

## **PERFORMERS' PROTECTION ACT**

**NO. 11 OF 1967**

[Assented to 10 February, 1967]

[Date of Commencement: 30 December, 1967]

*(Afrikaans text signed by the State President)*

### Table of Contents

1. Interpretation of terms
2. Relation to copyright protection
3. Protection of performers' rights in respect of performances in the Republic
4. Extension of protection of performers' rights to performances in convention countries.
5. Restrictions on use of performances
6. Collective performances
7. Term of protection
8. Exceptions from prohibition against use of performance without the consent of the performer
9. Offences and penalties
10. Damages or interdict for infringement of performers' rights.—Any person who infringes the rights of any performer may be sued in any court of law by such performer for
11. Power of the court in respect of fixations, reproductions and plates made in contravention of this Act
12. Consent on behalf of performers and criminal liability of unauthorized agent
13. Contracts in respect of use of performances
14. Savings

15. Short title and date of commencement

**ACT**

**To provide for the protection of performers of literary and artistic works.**

**1. Interpretation of terms.**

- (1) In this Act, unless the context otherwise indicates—

“ **broadcasting**” means broadcasting by means of a broadcasting service as defined in section 1 of the Radio Act, 1952 (Act No. 3 of 1952); and “ **broadcast**” has a corresponding meaning;

“**Corporation**” means the South African Broadcasting Corporation established by the Broadcasting Act, 1936 (Act No. 22 of 1936);

“**literary and artistic works**” include musical, dramatic and dramatico-musical works; “**performer**” means an actor, singer, musician, dancer or other person who acts, sings, delivers,

declaims, plays in or otherwise performs, literary or artistic works;

“**phonogram**” means any exclusively aural fixation of sounds of a performance or of other sounds;

“**rebroadcasting**” means the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization; and “rebroadcast” has a corresponding meaning;

“**reproduction**” means a copy made of a fixation of a performance.

- (2) Except in so far as the context otherwise requires, any reference in this Act to the doing of an act in relation to a performance, a fixation of a performance or a reproduction of such a fixation, shall be taken to include a reference to the doing of that act in relation to a substantial part of the performance, the fixation or the reproduction, as the case may be.

**2. Relation to copyright protection.**— The rights created by this Act shall in no way restrict or affect the rights provided for by any other law relating to copyright in literary and artistic works.

**3. Protection of performers' rights in respect of performances in the Republic.**— Performers shall be granted the protection provided for in section 5 of this Act in respect of their performances—

- (a) taking place,
  - (b) broadcast without a fixation, or
  - (c) first fixed,
- in the Republic.

**4. Extension of protection of performers' rights to performances in convention countries.**—The protection granted to performers by this Act shall, subject to such limitations as may hereinafter be prescribed, be extended automatically to performers in respect of their performances—

- (a) taking place.
- (b) broadcast without a fixation, or
- (c) first fixed,

in a country which, being a party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, by law grants in its territory similar rights to performers in respect of their performances in the Republic.

**5. Restrictions on use of performances.**—

- (1) Subject to the provisions of this Act, no person shall without the consent of the performer—
  - (a) broadcast or communicate to the public a performance of such performer, unless the performance used in the broadcast or the public communication is itself already a broadcast performance or is made from a fixation of the performance or from a reproduction of such a fixation; or
  - (b) make a fixation of the unfixed performance of such performer; or
  - (c) make a reproduction of a fixation of a performance of such performer—
    - (i) if the original fixation, other than a fixation excluded by section 8 from the necessity for obtaining the consent of the performer, was itself made without his consent; or

- (ii) if the reproduction is made for purposes other than those in respect of which such performer gave his consent to the making of the original fixation or of a reproduction thereof; or
  - (iii) if the original fixation was made in accordance with the provisions of section 8, and the reproduction is made for purposes not covered by those provisions.
- (2) In the absence of an agreement to the contrary, a performer's consent to the broadcasting of his performance shall be deemed to include his consent to the rebroadcasting of his performance, the fixation of his performance for broadcasting purposes, and the reproduction for broadcasting purposes of such fixation.

#### **6. Collective performances.—**

- (1) Where several performers as a group take part in the same performance, it shall suffice if the consent required under section 5 is given by the manager or other authority in charge of the group or, failing such authority, by the leader of the group.
- (2) In the case referred to in subsection (1) a single payment for the use of the performance shall, unless otherwise stipulated, be made to the manager or other authority in charge of the group or, failing such manager or authority, to the leader of the group, and the manager or authority or leader, as the case may be, shall distribute the proceeds as agreed by the performers or, in default of agreement, the right to remuneration of the respective performers shall be determined in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), or alternatively, at the option of the majority of the performers, by the Copyright Tribunal established by the Copyright Act, 1965 (Act No. 63 of 1965).

**7. Term of protection.—** The prohibition against the use of a performance without the consent of the performer as provided for in section 5, shall commence upon the day when the performance first took place or, if incorporated in a phonogram, when it was first fixed on such phonogram, and shall continue for a period of twenty years calculated from the end of the calendar year in which the performance took place or was incorporated in a phonogram, as the case may be.

