

# **COPYRIGHT ACT NO. 98 OF 1978**

[View Regulation]

[ASSENTED TO 20 JUNE, 1978]  
[DATE OF COMMENCEMENT: 1 JANUARY, 1979]

(except ss. 1, 39, 40, on 30 June, 1978 and s. 45 to be proclaimed)

*(Afrikaans text signed by the State President)*

This Act has been updated to *Government Gazette 37148* dated 10 December, 2013.

## **as amended by**

Copyright Amendment Act, No. 56 of 1980

Copyright Amendment Act, No. 66 of 1983

Copyright Amendment Act, No. 52 of 1984

Copyright Amendment Act, No. 39 of 1986

Copyright Amendment Act, No. 13 of 1988

Copyright Amendment Act, No. 61 of 1989

Copyright Amendment Act, No. 125 of 1992

Intellectual Property Laws Amendment Act, No. 38 of 1997

Copyright Amendment Act, No. 9 of 2002

Companies Act, No. 71 of 2008

[with effect from 1 May, 2011]

## **pending amendment by**

Copyright Amendment Act No. 66 of 1983

(provisions not yet proclaimed)

Intellectual Property Laws Amendment Act, No. 28 of 2013

(provisions not yet proclaimed)

## **ACT**

### **To regulate copyright and to provide for matters incidental thereto.**

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**1. Definitions.**—(1) In this Act, unless the context otherwise indicates—

**“adaptation”,** in relation to—

- (a) a literary work, includes—
  - (i) in the case of a non-dramatic work, a version of the work in which it is converted into a dramatic work;
  - (ii) in the case of a dramatic work, a version of the work in which it is converted into a non-dramatic work;
  - (iii) a translation of the work; or
  - (iv) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;
- (b) a musical work, includes any arrangement or transcription of the work, if such arrangement or transcription has an original creative character;
- (c) an artistic work, includes a transformation of the work in such a manner that the original or substantial features thereof remain recognizable;
- (d) a computer program includes—
  - (i) a version of the program in a programming language, code or notation different from that of the program; or
  - (ii) a fixation of the program in or on a medium different from the medium of fixation of the program;
 

[Para. (d) added by s. 1 (a) of Act No. 125 of 1992.]

**“arbitration”** means arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965);

**“artistic work”** means, irrespective of the artistic quality thereof—

- (a) paintings, sculptures, drawings, engravings and photographs;
- (b) works of architecture, being either buildings or models of buildings; or
- (c) works of craftsmanship not falling within either paragraph (a) or (b);
 

[Para. (c) substituted by s. 1 (a) of Act No. 66 of 1983 and by s. 1 (b) of Act No. 125 of 1992.]

**“author”,** in relation to—

- (a) a literary, musical or artistic work, means the person who first makes or creates the work;
- (b) a photograph, means the person who is responsible for the composition of the photograph;
- (c) a sound recording, means the person by whom the arrangements for the making of the sound recording were made;
 

[Para. (c) substituted by s. 1 (c) of Act No. 125 of 1992.]
- (d) a cinematograph film, means the person by whom the arrangements for the making of the film were made;
- (e) a broadcast, means the first broadcaster;
 

[Para. (e) substituted by s. 1 (c) of Act No. 125 of 1992.]

- (f) a programme-carrying signal, means the first person emitting the signal to a satellite;  
[Para. ( f ) substituted by s. 1 (c) of Act No. 125 of 1992.]
- (g) a published edition, means the publisher of the edition;  
[Para. (g) added by s. 1 (a) of Act No. 52 of 1984.]
- (h) a literary, dramatic, musical or artistic work or computer program which is computer-generated, means the person by whom the arrangements necessary for the creation of the work were undertaken;  
[Para. (h) added by s. 1 (d) of Act No. 125 of 1992.]
- (i) a computer program, the person who exercised control over the making of the computer program;  
[Para. (i) added by s. 1 (d) of Act No. 125 of 1992.]

(j) a derivative indigenous work, means the person who first made or created the work, a substantial part of which was derived from an indigenous work; and

(Pending amendment: Para. (j) to be inserted by s. 3 (a) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

(k) an indigenous work, means the indigenous community from which the work originated and acquired its traditional character;

(Pending amendment: Para. (k) to be inserted by s. 3 (a) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**“broadcast”**, when used as a noun, means a telecommunication service of transmissions consisting of sounds, images, signs or signals which—

- (a) takes place by means of electro-magnetic waves of frequencies of lower than 3 000 GHz transmitted in space without an artificial conductor; and
- (b) is intended for reception by the public or sections of the public,

and includes the emitting of programme-carrying signals to a satellite, and, when used as a verb, shall be construed accordingly;

[Definition of “broadcast” substituted by s. 1 (e) of Act No. 125 of 1992 and by s. 50 (a) of Act No. 38 of 1997.]

**“broadcaster”** means a person who undertakes a broadcast;

[Definition of “broadcaster” substituted by s. 50 (b) of Act No. 38 of 1997.]

**“building”** includes any structure;

**“cinematograph film”** means any fixation or storage by any means whatsoever on film or any other material of data, signals or a sequence of images capable, when used in conjunction with any other mechanical, electronic or other device, of being seen as a moving picture and of reproduction, and includes the sounds embodied in a sound-track associated with the film, but shall not include a computer program;

[Definition of “cinematograph film” substituted by s. 1 ( f ) of Act No. 125 of 1992 and by s. 50 (c) of Act No. 38 of 1997.]

**“collecting society”** means a collecting society established under this Act;

[Definition of “collecting society” inserted by s. 1 (a) of Act No. 9 of 2002.]

**“collecting society”** means a society created by this Act, or agreement and which amongst others—

- (a) manages matters related to rights in copyright works;
- (b) negotiates for, and collects royalties and benefits on behalf of its members; and

(c) distributes royalties and benefits to copyright owners;

(Pending amendment: Definition of “collecting society” to be substituted by s. 3 (b) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

Date of commencement to be proclaimed)

**"Commission"** means the Commission established in terms of section 185 of the Companies Act, 2008 (Act No. 71 of 2008);

(Pending amendment: Definition of "Commission" to be inserted by s. 3 (c) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"community protocol"** means a protocol developed by an indigenous community that describes the structure of the indigenous community and its claims to indigenous cultural expressions or knowledge and indigenous works, and provides procedures for prospective users of such indigenous cultural expressions or knowledge or indigenous works, to seek the community's prior informed consent, negotiate mutually agreed terms and benefit-sharing agreements;

(Pending amendment: Definition of "community protocol" to be inserted by s. 3 (c) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"computer program"** means a set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result;

[Definition of "computer program" inserted by s. 1 (g) of Act No. 125 of 1992.]

**"copy"** means a reproduction of a work, and, in the case of a literary, musical or artistic work, a cinematograph film or a computer program, also an adaptation thereof: Provided that an object shall not be taken to be a copy of a work of architecture unless the object is a building or a model of a building;

[Definition of "copy" substituted by s. 1 (h) of Act No. 125 of 1992.]

**"copyright"** means copyright under this Act;

**"Council"** means the National Council for Indigenous Knowledge contemplated in section 28L;

(Pending amendment: Definition of "Council" to be inserted by s. 3 (d) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"Corporation"** . . . . .

[Definition of "Corporation" deleted by s. 50 (d) of Act No. 38 of 1997.]

**"country"** includes any colony, protectorate or territory subject to the authority or under the suzerainty of any other country, and any territory over which trusteeship is exercised;

**"database"** means the National Database for Indigenous Knowledge contemplated in section 28C;

(Pending amendment: Definition of "database" to be inserted by s. 3 (e) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"derivative indigenous work"** means any work forming the subject of this Act, applied to any form of indigenous work recognised by an indigenous community as having an indigenous or traditional origin, and a substantial part of which, was derived from indigenous cultural expressions or knowledge irrespective of whether such derivative indigenous work was derived before or after the commencement of the Intellectual Property Laws Amendment Act, 2013;

(Pending amendment: Definition of "derivative indigenous work" to be inserted by s. 3 (e) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"derived signal"** is a signal obtained by modifying the technical characteristics of the emitted signal, whether or not there have been one or more intervening fixations;

**"diffusion service"** means a telecommunication service of transmissions consisting of sounds, images, signs or signals, which takes place over wires or other paths provided by material substance and intended for reception by specific members of the public; and diffusion shall not be deemed to constitute a performance or a broadcast or as causing sounds, images, signs or signals to be seen or heard; and where sounds, images, signs or signals are displayed or emitted by any receiving apparatus to which they are conveyed by diffusion in such manner as to constitute a performance or a causing of sounds, images, signs or signals to be seen or heard in public, this shall be deemed to be effected by the operation of the receiving apparatus;

**"distribution"**, in relation to a programme-carrying signal, means any operation by which a distributor transmits a derived signal to the general public or any section thereof;

[Definition of "distribution" substituted by s. 1 (i) of Act No. 125 of 1992.]

**"distributor"** in relation to a programme-carrying signal, means the person who decides that the transmission of the derived signal to the general public or any section thereof shall take place;

[Definition of "distributor" substituted by s. 1 (j) of Act No. 125 of 1992.]

**"dramatic work"** includes a choreographic work or entertainment in dumb show, if reduced to the material form in which the work or entertainment is to be presented, but does not include a cinematograph film as distinct from a scenario or script for a cinematograph film;

**"drawing"** includes any drawing of a technical nature or any diagram, map, chart or plan;

[Definition of "drawing" substituted by s. 1 (b) of Act No. 66 of 1983.]

**"emitted signal"** means a signal which goes to a satellite;

[Definition of "emitted signal" substituted by s. 1 (k) of Act No. 125 of 1992.]

**"engraving"** includes any etching, lithograph, woodcut, print or similar work, but does not include a photograph;

**"exclusive licence"** means a licence authorizing a licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would, apart from the licence, be exercisable exclusively by the owner of the copyright; and "exclusive licensee" shall be construed accordingly;

**"Fund"** means the National Trust Fund for Indigenous Knowledge established in terms of section 28I;

(Pending amendment: Definition of "Fund" to be inserted by s. 3 (f) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"indigenous community"** means any recognisable community of people originated in or historically settled in a geographic area or areas located within the borders of the Republic, as such borders existed at the date of commencement of the Intellectual Property Laws Amendment Act, 2013, characterised by social, cultural and economic conditions which distinguish them from other sections of the national community, and who identify themselves and are recognised by other groups as a distinct collective;

(Pending amendment: Definition of "indigenous community" to be inserted by s. 3 (f) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"indigenous cultural expressions or knowledge"** means any form, tangible or intangible, or a combination thereof, in which traditional culture and knowledge are embodied, passed on between generations, and tangible or intangible forms of creativity of indigenous communities, including, but not limited to—

- (a) phonetic or verbal expressions, such as stories, epics, legends, poetry, riddles and other narratives, words, signs, names or symbols;

- (b) musical or sound expressions, such as songs, rhythms, or instrumental music, the sounds which are the expression of rituals;
- (c) expressions by action, such as dances, plays, ceremonies, rituals, expressions of spirituality or religion, sports, traditional games, puppet performances, and other performances, whether fixed or unfixed; or
- (d) tangible expressions, such as material expressions of art, handicrafts, architecture, or tangible spiritual forms, or expressions of sacred places;

(Pending amendment: Definition of "indigenous cultural expressions or knowledge" to be inserted by s. 3 (f) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"indigenous work"** means a literary, artistic or musical work with an indigenous or traditional origin, including indigenous cultural expressions or knowledge which was created by persons who are or were members, currently or historically, of an indigenous community and which literary, artistic or musical work is regarded as part of the heritage of such indigenous community;

(Pending amendment: Definition of "indigenous work" to be inserted by s. 3 (f) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"infringing copy"**, in relation to—

- (a) a literary, musical or artistic work or a published edition, means a copy thereof;

- (a) a literary, musical or artistic work or a published edition or a traditional work, means a copy thereof;

(Pending amendment: Para. (a) to be substituted by s. 3 (g) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

- (b) a sound recording, means a record embodying that recording;
- (c) a cinematograph film, means a copy of the film or a still photograph made therefrom;
- (d) a broadcast, means a cinematograph film of it or a copy of a cinematograph film of it or a sound recording of it or a record embodying a sound recording of it or a still photograph made therefrom; and
- (e) a computer program, means a copy of such computer program,

being in any such case an article the making of which constituted an infringement of the copyright in the work, recording, cinematograph film, broadcast or computer program or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in the Republic;

[Definition of "infringing copy" substituted by s. 1 (l) of Act No. 125 of 1992.]

**"judicial proceedings"** means proceedings before any court, tribunal or person having by law power to hear, receive and examine evidence on oath;

**"licence"** . . . . .

[Definition of "licence" deleted by s. 1 (m) of Act No. 125 of 1992.]

**"licence scheme"**, for the purposes of Chapter 3, in relation to licences of any description, means a scheme prepared by one or more licensing bodies, setting out the classes of cases in which they are willing, or the person on whose behalf they act is willing, to grant licences of that description, and the charges, if any, and terms and conditions subject to which licences may be granted in those classes of cases, and includes anything in the nature of such a scheme, whether described as a scheme or as a tariff or by any other name;

[Definition of "licence scheme" substituted by s. 1 (n) of Act No. 125 of 1992.]

**"licensing body"** . . . . .

[Definition of "licensing body" deleted by s. 1 (o) of Act No. 125 of 1992.]

