M-Commerce and the (Re)Making of the Music Industry in Kenya: Preliminary Notes and Findings

This report lays out preliminary notes and findings from an on-going investigation into the ways in which mobile phone commerce, or ‘m-commerce’, is transforming the Kenyan music industry. At present, I am only midway through my fieldwork in Nairobi. This represents my first attempt at describing the remarkable integration of the mobile telecommunications sector and the music recording industry in Kenya. It is necessarily incomplete, and likely contains facts and perspectives that I will want to revise in the coming months.

There has been an explosion of music m-commerce in Kenya over the past seven years. Among the obvious reasons for this are the fact that Value Added Services (VAS) have become a vitally important revenue generator for Kenyan mobile network operators, as an increasingly difficult regulatory environment, a weakening Kenyan Shilling, and vicious price wars have made voice and messaging services unprofitable. Kenyan mobile phone users are now confronted by an array of music-centred VAS. Kenya’s largest mobile network operator, Safaricom, alone, runs three separate music portals, each geared toward a different type of service. The most profitable is Skiza, which offers ‘caller ringback tones’ (i.e. the sounds that a caller will hear when they dial the customer) at Ksh 5 per song per week. With close to 4 million subscribers, this service grosses around $10 million per year. But there is also Kenya Live, which offers MP3 music tracks (some of which are exclusively licensed to that portal), customized ringtones and alerts, and wallpaper images produced by a small stable of artists representing different genres. And Safaricom’s newest music-related VAS is iDJ, run by the Indian firm Spice, a personalized mobile phone radio service billed by the minute.

Platform operators (usually the mobile network operator) generally take the lion’s share of the revenue from music downloads and streams. For its part, Safaricom keeps around 85% (minus taxes) on music downloads and gives around 17% to ‘content providers’ that supply the music. The content providers then remit around 8% of each download to the music rights holders (at the moment this only means authors, as we will see).

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1 I am carrying out this research as part of a broader study of the Kenyan music industry in the digital age, under the auspices of the European Research Council’s Music, Digitisation, Mediation Project based at the University of Oxford (Georgina Born, Principal Investigator).

2 For at least one of there is also a ‘content aggregator’ that takes a cut.
Despite the small cuts they receive, rights holders still stand to make significant money from music m-commerce. The CEO of the Music Copyright Society of Kenya informed me that one content provider has between 20 and 30 artistes on its roster who each generate downloads in the hundreds of thousands per month. Even assuming that these artistes are splitting their revenue with other rights holders, they could still be making thousands of dollars per month through m-commerce—a good deal of money in a country whose average civil service wage is around $400 per month.

While I have not yet managed to garner statistics on downloads according to genre, it is clear that some genres have been far more successful than others on mobile music platforms. The major music m-commerce success stories have been gospel artistes who sing in Swahili or other Kenyan vernaculars. When Tanzanian gospel singer Rose Muhando was made the Skiza ‘brand ambassador’ in 2010, she was generating around 600,000 downloads per month. Meanwhile, middle-class-oriented genres like Afro-soul barely sell at all on mobile platforms. Afro-soul group Sauti Sol’s huge crossover hit, ‘Lazizi’, saw around 2000 downloads in one week when it was released as a ringtone. The group considered that good (though they were unimpressed by the royalties they received), but it pales in comparison with downloads of vernacular gospel singers like Rose Muhando. This variance would seem to be explainable as a matter of class-based consumption patterns. There is a general consensus among my interlocutors in the Kenyan music industry—and this was echoed by Kenyan cultural studies scholar Joyce Nyairo—that the consumer base for music m-commerce is largely lower middle-class and poor Kenyans.

(Re)Making the Industry

The Kenyan recording industry has been largely informal and undercapitalized since the multinational record companies pulled out of the country in the 1980s. But this may now be changing, as mobile telecommunication and content firms are beginning to take on, and thereby to magnify, roles within the industry that have been of relatively minor significance over the past thirty years: namely, manager and label.

Mobile Telecom and Content Firms as Talent Managers

Example 1: MTech

MTech East Africa is a subsidiary of MTech Nigeria, headed by a dapper Nigerian man by the name of Ikechukwu Anoke. Iyke, as he likes to be called, has gotten some media attention in Kenya for having helped to connect Kenyan artistes to the Nigerian music industry and market. In Iyke’s hands, MTech is fast becoming a talent management agency. My interview with him ended when our lunch table filled up with famous Kenyan music artists, who had apparently come just to hang out. One of these was dancehall singer Wyre. He was treated to lunch. I didn’t understand why, until I learned later that he has signed a management contract with MTech. Iyke is now Wyre’s manager.
lyke attributes MTech’s entrance into talent management to an increasingly competitive business market. In light of the entrance Indian firms like Spice into the digital content market, he told me, content providers have to have something special to offer to artists. For MTech, this something special is a connection to Nigeria, and a CEO who understands the music business in Africa and can personally attend to an artist’s needs.

