its intended impact (Bud, 2014; Haynes, 2014; Paulson, 2012). Nigerian marketers continue to control the film distribution chain. They do this in four regional markets: Idumota and Alaba (Lagos State), Aba (Abia State), and Onitsha (Anambra State). They have their own 'guild' (the Marketers Association), reject outsiders, and defy external control. Pirating; failure to account for sales, and short changing film producers are allegedly common strategies used by many marketers (Paulson, 2012). In emerging creative economies in general, anti-piracy measures and copyright education have had very limited effect (Karaganis, 2011).

Questions about the impact of piracy and market fluctuations resulting from it are, however, complex (Flew, 2015). It is important to protect victims of piracy. However, the argument that the Nigerian film industry has long had a *symbiotic* relationship with piracy is a potent one (Paulson, 2012). The industry has both benefitted and suffered from its impact (Larkin 2004; Lobato, 2012) and it presents variant forms of 'informal economy', which are complex and syncretic in their relationship to the formal economy of Nigerian film (Lobato, 2012; Lobato & Thomas, 2015).

It would be useful were stakeholders and law reformers to think in terms of what Lobato (2012) and others have referred to as 'piracies', which include but are not limited to 'piracy as theft'

(Lessig, 2005). Framing piracies enables a more nuanced approach and contributes constructively to how the industry might deal with piracy. In the light of the impact of digital cultures and global piracy, there is also a need for a harmonized global perspective on legal reform, one that is not particularly dominated by the specificity (in context) of U.S. and EU international policy frameworks (see Karaganis, 2011 and below).

Debate about how creative industries such as New Nollywood might manage IPRs and new distribution strategies creatively in an era where digital piracies have arisen as a normative consequence of open media networks is a complex one (Lessig, 2009). A range of flexible strategies are required to counter and/or accept the inevitability of piracies. What I refer to here are 'countervailing strategies', which might be used to offset the potential negative effects of piracies to equal value or force (also Karaganis, 2011). The Foucauldian (1978) idea of *governmentality* is useful as well. Some of these strategies might be expressly formal but at the same time rooted in everyday informal and normative practices. Where a statutory provision or regulatory framework fails, behavioral norms can play a part. A VOD service as a *digital panopticon* may represent an instance of Foucault's notion of *governmentality*. This approach does not deny the ontologies of piratical/remix economy and/or cultures of appropriation (Lessig, 2009; McLeod & Kuenzli, 2011). Though it does not deny the negative impact of 'piracy as theft', it does recognize that a countervailing strategy could be one that seeks actually to work with piracies to curtail the negative side of Nollywood's marketers. It thus draws on Lobato's (2012), understanding of 'shadow economies of cinema' (Larkin, 2004) and Lessig's (2009) very useful notion of 'hybrid economies'.

The case study provides an example of the possibilities of this countervailing strategy. *Confusion Na Wa's* producer observes:

In terms of this notion of piracy destroying Nollywood [...] I'm not trying to make a case for piracy being a positive thing, but this idea that it is destroying Nollywood would only hold true for me if there had been an era where there wasn't piracy in Nollywood. It is because of piracy that the videos have had the huge wide distribution that they have had across Africa, the industry has grown with piracy and, in spite of it and in some ways it is the practices of licit distribution channels that pose more of a problem (Rowlands-Rees, personal communication, 2015)

A balanced approach to regulate both licit and illicit distribution is fundamental. This is, perhaps, beginning to occur with attempts at more creative (non-exclusive) use of licensing/distribution rights (e.g. across digital platforms, *Ultra-violet*) and through copyleft licensing models (e.g. the growing use of *Creative Commons* licensing) and in music, the development of YouTube's 'user licensing' *Music Key* (YouTube, 2015). The European Union's current attempts at modernization of copyright rules within the digital economy, seek to address the relevant issues (European Commission, 2014; Reda, 2015). A similar pattern of change should also be implemented within emerging creative economies globally (Karaganis, 2011).

