

PROTECTION OF PERFORMERS AND THEIR PERFORMANCE

Copyright Amendment Act 1989

Historically - copyright legislation - trouble dealing with “the performance itself”

Why? Because a requirement of copyright is that the copyright work must be in a **material** form.

Problem?

When the performance is reduced to a material form (i.e. sound recording or film) it is the maker of that product who owns copyright in that material fixation of that performance - and this is generally **not** the performer.

Pre-1989 Act

- eg. a bootleg recording of a performance by a performer was protected by copyright (eg. DIVA Movie situation)

the owner of that copyright in the bootleg was the maker of it - could make and sell records from it and performer got nothing from those sales (& other uses of the recording of their performance) AND could do nothing to stop it.

(eg. Applehouse Music Case - Michael Jackson etc concerts recorded overseas)

EFFECT OF 1989 ACT - Although the Australian performer is **not** the owner of copyright in recordings of their performances, the performer now has the right to **prevent**:-

- * the “**unauthorised use**” of their performance for 20 years from the date on which the performance in question was given.
- * “**unauthorised use**” includes (Section 248G):-
 - making a recording of the performance without the performer’s permission

- broadcasting or re-broadcasting the performance (live or from a recording of that performance) without the performer's permission;

SAMPLING

Computer technology makes this **possible** - esp. rap music, dance music

BUT technology also makes it easier to **detect**

Is permission needed for this, if so, from whom?

Depends - is a "**substantial part**" being taken (as this makes it a copyright use)

If so, may need permission from all or some of the following:-

- **Record Company** which owns copyright in the sound recording being sampled;
- **the composer** (or their music publisher) of the musical composition involved;
- **the performer** whose recorded performance is being sampled.