

## 1.17 Performers' Rights

### a. **What are performers' rights?**

Performers have limited rights to:

- authorise the recording, filming, broadcasting and Internet streaming of their performances and
- prevent particular uses (such as the sale, copying, distribution or importation) of unauthorised recordings, filming or broadcasts of their live performance

### b. **What performances are covered?**

Performers' rights relate to the unauthorised recording, filming, broadcasts and Internet streaming of live performances of:

- dance
- dramatic, literary and musical works
- circus or other variety acts
- improvisations – such as improvised speeches and dance

For example, when students perform in a school play, or a school band performs an assembly, the performers will have certain rights in their performances.

### c. **What performances are not covered?**

Live performances do not include:

- the performance of a literary, dramatic or musical work in front of a class by a teacher or student
- news or documentary presentations
- interviews
- sporting activities
- participation in a performance as an audience member

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### d. **Photographing performances**

It will not infringe a performer's rights to take a photograph of a performer during a performance.

### e. **Exceptions**

Some performances can be recorded without first obtaining the performer's consent. Indirect recordings (ie recording from the television or radio) are permitted for:

- private and domestic use
- scientific research
- educational use
- use by handicapped persons

Indirect or direct (ie live) recordings are permitted for:

- criticism or review
- reporting the news

### f. **How long do performers' rights last?**

Performers' rights in:

- o sound recordings of performances last for 50 years
- o audio-visual recordings of performances last for 20 years

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g. **Performer's consent**

A performer's consent is required before a recording is made. Once consent is obtained, the performer generally is unable to control how the recording or film is used, unless this is negotiated specifically in the relevant contract.

The consent does not have to be in writing if it is obvious from the filming that the performer has consented. Consent will also be taken for the **'use'** of a recording where the performer has given consent for recording for that purpose.

h. **New performers' copyright in sound recordings**

From 1 January 2005, and as a result of the Free Trade agreement entered into between Australia and the United States of America, performers have been granted some copyright in sound recordings of their performances. Previously the record company (or other commissioning party) would be the sole owner of copyright. Now the performer and the owner become co-owners for equal shares in the copyright.

The rights came into force as at 1 January 2005 and apply to all recordings still in copyright.

Ordinarily, schools will be covered by the various Voluntary Licences for the use of sound recordings. However, where the school intends to use a sound recording of a performance outside the Voluntary Licences, it must make sure they have the consent and clearance of all performers. For sound recordings, a performer is any person who can be heard in the recording.

See 2.3: Musical Works for further information

See 2.4: Sound Recordings for further information

Where performers cannot be contacted, it will usually be enough for the school to get permission from the record company.

Two examples of where there will be no performers' rights are where:

- i. the recording of a performance is made for a fee ( such as a recording studio and production company); or
- ii. the performance is done in the course of the performers' employment.

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i. **Performers' moral rights**

Soon, performers may also have moral rights in their performance. These rights will be in addition to performers' copyright. They will include rights to:

- o attribution of performership
- o not to have performership falsely attributed
- o integrity of performership

This means any sound recordings made should credit the performers.

Any claim that the moral rights of a performer have been infringed can be defended on the basis of:

- o consent
- o reasonableness

See 1.16 Moral Rights for further information

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