**COURSE CODE: LPB 406**

**COURSE TITLE: INTELLECTUAL PROPERTY II**

**LECTURER IN CHARGE: DR OLUBUIYI I.**

**GROUP NUMBER: GROUP (9) NINE**

Dimitri is a renowned comedian and a popular Nollywood actor. He has recently been shocked at the massive reproduction of his quarterly comedy program ‘Laffmatazz’. He has been wondering if at all the copyright regime protects comedians and actors. He has approached you to enlighten him in the ways the law protects him as a comedian and actor. Advise him on the legal protection available to a performer under the Copyright Act anD Beijing Treaty.

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**LEGAL ISSUE**

Without further ado, this paper raises one sole legal issue from the above scenario and the legal issue is **Whether the copyright regime protects comedians and actors.**

**RESOLUTION**

This paper resolves the legal issue in the **positive.** This paper shall now go further to give legal backing for this answer dependent on the provisions of the Copyright Act and the Beijing Treaty. It will also enlighten Dimitri in the ways the law protects him as a comedian and actor.

**BACKGROUND KNOWLEDGE ON PERFORMERS’ RIGHTS**

The performances of actors, singers, musicians and dancers are an integral part of the creative process in presentations to the public. Since the very first performance recordings, in sound and images, it has been accepted that performers should have some rights over those recordings and a share in the proceeds from their commercial exploitation.

As a performer there are right which protect your performances, however these are slightly different from the other types of intellectual property (IP). **Performer’s right last 50 years from the end of the calendar year in which the performance took place.**

There are basically two types of performers right under law:

1. Non property right
2. Property right

The non-property right means that a performer has a right against recordings of live performances made without their permission. The property right means rights in authorised copies of their performances. These rights can be assigned or transferred.

**OVERALL INFORMATION OF RELATED RIGHTS IN THE INTERNATIONAL SCENE**

Related rights is the generic name given to rights that are derived from the parent copyrights. Hence they are also called Derivative rights. Although related rights are different from copyright, there is nevertheless a link between them because these three categories of related rights owners are auxiliaries in the intellectual creation process since they lend their assistance to authors in the communication of their works to the public[[1]](#footnote-0). For instance, actors perform roles in a play, which are written by playwrights; or producers produce songs and music, which are written by authors and played by musicians or sung by performers.

Without performers, some of these works would never be available to the public and also some of them would never be completed. For instance, many people are unable to read music and thus cannot enjoy it unless through performances of musicians and also movie or film cannot really complete without performers. The skill and labour of performers is important to the public enjoyment of those art works and thus, performers should be protected against unauthorized exploration of their performances in the same way as authors of copyright

works enjoy copyright. Audiovisual productions are becoming increasingly more important and popular, especially on TV and in the digital productions (e.g.music sector, video clips, recordings of concerts).[[2]](#footnote-1)

Since the very first performance recordings, in sound and images, it has been accepted that performers should have some rights over those recordings and a share in the proceeds from their commercial exploitation. Nevertheless, performers’ rights are related rights or neighbouring rights which are different from copyright because the rights provided by copyright apply to authors, but related rights are the rights that belong to the performers, the producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcast[[3]](#footnote-2). And as performing artists, actors receive legal rights known as performers’ rights, similar in nature to copyright. With this, it can be said that performers are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expression of folklore. Whilst, on 26 June 2012, to the Beijing Treaty on the Protection of Audiovisual Performances was finally adopted following over a decade of negotiations and postponements. The new treaty brings audiovisual performers into the fold of the international copyright framework by providing minimal standards of protection for audiovisual performances[[4]](#footnote-3).

Nonetheless, the first international recognition of these so-called “neighbouring rights” (rights related to copyright) did not come until adoption of the 1961 Rome Convention. This treaty gave performers in audiovisual works such as feature films, videos and television dramas rights against unauthorized broadcasts or recordings of their performances. However, and in contrast to performers in sound-only recordings (CDs, MP3 files and so on), once performers in audiovisual works had consented to the initial recording of their performance they were given no rights over its use. [[5]](#footnote-4)

**IN THE NIGERIAN SCENE**

In Nigeria, the birth and development of performers’ rights was initially witnessed in the

twentieth century. Domestic legislations and international conventions were drafted and

implemented in various countries and in the international community[[6]](#footnote-5). Nigeria has followed a similar trend in the development of performers’ rights by including in its domestic laws,

provisions protecting performers’ rights. Nigeria is also a party to the Rome Convention

providing for the protection of related rights. There are still gaps, however, in the laws

regarding these rights. There are issues relating to performers’ rights that have not been given

consideration under the Act. The need for a broader system of protection has become imminent due to the rapid development of technology, the growing entertainment industry in Nigeria and the volume of unprotected performances based on expressions of folklore.

**PROTECTION UNDER THE NIGERIAN COPYRIGHT**

Copyright gives protection of exclusive rights to the creator of the work. These exclusive rights can now be claimed by the performers with amendment of the copyright Act 1994. The major amendment of the Act was under section 38 which states “where any performer appears or engages in any performance, he shall have a special right to be known as the “performer’s right in relation to such performance”.

