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COURSE: INTELLECTUAL PROPERTY II

TEST ANSWER:

The legal issue in the hypothetical case given is whether John has copyright in the work he recorded.

Copyright is the right that gives the author of a work exclusive right to authorize or prohibit certain uses or exploitation of his work. There are six categories of copyrighted works under **section 6 of the Copyright Act**; literary works, artistic works, musical works, sound recordings, cinematograph film and broadcasts. For a work to be protected under copyright it must fulfill certain requirements such as: Originality, fixation and qualification of the author. Originality means that the person’s work must depict sufficient amount of effort, skill and labour and not copied from another person’s work. The case of **University of London Press v. University of Tutorial Press**, it was held that copyrighted acts are not concerned with the originality of ideas but with the expression of thought. The work must not be copied from another person but should originate from the author.

Applying this to the case scenario, John’s recording is considered to be original because it is his expression of idea

Fixation means that the work must be in a fixed definite form. In the case of **Kuti v. Iseli,** it was held that the written lyrics and the tape containing it were yet to be published songs but it was said to be in a definite form which could be perceived.

Applying this to the case scenario, John’s recording is considered to be in a fixed form.

Qualification of an author refers to the status of the author, place of publication, reference to international agreement, government works.

Status of the author means that the author must be a Nigerian for his work to have copyright protection in the country. Looking at the case given, John is a Ghanaian and therefore does not satisfy this qualification. Concerning the place of publication, **section 3 of the Copyright Act** states that copyright protection shall be granted to any work which is first published in Nigeria. This requirement becomes relevant when the work has not been subject to the status of the author as contained in **section 2(1) of the Act.** It must also be suffiently published in amanner that it is made available to the public.In the case given, the recording was published by Ope in Nigeria not John, therefore he does not satisfy this requirement.

However John satisfies the requirement of copyright of international agreement because Ghana is part of the Berne convention with Nigeria and protection is therefore given to a party to an obligation in a treaty. However, in the case of  **Microsoft v Franike** it requires a certificate stating that he is a signatory

In conclusion, John can claim copyright vecause he satisfies the requirements stated above