It could be that we are witnessing paradigm shift (Rifkin, 2014) in the nature of piracy as we know it. Digital technological development and proliferation has begun to result in a merging of illicit and licit technological infrastructures. Piracy, as Rowlands-Rees (personal communication, 2015) put it, is "almost like a pre-internet version of things going viral and you can't replicate that through conventional distribution channels at the same speed." There are some quite clear examples of a positive relationship between piracy and brand value creation. "Ramsey Nouah, for example, if he goes to Rwanda, people will chant... [he is so popular there] and that's not

because of legitimate distribution channels, it's because of piracy" (Rowlands-Rees, 2015). Further interesting developments include legal streaming sites using the same technologies and conventions that support online piracy, such as the use of torrent and peer-to-peer technology (e.g. *Voddler*, see Sjoman, 2014) and licensing 'peer-to-peer' style (e.g. *UltraViolet*, see Curtin et al., 2014, p. 43 and p. 240).

2.2 New Nollywood and its Focus: Distribution and Content

Linked to the above has been the emergence of New Nollywood. The movement has been well documented, with Haynes (2014) providing an excellent exposition, by a case study of Afolayan's New Nollywood work (e.g. *Irapada* (2006), *The Figurine* (2009), *Phone Swap* (2012), and *October 1* (2014)). New Nollywood has arisen out of concerns about the inefficient aspects of Nollywood. A movement has developed, which has different aspirations for filmmaking in Nigeria. Outside of the genealogy of the term a few themes unite thinkers, producers, directors, and other practitioners within the movement. Concerns about poor production quality have led to a push for bigger budgets and international co-production (e.g. Bandele's *Half a Yellow Sun* (2013)). There were concerns about whether Nigerian films could be taken seriously (Sacchi, personal communication, 2014). The quality of creative content (Vourlias, 2014) and the call for distribution strategies able to properly counter the negative impact of piracy are also important issues, as seen in the move toward self-distribution (Afolayan's *The Figurine* (2012)) and Igwe's branded quality assurance approach (Paulson, 2012). There is also a drive to deal with a market that has become oversaturated with 'low-end'; and 'average' quality narrative content. The effect of the latter being that supply is beginning to outstrip demand, resulting in diminished returns in revenues for producers (Haynes, 2014; Krings & Okome, 2013; Sacchi, personal communication, 2014).

The emergence of New Nollywood is interesting and constructive. Rowlands-Rees (2015) commented that the changes in the Nigerian film industry offer the opportunity to have a real, meaningful discussion about its meaning. The effect of New Nollywood may not be entirely positive. Haynes (2014) has drawn attention to the possibility of a segmentation effect on Nigerian film markets resulting from New Nollywood, and Paulson (2012) has identified a 'class' based film market. Those critical of New Nollywood and its proponents have described it as a false bifurcation. Focusing on the creativity and change, Sacchi (2014) maintains an interest in 'classic Nollywood':

There's a lot of talk about low production values but I always remind people that, up to a certain point, the low entry barrier to make these films is exactly the reason for [their] success [...] Audiences were very forgiving, a lot of people jumped in. First came the story, the culture [and the] connection(s) and people were less worried about [form, guilds and institutions] (Sacchi, 2014).

Classic Nollywood is particular in style and content. Many have noted the power of its storytelling (a griot tradition within West Africa) and 'the sophisticated way in which these stories are narrated', as in the case of Kinsley Ogoro's *Osuofia in London* (2003), a subtle and effective use of self-parody (Okome, 2013). Audiences with very little spending power (still a large proportion of the Nigerian population) could access film stories they could identify with at very low cost. Elsewhere Rowlands-Rees (2015) questioned whether bigger budgets are the answer to driving out piracy and improving quality: "I would say that the revenues don't exist yet to support these bigger budget films. [I]n general they haven't raised money from them in a way that has been sustainable, commercially". In conversations had about whether Cinema Kpatakpata

could be put in the New Nollywood category, Rowlands-Rees (2015) comments, “Actually, our film is sometimes classified as New Nollywood and sometimes classified as Nollywood and ‘not Nollywood’. There’s all these words flying around and [the meaning] depends entirely on the context.” The case study below highlights some of the issues in the debate.