**“literary work”** includes, irrespective of literary quality and in whatever mode or form expressed—

- (a) novels, stories and poetical works;
- (b) dramatic works, stage directions, cinematograph film scenarios and broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays and articles;
- (d) encyclopaedias and dictionaries;
- (e) letters, reports and memoranda;
- (f) lectures, speeches and sermons; and
- (g) tables and compilations, including tables and compilations of data stored or embodied in a computer or a medium used in conjunction with a computer,

[Para. (g) substituted by s. 50 (e) of Act No. 38 of 1997.]

but shall not include a computer program;

[Definition of “literary work” substituted by s. 1 (p) of Act No. 125 of 1992.]

**“Minister”** means the Minister of Trade and Industry;

[Definition of “Minister” substituted by s. 1 (c) of Act No. 66 of 1983, by s. 1 of Act No. 13 of 1988 and by s. 1 (b) of Act No. 9 of 2002.]

**“musical work”** means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;

[Definition of “musical work” inserted by s. 1 (q) of Act No. 125 of 1992.]

**“National Trust”** means the National Trust for Indigenous Knowledge established by section 28I;

(Pending amendment: Definition of “National Trust” to be inserted by s. 3 (h) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**“performance”** includes any mode of visual or acoustic presentation of a work, including any such presentation by the operation of a loudspeaker, a radio, television or diffusion receiver or by the exhibition of a cinematograph film or by the use of a record or by any other means, and in relation to lectures, speeches and sermons, includes delivery thereof; and references to **“perform”** in relation to a work shall be construed accordingly: Provided that “performance” shall not include broadcasting or rebroadcasting or transmitting a work in a diffusion service;

[Definition of “performance” substituted by s. 1 (r) of Act No. 125 of 1992.]

**“photograph”** means any product of photography or of any process analogous to photography, but does not include any part of a cinematograph film;

**“plate”** includes any stereotype, stone, block, mould, matrix, transfer, negative, record, disc, storage medium or any version of a work of whatsoever nature used to make copies;

[Definition of “plate” substituted by s. 1 (s) of Act No. 125 of 1992.]

**“prescribed”** means prescribed by or under this Act;

**“programme”**, in relation to a programme-carrying signal, means a body of live or recorded material consisting of images or sounds or both, embodied in a signal;

[Definition of “programme” substituted by s. 1 (t) of Act No. 125 of 1992.]

**“programme-carrying signal”** means a signal embodying a program which is emitted and passes through a satellite;

[Definition of “programme-carrying signal” inserted by s. 1 (u) of Act No. 125 of 1992.]

**“prospective owner”**, in relation to copyright, means a person who shall be entitled to the copyright, wholly or partially, in a work in which copyright does not yet subsist or whose entitlement to the copyright which does exist shall become effective upon a future event;

**“published edition”** means the first print by whatever process of a particular typographical arrangement of a literary or musical work;

[Definition of “published edition” inserted by s. 1 (c) of Act No. 52 of 1984.]

**“qualified person”** means a qualified person within the meaning of section 3 (1);

**“rebroadcasting”** means the simultaneous or subsequent broadcasting by one broadcaster of the broadcast of another broadcaster;



**"record"** means any disc, tape, perforated role or other device in or on which sounds, or data or signals representing sounds, are embodied or represented so as to be capable of being automatically reproduced or performed therefrom;

[Definition of "record" substituted by s. 50 (g) of Act No. 38 of 1997.]

**"Registrar"** means the Commissioner appointed in terms of section 189 of the Companies Act, 2008;

[Definition of "Registrar" substituted by s. 224 (2) of Act No. 71 of 2008.]

**"regulation"** means a regulation made under this Act;

**"reproduction"**, in relation to—

- (a) a literary or musical work or a broadcast, includes a reproduction in the form of a record or a cinematograph film;

(a) a literary or musical work or a broadcast or a traditional work, includes a reproduction in the form of a record or a cinematograph film;

(Pending amendment: Para. (a) to be substituted by s. 3 (i) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

- (b) an artistic work, includes a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it into a two-dimensional form;

(b) an artistic work or a traditional work, includes a version produced by converting the work into a three-dimensional form or, if it is three-dimensions, by converting it into a two-dimensional form; and

(Pending amendment: Para. (b) to be substituted by s. 3 (i) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

- (c) any work, includes a reproduction made from a reproduction of that work;

[Para. (c) added by s. 1 (d) of Act No. 66 of 1983.]

and references to **"reproduce"** and **"reproducing"** shall be construed accordingly;

**"satellite"** means any device in extra-terrestrial space capable of transmitting signals;

**"signal"** means an electronically generated carrier capable of transmitting programmes;

**"sculpture"** includes any cast or model made for purposes of sculpture;

**"sound recording"** means any fixation or storage of sounds, or data or signals representing sounds, capable of being reproduced, but does not include a sound-track associated with a cinematograph film;

[Definition of "sound recording" substituted by s. 1 (v) of Act No. 125 of 1992 and by s. 50 (h) of Act No. 38 of 1997.]

**"this Act"** includes the regulations;

**"traditional work"** includes a derivative indigenous work and an indigenous work;

(Pending amendment: Definition of "traditional work" to be inserted by s. 3 (j) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"work"** a work contemplated in section 2;

[Definition of "work" inserted by s. 1 (w) of Act No. 125 of 1992.]

**"work"** means—

- (a) a work as contemplated in section 2; and

(b) for purposes of this Act, a traditional work and indigenous cultural expressions or knowledge as contemplated in this Act;  
(Pending amendment: Definition of "work" to be inserted by s. 3 (k) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**"work of joint authorship"** means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors;

**"writing"** includes any form of notation, whether by hand or by printing, typewriting or any similar process.

(2) Any reference in this Act to a sound-track associated with a cinematograph film shall be construed as a reference to any record of sounds which is incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded or which is issued by the author of the film for use in conjunction with such an article.

(2A) Any reference in this Act to the doing of any act in relation to any work shall, unless the context otherwise indicates, be construed as a reference also to the doing of any such act in relation to any substantial part of such work.

[Sub-s. (2A) inserted by s. 1 of Act No. 56 of 1980.]

(3) The provisions of this Act shall with reference to any act or omission outside the territorial limits of the Republic by or on any ship or aircraft registered under any law in the Republic apply in the same manner as it applies with reference to acts or omissions within the territorial limits of the Republic.

(4) Notwithstanding the provisions of paragraph (i) of the definition of "author" in subsection (1), the author of a computer program made before the date of commencement of the Copyright Amendment Act, 1992, shall be deemed to be the person who first made or created the program, but if such computer program is original and has been published by a qualified person, such person shall be presumed to be the owner of the copyright subsisting in the computer program concerned, unless the contrary is proved.

[Sub-s. (4) added by s. 1 (x) of Act No. 125 of 1992.]

(5) For the purposes of this Act the following provisions shall apply in connection with the publication of a work:

- (a) Subject to paragraph (e), a work shall be deemed to have been published if copies of such work have been issued to the public with the consent of the owner of the copyright in the work in sufficient quantities to reasonably meet the needs of the public, having regard to the nature of the work.
- (b) Publication of a cinematograph film or sound recording is the sale, letting, hire or offer for sale or hire, of copies thereof.
- (c) A publication shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere within a period of 30 days.
- (d) Publication shall not include—
  - (i) a performance of a musical or dramatic work, cinematograph film or sound recording;
  - (ii) a public delivery of a literary work;
  - (iii) a transmission in a diffusion service;
  - (iv) a broadcasting of a work;
  - (v) an exhibition of a work of art;
  - (vi) a construction of a work of architecture.
- (e) For the purposes of sections 6, 7 and 11 (b), a work shall be deemed to be published if copies thereof have been issued to the public.

[Sub-s. (5) added by s. 1 (x) of Act No. 125 of 1992.]

(Date of commencement 30 June, 1978.)

## CHAPTER 1 COPYRIGHT IN ORIGINAL WORKS

**2. Works eligible for copyright.**—(1) Subject to the provisions of this Act, the following works, if they are original, shall be eligible for copyright—

- (a) literary works;
- (b) musical works;

- (c) artistic works;
- (d) cinematograph films;  
[Para. (d) substituted by s. 2 (a) of Act No. 125 of 1992.]

- (e) sound recordings;
- (f) broadcasts;
- (g) programme-carrying signals;
- (h) published editions;

[Para. (h) added by s. 2 of Act No. 52 of 1984.]

- (i) computer programs.  
[Sub-s. (1) amended by s. 2 (a) of Act No. 56 of 1980. Para. (i) added by s. 2 (b) of Act No. 125 of 1992.]

(2) A work, except a broadcast or programme-carrying signal, shall not be eligible for copyright unless the work has been written down, recorded, represented in digital data or signals or otherwise reduced to a material form.

[Sub-s. (2) substituted by s. 2 (b) of Act No. 56 of 1980, by s. 2 (c) of Act No. 125 of 1992 and by s. 51 of Act No. 38 of 1997.]

(2A) A broadcast or a programme-carrying signal shall not be eligible for copyright until, in the case of a broadcast, it has been broadcast and, in the case of a programme-carrying signal, it has been transmitted by a satellite.

[Sub-s. (2A) inserted by s. 2 (d) of Act No. 125 of 1992.]

(3) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

**3. Copyright by virtue of nationality, domicile or residence, and duration of copyright.**—(1) Copyright shall be conferred by this section on every work, eligible for copyright, of which the author or, in the case of a work of joint authorship, any one of the authors is at the time the work or a substantial part thereof is made, a qualified person, that is—

- (a) in the case of an individual, a person who is a South African citizen or is domiciled or resident in the Republic; or
- (b) in the case of a juristic person, a body incorporated under the laws of the Republic:

Provided that a work of architecture erected in the Republic or any other artistic work incorporated in a building or any other permanent structure in the Republic, shall be eligible for copyright, whether or not the author was a qualified person.

[Sub-s. (1) substituted by s. 3 (a) of Act No. 125 of 1992.]

(2) The term of copyright conferred by this section shall be, in the case of—

- (a) literary or musical works or artistic works, other than photographs, the life of the author and fifty years from the end of the year in which the author dies: Provided that if before the death of the author none of the following acts had been done in respect of such works or an adaptation thereof, namely—

- (i) the publication thereof;
- (ii) the performance thereof in public;
- (iii) the offer for sale to the public of records thereof;
- (iv) the broadcasting thereof,

the term of copyright shall continue to subsist for a period of fifty years from the end of the year in which the first of the said acts is done;

[Para. (a) amended by s. 3 (a) of Act No. 52 of 1984.]

- (b) cinematograph films, photographs and computer programs, fifty years from the end of the year in which the work—
  - (i) is made available to the public with the consent of the owner of the copyright; or
  - (ii) is first published,

whichever term is the longer, or failing such an event within fifty years of the making of the work, fifty years from the end of the year in which the work is made;

[Para. (b) substituted by s. 3 (b) of Act No. 125 of 1992 and by s. 52 of Act No. 38 of 1997.]

- (c) sound recordings, fifty years from the end of the year in which the recording is first published;

- (d) broadcasts, fifty years from the end of the year in which the broadcast first takes place;
- (e) programme-carrying signals, fifty years from the end of the year in which the signals are emitted to a satellite;
- (f) published editions, fifty years from the end of the year in which the edition is first published.  
[Para. (f) added by s. 3 (b) of Act No. 52 of 1984.]

(3) (a) In the case of anonymous or pseudonymous works, the copyright therein shall subsist for fifty years from the end of the year in which the work is made available to the public with the consent of the owner of the copyright or from the end of the year in which it is reasonable to presume that the author died, whichever term is the shorter.

[Para. (a) substituted by s. 3 (c) of Act No. 125 of 1992.]

(b) In the event of the identity of the author becoming known before the expiration of the period referred to in paragraph (a), the term of protection of the copyright shall be calculated in accordance with the provisions of subsection (2).

(4) In the case of a work of joint authorship the reference in the preceding subsections to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person.

**4. Copyright by reference to country of origin.**—(1) Copyright shall be conferred by this section on every work which is eligible for copyright and which—

- (a) being a literary, musical or artistic work or a sound recording, is first published in the Republic;
- (b) being a broadcast, is made in the Republic;
- (c) being a programme-carrying signal, is emitted to a satellite from a place in the Republic;
- (d) being a cinematograph film, is first published or made in the Republic;
- (e) being a published edition, is first published in the Republic;  
[Para. (e) added by s. 4 (b) of Act No. 52 of 1984.]
- (f) being a computer program, is first published or made in the Republic,  
[Para. (f) inserted by s. 4 of Act No. 125 of 1992.]

and in respect of which copyright is not conferred by section 3.

(2) Copyright conferred on a work by this section shall be subject to the same term of copyright provided for in section 3 for a similar work.

**5. Copyright in relation to the state and certain international organizations.**—(1) This Act shall bind the state.

(2) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by or under the direction or control of the state or such international organizations as may be prescribed.

(3) Copyright conferred by this section on a literary or musical work or an artistic work, other than a photograph, shall subsist for fifty years from the end of the year in which the work is first published.

(4) Copyright conferred by this section on a cinematograph film, photograph, sound recording, broadcast, programme-carrying signal, published edition or a computer program shall be subject to the same term of copyright provided for in section 3 for a similar work.

[Sub-s. (4) substituted by s. 5 of Act No. 52 of 1984 and by s. 5 of Act No. 125 of 1992.]

(5) Sections 3 and 4 shall not confer copyright on works with reference to which this section applies.

(6) Copyright which vests in the state shall for administrative purposes be deemed to vest in such officer in the public service as may be designated by the State President by proclamation in the *Gazette*.

