

CHAPTER 243
PERFORMERS PROTECTION

Ordinance No. 13 of 1966, Act No. 14 of 1975

AN ACT TO PROTECT THE INTERESTS OF ACTORS, SINGERS AND
OTHER PUBLIC PERFORMERS

[20th June, 1966]

Short title

1. This Act may be cited as the Performers Protection Act.

Interpretation

- 2.—(1) In this Act, unless the context otherwise requires—
- “broadcast” means broadcast for public reception by wireless telegraphy (within the meaning of the Wireless Telegraphy Act, 1949 of the United Kingdom), whether by way of sound broadcasting or of television; (*Amended by 14 of 1975, s. 58.*)
 - “cinematograph film” means any print, negative, tape or other article on which a performance or part thereof is recorded for the purposes of visual reproduction;
 - “performance” means the performance of any actors, singers, musicians, dancers or other persons who act, sing, deliver, declaim, play or otherwise perform literary, dramatic, musical or artistic works, and includes any performance, mechanical or otherwise, of any such work, being a performance rendered or intended to be rendered audible by mechanical or electrical means, and any performance of firewalking as is given in Fiji;
 - “performers”, in the case of a mechanical performance, means the persons whose performance is mechanically reproduced;
 - “record” means a recording of sound made by means of any record or similar contrivance for reproducing sound, including the sound-track of a cinematograph film.
- (2) Any reference in this Act to the making of a cinematograph film is a reference to the carrying out of any process whereby a performance or part thereof is recorded for the purposes of visual reproduction.
- (3) For the avoidance of doubt it is hereby declared that this Act applies as respects anything done in relation to a performance notwithstanding that the performance took place out of Fiji, but this shall not cause anything done out of Fiji to be treated as an offence under this Act.

Penalization of making, etc., records without consent of performers

- 3.—(1) Subject to the provisions of this Act, if a person knowingly—
- (a) makes a record, directly or indirectly, from or by means of a performance without the consent in writing of the performers; or

(b) sells or lets for hire, or distributes for the purposes of trade, or by way of trade exposes or offers for sale or hire, a record made in contravention of this Act; or

(c) uses for the purposes of a public performance a record so made, he shall be guilty of an offence under this Act, and shall be liable, on conviction, to a fine not exceeding four dollars for each record in respect of which an offence is proved, but not exceeding one hundred dollars in respect of any one transaction:

Provided that, where a person is charged with an offence under paragraph (a), it shall be a defence to satisfy the court before which such person is charged that the record was made for private and domestic use only and not for sale or for any commercial purpose.

(2) For the purposes of paragraphs (b) and (c) of subsection (1), a record made in a country outside Fiji directly or indirectly from or by means of a performance shall, where the civil or criminal law of that country contains a provision for the protection of performers under which the consent of any person to the making of the record was required, be deemed to have been made in contravention of this Act if, whether knowingly or not, it was made without the consent so required and without the consent in writing of the performers.

Penalization of making, etc., cinematograph films without consent of performers

4. Subject to the provisions of this Act, if a person knowingly—

(a) makes a cinematograph film, directly or indirectly, from or by means of a performance without the consent in writing of the performers; or

(b) sells or lets for hire, or distributes for the purposes of trade, or by way of trade exposes or offers for sale or hire, a cinematograph film made in contravention of this Act; or

(c) uses for the purposes of exhibition to the public a cinematograph film so made,

he shall be guilty of an offence under this Act, and shall be liable, on conviction, to a fine not exceeding one hundred dollars:

Provided that, where a person is charged with an offence under paragraph (a), it shall be a defence to satisfy the court before which such person is charged that the cinematograph film was made for private and domestic use only and not for sale or for any commercial purpose.