3. CONFUSION NA WA: ITS CONTENT AND DISTRIBUTION STRATEGY

Arguably and, as noted, films coming from New Nollywood have a more sophisticated and hybrid distribution strategy than the older well documented strategies used traditionally by marketers in Nollywood. More attention is now given to the *quality* of film content. Rowlands-Rees (personal communication, 2015) observed that as production companies distribute content beyond national or local borders to diasporan audiences and to international audiences, it is important to look closely at the impact of these differential approaches on creative content. Does creative content strategy itself have to differ for these diverse audiences? Some would critique this as a form of post-colonial echo (Okome, 2013). Certainly, the issue of differential or ‘appealing’ content becomes key to the business proposition of online VOD services such as Netflix.

In interviews Tom Rowland-Rees and Yinka Edward agreed that content is context specific, appealing differently to diverse global audiences. And some consideration has to be given to the importance of differentiation in content strategy for films distributed beyond national borders. Rowlands-Rees (2015) made the important point that,

People often talk about trying to do something that appeals to all audiences... [but] one has to acknowledge there’s a massive economic disparity between your local audience in

Nigeria and the global audience [...] You are dealing with different orders of magnitude of revenue coming from these different audiences. It’s unrealistic to cater to both in a way that treats them equally (Rowlands-Rees, personal communication 2015).

The debate is complex. Haynes (2014) analyzed examples of films which appear to be able to take what he calls a *bicultural* approach to content. The main example he gives is that of Afolayan’s (2012) film *The Figurine*.

The reading Haynes (2014) gives of Afolayan’s work as bicultural is a useful starting point for thinking about content that is diverse and *heteroglossic* in tone. These frames of reference are useful when considering the case of Cinema Kpatakpata’s *Confusion Na Wa* (Gyang, 2013a). The work has appealed to audiences both nationally and internationally, to local national audiences, and to diasporan and wider audiences generally. Though, as noted, the production company does not put itself firmly in the ‘New Nollywood’ category, the multiple narrative approach to this film and its production style, similar to the quality and creative work produced in ‘art house cinema’, is new.

It is important to consider the impact nationally and internationally of the film’s polyrhythmic soundtrack and, its inter-textual reference to the music and popularity of Fela Kuti, co-founder of the globally consumed genre Afrobeat. It was Fela Kuti’s (1974) album *Confusion*, which inspired the title and the multi-narrative style of *Confusion Na Wa*. This creative style and its inter-textuality is significant. Its heteroglossic nature and overall impact on diasporan and diverse audiences should not be understated. Music has persistently played a part in Nigerian traditional storytelling, a history reflected in Nigerian filmmaking (whether that be of the classic or new style Nollywood).

Fela's Afrobeat is a highly recognizable form of cultural property associated with Nigeria and its creative output. Many people both locally and globally consume Afrobeat (Knittingfactoryrecords.com, 2015). The creative team behind *Confusion Na Wa* was inspired by the title track of the album *Confusion*. There was a careful and creative approach to the film's content in the way in which it was conceived with its multiple revisions to the screen-play and its multiple shifts in location. Themes and issues conceived before a final title was attached to the film. In the context of discussions about distribution globally, as Rowlands-Rees observed of the title of the film, it is certainly something that is recognizable to audiences outside Africa. When one talks about Nigeria to western/European audiences, one of the first things they talk about is Fela.

The film celebrates and in some ways pays 'homage' to the work. Fela's (1974) album *Confusion* provided the backdrop to the poly/multi-narratives presented and distributed nationally and globally in *Confusion Na Wa*. "[A]s Fela lists Nigeria's broken civil institutions line by line the chorus girls sing back the recurrent refrain "Confusion Na Wa". For every problem he can list, they have the same response – confusion is everywhere" (Gyang, 2013b).

In *Confusion Na Wa*, the lives of a group of strangers become intertwined when two friends Charles (OC Ukeje) and Chichi (Ikponmwoosa Gold), following an incident of argument and assault related in the first scene of the film, find a phone lying on the ground. They take the phone and pry into its contents. Finding what they believe to be a number of interesting contacts and sensitive details in the phone's directory, Charles and Chichi use what they find (incriminating text messages) to blackmail Emeke (Ramsey Nouah), the owner of the phone. This sets in motion a chaotic and complex chain of events (CinemaK-patakpata.com, 2015). What follows is a visually

stunning and polyrhythmically rich denouement in characterization and storytelling linked to the ripple effect of the initial incident, culminating in a striking conclusion to the stories in each of the protagonist's parallel lives. *Confusion* is a literal echo and refrain throughout the film, the spine upon which the inter-weaving stories are hung.