**6. Nature of copyright in literary or musical works.**—Copyright in a literary or musical work vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

- (a) Reproducing the work in any manner or form;
- (b) publishing the work if it was hitherto unpublished;  
[Para. (b) substituted by s. 6 of Act No. 125 of 1992.]
- (c) performing the work in public;
- (d) broadcasting the work;
- (e) causing the work to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the work, and is operated by the original broadcaster;  
[Para. (e) substituted by s. 3 (b) of Act No. 56 of 1980.]

- (f) making an adaptation of the work;
- (g) doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (e) inclusive.

[S. 6 amended by s. 3 (a) of Act No. 56 of 1980.]

**7. Nature of copyright in artistic works.**—Copyright in an artistic work vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

- (a) Reproducing the work in any manner or form;
- (b) publishing the work if it was hitherto unpublished;  
[Para. (b) substituted by s. 7 of Act No. 125 of 1992.]
- (c) including the work in a cinematograph film or a television broadcast;
- (d) causing a television or other programme, which includes the work, to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the work, and is operated by the original broadcaster;  
[Para. (d) substituted by s. 4 (b) of Act No. 56 of 1980.]
- (e) making an adaptation of the work;
- (f) doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (d) inclusive.  
[S. 7 amended by s. 4 (a) of Act No. 56 of 1980.]

**8. Nature of copyright in cinematograph films.**—(1) Copyright in a cinematograph film vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

- (a) Reproducing the film in any manner or form, including making a still photograph therefrom;  
[Para. (a) substituted by s. 8 (a) of Act No. 125 of 1992.]
- (b) causing the film, in so far as it consists of images, to be seen in public, or, in so far as it consists of sounds, to be heard in public;
- (c) broadcasting the film;
- (d) causing the film to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the film, and is operated by the original broadcaster;  
[Para. (d) substituted by s. 5 (b) of Act No. 56 of 1980.]
- (e) making an adaptation of the film;
- (f) doing, in relation to an adaptation of the film, any of the acts specified in relation to the film in paragraphs (a) to (d) inclusive;
- (g) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the film.  
[Sub-s. (1) amended by s. 5 (a) of Act No. 56 of 1980. Para. (g) added by s. 6 of Act No. 52 of 1984 and substituted by s. 1 of Act No. 61 of 1989 and by s. 8 (b) of Act No. 125 of 1992.]

(2) . . . . .  
[Sub-s. (2) deleted by s. 8 (c) of Act No. 125 of 1992.]

**9. Nature of copyright in sound recordings.**—Copyright in a sound recording vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

- (a) Making, directly or indirectly, a record embodying the sound recording;
  - (b) letting, or offering or exposing for hire by way of trade, directly or indirectly, a reproduction of the sound recording;
  - (c) broadcasting the sound recording;
  - (d) causing the sound recording to be transmitted in a diffusion service, unless that service transmits a lawful broadcast, including the sound recording, and is operated by the original broadcaster;
  - (e) communicating the sound recording to the public.
- [S. 9 amended by s. 7 of Act No. 52 of 1984 and by s. 2 of Act No. 61 of 1989 and substituted by s. 6 of Act No. 56 of 1980 and by s. 2 of Act 9 of 2002.]

**9A. Royalties.**—(1) (a) In the absence of an agreement to the contrary, no person may broadcast, cause the transmission of or play a sound recording as contemplated in section 9 (c), (d) or (e) without payment of a royalty to

the owner of the relevant copyright.

(b) The amount of any royalty contemplated in paragraph (a) shall be determined by an agreement between the user of the sound recording, the performer and the owner of the copyright, or between their representative collecting societies.

(c) In the absence of an agreement contemplated in paragraph (b), the user, performer or owner may refer the matter to the Copyright Tribunal referred to in section 29 (1) or they may agree to refer the matter for arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

(2) (a) The owner of the copyright who receives payment of a royalty in terms of this section shall share such royalty with any performer whose performance is featured on the sound recording in question and who would have been entitled to receive a royalty in that regard as contemplated in section 5 of the Performers' Protection Act, 1967 (Act No 11 of 1967).

(b) The performer's share of the royalty shall be determined by an agreement between the performer and the owner of copyright, or between their representative collecting societies.

(c) In the absence of an agreement contemplated in paragraph (b), the performer or owner may refer the matter to the Copyright Tribunal referred to in section 29 (1), or they may agree to refer the matter for arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

(d) Any payment made by the user of the sound recording in terms of this subsection shall be deemed to have discharged any obligation which that user might have to make any payment in respect of his or her use of a corresponding fixation in terms of section 5 of the Performers' Protection Act, 1967 (Act No. 11 of 1967).

(3) In the event of any right to a royalty being assigned to any successor in title, either by contractual arrangement, operation of law, testamentary disposition or otherwise, any successor in title shall be entitled to enforce such right to a royalty against the person who in terms of this section is obliged to pay or against his or her successor in title.

[S. 9A inserted by s. 3 of Act 9 of 2002.]

**10. Nature of copyright in broadcasts.**—Copyright in a broadcast vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

(a) Reproducing, directly or indirectly, the broadcast in any manner or form, including, in the case of a television broadcast, making a still photograph therefrom;

[Para. (a) substituted by s. 9 of Act No. 125 of 1992.]

(b) rebroadcasting the broadcast;

(c) causing the broadcast to be transmitted in a diffusion service, unless such service is operated by the original broadcaster.

[S. 10 amended by s. 7 of Act No. 56 of 1980.]

**11. Nature of copyright in programme-carrying signals.**—Copyright in programme-carrying signals vest the exclusive right to undertake, or to authorize, the direct or indirect distribution of such signals by any distributor to the general public or any section thereof in the Republic, or from the Republic.

**11A. Nature of copyright in published editions.**—Copyright in a published edition vests the exclusive right to make or to authorize the making of a reproduction of the edition in any manner.

[S. 11A inserted by s. 8 of Act No. 52 of 1984.]

**11B. Nature of copyright in computer programs.**—Copyright in a computer program vests the exclusive right to do or authorize the doing of any of the following acts in the Republic:

(a) Reproducing the computer program in any manner or form;

(b) publishing the computer program if it was hitherto unpublished;

(c) performing the computer program in public;

(d) broadcasting the computer program;

(e) causing the computer program to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the computer program, and is operated by the original broadcaster;

(f) making an adaptation of the computer program;

(g) doing, in relation to an adaptation of the computer program, any of the acts specified in relation to the computer program in paragraphs (a) to (e) inclusive;

(h) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the computer program.

[S. 11B inserted by s. 10 of Act No. 125 of 1992 and substituted by s. 53 of Act No. 38 of 1997.]

**12. General exceptions from protection of literary and musical works.**—(1) Copyright shall not be infringed by any fair dealing with a literary or musical work—

- (a) for the purposes of research or private study by, or the personal or private use of, the person using the work;
- (b) for the purposes of criticism or review of that work or of another work; or
- (c) for the purpose of reporting current events—
  - (i) in a newspaper, magazine or similar periodical; or
  - (ii) by means of broadcasting or in a cinematograph film:

Provided that, in the case of paragraphs (b) and (c) (i), the source shall be mentioned, as well as the name of the author if it appears on the work.

[Sub-s. (1) amended by s. 11 (a) and (b) of Act No. 125 of 1992.]

(2) The copyright in a literary or musical work shall not be infringed by using the work for the purposes of judicial proceedings or by reproducing it for the purposes of a report of judicial proceedings.

(3) The copyright in a literary or musical work which is lawfully available to the public shall not be infringed by any quotation therefrom, including any quotation from articles in newspapers or periodicals that are in the form of summaries of any such work: Provided that the quotation shall be compatible with fair practice, that the extent thereof shall not exceed the extent justified by the purpose and that the source shall be mentioned, as well as the name of the author if it appears on the work.

(4) The copyright in a literary or musical work shall not be infringed by using such work, to the extent justified by the purpose, by way of illustration in any publication, broadcast or sound or visual record for teaching: Provided that such use shall be compatible with fair practice and that the source shall be mentioned, as well as the name of the author if it appears on the work.

(5) (a) The copyright in a literary or musical work shall not be infringed by the reproduction of such work by a broadcaster by means of its own facilities where such reproduction or any copy thereof is intended exclusively for lawful broadcasts of the broadcaster and is destroyed before the expiration of a period of six months immediately following the making of the reproduction, or such longer period as may be agreed to by the owner of the relevant part of the copyright in the work.

(b) Any reproduction of a work made under paragraph (a) may, if it is of an exceptional documentary nature, be preserved in the archives of the broadcaster, but shall, subject to the provisions of this Act, not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work.

[Sub-s. (5) substituted by s. 54 of Act No. 38 of 1997.]

(6) (a) The copyright in a lecture, address or other work of a similar nature which is delivered in public shall not be infringed by reproducing it in the press or by broadcasting it, if such reproduction or broadcast is for an informatory purpose.

(b) The author of a lecture, address or other work referred to in paragraph (a) shall have the exclusive right of making a collection thereof.

(7) The copyright in an article published in a newspaper or periodical, or in a broadcast, on any current economic, political or religious topic shall not be infringed by reproducing it in the press or broadcasting it, if such reproduction or broadcast has not been expressly reserved and the source is clearly mentioned.

(8) (a) No copyright shall subsist in official texts of a legislative, administrative or legal nature, or in official translations of such texts, or in speeches of a political nature or in speeches delivered in the course of legal proceedings, or in news of the day that are mere items of press information.

(b) The author of the speeches referred to in paragraph (a) shall have the exclusive right of making a collection thereof.

(9) The provisions of subsections (1) to (7) inclusive shall apply also with reference to the making or use of an adaptation of a work.

[Sub-s. (9) substituted by s. 11 (c) of Act No. 125 of 1992.]

(10) The provisions of subsections (6) and (7) shall apply also with reference to a work or an adaptation thereof which is transmitted in a diffusion service.

[Sub-s. (10) substituted by s. 11 (d) of Act No. 125 of 1992.]

(11) The provisions of subsections (1) to (4) inclusive and (6), (7) and (10) shall be construed as embracing the right to use the work in question either in its original language or in a different language, and the right of translation of the author shall, in the latter event, be deemed not to have been infringed.

(12) The copyright in a literary or musical work shall not be infringed by the use thereof in a *bona fide* demonstration of radio or television receivers or any type of recording equipment or playback equipment to a client by a dealer in such equipment.

[Sub-s. (12) substituted by s. 11 (e) of Act No. 125 of 1992.]

(13) An authorization to use a literary work as a basis for the making of a cinematograph film or as a contribution of a literary work to such making, shall, in the absence of an agreement to the contrary, include the right to broadcast such film.

[Sub-s. (13) added by s. 11 ( f ) of Act No. 125 of 1992.]

**13. General exceptions in respect of reproduction of works.**—In addition to reproductions permitted in terms of this Act reproduction of a work shall also be permitted as prescribed by regulation, but in such a manner that the reproduction is not in conflict with a normal exploitation of the work and is not unreasonably prejudicial to the legitimate interests of the owner of the copyright.

[S. 13 substituted by s. 8 of Act No. 56 of 1980.]

**14. Special exception in respect of records of musical works.**—(1) The copyright in a musical work shall not be infringed by a person (in this section referred to as the “manufacturer”) who makes a record of the work or of an adaptation thereof in the Republic, whether from an imported disc, tape, matrix or otherwise, if—

- (a) records embodying the work or a similar adaptation of the work were previously made in or imported into the Republic for the purposes of retail sale and were so made or imported by, or with the licence of, the owner of the copyright in the work;
- (b) before making the record the manufacturer gave the prescribed notice to the owner of the copyright of his intention to make it;
- (c) the manufacturer intends to sell the record by retail or to supply it for the purpose of resale by retail by another person or to use it for making other records to be so sold or so supplied; and
- (d) in the case of a record which is sold by retail or supplied for the purpose of resale by retail, the manufacturer pays to the owner of the copyright, in the prescribed manner and at the prescribed time, the prescribed royalties.

(2) Where a record comprises, with or without other material, a performance of a musical work or of an adaptation of a musical work in which words are sung or are spoken that are incidental to, or in association with, the music and no copyright subsists in that work or, if copyright does subsist therein, the conditions specified in subsection (1) are fulfilled in relation to such copyright and—

- (a) the words consist or form part of a literary work in which copyright subsists; and
- (b) the records referred to in subsection (1) (a) were made or imported by or with the licence of the owner of the copyright in that literary work; and
- (c) the conditions specified in subsection (1) (b) and (d) are fulfilled in relation to the owner of that copyright,

the making of the record shall not constitute an infringement of the copyright in the literary work.

(3) For the purposes of this section an adaptation of a work shall be deemed to be similar to an adaptation thereof embodied in a previous record if the two adaptations do not substantially differ in their treatment of the work, either in respect of style or, apart from any difference in number, in respect of the performers required to perform them.

(4) A manufacturer may for the purposes of paragraph (a) of subsection (1) make the prescribed enquiries in order to ascertain whether the previous records referred to in that paragraph were previously made in or imported into the Republic, and if the owner of the copyright fails to reply to such enquiries within the prescribed period, the said previous records shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.

(5) The preceding provisions of this section shall apply also with reference to records of a part of a work or an adaptation thereof: Provided that the provisions of subsection (1) shall not apply with reference to—

- (a) a record of the whole of a work or an adaptation thereof unless the previous records referred to in paragraph (a) of that subsection were records of the whole of the work or of a similar adaptation; or
- (b) a record of a part of a work or an adaptation thereof unless the records previously made in or imported into the Republic as contemplated in paragraph (a) of that subsection were of, or included, that part of the work or of a similar adaptation.

