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The Anton Mostert

CIP

Chair of Intellectual Property

PERFORMERS' PROTECTION

Delivery of Performances

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INTRODUCTION



- Performances of Works
- Treaty Obligations
- Akin to Personality Rights
- Relationship to Copyright
- Dates from 30 December, 1967 with retrospective effect.

PERFORMANCES ENJOYING PROTECTION



- Performances of Persons Who Perform **Works**
- Effectively Scripted Works
- Folklore
- Traditional Works

CONDITIONS FOR PROTECTION



- Place of Performance
- Broadcast Live
- First Recorded
- Qualification in Respect of Foreign Performances

TERM OF PROTECTION



- Fifty Years
- After Performance Took Place; or
- Recording Made (if incorporated in a sound recording)

NATURE AND SCOPE OF PROTECTION



- **Vests in Performer**
- **Monopoly in Certain Acts (known as “restricted acts”), namely :**
- Broadcasting or Communicating Unfixed Performance
- Making Recording of Live Performance
- Making Reproductions of a Recording of Performance

(continued)

PROTECTION (continued)



- By Means of a Commercial Record, Without Payment of a Royalty :-
 - 1) Broadcasting the Performance
 - 2) Transmitting the Performance in a Diffusion Service
 - 3) Communicating the Performance to the Public (“Needletime”)

CIVIL LAW INFRINGEMENT



- Performing “Restricted Act” in Relation to a Substantial Part, without Consent
- **“Consent”**
- Collective Consent by Manager of a Group
- Deemed Consent when :-
- 1) Rebroadcast takes place where initial broadcast has been authorised
- 2) Representative of a group incorrectly represents that he is authorised and performer of restricted act reasonably believed that the authorisation was valid.

CRIMINAL INFRINGEMENT



- Performing Restricted Act in Relation to Substantial Part
- Distributing Infringing Copy
- Possessing Master of Infringing Copy

With “Guilty Knowledge”

CIVIL LAW REMEDIES FOR INFRINGEMENT



- 1) Interdict
- 2) Patrimonial Damages; alternatively penal damages in amount determined by Minister; alternatively,
- 3) Statutory Damages prescribed by Minister, without any proof of damages being suffered
- 4) Destruction of Masters
- 5) Costs

CRIMINAL SANCTIONS FOR INFRINGEMENT



- 1) Fine and/or Imprisonment
- 2) Payment of Prescribed Penalty to Performer, in the Case of Performance of Restricted Act.
- 3) Destruction of Masters

EXEMPTIONS FROM INFRINGEMENT



- Private Study and Personal Use
- Criticism or Review
- Teaching, Scientific Use, Legal Proceedings, Demonstrating Equipment
- “Ephemeral Recordings” by Broadcaster

DISPOSITION OF PERFORMERS RIGHT



- Assignment not Possible
- Licence

CONCLUSION



- Questions ?



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