Gyang and Rowland-Rees' screenplay presents a complex matrix of events affecting the lives of several characters in the film, reflecting a larger picture of themes of 'crime, corruption, tolerance and societal and family breakdown within the Nigerian Context' (Gyang, 2013b). Humor plays a part as well. *Confusion Na Wa* is a dark comedy, with the potential to appeal to many types of audiences. It presents themes not often dealt with in Nollywood, such as the emasculation of Bello (Ali Nuhu), the social consciousness of Charles and the issues powerful patriarch Babajide (Tony Goodman) must deal with when realizing his son might be attracted to other men. These issues are not the typical fare of mainstream or classic Nollywood. Yinka Edwards' cinematography and the production quality is particularly strong. The impact of leading Nigerian actors such as Ramsey Nouah, a household name across Africa and the diaspora, is also important in thinking about factors affecting global and diasporan distribution and consumption.

Confusion Na Wa's distribution strategy was 'organic' and hybrid' in nature (Broderick, 2008; Lobato & Thomas, 2015), combining a theatrical-window with 'day-and-date' release (here the simultaneous release of a film across platforms, in this case cinema and online VOD). The distribution pattern in Nigeria, for a number of reasons leapfrogged traditional windowing strategies. The main method of getting films to market via infamous marketers in various markets (including Alaba, Idumota and Onitsha markets) has been well documented (Haynes, 2014; Bud, 2014; Jedlowski, 2010). Paulson (2012) observed that

the marketer has most typically been the intermediary and has traditionally maintained almost full control of the global value and distribution chain of the film's production, distribution, and consumption lifecycle (Bud, 2014; Jedlowski, 2010; Kehoe & Mateer, 2015). The idea that digitalization and VOD distribution may disrupt that pattern (Cunningham & Silver, 2013; Iordanova & Cunningham, 2012), thus takes on a very particular meaning here. In many ways the trend identified by Kehoe and Mateer (2015, p. 94), that "[T]he singular value chain that has dominated traditional film distribution is being replaced by bespoke business strategies that can be tailored to the demands of each individual film release", is echoed in the way in which distribution evolved in the case of *Confusion Na Wa*. The strategy was organic in that it emerged out of a very particular unraveling of events and processes. It was not specifically planned within or born from a vertical value chain process model.

Two background facts in the distribution strategy of *Confusion Na Wa* were critical. First, the realization that all of the publicity and awareness that came from the film's success at the African Movie Academy Awards 2013, winning awards in the Best Film and Best Nigerian Film categories, meant there was already a buzz about the film. Many were talking about it and the production company felt a sense of urgency that they should capitalize on the moment. Second, as an independent film company the budget for distribution, particularly for print and advertising (P&A) and the associated costs of digital projection was not substantial. This had a significant impact on the kinds of conversations that followed with distributors and exhibitors.

The team behind *Confusion Na Wa* initially took a traditional approach. As Rowlands-Rees (2015) recounts, "the first thing we knew was that we should do a cinematic release because that is, you know, everyone's understanding. You put it in

theatres and that should make you some money and it should also generate some publicity." This was the strategy envisaged, notwithstanding the relatively lower number of theatres and multiplexes within the Nigerian setting (Haynes, 2014). Cinema Kpatakpata managed to obtain a deal with a local distributor-exhibitor, a release date was set and it was agreed [initially verbally] that the third party distributor-exhibitor would distribute the film in Nigerian theatres.