[S. 14 substituted by s. 12 of Act No. 125 of 1992.]

**15. General exceptions from protection of artistic works.**—(1) The copyright in an artistic work shall not be infringed by its inclusion in a cinematograph film or a television broadcast or transmission in a diffusion service, if such inclusion is merely by way of background, or incidental, to the principal matters represented in the film, broadcast or transmission.

(2) The copyright in a work of architecture or in the relevant drawings shall not be infringed by the reconstruction of that work on the same site in the same style as the original.

(3) The copyright in an artistic work shall not be infringed by its reproduction or inclusion in a cinematograph film or a television broadcast or transmission in a diffusion service, if such work is permanently situated in a street, square or a similar public place.



(3A) (a) The copyright in an artistic work of which three-dimensional reproductions were made available, whether inside or outside the Republic, to the public by or with the consent of the copyright owner (hereinafter referred to as authorized reproductions), shall not be infringed if any person without the consent of the owner makes or makes available to the public three-dimensional reproductions or adaptations of the authorized reproductions, provided—

(i) . . . . .

[Sub-para. (i) deleted by s. 2 (1) (a) of Act No. 13 of 1988.]

(ii) the authorized reproductions primarily have a utilitarian purpose and are made by an industrial process.

(b) . . . . .

[Sub-s. (3A) inserted by s. 2 of Act No. 66 of 1983. Para. (b) deleted by s. 2 (1) (b) of Act No. 13 of 1988.]

(4) The provisions of section 12 (1), (2), (4), (5), (9), (10), (12) and (13) shall *mutatis mutandis*, in so far as they can be applied, apply with reference to artistic works.

[Sub-s. (4) substituted by s. 13 of Act No. 125 of 1992.]

**16. General exceptions regarding protection of cinematograph films.**—(1) The provisions of section 12 (1) (b) and (c), (2), (3), (4), (12) and (13) shall *mutatis mutandis* apply with reference to cinematograph films.

(2) Where sounds embodied in a sound-track associated with a cinematograph film are also embodied in a record other than such a soundtrack or in a record derived directly or indirectly from such a sound-track, the copyright in the film shall not be infringed by the use of that record.

[S. 16 substituted by s. 14 of Act No. 125 of 1992.]

**17. General exceptions regarding protection of sound recordings.**—The provisions of section 12 (1) (b) and (c), (2), (3), (4), (5), (12) and (13) shall *mutatis mutandis* apply with reference to sound recordings.

[S. 17 substituted by s. 15 of Act No. 125 of 1992.]

**18. General exceptions regarding protection of broadcasts.**—The provisions of section 12 (1) to (5) inclusive, (12) and (13) shall *mutatis mutandis* apply with reference to broadcasts.

[S. 18 substituted by s. 16 of Act No. 125 of 1992.]

**19. General exceptions from protection of programme-carrying signals.**—(1) The copyright in programme-carrying signals shall not be infringed by the distribution of short excerpts of the programme so carried—

(a) that consist of reports of current events; or

(b) as are compatible with fair practice,

and to the extent justified by the informatory purpose of such excerpts.

(2) The provisions of this section shall not apply with reference to a programme carried by programme-carrying signals representing a sporting event.

**19A. General exceptions regarding protection of published editions.**—The provisions of section 12 (1), (2), (4), (5), (8), (12) and (13) shall *mutatis mutandis* apply with reference to published editions.

[S. 19A inserted by s. 9 of Act No. 52 of 1984 and substituted by s. 17 of Act No. 125 of 1992.]

**19B. General exceptions regarding protection of computer programs.**—(1) Subject to the provisions of section 23 (2) (d), the provisions of section 12 (1) (b) and (c), (2), (3), (4), (5), (12) and (13) shall *mutatis mutandis* apply, in so far as they can be applied, with reference to computer programs.

(2) The copyright in a computer program shall not be infringed by a person who is in lawful possession of that computer program, or an authorized copy thereof, if—

(a) he makes copies thereof to the extent reasonably necessary for back-up purposes;

(b) a copy so made is intended exclusively for personal or private purposes; and

(c) such copy is destroyed when the possession of the computer program in question, or authorized copy thereof, ceases to be lawful.

[S. 19B inserted by s. 18 of Act No. 125 of 1992.]

**20. Moral rights.**—(1) Notwithstanding the transfer of the copyright in a literary, musical or artistic work, in a cinematograph film or in a computer program, the author shall have the right to claim authorship of the work, subject to the provisions of this Act, and to object to any distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honour or reputation of the author: Provided that an author who authorizes the use of his work in a cinematograph film or a television broadcast or an author of a computer program or a work associated with a computer program may not prevent or object to modifications that are absolutely

necessary on technical grounds or for the purpose of commercial exploitation of the work.

(2) Any infringement of the provisions of this section shall be treated as an infringement of copyright under Chapter 2, and for the purposes of the provisions of the said Chapter the author shall be deemed to be the owner of the copyright in question.

[S. 20 substituted by s. 19 of Act No. 125 of 1992.]

**21. Ownership of copyright.**—(1) (a) Subject to the provisions of this section, the ownership of any copyright conferred by section 3 or 4 on any work shall vest in the author or, in the case of a work of joint authorship, in the co-authors of the work.

(b) Where a literary or artistic work is made by an author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall be the owner of the copyright in the work in so far as the copyright relates to publication of the work in any newspaper, magazine or similar periodical or to reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the owner of any copyright subsisting in the work by virtue of section 3 or 4.

(c) Where a person commissions the taking of a photograph, the painting or drawing of a portrait, the making of a gravure, the making of a cinematograph film or the making of a sound recording and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, such person shall, subject to the provisions of paragraph (b), be the owner of any copyright subsisting therein by virtue of section 3 or 4.

(d) Where in a case not falling within either paragraph (b) or (c) a work is made in the course of the author's employment by another person under a contract of service or apprenticeship, that other person shall be the owner of any copyright subsisting in the work by virtue of section 3 or 4.

(e) Paragraphs (b), (c) and (d) shall in any particular case have effect subject to any agreement excluding the operation thereof and subject to the provisions of section 20.

(2) Ownership of any copyright conferred by section 5 shall initially vest in the state or the international organization concerned, and not in the author.

[S. 21 substituted by s. 9 of Act No. 56 of 1980.]

**22. Assignment and licences in respect of copyright.**—(1) Subject to the provisions of this section, copyright shall be transmissible as movable property by assignment, testamentary disposition or operation of law.

(2) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the term of the copyright, or to a specified country or other geographical area.

(3) No assignment of copyright and no exclusive licence to do an act which is subject to copyright shall have effect unless it is in writing signed by or on behalf of the assignor, the licensor or, in the case of an exclusive sublicense, the exclusive sublicenser, as the case may be.

(4) A non-exclusive licence to do an act which is subject to copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time: Provided that such a licence granted by contract shall not be revoked, either by the person who granted the licence or his successor in title, except as the contract may provide, or by a further contract.

(5) An assignment, licence or testamentary disposition may be granted or made in respect of the copyright in a future work, or the copyright in an existing work in which copyright does not subsist but will come into being in the future, and the future copyright in any such work shall be transmissible as movable property.

(6) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, in the absence of a stipulation to the contrary, be taken to include the disposition of any copyright or future copyright in the work which is vested in the deceased at the time of his death.

(7) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright, shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser, and any reference in this Act to the doing in relation to any copyright of anything with or without the licence of the owner of the copyright shall be construed accordingly.

(8) Where the doing of anything is authorized by the grantee of a licence or a person deriving title from the grantee, and it is within the terms, including any implied terms, of the licence for him to authorize it, it shall for the purpose of this Act be deemed to be done with the licence of the grantor and of every person, if any, upon whom the licence is binding.

## CHAPTER 2 INFRINGEMENTS OF COPYRIGHT AND REMEDIES

**23. Infringement.**—(1) Copyright shall be infringed by any person, not being the owner of the copyright, who, without the licence of such owner, does or causes any other person to do, in the Republic, any act which the owner has the exclusive rights to do or to authorize.

[Sub-s. (1) substituted by s. 20 (a) of Act No. 125 of 1992.]

(2) Without derogating from the generality of subsection (1), copyright shall be infringed by any person who, without the licence of the owner of the copyright and at a time when copyright subsists in a work—

- (a) imports an article into the Republic for a purpose other than for his private and domestic use;
- (b) sells, lets, or by way of trade offers or exposes for sale or hire in the Republic any article;
- (c) distributes in the Republic any article for the purposes of trade, or for any other purpose, to such an extent that the owner of the copyright in question is prejudicially affected; or
- (d) acquires an article relating to a computer program in the Republic,  
[Para. (d) inserted by s. 20 (b) of Act No. 125 of 1992.]

if to his knowledge the making of that article constituted an infringement of that copyright or would have constituted such an infringement if the article had been made in the Republic.

(3) The copyright in a literary or musical work shall be infringed by any person who permits a place of public entertainment to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in the work: Provided that this subsection shall not apply in a case where the person permitting the place of public entertainment to be so used was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of the copyright.

(4) . . . . .

[Sub-s. (4) deleted by s. 20 (c) of Act No. 125 of 1992.]

**24. Action by owner of copyright for infringement.**—(1) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright, and in any action for such an infringement all such relief by way of damages, interdict, delivery of infringing copies or plates used or intended to be used for infringing copies or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

[Sub-s. (1) substituted by s. 21 (a) of Act No. 125 of 1992.]

(1A) In lieu of damages the plaintiff may, at his or her option, be awarded an amount calculated on the basis of a reasonable royalty which would have been payable by a licensee in respect of the work or type of work concerned.

[Sub-s. (1A) inserted by s. 21 (b) of Act No. 125 of 1992 and substituted by s. 55 of Act No. 38 of 1997.]

(1B) For the purposes of determining the amount of damages or a reasonable royalty to be awarded under this section or section 25 (2), the court may direct an enquiry to be held and may prescribe such procedures for conducting such enquiry as the court considers necessary.

[Sub-s. (1B) inserted by s. 21 (b) of Act No. 125 of 1992 and substituted by s. 55 of Act No. 38 of 1997.]

(1C) Before the owner of copyright institutes proceedings under this section, he or she shall give notice in writing to the exclusive licensee or sub-licensee of the copyright concerned of the intention to do so, and the exclusive licensee or sub-licensee may intervene in such proceedings and recover any damages he or she may have suffered as a result of the infringement concerned or a reasonable royalty to which he or she may be entitled.

[Sub-s. (1C) inserted by s. 21 (b) of Act No. 125 of 1992 and substituted by s. 55 of Act No. 38 of 1997.]

(2) Where in an action for infringement of copyright it is proved or admitted that an infringement was committed but that at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement.

[Sub-s. (2) substituted by s. 21 (c) of Act No. 125 of 1992.]

(3) Where in an action under this section an infringement of copyright is proved or admitted, and the court having regard, in addition to all other material considerations, to—

- (a) the flagrancy of the infringement; and
- (b) any benefit shown to have accrued to the defendant by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court shall in assessing damages for the infringement have power to award such additional damages as the court may deem fit.

(4) In an action for infringement of copyright in respect of the construction of a building, no interdict or other order shall be made—

- (a) after the construction of the building has been begun so as to prevent it from being completed; or
- (b) so as to require the building, in so far as it has been constructed, to be demolished.

**25. Rights of action and remedies of exclusive licensee and exclusive sub-licensee.**—(1) An exclusive licensee and an exclusive sub-licensee shall have the same rights of action and be entitled to the same remedies as if the licence were an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under which the licence and sub-licence were granted.

(2) Before an exclusive licensee or sub-licensee institutes proceedings under subsection (1), he or she shall give notice in writing to the owner of the copyright concerned of the intention to do so, and the owner may intervene in such proceedings and recover any damages he or she may have suffered as a result of the infringement concerned or a reasonable royalty to which he or she may be entitled.

[S. 25 substituted by s. 1 of Act No. 39 of 1986. Sub-s. (2) added by s. 22 of Act No. 125 of 1992 and substituted by s. 56 of Act No. 38 of 1997.]

**26. Onus of proof in proceedings.**—(1) Where in the case of a literary, musical or artistic work or a computer program a name purporting to be that of the author appeared on copies of the said work or program as published or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appeared shall, if it was his true name or a name by which he was commonly known, in any proceedings brought by virtue of this Chapter be presumed, unless the contrary is proved, to be the author of the work or program.

(2) In the case of a work or program alleged to be a work or program of joint authorship, subsection (1) shall apply in relation to each person alleged to be one of the authors of the work or program as if references in that subsection to the author were references to one of the authors.

(3) Where in any proceedings brought by virtue of this Chapter with respect to a literary, musical or artistic work or a computer program which is anonymous or pseudonymous it is established—

- (a) that the work or program was first published in the Republic and was so published within the period of fifty years ending with the beginning of the calendar year in which the proceedings were brought; and
- (b) that a name purporting to be that of the publisher appeared on copies of the work or program as first published,

then, unless the contrary is shown, copyright shall be presumed to subsist in the work or program and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication: Provided that this subsection shall not apply if the actual name of the author of a pseudonymous work is commonly known.

(4) Where in any proceedings brought by virtue of this Chapter with respect to a literary, musical or artistic work or a computer program it is proved or admitted that the author of the work or program is dead, the work or program shall be presumed to be an original work or program unless the contrary is proved.