**RIGHTS OF A PERFOMER COPYRIGHT PROTECTION ACT**

A performer has the exclusive right to do the following under the copyright protection Act:

**1). Right to make sound recording or visual Recording of the performance**

This is highlighted under section 1 of the copyright Protection Act. He also has the right to authorize the recording of a live performance, and the exclusive right to make sound recording from which such sounds may be produced regardless of the medium on which the sounds are reproduced. Copyright will subsist in a sound recording only if it is lawfully made. If the recording includes any material which is an infringement of any literary, dramatic or musical work, copyright will not subsist in the sound recording.

**2).Right to produce a Sound Recording or Visual Recording of the Performance**

A performer has the right to make copies of the recording, the right to issue copies of the recording to the public, the right to rent or lend copies. However, the recording must display following particulars:

a). A copy of the certificate granted by the Board of film certification.

b). The name and address of the person who has made the video film and a declaration that he has obtained the necessary license or consent of the owner of the copyright in the work for making the video film, and

c) The name and address of the owner of the copyright in such work.

Failure to comply with the above is a punishable offence. This is done with a view to check and detects piracy.

**3) Right to broadcast the performance**

Performers also have the right to prevent their live performances being broadcast.

‘Broadcast’ means communication to the public

(i) By any means of wireless diffusion, whether in any one or more of the forms of signs, sounds, and visual image

(ii) Or by wire and includes a rebroadcast.

In case of programme broadcast, which includes literary, dramatic or musical works or records in which independent copyright may subsist, broadcasting organization should obtain the consent or license of the copyright owners in the work in question.

**4) To communicate the work to the public otherwise than by broadcast**

Under the Beijing Treaty [[7]](#footnote-6)

The Beijing Treaty modernizes and updates for the digital era the protection for singers, musicians, dancers and actors in audiovisual performances contained in the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. The Beijing Treaty encompasses the performances of actors in different media, such as film and television, and also includes musicians when their musical performances are recorded in a DVD or any other audiovisual platform. The Beijing Treaty grants performers economic rights in fixed and unfixed performances, as well as certain moral rights.

Main Provisions of the Beijing Treaty

The Beijing Treaty grants performers four kinds of economic rights for their performances fixed in audiovisual fixations:

1. **The right of reproduction**[[8]](#footnote-7) is the right to authorize direct or indirect reproduction of the performance fixed in an audiovisual fixation in any manner or form.
2. **The right of distribution**[[9]](#footnote-8)is the right to authorize the making available to the public of the original and copies of the performance fixed in an audiovisual fixation through sale or other transfer of ownership.
3. **The right of rental**[[10]](#footnote-9) is the right to authorize the commercial rental to the public of the original and copies of the performance fixed in an audiovisual fixation.
4. **The right of making available**[[11]](#footnote-10) is the right to authorize the making available to the public, by wire or wireless means, of any performance fixed in an audiovisual fixation, in such a way that member of the public may access the fixed performance from a place and at a time individually chosen by them.

As to unfixed (live) performances, the Treaty grants performers three kinds of economic rights:

1. The right of broadcasting (except in the case of rebroadcasting);
2. The right of communication to the public (except where the performance is a broadcast performance); and
3. The right of fixation.

The Treaty also grants performers moral rights, that is, the right to claim to be identified as the performer (except where such an omission would be dictated by the manner of the use of the performance); and the right to object to any distortion, mutilation or other modification that would be prejudicial to the performer’s reputation, taking into account the nature of the audiovisual fixations.

The Treaty provides that performers shall enjoy the right to authorize the broadcasting and communication to the public of their performances fixed in audiovisual fixations. However, Contracting Parties may notify that instead of the right of authorization, they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or communication to the public. Any Contracting Party may restrict or provided that it makes a reservation to the treaty deny this right.

As to the transfer of rights, the Treaty provides that Contracting Parties may stipulate in their national laws that once a performer has consented to the audiovisual fixation of a performance, the exclusive rights mentioned above are transferred to the producer of the audiovisual fixation (unless a contract between the performer and producer states otherwise). Independent of such a transfer of rights, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under the Treaty.

**The term of protection must be at least 50 years.**

The enjoyment and exercise of the rights provided for in the Treaty cannot be subject to any formality.

**CONCLUSION**

In conclusion, this paper has raised one sole legal issue and resolved it in the positive in accordance with the provisions of the Nigerian Copyright Act and the Beijing Treaty 2012. All the rights discussed above are granted to Dimitri by virtue of the Act and Treaty respectively.

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2. 3World Intellectual Property Organization, Diplomatic Conference on the Protection of Audiovisual Performances; Beijing Treaty on Audiovisual Performances. China; Beijing; (2012) 5

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4. AEPO A. Performers’ Rights in International and European Legislation: Situation and Elements for Improvement. (2014) http://www.aepo-artis.org/usr/files/di/fi/2/AEPO-ARTIS-study-on-performers-rights-1-December-2014-FINAL\_201611291138.pdf (assessed 7th April, 2020). [↑](#footnote-ref-3)
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7. BEIJING TREATY ON THE PROTECTION OF AUDIO-VISUAL PERFORMANCES (2012) [↑](#footnote-ref-6)
8. Article 7 (Beijing Treaty on Audio-visual performances) 2012 [↑](#footnote-ref-7)
9. Article 8 [↑](#footnote-ref-8)
10. Article 9 [↑](#footnote-ref-9)
11. Article 10 [↑](#footnote-ref-10)