It was clear from the conversations that Cinema Kpatakpata were to look after P&A and associated hardware costs of digital screen projection of the film in the chain of multiplexes (Rowlands-Rees, 2015). The team explored a few options to build awareness as part of their P&A. They made a deal with a Nigerian television channel that "they [the channel] could have an option on the film if they ran a trailer of the film on their channel" (Rowlands-Rees, 2015). They tried to promote the film online, which was time consuming. Having a production company website and film webpages is not a particularly common strategy within Nigeria (Haynes, 2014) and though Cinema Kpatakpata were resourceful in using that option, the costs associated with the process and with P&A added up. At the same time the company was in conversation with a VOD channel, which had made a good case for 'day-and-date release'. The VOD channel offered to distribute the film on a transactional basis (i.e. a pay-per-view TVOD service) and would promote/market the film, in effect taking care of the P&A constraint.

The advantages of day-and-date release are still being debated. The main arguments are twofold: it would build awareness and drive audiences to both the cinemas and to VOD, nationally and globally. It has also been used strategically to curtail piracy and other possible illicit dealings with films. The latter point turned out, arguably, to be crucial in this case. Although not planned by Cinema Kpatakpata at the outset, the option

of day-and-date release turned out well for the film. The distribution rights had not at that point been licensed exclusively to the distributor-exhibitor. Since the team was still at that point, effectively, in control of its rights, the option to split its rights (Broderick, 2008) to meet the best possible outcome demanded by their particular set of circumstances remained. This type situation resonates with the EU's current attempts at modernizing copyright law. After a recent period of public consultation, the European Commission recommended protection of artists against inflexible contracts:

Under such contracts, which are frequent, creators sign away all their rights to their creation in order to gain a commission for creating a work. Consequently, they lose control over their creation, which can be used in contradiction to their own vision (United Nations, cited by Reda, 2015).

The team did not feel that they had any other option but to go with the VOD strategy (Rowlands-Rees, 2015). The process was of course, evolving organically and also, as Kehoe and Mateer (2015) put it, specific to the demands of the film and its distribution requirements (rather than set out at the start in a 'supply-led' fashion, without regard to film's lifecycle requirements and to those demands of very particular audiences, see also Parks, 2012). The value proposition of day-and-date release seemed clear since the VOD service providers had made a very good case for it,

They convinced us that the day and time release would generate a huge amount of revenue. We didn't have any data points from any other film maker to tell us anything else. When Cinema Kpatakpata asked one other filmmaker they knew had used the platform they said that day-and-date was fine [...] [we] at least had some reassurance that things would be fine (Rowlands-Rees, 2015).

In Cinema Kpatakpata's case, once it became clear that a simultaneous VOD strategy was in place, the initial approach to theatrical release changed and the team ended up continuing without it (Rowlands-Rees, 2015). Even though, as Rowlands-Rees (2015) explained,

The VOD strategy may have built awareness and attracted wider audiences (particularly key in a setting where there were relatively few cinemas/multiplexes). Within Nigeria itself there were fewer people (at the time) accessing the film on VOD, which meant that the strategy was not necessarily harming the distributor's revenue streams.

The strategy may also have disrupted what has elsewhere been described as unfettered practices used by marketers in the traditional Nollywood context (Bud, 2014). The idea, however, of non-exclusive distribution rights at the release window stage (of a vertical supply chain) has, it has been argued, been challenging to those relying on traditional exclusively licensed distribution runs (Kehoe & Mateer, 2015). It was interesting in this case that *Confusion Na Wa* was later picked up by the VOD platforms iROKOTv and Netflix (below).

It was noted earlier that *Confusion Na Wa* did not appear to suffer lost returns on revenue due to piracy. "[W]e didn't have directly too much of a problem, our film isn't out on pirate DVDs and hopefully it will remain that way" (Rowlands-Rees, 2015). It is feasible that the day-and-date release strategy may have helped reduce the chance of illicit copying and distribution on the ground. The approach taken by the film's producer is interesting and in tune with existing academic debate and theoretical thinking regarding the difficulties posed by binary thinking about piracy and the enforcement of copyright law within the current digital era. Certainly the legal framework needs to protect filmmakers

and their returns on revenue. As Lessig (2012) observes, it is important to reform the law so that it can manage the intricacies of the distribution of content across borders in the 21st century digital economy. Cross border harmonization and costs of setting up flexible licensing deals should be addressed here. This case study suggests that Lessig (2009) was right to argue that IPR management, specifically copyright licensing agreements, should become more hybrid and flexible (see also Reda, 2015).

