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LEVEL: 400

COURSE TITLE: INTELLECTUAL PROPERTY

LEGAL ISSUE

1. whether the audio file recorded by john qualify for copyright protection
2. whether a foreigner who is a ghanian claim copyright in Nigeria

RULE

The rule as noted by Peterson j in university of London press v. university tutorial press with respect to literary work is that a literary work is therefore a work expressed in print or writing. However, a musical work is a composition of melody and harmony or either of them which can be printed, reduced to writing, graphically produced or recorded as defimed in the section 51 of the copyright act.

In the case of Akinkulapo kuti v. iseli, fela never wrote any of his songs down , rather it was recorded and so qualified for copyright protection. The requirement for fixation in this case requires that it must have been in a fixed medium without specifying the form it must take, for example, like been recorded on phones or cassetes.

Also, before the work can qualify for copyright protection in Nigeria, it must satisfy the requirements of originality, fixation and qualification of the author

Based on qualification of the Author, the section 2-5 of the copyright act explains this. The section 5 of the act provides for reference to international agreements. The rule on this is that works which on the date of first publication are made by authors who are domiciled or nationals in a member state, un or its agencies, OAU or ECOWAS may be protected by copyright in Nigeria and this is because of the principle of national treatment and fulfilling obligation under international treatment.

Based on originality, it does not mean originality of ideas but the originality of thoughts and expression of ideas.

**APPLICATION OF THE RULE**

In applying the rules stated above to the following issues;

For the first issue, as to whether the audio file created by john qualified for copyright protection, the answer is YES.

The reason for my answer is that when it comes to musical work, the requirement for it as stated earlier is that it must have been in a fixed form and must be a composition of melody and harmony or either of them and the audio file indeed qualified as both and so could qualify for copyright protection under it.

For my second legal issue, whether a foreigner who is a ghanian claim copyright in Nigeria, my answer is YES.

Ghanian is a member state to Nigeria and so by reason of this all works produced by a person who is a national of Ghana is qualified to be protected under the Nigerian laws following the rule above. This was one of the issues in the case of Microsoft corporation v. franike associates ltd.

**MY ADVICE TO JOHN**

I advise that john sues Ope in a copyright infringement action and claims all such remedies that may be available to him such as damages, injunctions, accounts of profits. The copyright act in section 16 provides for both civil and criminal actions of infringement. The acts in respect to civil action provides for 3 categories of persons that may institute an action for copyright infringement such as the copyright owner(creator of the work), assignee and exclusive licensee. John being a copyright owner can therefore succeed in such infringement action against ope.

**CONCLUSION**

John can claim copyright protection under the Nigerian law cause he fulfilled all requirements as stated above and so therefore was entitled to remedy for the publication done by ope as this was in breach of his economic rights contained in the section 1a-7 of the copyright act.