(5) Subsection (4) shall also apply where a work or program has been published and—

- (a) the publication was anonymous or under a name alleged by the plaintiff or the State to be a pseudonym; and
- (b) it is not shown that the work or program has ever been published under the true name of the author or under a name by which he was commonly known or that it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry.

(6) Where in any proceedings brought by virtue of this Chapter with respect to the alleged infringement of copyright in a cinematograph film it is proved that the name purporting to be the name of the author of that film appears thereon in the prescribed manner, the person whose name so appears shall be presumed to be the author of that film, unless the contrary is proved.

(7) Where in any proceedings brought by virtue of this Chapter with respect to the alleged infringement of copyright in a sound recording it is proved that records embodying that recording or part thereof have been issued to the public and that at the time when those records were so issued the following claims appeared on a label or any other printed matter affixed to such records or in or on anything in which they were contained, that is to say—

- (a) that a person named on the label or printed matter is the author of the sound recording; or
- (b) that the recording was first published in a year and at a place specified on the label or printed matter,

that label or printed matter shall be sufficient evidence of the facts so stated, except in so far as the contrary is proved.

(7A) A claim contemplated in paragraph (a) of subsection (7) may be made by means of the symbol "C" in conjunction with the name of the person concerned, and a claim contemplated in paragraph (b) of that subsection may be made by means of the symbol "P" in conjunction with the year and place in question.

(8) . . . . .

(9) In any proceedings by virtue of this Chapter with regard to the alleged infringement of the copyright in a cinematograph film registered in terms of the Registration of Copyright in Cinematograph Films Act, 1977 (Act No. 62 of 1977), it shall be presumed—

- (a) that every party to those proceedings had knowledge of the particulars entered in the register of copyright mentioned in section 15 of the said Act from the date of the lodging of the application in question to record those particulars;
- (b) that the person who is alleged to have done an act which infringes the relevant copyright did that act without the required authority, unless the contrary is proved.

(10) In any proceedings by virtue of this Chapter with regard to the alleged infringement of the copyright in a cinematograph film, a sound recording or a computer program, it shall be presumed, until the contrary is proved,

that any person trading in the selling, letting or distribution of copies of any of the said works, and who was found in possession of a copy of any of such works, sold or let for hire or by way of trade offered or exposed for sale or hire such copy.

(11) Where in any proceedings by virtue of this Chapter with regard to the alleged infringement of the copyright in a work it is proved that the person alleged to have done an act which allegedly infringes the relevant copyright did such act without the authority of the exclusive licensee, it shall be presumed, unless the contrary is proved, that the relevant act was done also without the authority of the owner of the copyright concerned.

(12) (a) In any proceedings by virtue of this Chapter relating to the alleged infringement of the copyright in a work, evidence to prove—

- (i) the subsistence of the copyright in that work; or
- (ii) the title of any person in respect of such copyright, whether by way of ownership or licence,

may be adduced by way of affidavit, and the mere production of such affidavit in such proceedings shall be *prima facie* proof of the relevant facts.

(b) The court before which an affidavit referred to in paragraph (a) is produced, may in its discretion order the person who made the affidavit to be subpoenaed to give oral evidence in the proceedings in question, or may cause written interrogatories to be submitted to such person for reply, and any reply purporting to be a reply from such person, shall likewise be admissible in evidence in such proceedings.

[S. 26 amended by s. 3 of Act No. 66 of 1983, by s. 10 of Act No. 52 of 1984 and by s. 3 (1) of Act No. 13 of 1988 and substituted by s. 23 of Act No. 125 of 1992.]

**27. Penalties and proceedings in respect of dealings which infringe copyright.**—(1) Any person who at a time when copyright subsists in a work, without the authority of the owner of the copyright—

- (a) makes for sale or hire;
- (b) sells or lets for hire or by way of trade offers or exposes for sale or hire;
- (c) by way of trade exhibits in public;
- (d) imports into the Republic otherwise than for his private or domestic use;
- (e) distributes for purposes of trade; or
- (f) distributes for any other purposes to such an extent that the owner of the copyright is prejudicially affected,

articles which he knows to be infringing copies of the work, shall be guilty of an offence.

[Sub-s. (1) substituted by s. 11 (a) of Act No. 52 of 1984 and by s. 3. of Act No. 61 of 1989.]

(2) Any person who at a time when copyright subsists in a work makes or has in his possession a plate knowing that it is to be used for making infringing copies of the work, shall be guilty of an offence.

(3) Any person who causes a literary or musical work to be performed in public knowing that copyright subsists in the work and that performance constitutes an infringement of the copyright, shall be guilty of an offence.

(4) Any person who causes a broadcast to be rebroadcast or transmitted in a diffusion service knowing that copyright subsists in the broadcast and that such rebroadcast or transmission constitutes an infringement of the copyright, shall be guilty of an offence.

(5) Any person who causes programme-carrying signals to be distributed by a distributor for whom they were not intended knowing that copyright subsists in the signals and that such distribution constitutes an infringement of the copyright, shall be guilty of an offence.

(6) A person convicted of an offence under this section shall be liable—

- (a) in the case of a first conviction, to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment, for each article to which the offence relates;
- (b) in any other case, to a fine not exceeding ten thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, for each article to which the offence relates.

[Sub-s. (6) substituted by s. 11 (b) of Act No. 52 of 1984 and by s. 24 (a) of Act No. 125 of 1992.]

(7) . . . . .

[Sub-s. (7) deleted by s. 24 (b) of Act No. 125 of 1992.]

(8) . . . . .

[Sub-s. (8) added by s. 11 (c) of Act No. 52 of 1984 and deleted by s. 24 (b) of Act No. 125 of 1992.]

**28. Provision for restricting importation of copies.**—(1) The owner of the copyright in any published work may give notice in writing to the Commissioner for Customs and Excise (in this section referred to as "the Commissioner")—

- (a) that he is the owner of the copyright in the work; and
- (b) that he requests the Commissioner to treat as prohibited goods, during a period specified in the notice, copies of the work to which this section applies:

Provided that the period specified in a notice under this subsection shall not extend beyond the end of the period for which the copyright is to subsist: Provided further that the Commissioner shall not be bound to act in terms of any such notice unless the owner of the copyright furnishes him with security in such form and for such amount as he may require to secure the fulfilment of any liability and the payment of any expense which he may incur by reason of the detention by him of any copy of the work to which the notice relates or as a result of anything done by him in relation to a copy so detained.

[Sub-s. (1) amended by s. 25 (a) of Act No. 125 of 1992.]

(2) This section shall apply to any copy of the work in question made outside the Republic which if it had been made in the Republic would be an infringing copy of the work.

(3) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation into the Republic at a time before the end of the period specified in the notice of any copy of the work to which this section applies shall be prohibited.

(4) Notwithstanding anything contained in the Customs and Excise Act, 1964 (Act No. 91 of 1964), a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason of the fact that any goods are treated as prohibited goods by virtue of this section.

(5) This section shall *mutatis mutandis* apply with reference to an exclusive licensee who has the right to import into the Republic any work published elsewhere.

[S. 28 substituted by s. 12 of Act No. 52 of 1984 and by s. 25 (b) of Act No. 125 of 1992.]

## CHAPTER 2A COPYRIGHT IN TRADITIONAL WORKS

(Pending amendment: Ch. 2A to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28A. Application to traditional works.**—(1) Subject to the provisions of this chapter, the provisions of this Act shall, except in so far as is otherwise provided in the said chapter, and in so far as they can be applied, apply to traditional works.

(2) Nothing in this chapter shall be construed as conferring any rights on any person in respect of intellectual property which is not a traditional work.

(Pending amendment: S. 28A to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28B. Traditional works eligible for copyright.**—(1) Subject to the provisions of this Act, traditional works shall be eligible for copyright.

(2) Notwithstanding section 2 (2), a traditional work shall not be eligible for copyright unless it has been written down, recorded, represented in digital data or signals, or otherwise reduced to a material form or is capable of substantiation from the collective memory of the relevant indigenous community.

(3) Copyright shall be conferred on a traditional work only if—

- (a) the traditional work is a derivative indigenous work and was created on or after the date of commencement of the Intellectual Property Laws Amendment Act, 2013, and the indigenous community from which the work, or a substantial part thereof originated, is or was an indigenous community when the work was created; or
- (b) the traditional work is an indigenous work.

(4) No right in a derivative indigenous work provided for in the Intellectual Property Laws Amendment Act, 2013, shall be eligible for registration unless—

- (a) prior informed consent has been obtained from the relevant authority or indigenous community;
- (b) disclosure of the indigenous cultural expressions or knowledge have been made to the Commission; and

(c) a benefit-sharing agreement between the applicant and the relevant authority or indigenous community has been concluded.

(5) If an indigenous community has established a community protocol, the interaction with the indigenous community contemplated in subsection (4) must take such community protocol into account.

(Pending amendment: S. 28B to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28C. National Database.**—(1) There shall be kept in the prescribed manner, at the offices of the registrars of patents, copyright, trade marks and designs, databases for indigenous knowledge as part of existing intellectual property registers, where applicable.

(2) The databases contemplated in subsection (1) shall form subsections of existing intellectual property registers and shall incorporate separate sections for the recording of information on different manifestations of indigenous cultural expressions or knowledge, as contemplated in subsection (3).

(3) All information submitted to the registrar regarding manifestations of indigenous cultural expressions or knowledge shall be recorded in the databases in the appropriate sections in the prescribed manner.

(4) Registration in respect of a traditional work shall be for the purposes of recordal of ownership and identification of representation within an indigenous community.

(5) The databases may be kept in an electronic format, and shall be open for inspection by the public during office hours, upon payment of the prescribed fee.

(6) The registrars of patents, copyright, trade marks and designs may request any relevant person to provide them with such information or advice as they may require in order to assess a request for recording as contemplated in subsection (7), or to maintain the databases.

(7) Any—

- (a) person who is an author;
- (b) person authorised to act on behalf of an author; or
- (c) person appointed by the Minister in the manner prescribed, to act on behalf of an indigenous community which is no longer in existence,

may, for the purposes of recordal, submit to the registrars of patents, copyright, trade marks and designs a request together with the appropriate information as prescribed, for a manifestation of indigenous cultural expressions or knowledge to be recorded in the relevant database.

(8) If the applicant for registration is an existing indigenous community, the request referred to in subsection (7) shall include a community protocol setting out relevant information about the indigenous community including—

- (a) identification of the indigenous community and its acknowledged structure;
- (b) full details of the appointed representative of the indigenous community in whose name the copyright must be registered;
- (c) if the representative is a juristic person, full details of registration of such juristic person;
- (d) the indigenous work that is being recorded and the justification for the indigenous community claiming rights to it;
- (e) whether such indigenous work is sacred, or should for any other reason, which must be provided, be kept confidential; and
- (f) a written undertaking by the representative of the indigenous community to the effect that he or she will hold the copyright on behalf of the indigenous community.

(9) The Council shall assist the indigenous community to ensure that the community protocol corresponds with the structure of the indigenous community.

(10) The community protocol must be kept with the recordal of the indigenous work.

(11) If the registrars of patents, copyright, trade marks and designs are satisfied that a request for recording meets with the prescribed requirements for recording, he or she shall accept the request and, within the prescribed period, cause the request to be published in the prescribed manner.

(12) Any person may, within three months from the date of publication of the request contemplated in subsection (11), or such further period as the registrars of patents, copyright, trade marks and designs may upon application allow, oppose the recording by lodging with the registrars of patents, copyright, trade marks and designs a notice of opposition setting out the grounds on which he or she relies to support the opposition.

(13) An opposition contemplated in subsection (12) shall be dealt with in the manner prescribed, and at the conclusion thereof the registrars of patents, copyright, trade marks and designs shall decide either to—

- (a) refuse the recording of the information concerned;
- (b) record the information; or
- (c) record the information subject to certain conditions.

(14) A recording as contemplated in this section shall serve as *prima facie* proof of the existence of the manifestation of indigenous cultural expressions or knowledge and the veracity of the information recorded, but shall not give rise to any rights other than expressly provided in this Act or in the Performers' Protection Act, 1967 (Act No. 11 of 1967), the Trade Marks Act, 1993 (Act No. 194 of 1993), or the Designs Act, 1993 (Act No. 195 of 1993).

(15) The Commission may determine which information recorded in the databases must be treated confidentially: Provided that if the community protocol indicates that the information is sacred or must be kept in confidence, the Commission must treat the information confidentially.

(16) Any person contemplated in subsection (7), or a third party who has an interest in a traditional work may submit to the registrars of patents, copyright, trade marks and designs a request together with the appropriate information as prescribed, for the amendment or removal of a traditional work in the database.

(17) Upon receipt of a request to amend or remove any indigenous cultural expressions or knowledge recorded in a database, the registrars of patents, copyright, trade marks and designs shall—

- (a) where the request did not originate from the owner or proprietor of the indigenous cultural expressions or knowledge—
  - (i) notify said owner or proprietor of the request;
  - (ii) require a written response from said owner or proprietor to be submitted to the registrars of patents, copyright, trade marks and designs within a stipulated time frame;
  - (iii) upon receipt of the written response from the said owner or proprietor, refer the matter for dispute resolution as set out in section 28K; and
  - (iv) implement the decision of the dispute resolution institution referred to in section 28K; or
- (b) where the request originated from the owner or proprietor of the indigenous cultural expressions or knowledge—
  - (i) consider the request as set out in subsection (16); and
  - (ii) consider any opposition received as set out in subsection (12).

(18) The Minister may, in consultation with the Minister of Finance, prescribe the tariff of fees payable for access by any person to the databases.