Penalization of broadcasting and relaying without consent of performers

5.—(1) Subject to the provisions of this Act, a person who knowingly, without the consent in writing of the performers—

(a) broadcasts, otherwise than by the use of a record or cinematograph film, a performance, or any part thereof; or

(b) causes, otherwise than by the use of a record or cinematograph film or the reception of a broadcast, a performance, or any part thereof—

(i) to be transmitted to subscribers to a diffusion service; or

(ii) to be transmitted over wires or other paths provided by a material substance so as to be seen or heard in public,

shall be guilty of an offence under this Act, and shall be liable, on conviction, to a fine not exceeding one hundred dollars.

(2) For the purposes of subsection (1), references to the transmission of a work or other subject-matter to subscribers to a diffusion service are references to the transmission thereof in the course of a service of distributing broadcast

programmes, or other programmes (whether provided by the person operating the service or other persons), over wires, or other paths provided by a material substance or the premises of subscribers to the service; and for such purposes as aforesaid, where a work or other subject-matter is so transmitted—

- (a) the person operating the service (that is to say, the person who, in the agreements with subscribers to the service, undertakes to provide them with the service, whether he is the person who transmits the programmes or not) shall be taken to be the person causing the work or other subject-matter to be so transmitted; and
- (b) no person, other than the person operating the service, shall be taken to be causing it to be so transmitted, notwithstanding that he provides any facilities for the transmission of the programmes:

Provided that, for the purposes of this subsection, and of references to which this subsection applies, no account shall be taken of a service of distributing broadcast or other programmes, where the service is only incidental to a business of keeping or letting premises where persons reside or sleep, and is operated as part of the amenities provided exclusively or mainly for residents or inmates therein.

Penalization of making or having plates, etc., for making records in contravention of Act

6. If a person makes, or has in his possession, a plate or similar contrivance for the purpose of making records in contravention of this Act, he shall be guilty of an offence under this Act, and shall be liable, on conviction, to a fine not exceeding one hundred dollars for each plate or similar contrivance in respect of which an offence is proved.

Power of court to order destruction of records, etc., contravening Act

7. The court before which any proceedings are taken under this Act may, on conviction of the offender, order that all records, cinematograph films, plates or similar contrivances in the possession of the offender which appear to the court to have been made in contravention of this Act, or to be adapted for the making of records in contravention of this Act, and in respect of which the offender has been convicted, be destroyed or otherwise dealt with as the court may think fit.

Special defences

8. Notwithstanding anything in the preceding provisions of this Act, it shall be a defence to any proceedings under this Act to satisfy the court before which any person is charged—

- (a) that the record, cinematograph film, broadcast or transmission to which the proceedings relate was made only for the purpose of reporting current events; or
- (b) that the inclusion of the performance in question in the record, cinematograph film, broadcast or transmission to which the proceedings relate was only by way of background or was otherwise only incidental to the principal matters comprised or represented in the record, film, broadcast or transmission.

Consent on behalf of performers

9. Where, in any proceedings under this Act, a court is satisfied—

- (a) that the record, cinematograph film, broadcast or transmission to which the proceedings relate was made with the consent in writing of a person who, at the time of giving the consent, represented that he

was authorised by the performers to give it on their behalf; and
(b) that the person making the record, film, broadcast or transmission had no reasonable grounds for believing that the person giving the consent was not so authorised,
the provisions of this Act shall apply as if it had been shown that the performers had themselves consented in writing to the making of the record, film, broadcast or transmission.

Giving of consent without authority

10.—(1) Where—

- (a) a record, cinematograph film, broadcast or transmission is made with the consent in writing of a person who, at the time of giving the consent, represented that he was authorised by the performers to give it on their behalf when to his knowledge he was not so authorised; and
(b) if proceedings were brought against the person to whom the consent was given, the consent would by virtue of section 9 afford a defence to those proceedings,

the person giving the consent shall be guilty of an offence under this Act, and shall be liable, on conviction, to a fine not exceeding one hundred dollars.

- (2) Section 9 shall not apply to proceedings under this section.

Controlled by Ministry of the Attorney-General