higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

MUSIC BUSINESS AND STYLES N5

14 JUNE 2019

This marking guideline consists of 6 pages.

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SECTION A

QUESTION 1

1.1	1.1.1	J
	1.1.2	F
	1.1.3	O
	1.1.4	M
	1.1.5	K
	1.1.6	N
	1.1.7	E
	1.1.8	L
	1.1.9	A
	1.1.10	B
	1.1.11	G
	1.1.12	H
	1.1.13	I
	1.1.14	C
	1.1.15	D

(15 × 2) (30)

1.2	1.2.1	True
	1.2.2	False
	1.2.3	True
	1.2.4	False
	1.2.5	True
	1.2.6	True
	1.2.7	False
	1.2.8	True
	1.2.9	False
	1.2.10	False
	1.2.11	True
	1.2.12	True
	1.2.13	True
	1.2.14	False
	1.2.15	False
	1.2.16	False
	1.2.17	False
	1.2.18	True
	1.2.19	True
	1.2.20	True
	1.2.21	False
	1.2.22	False
	1.2.23	True
	1.2.24	True
	1.2.25	True

(25 × 2) (50)

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1.3

1.3.1	B
1.3.2	C
1.3.3	A
1.3.4	A
1.3.5	A
1.3.6	D
1.3.7	B
1.3.8	C
1.3.9	C
1.3.10	A
1.3.11	D
1.3.12	B
1.3.13	B
1.3.14	A
1.3.15	C
1.3.16	D
1.3.17	A
1.3.18	B
1.3.19	D
1.3.20	D
1.3.21	C
1.3.22	A
1.3.23	A
1.3.24	A
1.3.25	D

(25 × 2) (50)

1.4

- Reproduce the work
  A musical composition as a good example of this. It implies that no one is allowed to record an artist's composition,✓✓ publish it as sheet music, use it in a movie or make a copy of it.✓✓
- Distribute copies of the work
  This right gives the artist the power to control the distribution of the product✓✓ or the copyright of the music.✓✓
- Perform the work
  This right protects the artist's work from being played in nightclubs, on the radio, on television, in amusement parks, supermarkets or anywhere else where music is heard publicly.✓✓ It does not matter whether the performance is by live musicians or a DJ playing records, the artist can 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. Films are a good example of this. A film made from a novel is a derivative work.✓✓
- Display the work publicly
  This right specifically allows the public display of paintings, statues, etc.✓✓ However, it is not applicable to music.✓✓ (5 × 4) (20)

[150]

TOTAL SECTION A: 150

SECTION B

QUESTION 2

2.1 Reversion of copyright

Reversion of copyright means the work the artist signed to the publisher can be given back to him/her at the end of the term.✓✓ Reversion of copyright is a contractual deal which has a time limit on the deal.✓✓ This is always good for the artist as his/her compositions will be reverted back to him/her.✓✓ This is different from the termination of copyrights under the Copyright Law,✓✓ because the reversion is a contractual provision, negotiated specifically.✓✓ It means that the publisher must give the artist's song back to him/her at some point in the future together with its copyright.✓✓ (12)

Conditions of reversion

What should trigger the reassignment of music?✓✓ The music/song reverts back to the writer if it is not recorded✓✓ and commercially released.✓✓ If the writer has the bargaining power, he/she can insist to get the song back unless the recording is done by a major artist✓✓ or at least it is on a major label✓✓ and/or it achieves a certain chart position such as the top 50.✓✓ (12)

Automatic reversion

When an artist moves into the super league or when he/she is in a bidding war, he/she can ask for the reassignment of all compositions,✓✓ whether they are recorded or not.✓✓ Time frames of these are usually from five to fifteen years after the close of the exclusive term,✓✓ with the majority in these from seven to twelve year.✓✓ It is usually tied to recoupment, for example, ten years after the term, the publisher will reassign only if the artist is recouped.✓✓

The artist should choose the right to pay the unrecouped balance and to remember to keep his/her option, in which case he/she will get his/her songs back sooner.✓✓ The artist should make sure that he/she gets the songs back when he/she eventually recoups, even if it is five or ten years later.✓✓ The contract will usually not include anything on recoupment, therefore the artist must not assume that either of these are included in the contract and should specifically enquire about it.✓✓ (16)

2.2 He/She gets the fair market value of the use the infringer made,✓✓ for example, if the song was used in a commercial way and the song would be worth $25,000 if they had a license, the artist can get $25,000.✓✓ (4)

