higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

MUSIC BUSINESS AND STYLES N5

22 JUNE 2018

This marking guideline consists of 7 pages.

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SECTION A

QUESTION 1

1.1 A
1.2 B
1.3 A
1.4 B
1.5 A
1.6 D
1.7 B
1.8 B
1.9 A
1.10 D
1.11 A
1.12 A
1.13 A
1.14 C
1.15 B
1.16 B
1.17 D
1.18 C
1.19 A
1.20 D
1.21 C
1.22 B
1.23 A
1.24 C
1.25 A

(25 × 2) **[50]**

QUESTION 2

2.1 True
2.2 False
2.3 False
2.4 True
2.5 True
2.6 False
2.7 True
2.8 False
2.9 False
2.10 False
2.11 True
2.12 True
2.13 False
2.14 True
2.15 False
2.16 True
2.17 True
2.18 False
2.19 False
2.20 True
2.21 False
2.22 True
2.23 True
2.24 False
2.25 False

(25 × 2) **[50]**

QUESTION 3

3.1 L
3.2 G
3.3 J
3.4 P
3.5 T
3.6 K
3.7 O
3.8 M
3.9 C
3.10 F
3.11 S
3.12 A
3.13 R
3.14 B
3.15 Q
3.16 H
3.17 N
3.18 E
3.19 I
3.20 D

(20 × 2) **[40]**

QUESTION 4

4.1 Limited liability company are partnerships that provide limited liability of corporation.

4.2 Audience is a group of people gathered to watch and listen to a performance.

4.3 Stockpiling is where the printer manufactures more units right before the term ends in order to sell after the end of the term.

4.4 Mixed folios are basically a collection of sheet songs by a number of different artists.

4.5 Contract is a legally binding agreement between two or more parties.

(5 × 2) **[10]**

TOTAL SECTION A: 150

SECTION B

QUESTION 5

5.1 Reproduce the work:✓✓ Keeping with a musical composition as our example,✓✓ this means no one can record your composition,✓✓ publish it as sheet music,✓✓ put it in a movie,✓✓ or otherwise copy it.✓✓

Distribute copies of the work:✓✓ Apart from the right to reproduce your song, there is a separate right of distribution which you also control.✓✓

Perform the work:✓✓ With a song, this mean playing it in night-clubs, on the radio, on television, in amusement parks, supermarkets, elevators, or anywhere else music is heard publicly.✓✓ It doesn't matter whether the performance is by live musicians✓✓ or a DJ playing records,✓✓ you get to control this right.✓✓

Make a derivative work:✓✓ a derivative work is a creation based on other work.✓✓ In the music industry, an example is a parody lyric set to a well-known song.✓✓ This concept is even easier to see in the motion picture area.✓✓ Any film made from a novel is a derivative work.✓✓

To display the work publicly:✓✓ This really doesn't apply to music; it's the right to put paintings, statues, etc. on public display.✓✓ (40)

5.2 A digital sampler is a device capable of taking any guitar sound, drum sound, voice, etc, and making a perfect digital copy.✓✓ It can then be played on a keyboard, edited, etc.✓✓ Every rapper on the planet samples freely from other people's works. ✓✓What started out as a minor practice of taking drum sounds, unusual squeaks and groans has turned into a wholesome lifting of rhythm tracks, melodies, etc.✓✓
In the early days, a lot of sampled records were released before anybody even tried to clear the rights.✓✓
The rights of the record company owning the sampled recording had to be bought✓✓ when the company was caught recording without having cleared the rights.✓✓ But they are not the only ones whose rights you need.✓✓ The publisher of the sampled musical composition must also be taken care of.✓✓
This 'catch me if you can' attitude came to an abrupt halt after the case of Grand Upright Music Limited v. Warner Bros Records, Inc., 780 F.Supp. 182 (S.D.N.Y 1991), which involved the rapper Biz Marky sampling Gilbert O'Sullivan's 'Alone Again (Naturally)'.✓✓
Because of this case, everyone now treats sampling with the utmost care and respect.✓✓ Record companies won't release a record containing samples without assurances that the samples have been cleared,✓✓ and you as an artist should want the same thing.✓✓ Clearing samples is a major pain in the rear end,✓✓ because there's nothing in the law that requires anyone to let you use a sample, ✓✓and thus any record company or publisher is free to make you take it off your record.✓✓ And if you're on a tight schedule and/or if it ruins your song to take it out,✓✓ you won't be a happy camper.✓✓