(Pending amendment: S. 28C to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28D. Ownership of copyright.**—(1) For the purposes of this Act, an indigenous community is deemed to be a juristic person.



(2) Subject to the provisions of this section as well as section 21, the ownership of any copyright conferred by sections 3 and 28B on any traditional work shall vest in the author.

(3) The ownership of any copyright conferred by sections 3 and 28B, shall vest in the National Trust established by section 28I, to be administered for the benefit of the relevant indigenous communities, in the manner prescribed in section 28I, if—

- (a) the author cannot be determined;
- (b) the author is an indigenous community which is no longer in existence; or
- (c) the authorship cannot be shared between more than one indigenous community claiming authorship, for whatever reason.

(Pending amendment: S. 28D to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28E. Nature of copyright in traditional works.**—(1) Copyright in a traditional work vests the exclusive right to do or to authorise the doing of any of the following acts in the Republic:

- (a) Reproducing the traditional work in any manner or form;
- (b) reproducing the cinematograph film in which the traditional work is included in any manner or form, including making a still photograph thereof;
- (c) publishing the traditional work if it was hitherto unpublished;
- (d) in the case of a traditional work of a literary or musical nature, performing the traditional work in public and broadcasting the work or causing a communication to the public of the work, by wire or wireless means, including the making available to the public of the work in such a way that members of the public may access the work from a place and at a time individually chosen by them;
- (e) in the case of a traditional work of a musical or artistic nature, or a traditional work of a literary nature in the form of a dramatic work, to include the traditional work in a cinematograph film, television broadcast or a sound recording;
- (f) broadcasting the traditional work, or the cinematograph film or sound recording in which the traditional work is included;
- (g) causing the cinematograph film in which the traditional work is included, in so far as it consists of images, to be seen in public, or, in so far as it consists of sounds, to be heard in public, or causing a communication to the public of the said cinematograph film, by wire or wireless means, including the making available to the public of the said cinematograph film in such a way that members of the public may access the said cinematograph film from a place and at a time individually chosen by them;
- (h) communicating the sound recording in which the traditional work is included to the public;
- (i) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the cinematograph film or a reproduction of the sound recording in which the traditional work is included;
- (j) causing the traditional work, or a television or other programme which incorporates the traditional work, to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast including the traditional work and is operated by the original broadcaster;
- (k) making, directly or indirectly, a record embodying the sound recording in which the traditional work is included;
- (l) making an adaptation of the traditional work; and
- (m) doing in relation to an adaptation of the traditional work, any of the acts specified in paragraphs (a) to (l).

(2) The exclusive right vested under subsection (1) shall be exercised subject to any rights in respect of the traditional work acquired by any person prior to the commencement of the Intellectual Property Laws Amendment Act, 2013.

(Pending amendment: S. 28E to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28F. Term of protection.**—(1) The term of copyright conferred on traditional works by this Act shall be, in the case of—

- (a) a derivative indigenous work referred to in section 28B (3) (a), 50 years from the end of the year in which—
  - (i) the work was first communicated to the public with the consent of the author or authors; or
  - (ii) the date of the death of the author or all authors concerned, whichever term expires last; and
- (b) an indigenous work referred to in section 28B (3) (b), in perpetuity.

(2) Notwithstanding section 5, copyright in an indigenous work that vests in the State as a result of the provisions of this Act shall be perpetual in nature.

(Pending amendment: S. 28F to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28G. General exceptions regarding protection of traditional works.**—

(1) Sections 12 to 19B shall, with the necessary changes required by the context, apply to a traditional work, in so far as they can be applied to the specific traditional work.

(2) The copyright in a traditional work shall not be infringed by a person if that person—

- (a) has acquired rights in respect of that work by doing any of the acts referred to in section 28E prior to the commencement of the Intellectual Property Laws Amendment Act, 2013; and
- (b) continues to perform such act,

and save for the obligations contemplated in subsections (3) and (5), such person shall continue to hold his or her copyright in the manner he or she has done prior to the commencement of the Intellectual Property Laws Amendment Act, 2013.

(3) Any person who has acquired rights as contemplated in subsection (2), must comply with section 28B (4) (b) and (c), within 12 months after the commencement of the Intellectual Property Laws Amendment Act, 2013: Provided that the rights of the indigenous community to royalties or benefits or both such royalties and benefits shall come into existence on the commencement of the Intellectual Property Laws Amendment Act, 2013.

(4) Any person who intends to acquire rights pertaining to doing any of the acts referred to in section 28E in respect of an indigenous work after the commencement of the Intellectual Property Laws Amendment Act, 2013, must comply with section 28B (4).

(5) If any commercial benefit is derived from acts contemplated in subsections (2) or (4) the person who derived such benefit shall pay a royalty, or a benefit, or both such royalty and benefit, to the author as set out in section 28H (3).

(6) Any person deriving commercial benefit from the use of a traditional work, the value of which is less than the prescribed value shall be excluded from the requirements of sections 28B (4), 28C and 28H.

(7) A traditional work may be used without obtaining prior consent of the copyright owner, if it is for the purpose of—

- (a) private study or private use;
- (b) professional criticism or review;
- (c) reporting on current events;

- (d) education;
- (e) scientific research;
- (f) legal proceedings; or
- (g) the making of recordings and other reproductions of indigenous cultural expressions or knowledge for purposes of their inclusion in an archive, inventory, dissemination for non-commercial cultural heritage safeguarding purposes and incidental uses:

Provided that only such excerpts or portions as is reasonably required are used and that the copyright owner's name is acknowledged.

(Pending amendment: S. 28G to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28H. Royalties and benefits.**—(1) The content of sections 6, 7, 8 and 9 shall with the necessary changes required by the context, apply to traditional works, in so far as they can be applied to the specific traditional work.

(2) In the absence of an agreement to the contrary, no person may—

- (a) broadcast, cause the transmission of or play a sound recording as contemplated in section 9 (c), (d) or (e); or
- (b) show, broadcast or cause the transmission of a cinematograph film recording a traditional work, or include a traditional work in a cinematograph film or a television broadcast as contemplated in section 28E (1),

without payment of a royalty, a benefit, or both such royalty and benefit, to the owner of the relevant copyright.

(3) The amount of any royalty, benefit, or both such royalty and benefit due for the use of traditional work shall be determined by—

- (a) an agreement between the user of the traditional work and the owner of the copyright in such work, or between their representative collecting societies; or
- (b) in the absence of an agreement as contemplated in subsection (a) being reached, the amount or value of the royalty, benefit, or both such royalty and benefit, shall be determined by—
  - (i) an institution accredited by the Commission as contemplated in section 28K (1);
  - (ii) the Copyright Tribunal referred to in section 29 (1); or
  - (iii) arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965):

Provided that if the persons referred to in paragraph (a) cannot agree on which referral to follow in terms of this subsection within a reasonable period, any of the persons may refer these disputes for resolution in terms of section 28K.

(4) Agreements concluded in terms of sections 28G (3), 28G (4) and subsection (3) (a) must be submitted to the Council, who shall—

- (a) scrutinise the agreement for compliance with intellectual property laws, the community protocol and this Act; and
- (b) where any clause within the contract is regarded as not being to the benefit of the indigenous community or member of the indigenous community concerned, require renegotiation of said clause and provide the necessary advice.

(5) The owner of copyright in a derivative indigenous work shall pay a royalty, a benefit, or both such royalty and benefit, agreed to as set out in this section, to the owner of the copyright in the indigenous work from which the derivative indigenous work was derived.

(Pending amendment: S. 28H to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28I. National Trust and Fund for Indigenous Knowledge.**—(1) There is hereby established a National Trust to be known as the National Trust for Indigenous Knowledge, and the Minister shall appoint not more than five persons as trustees for the National Trust.

(2) The National Trust shall be responsible for the promotion and preservation of indigenous cultural expressions and knowledge, including, but not limited to—

- (a) the commercialisation and exploitation of indigenous cultural expressions or knowledge for the purpose of generating income;
- (b) facilitating the development of indigenous communities with respect to training on, and awareness of, their intellectual property and associated rights; and
- (c) assisting indigenous communities in the application of this Act and other legislation dealing with indigenous cultural expressions or knowledge.

(3) The National Trust shall establish a Fund to be known as the National Trust Fund for Indigenous Knowledge.

(4) The trustees of the National Trust shall administer the Fund in the prescribed manner and may invest monies received from the commercialisation of indigenous cultural expressions or knowledge or otherwise, pending the distribution thereof—

- (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
- (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).

(5) The Fund may be subdivided, in whole or in part, into separate sub-funds which may be administered on behalf of and at the request of the National Trust by the registrars of patents, copyright, trade marks and designs, respectively.

(6) All income derived by the National Trust from the use of indigenous cultural expressions or knowledge, including all royalties and benefits payable as provided for in—

- (a) this Act;
- (b) the Performers' Protection Act, 1967 (Act No. 11 of 1967);
- (c) the Patents Act, 1978 (Act No. 57 of 1978);
- (d) the Trade Marks Act, 1993 (Act No. 194 of 1993); and
- (e) the Designs Act, 1993 (Act No. 194 of 1993),

shall be National Trust monies and shall be paid into the respective sub-funds, to be applied for the benefit of indigenous communities: Provided that the Minister may prescribe—

- (i) administration fees;
- (ii) fees relating to commercialisation, exploitation and training of indigenous communities;
- (iii) the frequency and manner in which payments shall be made to indigenous communities; and
- (iv) any other matter related to the administration of the income received by the Fund.

(7) The Commission shall be responsible for the administration of the National Trust.

(8) Notwithstanding the provisions of this section, any indigenous community may establish a legal entity, business or other enterprise to promote or exploit indigenous cultural expressions or knowledge: Provided that any commercial benefit derived shall only be subject to royalties, benefits or licence fees once, which royalties, benefits or license fees may be paid to the Fund, if the Fund is the owner, by the indigenous community.

(9) Nothing in this Act, or in the Acts referred to in subsection (6) shall prohibit an indigenous community from requesting the National Trust to collect, manage and distribute royalties, benefits or license fees on its behalf against payment of a prescribed fee.

(Pending amendment: S. 28I to be inserted by s. 4 of Act No. 28 of 2013)

and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28J. Assignment and licences.**—(1) Save for—

- (a) assignment of copyright to a collecting society; or
- (b) the transfer to a duly appointed representative of the indigenous community,

the copyright in an indigenous work shall not be transmissible by assignment, testamentary disposition or operation of law, but the doing of any act which is the subject of the copyright as contemplated in section 28E may be licensed.

(2) Should the copyright referred to in subsection (1) vest in a representative of an indigenous community, whether a natural or juristic person, the indigenous community may—

- (a) upon the death or liquidation of the said representative, as the case may be; or
- (b) prior to the death or liquidation of the said representative, by agreement as set out in the community protocol, transfer such copyright to a natural or juristic person, as the indigenous community may decide.

(3) Should the copyright referred to in subsection (1), vest in a representative of an indigenous community, such copyright shall automatically upon the death of the last living member of such indigenous community transfer to the National Trust.

(Pending amendment: S. 28J to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28K. Disputes.**—(1) The Commission must accredit certain institutions which have the necessary capacity, to adjudicate any dispute arising from the application of the Intellectual Property Laws Amendment Act, 2013.

(2) Any dispute arising from the application of the Intellectual Property Laws Amendment Act, 2013, must first be instituted in an institution accredited as contemplated in subsection (1).

(3) No person appearing in proceedings before an institution contemplated in subsection (1) shall have the right to legal representation unless—

- (a) the adjudicator and all other parties consent; or
- (b) the adjudicator, after considering—
  - (i) the nature of the questions of law raised by the dispute;
  - (ii) the relative complexity and importance of the dispute; and
  - (iii) the comparative ability of the parties to represent themselves in the adjudication,

concludes that it would be unreasonable to expect the party to deal with the adjudication without legal representation.

(4) Any adjudication must take into account existing customary dispute resolution mechanisms.

(5) The decision of the institution referred to in subsection (1) may be served, executed and enforced as if it was an order of the High Court.

(6) Any party to proceedings before an institution referred to in subsection (1) may appeal to a court of law against any decision of such institution, and the appeal must be noted and dealt with in the manner prescribed by law for appeals against a civil order or decision of a single judge.

(7) The Minister shall prescribe the fees, processes and formalities relating to the institution and adjudication of a dispute.

(Pending amendment: S. 28K to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

**28L.** National Council for Indigenous Knowledge.—(1) The Minister shall establish a National Council for Indigenous Knowledge.

(2) The Council shall consist of not less than 15 members, appointed by the Minister.

(3) The Minister shall designate one of the members of the Council as the Chairperson of the Council.

(4) Before appointing any person referred to in subsection (2), the Minister must—

- (a) by notice in the *Gazette*, and any other widely circulated means of communication call for nominees and state the criteria for such nominations;
- (b) specify a period within which nominations must be submitted; and
- (c) consider all nominations before making an appointment.

(5) In appointing the members of the Council, the Minister may consult—

- (a) the Ministers responsible for—
  - (i) agriculture;
  - (ii) arts and culture;
  - (iii) environmental affairs;
  - (iv) health; and
  - (v) science and technology;
- (b) organised local government;
- (c) an association of traditional healers;
- (d) the National House of Traditional Leaders;
- (e) academia;
- (f) the legal profession;
- (g) organised commerce and industry; or
- (h) any other relevant body or institution.