The artist can recover the infringer's profits. It is not a common remedy and is extremely valuable.✓✓ It means that if the infringer has made a profit using the artist's work,✓✓ the artist can recover his/her profits,✓✓ which may be more than the fair market value of the usage.✓✓ (8)

The artist can get an injunction.✓✓ This means the court enjoins and prohibits the infringer from using the work.✓✓ If the infringer continues to use it, he/she is subject to substantial fines✓✓ and sometimes even jail.✓✓ (8)

The artist can recover statutory damages, which is an essential part of copyright.✓✓ This is when actual damages cannot be proved, for example, the infringer lost money due to the infringement✓✓ or his/her profits might be so well-hidden that they cannot be found.✓✓ In this case, the court can give the artist from $250 to $10 000 for a single infringement which is per act of infringement,✓✓ not the number of copies actually made, for example, putting out 100,000 records with the artist's song on is still only one act of infringement.✓✓ The judge can raise this to $50 000 if it is a wilful (intentional) infringement.✓✓ (12)

The court can order destruction or seizure of any infringing copies. This is also not a common remedy. (2)

If the infringement is wilful, there are criminal penalties. (2)

The artist can get his/her court costs back to a limited extent, which means he/she can recover the lawyers' fees.✓✓ The latter is unusual, as the lawyers' fees are not usually paid back to a person when he/she wins a lawsuit.✓✓ (4)

[80]

QUESTION 3

3.1
- It is included in the contract that if a member leaves a group during the band's recording contract, the company has the option to make use of the member's services as a solo artist✓✓ or as a member of another group which he/she may join.✓✓ (4)
- This is a reasonable measure. Without it, a member could get out of a record deal just by leaving the group and inconvenience the recording company.✓✓ Even when the member has a key or non-key member position, the company may want the right to sign a contract with any leaving members.✓✓ (4)
- The company also gets the option to keep the remaining members as a group.✓✓ (2)
- The company has the option to terminate the contract with the remaining members, as the group is no longer the one with which they signed the contract.✓✓ This can happen if the band does not exercise the option of signing a contract with the leaving members.✓✓ (4)

3.2 3.2.1 A personality folio has the picture of the performing artist attached to it. It is also called a matching folio.

3.2.2 Stockpiling is where the printer manufactures tons of units right before the end of the term, so that they have a lot of your inventories to sell after the term.

3.2.3 Dumping sales mean the printer sells your inventory at less than customary wholesale prices.

(3 × 2) (6)

[20]

QUESTION 4

4.1 PERSONAL MANAGER

The personal manager is the chief executive officer of the artist's professional team✓✓ therefore he/she is in charge of the tour.✓✓ He/she is the one who planned the tour in the first place.✓✓ He/she ensures that the agent makes the best possible deals for the artist✓✓ and once the tour is in place,✓✓ mechanically makes it happen.✓✓

He/She has to coordinate:

- Transportation of people and equipment✓✓
- Hiring and smooth functioning of crew✓✓
- Booking hotels✓✓
- Collecting money on the road✓✓
- Dealing with and supervising the promoters, the people who hire the artist, rent the hall, advertise the event, etc.✓✓
- Deals with the challenges that come up during the tour✓✓ like missing equipment, improper advertising, dates that aren't selling well, lapses in security, et cetera✓✓
- With more popular artists, many of these duties are delegated to a road manager✓✓ and/or road accountant, but the personal manager is ultimately responsible and every decision should be done by him/her.✓✓ (30)

4.2 BUSINESS MANAGER

The business manager is in charge of all the financial aspects of the tour.✓✓ His/her responsibilities begin long before the tour starts by forecasting what could happen.✓✓ He/She must be able to tell what the likely income and expenses are going to be with the projection of how much the artist is going to make or lose.✓✓ If it is a new band, this information helps the band to go to the record company and pressurise them for tour support.✓✓ At all levels, it helps avoid unhappy surprises along the way.✓✓

When the tour gets going, the business manager makes sure that all the road personnel are on the payroll✓✓i.e. the people who set up the equipment, those who supervise the crew, et cetera.✓✓ The business manager is in charge of making sure everyone on the payroll is paid.✓✓ He/she makes sure that the bills (travel, hotels, food, etc.) are paid and that the performance fees are collected from the promoter, which is physically done by a road manager, if one is appointed,✓✓ It is also his/her responsibility to make sure the tour does not run over budget and warns in advance to make sure there is still a chance to put things right.✓✓ (20)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 300

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