Example 2: Safaricom

Safaricom has also entered into talent management with their Kenya Live project (or “brand asset,” in corporate jargon). Now a mobile content platform, Kenya Live started out two years ago as a unique, multifaceted project for which Safaricom teamed up with a production house and a talent management agency.

The project involved a series of well-rehearsed and well-choreographed live concerts all over Kenya. These featured a diverse array of established Kenyan artists, representing genres ranging from gospel to hip-hop to vernacular-language popular music, all performing with a live band. For some, it was their first time ever performing with a live band.

In addition to weeks of intensive rehearsal for the shows, the artists were put through an “academy,” with master classes on everything from vocal techniques to make-up techniques. The objective of this, according to one of its directors, was to bring seasoned Kenyan music performers “to the next level.”

In their literature, Safaricom frames this training as a way of helping to develop an industry that supplies content for their highly profitable VAS platforms. (The company also works to build up the Kenyan music industry in other, highly visible ways, including their support of Kenya Music Week.) Each of the performers contracted for the Kenya Live academy and tour was also contracted to work with a large media house called Homeboyz Entertainment to produce exclusive content, including customized ringtones and wallpapers, for what is now the Kenya Live portal.

Mobile Telecom and Content Firms as Labels

In marketing and selling this exclusive content, Safaricom is positioning itself as something of a mini-label. Another firm within the mobile phone sector that has started a mini-label is the content provider Bernsoft. The company has opened its own recording studio. To inaugurate the facility, Bernsoft founder and CEO Bernard Kioko commissioned a patriotic song for a non-governmental, apolitical campaign for national unity. In doing so, he was able to get some of Kenya’s most famous artists to participate in the pilot project free of charge.

The song, which was composed and engineered by a talented music producer who happens to be from Tanzania, borrows the first couple of melodic phrases from the Kenyan national anthem. The fact that it was composed by a Tanzanian is only one of the ironies of this production. Another is the fact that it features the General Managers...
of two music royalty collection societies (or Collective Management Organizations, as they are called in Kenya) with which Bernsoft is not yet in compliance. Kioko first contacted Angela Ndambuki of the Performing Rights Society of Kenya, because she is a very well known pop singer. Angela, however, felt that she couldn’t sing the refrain the way it should sound, and so called in June Gachui of the Kenya Association of Music Producers, who happens to be a very fine jazz singer.

Controversies and Struggles over Rights

In the eight or so years since the advent of music m-commerce in Kenya, there have been a number of struggles over royalties involving various combinations of content providers, individual music artists, the Music Copyright Society of Kenya (MCSK), and the Kenya Association of Producers (KAMP). The most widely reported of these have involved MCSK. Content providers have worked consistently to sideline or bypass MCSK, with some success. Early on, MCSK battled for a 75/25 split between their members (authors) and mobile content providers. They failed in this effort, however, because their own members did not trust the organization enough to allow it to bargain on their behalf. As the CEO told me, many MCSK members took the side of the content providers. Some of these members had already negotiated their own arrangements with content providers, but others were simply unconvinced by MCSK’s commitment to getting members the best deal possible. It didn’t help that MCSK was at the time spending 70% of their revenue on administrative overhead—an issue that led to the Kenya Copyright Board revoking their license in 2011. (MCSK was able to get a court order allowing them temporarily to continue collecting on behalf of their members, and the CEO is hopeful the matter will be resolved soon. Rebuilding the organization’s reputation may take quite a bit longer.)

The Issue of Neighbouring Rights

The more complicated but less reported controversies and struggles over royalties for music m-commerce in Kenya have to do with the issue of ‘neighbouring’, or ‘related’ rights. With respect to recorded music, these are the rights of performers and phonogram producers (i.e. the owners of the master recording). When royalties first started to be collected for digital music distribution in Kenya these rights were not taken into account. The two organizations officially charged with collecting royalties for neighbouring rights in Kenya are very young—only about four years old, if we go by the dates on which they were registered with the Kenya Copyright Board. MCSK, however, first started collecting royalties for digital music distribution area in 2005.

\[3\] MCSK had a victory in court, however, against content provider Cellulant. Cellulant was dealing directly with rights holders without going through MCSK. MCSK submitted evidence that Cellulant was selling some music without having cleared the rights.
MCSK has always operated in the digital domain using so-called ‘mechanical licenses’. That is, they license their members’ works to digital distributors and collect royalties as the manager of their members’ ‘mechanical rights’, the exclusive rights of authors to mechanically ‘fix’ a song onto a recording medium, and to reproduce and distribute recordings of a song. Historically, a mechanical license has meant an agreement between the author or authors of a work and a phonogram producer granting the phonogram producer permission to duplicate and sell the author’s recorded work. While this has been changing in the digital age, with distributors now signing separate agreements with authors and producers, a situation in which a phonogram producer is left out of a mechanical agreement entirely is highly unusual. But that is what is happening at present in Kenya.