(6) The Council shall—

- (a) be broadly representative of indigenous communities from different cultures within the Republic; and
- (b) at all times have as members—
  - (i) at least two persons with expertise and extensive knowledge in, and patronage of, traditional cultures and values of indigenous communities;
  - (ii) at least two persons with expertise and extensive knowledge in, and patronage of, traditional artistic, literary, musical works and performing arts; and
  - (iii) at least two persons with expertise and extensive knowledge of the law.

(7) The Council shall have at least seven meetings per year and a quorum shall consist of half of the appointed members, plus one.

(8) The members of the Council are appointed on such terms and conditions, including remuneration, as may be determined by the Minister in consultation with the Minister of Finance.

(9) A member of the Council shall hold office for a period of three years and may be reappointed, upon the expiry of that period, for a further period of three years.

(10) For the sake of continuity, succession planning must include reappointment of members in such a manner that subsections (6) and (9) are always adhered to.

(11) The Minister may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), remove a member of the Council for—

- (a) non-performance;
- (b) serious misconduct; or
- (c) conduct that undermines the integrity or objectives of the Council.

(12) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3

of 2000), the Minister may dissolve the Council—

- (a) if the Council fails to perform its functions in an effective and efficient manner; and
- (b) on the grounds of mismanagement.

(13) When the Minister dissolves the Council in terms of subsection (12), the Minister may appoint an interim body for the continued governance and control of the affairs of the Council, on such conditions as the Minister may determine.

(14) The body contemplated in subsection (13) must be appointed for a period not exceeding six months or until the new Council is appointed in terms of subsection (2), whichever is the lesser.

(15) The Commission shall be responsible for the administration of the Council, and its subcommittees.

(Pending amendment: S. 28L to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28M. Functions of Council.**—(1) The Council shall—

- (a) advise the Minister on any matter concerning indigenous cultural expressions or knowledge;
- (b) advise the registrars of patents, copyright, trade marks, and designs on any matter relating to the registration of indigenous cultural expressions or knowledge;
- (c) advise the Minister on matters relating to performances of traditional work;
- (d) advise on the integrity of a database of intellectual property in relation to indigenous cultural expressions or knowledge;
- (e) perform such further functions as provided for in the—
  - (i) Patents Act, 1978 (Act No. 57 of 1978);
  - (ii) Trade Marks Act, 1993 (Act No. 194 of 1993);
  - (iii) Designs Act, 1993 (Act No. 195 of 1993); and
  - (iv) Performers' Protection Act, 1967 (Act No. 11 of 1967);
- (f) refer any dispute received, to an institution contemplated in section 28K (1); and
- (g) carry out such tasks as assigned to it from time to time by the Minister.

(2) The Council may—

- (a) appoint any person to assist the Council with the performance of any specific act, task or assignment, or to investigate any matter relating to its functions;
- (b) constitute and maintain such committees as it may deem necessary;
- (c) appoint as members of the committees any of its members and any other persons, for such periods of time as the Council may determine; and
- (d) refer to such committees any tasks or matters as may be necessary to enable the Council to carry out its functions.

(3) The Minister may, in consultation with the Minister of Finance, prescribe the tariff of fees payable for—

- (a) any work performed or services rendered by any person at the specific request or instruction of the Council;
- (b) access by any person to the results of, or other information in connection with any research performed or information collected by the Council; and
- (c) access by any person to the databases contemplated in section 28C.

(4) The Council may recommend to the Minister appropriate measures to ensure the effective implementation of the Act in relation to all matters pertaining to indigenous cultural expressions or knowledge relating to performers' rights, copyright, trade marks, designs and patents.

(Pending amendment: S. 28M to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**28N. Compliance with international agreements.**—(1) The Minister may by notice in the *Gazette* provide that any provision of this Act specified in such notice shall, in the case of any country so specified apply so that—

- (a) a community recognised in the specified country as an indigenous community shall be deemed to be an indigenous community as defined in this Act; and
- (b) a traditional work recognised in the specified country as a traditional work shall be deemed to be a traditional work as defined in this Act.

(2) The Minister may in the notice contemplated in subsection (1) make the provisions of this Act applicable to the following in respect of a country listed in the notice:

- (a) its citizens or subjects;
- (b) persons who at material times are domiciled or resident in the listed country and who are members of an indigenous community in that country; and
- (c) juristic persons incorporated under the laws of the specified country and representing indigenous communities of that country.

(3) The notice referred to in subsection (1) may—

- (a) include exceptions or modifications to the application of the Act in respect of a specified country;
- (b) provide for general application of the Act; or
- (c) limit application of the Act to such types of traditional works as may be specified.

(4) No notice shall be issued under this section in respect of any country which is not a party to a convention relating to copyright to which the Republic is also a party, unless the Minister is satisfied that, in respect of the class of works to which the notice relates, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright in traditional works under this Act.

(Pending amendment: S. 28N to be inserted by s. 4 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

### CHAPTER 3 COPYRIGHT TRIBUNAL

**29. Establishment of Copyright Tribunal.**—(1) The judge or acting judge who is from time to time designated as Commissioner of Patents in terms of section 8 of the Patents Act, 1978, shall also be the Copyright Tribunal (in this Chapter referred to as the tribunal) for the purposes of this Act.

(2) The tribunal may order that the costs or expenses of any proceeding before it incurred by any party shall be paid by any other party, and may tax or settle the amount of any costs or expenses to be paid under any such order or direct in what manner they are to be taxed.

(3) (a) Regulations may be prescribed as to the procedure in connection with the making of references and applications to the tribunal and for regulating proceedings before the tribunal and as to the fees chargeable in respect of those proceedings.

(b) Any such regulations may in relation to proceedings before the tribunal apply any of the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), or alternatively, any of the provisions applicable in the court of the Commissioner of Patents in terms of the Patents Act, 1978.



(c) Any regulations may include provision for—

- (i) requiring notice of any intended application to the court under section 36 to be given to the tribunal and to the other parties to the proceedings;
- (ii) suspending or authorizing or requiring the tribunal to suspend the operation of orders of the tribunal in cases where after giving its decision an application under section 36 to any provincial division of the Supreme Court is noted;
- (iii) modifying in relation to orders of the tribunal, of which the operation is suspended, the operation of any provisions of this Chapter as to the effect of orders made thereunder;
- (iv) the publication of notices or the taking of any other steps for ensuring that persons affected by the suspension of an order of the tribunal will be informed of its suspension;
- (v) regulating or prescribing any other matters incidental to or consequential upon any request, application, order or decision under section 36.

[Sub-para. (v) substituted by s. 26 (a) of Act No. 125 of 1992.]

(4) Without prejudice to any method available by law for the proof of orders of the tribunal, a document purporting to be a copy of any such order and to be certified by the Registrar to be a true copy thereof shall in any legal proceedings be sufficient evidence of the order unless the contrary is proved.

(5) The Registrar shall act as the registrar of the tribunal.

(6) Any reference in this Chapter to the giving of an opportunity to any person of presenting his case shall be construed as a reference to the giving to that person of the opportunity of submitting representations in writing and of being heard.

[Sub-s. (6) added by s. 26 (b) of Act No. 125 of 1992.]

**30. General provisions as to jurisdiction of tribunal.**—Subject to the provisions of this Chapter, the function of the tribunal shall be to determine disputes arising between licensing bodies, or other persons from whom licences are required and persons requiring licences, or organizations claiming to be representatives of such persons, either—

- (a) on the reference of a licence scheme to the tribunal; or
- (b) on the application of a person requiring a licence either in accordance with a licence scheme or in a case not covered by a licence scheme.

[S. 30 substituted by s. 27 of Act No. 125 of 1992.]

**31. Reference of licence schemes to tribunal.**—(1) Where at any time while a licence scheme is in operation a dispute arises with respect to the scheme between the licensing body operating the scheme and—

- (a) an organization claiming to be representative of persons requiring licences in cases of a class to which the scheme applies; or
- (b) any person claiming that he requires a licence in a case of a class to which the scheme applies,

the organization or person in question may refer the scheme to the tribunal in so far as it relates to cases of that class.

(2) The parties to a reference under this section shall be—

- (a) the organization or person at whose instance the reference is made;
- (b) the licensing body operating the scheme to which the reference relates; and
- (c) such other organizations or persons (if any) as apply to the tribunal to be made parties to the reference and are in accordance with subsection (3) made parties thereto.

(3) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the tribunal to be made a party to a reference, and the tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute, the tribunal may, if it thinks fit make that organization or person a party to the reference.

(4) The tribunal shall not entertain a reference under this section by an organization unless the tribunal is satisfied that the organization is reasonably representative of the class of persons which it claims to represent.

(5) Subject to the provisions of subsection (4), the tribunal shall on any reference under this section consider the matter in dispute and after giving the parties to the reference an opportunity of presenting their respective cases, make such order, either confirming or varying the scheme in so far as it relates to cases of the class to which the reference relates, as the tribunal may determine to be reasonable in the circumstances.

(6) An order of the tribunal under this section may, notwithstanding anything contained in the licence scheme to which it relates, be made so as to be in force either indefinitely or for such period as the tribunal may determine.

(7) Where the tribunal has made an order in respect of a licence scheme which has been referred to it, such scheme shall, notwithstanding anything contained therein, in so far as it relates to the class of cases in respect of which the order was made, thereafter remain in operation subject to the terms of the order: Provided that this

subsection shall not apply in relation to a reference as respects any period after the reference has been withdrawn or has been discharged by virtue of subsection (4).

**32. Further reference of scheme to tribunal.**—(1) Where the tribunal has made an order under section 31 with respect to a licence scheme—

- (a) the licensing body operating the scheme;
- (b) any organization claiming to be representative of persons requiring licences in cases of the class to which the order applies; or
- (c) any person claiming that he requires a licence in a case of that class,

may, subject to the provisions of subsection (2), at any time while the order is in force, again refer the scheme to the tribunal in so far as it relates to cases of the class in respect of which the order applies.

(2) A licence scheme shall not, except with the special leave of the tribunal, again be referred to the tribunal under subsection (1)—

- (a) where the relevant order was made so as to be in force indefinitely or for a period exceeding fifteen months, before the expiration of a period of twelve months from the date on which the order was made; or
- (b) where such order was made so as to be in force for a period not exceeding fifteen months, at any time more than three months before the date of expiry of the order.

(3) The provisions of section 31 shall *mutatis mutandis* apply in respect of any reference under this section or any order made thereon, and the tribunal shall have power to make such order on any such reference as it deems just.

**33. Applications to tribunal.**—(1) For the purposes of this Chapter a case shall be taken to be covered by a licence scheme if, in accordance with a licence scheme for the time being in operation, licences would be granted in cases of the class to which that case belongs: Provided that where in accordance with the provisions of a licence scheme—

- (a) the licences which would be so granted would be subject to terms and conditions whereby particular matters would be excepted from the licences; and
- (b) the case in question relates to one or more matters falling within such an exception,

that case shall be taken not to be covered by the scheme.

(2) Any person who claims that in a case covered by a licence scheme the licensing body operating the scheme has refused or failed to grant him a licence in accordance with the provisions of the scheme or to procure the grant to him of such a licence, may apply to the tribunal for an order under this section.

(3) An application for such an order may also be made by any person who claims that he requires a licence in a case not covered by a licence scheme, and either—

- (a) that a licensing body or person has refused or failed to grant the licence or to procure the grant thereof, and that in the circumstances it is unreasonable that the licence should not be granted; or
- (b) that any charges, terms or conditions subject to which a licensing body proposes that the licence should be granted are unreasonable.

(4) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the tribunal to be made a party to an application under subsection (2) or (3), and the tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute, the tribunal may if it thinks fit make that organization or person a party to the application.

(5) On any application under subsection (2) or (3) the tribunal shall give the applicant and the licensing body in question and every other party to the application an opportunity of presenting his case, and if the tribunal is satisfied that the claim of the applicant is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms and conditions and subject to the payment of such charges (if any) as the tribunal may—

- (a) in the case of an application under subsection (2), determine to be applicable in accordance with the licence scheme; or
- (b) in the case of an application under subsection (3), determine to be reasonable in the circumstances.

(6) Any reference in this section to failure to grant or procure the grant of a licence shall be construed as including a reference to a failure to grant it or to procure the grant thereof within a reasonable time after being requested to do so.

**34. Diffusion service.**—In a dispute concerning the transmission of broadcasts in a diffusion service in the Republic, the tribunal shall disallow any claim under this Act to the extent to which the licences of the broadcaster concerned provide for or include such transmission in a diffusion service.

**35. Effect of orders of tribunal, and supplementary provisions relating thereto.**—(1) Any person who complies with the conditions of an order made by the tribunal under this Chapter or who has given a satisfactory undertaking to the owner or prospective owner of the copyright to comply with such conditions, shall be deemed to be the holder of a licence under this Act.

(2) In the exercise of its jurisdiction in respect of licences relating to television broadcasts, the tribunal shall have regard *inter alia* to any conditions imposed by the promoters of any entertainment or other event which is to be comprised in the broadcasts, and in particular the tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

**36. Appeals.**—(1) Any party to proceedings before the tribunal may appeal against any order or decision of the tribunal pursuant to such proceedings.

(2) Every appeal shall be noted and prosecuted in the manner prescribed by law for appeals against a civil order or decision of a single judge, and sections 20 and 21 of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply *mutatis mutandis*.

(3) The court may in respect of any such appeal—

- (a) confirm, vary or set aside the order or decision appealed against, as the court may deem fair;
- (b) if the record does not furnish sufficient evidence or information for the determination of the appeal, remit the matter to the tribunal with instructions in regard to the taking of further evidence or the setting out of further information;
- (c) take any other course which in the opinion of the court is fair and may lead to the speedy and as far as may be possible inexpensive settlement of the case; and
- (d) make such order as to costs as the court may deem fair.