4. NETFLIX DISTRIBUTION: GOOD FOR NEW NOLLYWOOD?

Questions about cross border licensing are arising as Netflix expands to include African (including Nigerian) film content. This development may help grow access to content within diasporan and wider audiences. The question is whether that is good for New Nollywood. The International Movies section inclusion of African and Nollywood Movies is critical, while the recent partnership deal between local SVOD provider iROK0tv.com and Netflix has helped with the expansion of African content to the latter (Coker, 2015). *Confusion Na Wa* was one of a handful of early films in these international movie sections (Netflix.com). The potential for growing international audiences is supported by the wide global consumption of content on Netflix. The site is currently ranked 53rd relative to other sites in the world (Alexa.com). Netflix currently dominates the global subscription service to VOD (SVOD), with 66 million subscribers worldwide (Spillane, 2015). Though, relative to the general internet population (for reasons highlighted above), “people of African ethnicity are greatly under-represented on Netflix.com; African-Americans, relative to the general internet population in the United States are over-represented on the internet”. Similar trends are found in the United Kingdom and other parts of Europe (Alexa.com, 2015). It may be that this

is over simplifying what is actually happening on the ground, but these trends suggest a large level of consumption in the United States and Europe by diasporan Africans. Netflix.com is available in circa 80 countries (and plans continued expansion) with audience consumption highest in the United States (67.2%), Canada (4.6%), Brazil (4.4%), United Kingdom (4.0%), and Mexico (3.9%). There is potential for Nigerian content to grow in these regions, given Netflix and the potential it has to dominate the online screen distribution space (Cunningham & Silver, 2013).

However, for Nigerian markets to benefit the service should, arguably, be available in Nigeria itself (Mogaji, personal communication, July 2015). Whether this is good for Nollywood is, as Sacchi (2014), said “really tied to the growth of the telecommunication infrastructure in Africa”. It may be good if it reduces current dysfunction in distribution. Two arguments address the current absence of Netflix within Africa. The first has to do with the technological infrastructure on the African continent and the second, with the perceived dangers of piracy. Things are changing. Netflix will launch in South Africa by the end of 2016 (Netflix.com) and if trends reported by Sandvine (2014) continue, given the success of Nollywood and Netflix’s inclusion of Nigerian content on its platform, Netflix should eventually launch within Nigeria. Sandvine (2014) reported that Nigeria has a relatively high level of internet penetration at 68% and a 4,350 mile fiber optic cable (provided by Main One Cable Company) linking West Africa to Europe should help boost broadband connectivity in the region (Abell, 2010). The infrastructure is developing and, technological proliferation is beginning to make its mark, particularly with the ubiquitous presence and use of mobile (Spillane, 2015). Mobile networks have the capacity to stream film content to many audiences in local regions (Flint Productions, focus group communication, 2015).

The recent partnership deal between iROKOTV.com and Netflix (Coker, 2015), which drives more African content to Netflix, has attracted some criticism as returns in revenues for filmmakers are alleged to be lower than expected, as a result of exclusive licensing deals with iROKOTV Partners (Haynes, 2014). Second, there is more than one SVOD provider in the local and global market place. Competition for the African film market from Nasper's new platform Showmax.com may challenge Netflix expansion in to Africa, especially if it is successful with mobile platform distribution, which has a comparatively well-developed telecommunications infrastructure and consumption habits (Spillane, 2015). It might be that Netflix will have to rely on the power of its brand value to temper the impact of Showmax.com, but this would only be an advantage if potential corporate dominance is avoided (Cunningham & Silver, 2013).

5. CONCLUSIONS

Clearly, from the point of view of new distribution strategies, what we learn here is that *bespoke* approaches to distribution are important, particularly in the case of independent filmmaking. Kehoe and Mateer (2015) state that maintaining flexibility and control of distribution rights is important (e.g. by splitting intellectual property rights such that some control is retained, when negotiating distribution deals, see Broderick, 2008):

What is emerging [however] is that no one model for multiplatform distribution will replace the rigid value chain of the old distribution models. Rather, a number of different options, formats, and platforms can be utilized together according to the individual needs of each specific film (Kehoe & Mateer, 2015, p. 103).

