

Study unit 1

Copyright and related rights

Overview

In this study unit you will be introduced to the law relating to copyright and related (earlier called 'neighbouring') rights. You will see how these legal rules apply in a factual setting. In short, we will explore the relevance of copyright and related rights law to certain events. We will also introduce you to the way in which these interact with each other and with other legal rights.

Learning outcomes

- After completion of this study unit, you should be able to —
- ☐ identify the characteristics of an event that have legal relevance
 - ☐ appreciate the relationship between copyright law and the law relating to certain related rights

Setting the scene

This little episode will introduce you to the subject-matter of this course. The facts of this episode are based on a decision of the Appellate Division of the Supreme Court of South Africa — *South African Broadcasting Corporation v Pollecutt* 1996 (1) SA 546 (A).

Peter had been commissioned by the South African Broadcasting Corporation (SABC) to provide the music for a television series — *Shaka Zulu*. The parties had entered into three agreements:

- ☐ the first appointed Peter as composer and musical director for the production of *Shaka Zulu*;
- ☐ the second commissioned him to provide the music for the production (we will refer to this agreement as the 'commission agreement'); and
- ☐ in the third agreement, Peter, in his capacity as composer, granted the SABC the right to record,

broadcast, and commercially exploit the production without further payment.

It was stated in the first agreement that Peter would retain ownership of all his copyright in all music composed by him, but he granted the SABC 'the perpetual right to broadcast the music and to license the broadcast of the music by third parties without further compensation'.

In terms of the commission agreement, Peter had to deliver to the SABC, on a master tape, music for ten episodes of the series. His duties included recording and mixing the music in 50 three-hour sessions. For this purpose he had to employ and pay, among others, a number of orchestras and a choir. One of the clauses in this agreement stated the following:

'Insofar as their contributions may constitute a performing right, you [Peter] hereby consent on behalf of all the performers mentioned in clause 2 [the members of the different orchestras and the choir] hereof that the SABC may record, broadcast and commercially exploit their contributions to the production [*Shaka Zulu*] without any further payment being made to you or any of the said performers.'

As a result of the success of *Shaka Zulu*, Peter had entered into two further agreements:

- the first was with A (Pty) Ltd, a music publishing company, to which he assigned his literary copyright in the title and lyrics as well as his compositions; and
- the second was a 'consent agreement' in terms of which he gave written consent to the SABC to attend to the marketing and distribution of the mechanical phonographic licences of cassettes, records, compact discs, video discs, video tapes, or any future format, subject to payment by the SABC to him of a certain royalty.

After concluding the consent agreement, Peter had entered into an agreement with a publishing company. He licensed it to manufacture and sell records derived from the master tape of *Shaka Zulu*. These records contained the original music as performed in terms of the commission agreement. The company had to pay all performers' or other royalties. The SABC had not been a party to this agreement. The company had later failed pay Peter or the SABC the amounts due in

terms of the consent agreement; the SABC then failed to pay Peter.

In the trial court, he successfully recovered from the SABC the agreed royalties in terms of the consent agreement. This decision was upheld on appeal.



Activity 1.1

Make a list of the parties' rights which you think are **legally relevant**.

After you have made your list, read the discussion that follows immediately after this. This will give you feedback.



Feedback

As was noted by the appeal court, in cases like the present one a number of different and distinct rights have to be considered

- ☐ the copyright of a composer in his musical work
- ☐ the copyright of the author of the lyrics in his literary work
- ☐ the copyright in the sound recording as embodied on the master tape
- ☐ the copyright in the cinematograph film, which includes the sound embodied in its sound-track
- ☐ the rights of the performers involved (here, the musicians and presumably the musical director)
- ☐ the ownership of the master tape

The copyright issues are governed by copyright legislation (in South Africa, for example, the Copyright Act 98 of 1978). Such legislation is usually drafted in terms of the international framework established primarily by the Berne Convention for the Protection of Literary and Artistic Works. We will explore this convention and other relevant international instruments in Study Unit 2.

Performers' rights are usually subject to special legislation (in South Africa, for example, the Performers' Protection Act 11 of 1967). Legislation of this nature is usually drafted in the context of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (known as the 'Rome Convention'). We will discuss performers' rights briefly in Study Unit 9 below. From our little episode it should be clear that there is a close relationship between copyright and performers' rights. That is why the latter rights are often called 'related rights' or 'neighbouring rights'; as they exist side by side with copyright.

Ownership of the master tape is, of course, determined by the law of property. This branch of the law falls outside the scope of this module.



Activity 1.2

A friend shows you a compact disc containing music performed by Sanki, a well-known local singer. The lyrics have been written by Vusi, and the music has been composed by Yvonne. On the cover of the insert is a painting of a rural landscape. The artist is Sandile, a famous local painter. The recording has been made by Africa Music Group Ltd. Your friend wants to make a copy of the disc. She wants to know from you who the people are whose rights may be affected if she should make such a copy.

After you have made your list, read the discussion relating to this activity in Tutorial Letter 201. This will give you feedback.

Conclusion

You should by now appreciate a basic truth relating to copyright and related rights — although one may be dealing with a single physical object, that object may be subject to the rights of various people. Some of them may be authors and so the owners of copyright; others, holders of related rights. You will see that when you are faced with any problem the solution of which involves copyright and/or neighbouring rights law, the

first step towards solving the problem is to determine the identity of the various rightholders involved. Once you have done that, solving the problem becomes a process of asking the right questions. In this module we will explore what these questions are, and especially how the answer to one question will lead you to ask the right next question.