Suppose you don't actually sample, but just duplicate the track by playing it in the studio.✓✓ Does that solve your problems? Well, only half. You've just created what we call replay.✓✓ Replays eliminate the need to license the master, but you still need to license the song.✓✓

Since there is no compulsory license for samples, you have to make whatever deal the rights owner decides to bless you with.✓✓ If the usage is minor, and it's a little known song, you might be able to buy out all the rights for a flat fee.✓✓ The range is usually from $5,000 to $15,000 for the record company and about the same for the publisher.✓✓ If the usage is more significant and/or the song is well known, or you happen to hit a difficult rights owner,✓✓ record companies may still give you a buy-out,✓✓ but the price can go up radically- I've seen fees of $50,000 and more.✓✓ If there is no buy-out, the record company will want an advance against royalty, which is usually in pennies and payable on worldwide sales, regardless of configuration.✓✓ The range is around five to seven cents.✓✓ Sometimes their fee is a rolling payment, meaning a flat amount based on a certain number of sales✓✓ (60)
[100]

TOTAL SECTION B: 100

SECTION C

QUESTION 6

6.1 The major differences between having a partnership and a corporation are the tax-planning aspects,✓✓ the liability limitations,✓✓ and the fact that corporations are more expensive to set up and run;✓✓ otherwise, it doesn't make much of a difference whether you're a corporation or a partnership.✓✓ By liability limitations, it means that corporations limit what assets someone suing you can grab.✓✓

In a corporation, they can get only the assets of the corporation.✓✓ however with partnership they can grab both the partnership's assets✓✓ and the assets of every partner (that means you) while these are nice benefits of corporations,✓✓ they're offset by the increased cost of setting up✓✓ and running the suckers so it's marginally in your early stages.✓✓
Most states now have something called **Limited Liability Company,** or **LLC**.✓✓ LLCs are basically partnerships, but they provide the limited liability of a corporation.✓✓ Because they're as cheap and easy to use as partnerships, they're the vehicle du jour for many groups.✓✓
The mechanical difference between these entities is that, if you want a partnership, you need a written partnership agreement,✓✓ and if you want a corporation or LLC, you need both a written shareholders' agreement (meaning an agreement among the shareholders of a corporation, or the owners of the LLC, who are called members) and employment agreements between yourselves and the corporation or the LLC.✓✓ **[30]**

OR

6.2 At the end of the term the merchandiser wants to sell off any remaining merchandise.✓✓ This is usually for a period of six months after the expiry of term✓✓ and they should have no right to manufacture, only to sell whatever is on hand.✓✓ They will ask for the right to sell it through wholesale (meaning retail) outlets,✓✓ since there will not be any concerts.✓✓ You get royalties for these sales, which is the same as if they were sold under any retail deal✓✓

- The right to sell off must be totally non-exclusive,✓✓ so you can have another merchandiser in place✓✓
- The merchandiser cannot stockpile goods.✓✓ This means it cannot manufacture a ton of goods right before the end, so that the company has a lot of leftovers to sell.✓✓
- Merchandisers cannot have distress sales,✓✓ meaning they cannot sell your goods at low prices just to get rid of them.✓✓
- You should have the right to purchase the merchandise at the end of the term.✓✓ (If you do not purchase, the merchandiser gets a six-month sell-off period,✓✓ and after that you should have a second right to purchase the leftovers.)✓✓ **[30]**

QUESTION 7

Delivery requirements: Advances are sometimes geared to delivery of songs.✓✓ The problem with this structure is that songwriters have been known to throw together a batch of crummy songs for the sole purpose of satisfying a delivery requirement✓✓ and getting an advance.✓✓ So publishers came up with ways to protect themselves.✓✓ One approach is for the publisher to approve each song before they allow it to satisfy the delivery requirements.✓✓ There will also be a requirement that you have a minimum number of songs on the album,✓✓ or else the advance gets reduced.✓✓ For example, if your deal requires you to have ten songs on the album and you only have five,✓✓ you'd get 50% (the ratio of the five songs you actually had to the ten songs you were supposed to have) of your advance.✓✓ If you have a song-delivery requirement, be sure to add a formula saying that fractional compositions count towards the delivery requirement in proportion to your ownership.✓✓ **[20]**

TOTAL SECTION C: 50
GRAND TOTAL: 300

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