#### **8. Exceptions from prohibition against use of performance without the consent of the performer.—**

- (1) If a performer consents to the incorporation of his performance in a visual or audio-visual fixation, section 5 (1) shall cease to apply in respect of the performance so fixed.
- (2) A performance, a fixation of a performance or a reproduction of such a fixation may be used without the consent required by section 5—
  - (a) if it is for the purposes of private study or personal and private use; or

- (b) if it is for the purposes of criticism or review or for the purpose of reporting on current events, provided that not more than short excerpts from the performance are used and, whenever possible, the performer's name or the names of the leading performers are acknowledged; or
  - (c) if it is for the purposes of teaching or scientific research; or
  - (d) if it is for the purpose of legal proceedings; or
  - (e) if it is for the demonstration of recording, amplifying or similar apparatus, provided that the demonstration is made by a licensed dealer on his premises to a specific client.
- (3)
- (a) The Corporation may make by means of its own facilities a fixation of a performance and reproductions of such fixation without the consent required by section 5, provided that, unless otherwise stipulated—
    - (i) the fixation and the reproductions thereof are used solely in the broadcasts made by the Corporation;
    - (ii) the fixation and any reproductions thereof, if they are not of an exceptional documentary character, are destroyed before the end of the period of six months commencing on the day on which the fixation was first made; and
    - (iii) the Corporation pays to the performer, whose performance is so used, in respect of each use of the fixation or of any reproduction thereof, an equitable remuneration, which, in the absence of agreement, shall be determined in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), or alternatively, at the option of the performer, by the Copyright Tribunal established by the Copyright Act, 1965 (Act No. 63 of 1965).
  - (b) The fixation and the reproductions thereof made under the provisions of this subsection may, on the grounds of their exceptional documentary character, be preserved in the archives of the Corporation but shall, subject to the provisions of this Act, not be further used without the consent of the performer.
- (4) The general exceptions from copyright protection of literary and artistic works provided by sections 7 and 10 of the Copyright Act, 1965, shall apply *mutatis mutandis* in respect of performances.

## 9. Offences and penalties.—

- (1) Any person—
  - (a) who knowingly contravenes any of the provisions of section 5 (1); or
  - (b) who knowingly sells or lets for hire or distributes for the purposes of trade, or by way of trade exposes or offers for sale or hire, any fixation of a performance or a

reproduction of such a fixation made in contravention of section 5; or

- (c) who makes, or has in his possession, a plate or similar contrivance for the purpose of making fixations of a performance or reproductions of such fixations in contravention of section 5,

shall be guilty of an offence and liable on conviction—

- (i) in the case of a contravention referred to in paragraph (a), to a fine not exceeding fifty rand or to imprisonment for a period not exceeding three months, and the court convicting him may in addition, on the application of the performer whose rights have been infringed, and without proof of any damages, order him to pay to the performer as damages such amount, not exceeding one hundred rand, as may in the circumstances of the case appear to it to be reasonable;
  - (ii) in the case of a contravention of paragraph (b), to a fine not exceeding ten rand in respect of each fixation or reproduction; and
  - (iii) in the case of a contravention of paragraph (c), to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (2) Any order made under subsection (1) for the payment of damages to a performer may be executed as if it were a civil judgment in favour of that performer.

**10. Damages or interdict for infringement of performers' rights.**— Any person who infringes the rights of any performer may be sued in any court of law by such performer for—

- (a) an amount not exceeding one hundred rand, and such court may, without proof of any damages and in addition to the costs of the action, award as damages such amount, not exceeding the said amount, as may in the circumstances of the case appear to it to be reasonable; or
- (b) damages or an interdict or for both damages and an interdict, and such court may, in addition to the costs of the action, award such damages as may appear to it to have been suffered by the performer, or award as damages such amount as it may determine in terms of paragraph (a), or grant an interdict or both award damages and grant an interdict.

**11. Power of the court in respect of fixations, reproductions and plates made in contravention of this Act.**— The court before which any legal proceedings are taken under this Act may order that all fixations, reproductions of fixations or plates (including contrivances similar to plates) in the possession of the accused or the defendant, which appear to the court to have been made in contravention of this Act, be destroyed or otherwise dealt with as the court may in its discretion determine.

**12. Consent on behalf of performers and criminal liability of unauthorized agent.**—

(1) Where in any legal proceedings under this Act it is proved—

- (a) that the fixation, the reproduction of a fixation, the broadcast or the public communication to which the legal proceedings relate, was made with the consent of a person who, at the time of giving the consent, represented that he was authorized by the performers to give it on their behalf, and
- (b) that the person who made the fixation, the reproduction of a fixation, the broadcast or the public communication had no reasonable grounds for believing that the person giving the consent was not so authorized,

the provisions of this Act shall apply as if it had been proved that the performers had themselves consented to the making of the fixation, the reproduction of the fixation or the broadcast or the public communication, as the case may be.

(2) Where—

- (a) a fixation, a reproduction of a fixation, a broadcast or a public communication is made with the consent of a person who, at the time of giving the consent, represented that he was authorized by the performers to give it on their behalf when, to his knowledge, he was not so authorized, and
- (b) if legal proceedings were brought against the person to whom the consent was given, the consent would by virtue of subsection (1) afford a defence to those legal proceedings,

the person who gave the consent shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand, or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.

**13. Contracts in respect of use of performances.**— Notwithstanding the provisions of this Act any performer may enter into any contract with any user or prospective user of his performance in respect of the use of his performance, but such contract shall be enforceable only in the Republic.

**14. Savings.**—

- (1) The rights acquired by any performer prior to the commencement of this Act shall not be prejudiced by this Act.
- (2) This Act shall not apply to performances which took place before the commencement of this Act.

**15. Short title and date of commencement.**— This Act shall be called the Performers' Protection Act, 1967, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.