

PERFORMERS

Need for performers' interests to be protected by legislation

79. The copyright conventions, and the national laws which implement them, do not protect the interests of those who perform literary, dramatic, musical or artistic works. Actors, singers and dancers do not enjoy protection in the same way that authors and composers do. Until the technologies of the mid-twentieth century emerged, there was little need for a similar kind of protection for performers. If the public wanted to see or listen to performances of a talented actor, singer or musician, the performances would have to be repeated live. But as technology developed it became possible to capture on record, film or tape the performances of actors, singers and musicians and to replay their performances without the performer having to give a repeat performance. It was therefore apparent that performers should have some power of control over the recording of their performances and their subsequent communication to the public. This need was first recognised in the United Kingdom in 1925 by the enactment of the Dramatic and Musical Performers' Protection Act, 1935 subsequently replaced and consolidated in the Performers' Protection Acts, 1958 - 1970. The effect of this legislation is to protect performers. It is an offence for anyone to make sound-recordings or films (including video-tapes) of a performer's performance without his permission. It is also an offence to sell or distribute to the public such

unauthorised recordings or films, to use them for public performances or broadcasting purposes, or to relay them through a cable distribution system. The protection thus given is not the same as the protection given to authors. Performers do not have "property rights" which they can assign or license in the way copyright can be dealt with. They are, however, enabled to protect their interests by exercising control over the extent to which performances are recorded, filmed or broadcast, and they may, of course, attach conditions - financial or other - to the granting of their permission for the recording and subsequent use of their recorded performances.

Performers not usually protected by developing country laws - but should be

80. The need to protect performers against the unauthorised recording and subsequent use of their recorded performances was recognised internationally by the establishment in Rome in 1961 of the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations. Today only 23 countries have joined this Convention. So, although most countries which belong to either the Berne or the Universal Copyright Convention now give a form of copyright protection to record manufacturers and broadcasters, only a few protect the interests of performers. There are hardly any developing countries among them. As the trade unions and other organisations which look after the interests of performers in the developing countries are not as well established or as effective as the unions which serve the interests of other categories of workers, governments of developing countries should give urgent consideration to the enactment of legislation to protect the interests of their performers. For example, at present there is no legislation which protects the calypsonians of Trinidad and Tobago from having their live performances recorded by either national or foreign recording

companies. The result is that calypsonians (otherwise than by possibly using the control over the copyright in the material they sing) are unable to ensure that they share in the proceeds of sales abroad of the recordings of their performances.

Value of
copyright to
developing
countries

81. In a booklet entitled '*The ABC of Copyright*', UNESCO has explained the importance of the copyright system to developing countries:

Young countries are anxious to have access to the best works of other nations and to export their own. They must therefore protect their own authors and provide them with the same guarantees as others. By protecting expressions of the human mind, copyright enables countries to communicate their aspirations, ideas and accomplishments to the entire world. Copyright has a critical impact on the flow of literary, scientific, musical and artistic works, information and culture from one country to another. All countries therefore have an interest in copyright. The regulation of copyright is consequently a major task facing developing countries. (p. 67)