The paper has focused on the importance of two key factors: (1) business model innovation in the

form of *flexible* licensing and distribution strategies and (2) legal reform capable of handling such flexibility.

The case of *Confusion Na Wa* shows some independent filmmakers have been able to use flexibility in distribution with reasonably good results. Cinema Kpatkpata's 'evolved' use of day-and-date release did not have a major impact on the cinematic release but it is possible the strategy had an impact on the level of piracy associated with the film. Rowlands-Rees noted: "We're now in an era where the internet is becoming far more widespread across Africa and there's a view that it's probably easier to control your intellectual property online" (Rowlands-Rees, 2015). In Europe, reform of copyright law is very much embracing flexibility in licensing rights. This may lead to a similar process of reform of rules for access and distribution of content in emerging creative markets (Karaganis, 2011; Reda, 2015).

Confusion Na Wa's inclusion on Netflix shows that digital disruption/disintermediation (Cunningham & Silver, 2013) is taking place within Nigeria. Netflix's and iROKOTV's partnership (Coker, 2015) looks as though it will certainly be good for iROKOTV.com. It remains to be seen whether this will be good for Nollywood more generally. Whereas some commentators have suggested that the NFVCB's new Framework for managing distribution through the licensing of marketers has failed (Bud, 2014; Haynes, 2014), the particular routes to 'disintermediation' discussed in this paper may leave a positive mark. If Netflix itself were to launch in the region, questions should be raised about its sustainability and the impact of that launch on the local market. At present, there is little data to help answer these questions. As Kehoe and Mateer (2015) have observed, it is difficult to access the right information, "...access to performance data from VOD platforms has [...] been limited; the reluctance of VOD providers to share this information makes analysis—of what

is working successfully or what is not—extremely difficult” (Kehoe & Mateer, 2015, p. 105).

Independent filmmakers will have greater control if they can use more creative licensing strategies (as proposed e.g. by Broderick, 2008). Agreements embracing more creative use of licensing strategies would mean that IPR management strategies would sit more comfortably within the 21st century knowledge economy. The approach would be useful for such production companies as Cinema Kpatakpata (Rowlands-Rees, 2015). Sacchi (2014) remarked that “the problem is, the legal infrastructure [is prohibitive]. Directors and producers don’t seem to be able to negotiate better and more favorable deals with [...] distributors. This is a very complicated problem... there are all kinds a legal frameworks that could be improved”.

In informal economies, problems accrue around questions of ‘chain of title’, as to who precisely has the rights to negotiate creative licensing of intellectual property and this problem will not easily be resolved. There is a potential remedy though. If (unlike the NFVCB Framework) it can be implemented effectively (Bud, 2014), it would not be too dissimilar to a set of legal provisions, which recently came in to force in the UK dealing with permissions to access and use *orphaned* works, i.e. where the rights holder is unknown². There is room for optimism. As content goes ‘viral’, it becomes ‘spreadable’ (Jenkins, Ford, & Green, 2013), and business innovators and legal reformers begin to embrace ‘open-norms’ and change. The gradual movement of content to VOD and to mobile telecommunications infrastructures does bode well for creative IP licensing and distribution in Nigerian global film markets.

ACKNOWLEDGEMENTS

Thanks to Tom Rowlands-Rees, Franco Sacchi, and Yinka Edward for their invaluable interview

contributions. To Akim Mogaji from New Media Networks, who led focus group discussions in Nigeria as a part of our ‘Screen Exchange’ project, supported by Creativeworks, London. Thank you to all the participants of that discussion, including Kenneth Gyang. Thanks to all the team at Cinema Kpatakpata. Thanks also to Flint Productions in Nigeria and Karen Merkel of New Media Network for their valued contributions to the London based focus group workshop organised for this research and for Screen Exchange.

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² Copyright, Designs and Patents Act 1988 as amended by *The Copyright and Rights in Performances (Certain Permitted Uses of Orphan Works) Regulations 2014*. See also, *The Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014*, which introduces a UK licensing scheme for orphan works. Source: <http://www.ipo.gov.uk>

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