The General Manager of KAMP, June Gachui, has made it clear to MCSK and the Kenya Copyright Board that she disagrees with the use of mechanical licenses for digital music downloads. She maintains that there should be another system of digital music licensing, which should be described in an amendment to the Copyright Act. (In our discussions she has declined to describe what this system would look like.) Since she doesn’t agree with MCSK’s way of doing things, she refuses to ask her own members for permission to allow KAMP to manage digital mechanical rights. This puts the onus on content providers to clear the master use rights with each and every producer individually. At present, content providers are not doing so, and phonogram producers are not getting their digital royalties. This is also preventing performers from getting their digital royalties, as KAMP and PRSK work together to collect royalties.

In addition to disagreeing with the use of mechanical licenses for digital distribution, Gachui also argues that MCSK should not be handling mechanical licenses in the first place, as it is not in their charter; and that they should not be giving over recordings of the music they are licensing, since they are only licensing the work and not the recording of the work. The latter issue is something Gachui brought up almost as an aside, but it brings up an intriguing issue. By distributing master recordings to content providers, MCSK is essentially infringing upon the rights of the owners of the recordings. Even if they inform digital music distributors that the master recording rights must be cleared, MCSK still do not have the right to hand over the recordings in the first place. When I brought this up to the CEO of MCSK, he seemed bemused. Perhaps this was because the idea of being concerned about the custody chain of a digital recording seemed absurd to him. After all, we are living in an age when there is no longer a qualitative difference between a master recording and a copy. Or perhaps it was because the idea of being concerned about the custody chain of any recording, digital

[^4] This is, as I understand it, the way things work in other countries, including the U.S., but in most of those countries there are large labels that can serve as clearinghouses for at least a portion of a content provider’s catalog.
or analog, in Kenya, where pirates have traditionally brought recordings to market before legitimate sellers, seemed absurd.

**Conclusion: ‘Colonization’ or ‘Development’?**

In our interview, producer and KAMP chairperson Eric Musyoka expressed a concern that the mobile phone sector may be ‘colonizing’ the music industry. ‘They shouldn’t be controlling the music industry’, he told me. ‘It’s like when foreign companies buy our produce and then sell it back to us’. One might expect this to be a common concern among Kenyan music industry stakeholders, but it seems not. While there is a great deal of suspicion that firms like Safaricom are taking a larger share than they deserve from music m-commerce, Musyoka’s concern is not at all common among music industry stakeholders. I did not hear it expressed at all in any of the industry events I have attended over the past nine months. Instead, what I have heard from music industry stakeholders regarding the advent of m-commerce are statements grounded in what one might term digital-age Afro-optimism, the belief that African economies and societies, despite their problems, are positioned to ‘leapfrog’ to the vanguard of the digital age.

Kenya is an important physical and conceptual *topos* for digital-age Afro-optimism. It is a country where massive public and private resources are being funnelled into the goal of creating a ‘Silicon Savannah’; and it is the home of the pioneering mobile money transfer service M-Pesa (operated by Safaricom), which is often held up as a ‘rare case in which a poor African country is the world market leader and an exporter of innovation’.\(^5\) It is not surprising, then, that stakeholders in the Kenyan music industry are ready and willing to embrace the brave new digital world.

Kenyan music industry stakeholders commonly predict that the same digital technologies that have allowed music piracy to flourish in the developed world will serve to create, for the first time since the multinational record companies pulled out of Kenya in the 1980s, a music industry based on the legal exploitation of music as intellectual property. This prognostication is based in part on the idea that digital media monitoring, which is just becoming a reality in Kenya, will make royalty collection more ‘scientific’, efficient, and transparent, and in part on the idea that digital modes of distribution—in particular, m-commerce—create a huge market for popular music while being resistant to piracy.

The idea that m-commerce will remain resistant to piracy as it evolves may seem folly, but the fact is that the most popular form of music m-commerce in Kenya at the moment, the caller ringback tone service, is completely immune to piracy—even more so than radio (as long as the network operators have complete control over their ringback tones, we will never see a pirate ringback tone service).

As for ringtones and mp3 downloads, these forms of distribution are far from immune to piracy; however, I have heard from many music industry stakeholders (including two who had been involved in music piracy in the past) that music piracy in Kenya has always been fuelled by an 'availability problem', and so as music becomes easily and cheaply available to Kenyan consumers via their mobile phones, piracy will disappear.

But as I have shown, piracy is not the only obstacle standing in the way of the Kenyan music industry becoming a viable, formalized industry based on the legal exploitation of music as intellectual property. Many stumbling blocks remain, and I think it is worth asking with Eric Musyoka whether m-commerce is ultimately 'underdeveloping' the Kenyan music industry.