[S. 36 substituted by s. 28 of Act No. 125 of 1992.]

#### CHAPTER 4 EXTENSION OR RESTRICTION OF OPERATION OF ACT

**37. Application of Act to countries to which it does not extend.**—(1) The Minister may by notice in the *Gazette* provide that any provision of this Act specified in the notice shall in the case of any country so specified apply—

- (a) in relation to literary, musical or artistic works, computer programs, cinematograph films, sound recordings and published editions first published in that country as it applies in relation to literary, musical or artistic works, computer programs, cinematograph films, sound recordings and published editions first published in the Republic;  
[Para. (a) substituted by s. 13 of Act No. 52 of 1984 and by s. 29 (a) of Act No. 125 of 1992.]
- (b) in relation to persons who at a material time are citizens or subjects of that country as it applies in relation to persons who at such a time are South African citizens;
- (c) in relation to persons who at a material time are domiciled or resident in that country as it applies in relation to persons who at such a time are domiciled or resident in the Republic;
- (d) in relation to bodies incorporated under the laws of that country as it applies in relation to bodies incorporated under the laws of the Republic;
- (e) in relation to broadcasts made and programme-carrying signals emitted to a satellite from places in that country as it applies in relation to broadcasts made and programme-carrying signals emitted to a satellite from a place in the Republic.

[Para. (e) substituted by s. 29 (b) of Act No. 125 of 1992.]

(2) A notice under this section may provide—

- (a) that any provisions referred to therein shall apply subject to such exceptions or modifications as may be specified in the notice;
- (b) that such provisions shall so apply either generally or in relation to such classes of works or classes of cases as may be so specified.

(3) No notice shall be issued under this section in respect of any country which is not a party to a convention relating to copyright to which the Republic is also a party, unless the Minister is satisfied that, in respect of the class of works to which the notice relates, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright under this Act.

**38. . . . .**

[S. 38 repealed by s. 30 of Act No. 125 of 1992.]

CHAPTER 5  
MISCELLANEOUS PROVISIONS

**39. Regulations.**—The Minister may make regulations—

- (a) as to any matter required or permitted by this Act to be prescribed by regulation;
- (b) in consultation with the Minister of Finance, prescribing the tariff of fees payable in respect of proceedings before the Copyright Tribunal referred to in section 29 (1);
- (c) in consultation with the Minister of Finance, prescribing the remuneration and allowances of members of the advisory committee referred to in section 40, and of its subcommittees, and the conditions upon which such members shall be appointed; and

- (c) in consultation with the Minister of Finance, prescribing the remuneration and allowances of members of the advisory committee referred to in section 40, the Council referred to in section 28L, and of their subcommittees, and the conditions upon which such members shall be appointed;

(Pending amendment: Para. (c) to be substituted by s. 5 (a) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

- (cA) in consultation with the Minister of Finance, providing for the establishment, composition, funding and functions of collecting societies contemplated in section 9A, and any other matter that it may be necessary or expedient to regulate for the proper functioning of such societies;

[Para. (cA) inserted by s. 4 of Act 9 of 2002.]

- (cA) in consultation with the Minister of Finance, providing for the establishment, composition, funding and functions of collecting societies contemplated in section 9A, and any other matter that it may be necessary or expedient to regulate for the proper functioning of such societies whether in respect of copyright or any other type of intellectual property;

(Pending amendment: Para. (cA) to be substituted by s. 5 (b) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

- (cB) providing for the recording of indigenous cultural expressions or knowledge as contemplated in section 28C including issues related to—

- (i) the manner in which information on indigenous cultural expressions or knowledge is kept;

- (ii) fees payable for access to inspect the databases;

- (iii) processes and formalities related to the submission of an application; and

- (iv) criteria to be met for indigenous cultural expressions or knowledge to be entered into the databases;

(Pending amendment: Para. (cB) to be inserted by s. 5 (c) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

- (cC) prescribing the nature of the entities envisaged by section 28I (8) including issues related to—

- (i) governance of the entities; and

- (ii) interaction of the entities with the National Trust and the Council;

(Pending amendment: Para. (cC) to be inserted by s. 5 (c) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

- (cD) providing for the fees, processes and formalities related to the

submission and adjudication of a dispute set out in section 28K;  
and  
(Pending amendment: Para. (cD) to be inserted by s. 5 (c) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

(cE) providing for the appointment of a person to act on behalf of an indigenous community which is no longer in existence;  
(Pending amendment: Para. (cE) to be inserted by s. 5 (c) of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

- (d) generally, as to any matter which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

**39A. Guidelines.**—(1) The Minister may issue guidelines on any aspect of the Intellectual Property Laws Amendment Act, 2013, including—

- (a) protection of indigenous cultural expressions or knowledge;
- (b) reducing traditional work that is eligible for copyright due to it being capable of substantiation from the collective memory of the relevant indigenous community, to material form for purposes of protection thereof;
- (c) the databases, in so far as it relates to indigenous cultural expressions or knowledge;
- (d) the National Trust and Fund, in so far as it relates to indigenous cultural expressions or knowledge;
- (e) the Council, in so far as it relates to indigenous cultural expressions or knowledge; and
- (f) the dispute process as set out in section 28K.  
(Pending amendment: S. 39A to be inserted by s. 6 of Act No. 28 of 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**40. Advisory committee.**—(1) (a) The Minister shall appoint an advisory committee consisting of a judge or a senior advocate of the Supreme Court of South Africa as chairman and such *ex officio* and other members as the Minister may from time to time determine.

[Para. (a) substituted by s. 4 (a) of Act No. 61 of 1989.]

(b) A member of the advisory committee shall hold office for such period as the Minister may direct and shall be eligible for reappointment upon the expiration of his period of office.

(2) The advisory committee shall as to witnesses and their evidence have the powers of a commission under the Commissions Act, 1947 (Act No. 8 of 1947).

(3) The advisory committee may from time to time make recommendations to the Minister in regard to any amendments to this Act and to the Trade Marks Act, 1963 (Act No. 62 of 1963), the Designs Act, 1967 (Act No. 57 of 1967), and the Patents Act, 1978 (Act No. 57 of 1978), and shall advise the Minister on any matter referred to it by the Minister.

[Sub-s. (3) substituted by s. 4 (b) of Act No. 61 of 1989.]

(4) (a) The advisory committee may constitute and maintain subcommittees.

[Para. (a) substituted by s. 4 (c) of Act No. 61 of 1989.]

(b) The advisory committee shall appoint as members of the subcommittees such of its members and such other persons and for such periods of office as the advisory committee may from time to time determine.

(5) The advisory committee may call to its assistance any person it may deem necessary to assist it with, or to investigate matters relating to, the functions referred to in subsection (3).

[Sub-s. (5) substituted by s. 4 (d) of Act No. 61 of 1989.]

(6) The Registrar shall be responsible for the administration of the advisory committee and the subcommittees.

**41. Savings.**—(1) Nothing in this Act shall affect any right or privilege of the State or of any other person under any law not expressly repealed, amended or modified by this Act.

[Sub-s. (1) substituted by s. 31 (a) of Act No. 125 of 1992.]

(2) Nothing in this Act shall affect the right of the state or of any person deriving title from the state to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise, including any article forfeited by virtue of this Act or of any enactment repealed by this Act.

(3) The provisions of this Act shall not derogate from any rule of law relating to confidential or privileged information, unlawful competition or personality rights.

[Sub-s. (3) substituted by s. 31 (b) of Act No. 125 of 1992.]

(4) Subject to the preceding provisions of this section, no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Act or of some other enactment in that behalf.

**42. . . . .**

[S. 42 repealed by s. 32 of Act No. 125 of 1992.]

**43. Application to work made before commencement of Act.**—This Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made thereafter: Provided that—

(a) nothing in this Act contained shall—

(i) subject to paragraph (d), affect the ownership, duration or existence of any copyright which subsists under the Copyright Act, 1965 (Act No. 63 of 1965); or

(ii) subject to paragraph (c), be construed as creating copyright in any type of work in which copyright could not subsist prior to 11 September 1965;

[Para. (a) amended by s. 14 (a) of Act No. 52 of 1984 and substituted by s. 33 (a) of Act No. 125 of 1992.]

(b) . . . . .

[Para. (b) deleted by s. 14 (b) of Act No. 52 of 1984.]

(c) the copyright in a cinematograph film made before the commencement of this Act shall be governed by the relevant provisions of this Act, subject to the qualification, in the case of a cinematograph film treated as an original dramatic work under section 35 of the Third Schedule to the Designs Act, 1916 (Act No. 9 of 1916)—

(i) that the owner of the copyright shall, if so required, remunerate the person who is the owner of a copyright in that original dramatical work for the purposes of that Act, which remuneration shall be determined by arbitration if agreement thereon cannot be reached; and

(ii) that the owner of the copyright in the cinematograph film or any person deriving rights in respect of the cinematograph film from such owner shall in exercising such rights in the cinematograph film be deemed not to infringe any rights in such original dramatical work under the said Act; and

(iii) that an act performed by virtue of a licence granted by the owner of the copyright in the original dramatical work under that Act and in existence before or at the time of coming into force of this subsection, shall be deemed to be performed or have been performed on the authority of the owner of the copyright in the cinematograph film.

[Para. (c) substituted by s. 33 (b) of Act No. 125 of 1992.]

(d) in the determination of the term of copyright contemplated in the proviso to section 3 (2) (a) in the case of a work in respect of which the copyright has expired at the commencement of the Copyright Amendment Act, 1984, on the ground that the period mentioned in the said paragraph has lapsed, it shall be deemed that, subject to any rights acquired by any person after the lapse of that period and before the said commencement, copyright did not expire on that ground.

[Para. (d) added by s. 14 (c) of Act No. 52 of 1984.]

**44. Time when a work is made.**—(1) For the purposes of this Act a work, except a broadcast or programme-carrying signal, shall be deemed to have been made at the time when it was first reduced to writing, recorded or otherwise reduced to material form.

(2) A broadcast shall be deemed to have been made at the time when it was first broadcast.

(3) A programme-carrying signal shall be deemed to have been made at the time when it was first transmitted by a satellite.

[S. 44 substituted by s. 34 of Act No. 125 of 1992.]

**45. Regulation and control of circulation, presentation or exhibition of works.\***—(1) Notwithstanding anything to the contrary in this Act contained, the Minister may make such regulations as he may consider necessary in regard to the circulation, presentation or exhibition of any work or production.

(2) Such regulations may empower any person specified therein to prohibit the circulation, presentation or exhibition of any such work or production or to authorize the circulation, presentation or exhibition thereof on such conditions as may be specified in those regulations.

(3) The circulation, presentation or exhibition of any work or production in pursuance of authority granted in terms of such regulations shall not constitute an infringement of copyright in such work or production, but the author shall not thereby be deprived of his right to a reasonable remuneration, which shall in default of agreement be determined by arbitration.

(Date of commencement to be proclaimed.)

**45. Regulation and control of distribution, performance or exhibition of works.**—(1) Notwithstanding anything to the contrary in this Act contained, the Minister may make such regulations as he may consider necessary in regard to the distribution, performance or exhibition of any work.

(2) Such regulations may empower any person specified therein to prohibit the distribution, performance or exhibition of any such work or to authorize the distribution, performance or exhibition thereof on such conditions as may be specified in those regulations.

(3) The distribution, performance or exhibition of any work in pursuance of authority granted in terms of such regulations shall not constitute an infringement of copyright in such work, but the copyright owner shall not thereby be deprived of any right which he may have had to obtain a reasonable remuneration, which shall in default of agreement be determined by arbitration.

(Pending amendment: S. 45 to be substituted by s. 4 of Act No. 66 of 1983 and shall come into operation on a date fixed by the State President by proclamation in the *Gazette* – date not determined.)

Date of commencement to be proclaimed)

\*45A. ....

**45A. Regulation and control of the reproduction or adaptation of artistic works.**—(1) Notwithstanding anything to the contrary in this Act contained, the Minister may make such regulations as he may consider necessary in regard to the reproduction or adaptation, or the making available to the public of reproductions or adaptations, of any artistic work.

(2) Such regulations may empower any person specified therein to authorize the reproduction or adaptation, or the making available to the public of reproductions or adaptations, of any artistic work on such conditions as may be specified in those regulations.

(3) The reproduction or adaptation, or the making available to the public of reproductions or adaptations, of any artistic work in pursuance of authority granted in terms of such regulations shall not constitute an infringement of copyright in such work, but the copyright owner shall not thereby be deprived of any right which he may have had to obtain a reasonable remuneration, which shall in default of agreement be determined by arbitration.

(Pending amendment: S. 45A to be inserted by s. 5 of Act No. 66 of 1983 and shall come into operation on a date fixed by the State President by proclamation in the *Gazette* – date not determined.)

(Date of commencement to be proclaimed)

**46. Repeal of laws.**—The laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule: Provided that any proclamation, regulation or rule having effect under any provision so repealed and in force immediately prior to the commencement of this Act, shall continue in force after such commencement and may be repealed, amended or altered as if it had been made under this Act.

**47. Short title and commencement.**—This Act shall be called the Copyright Act, 1978, and shall come into operation on 1 January 1979, except sections 1, 39 and 40, which shall come into operation upon promulgation of this Act in the *Gazette*, and except section 45, which shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

**Schedule**

<i>No. and year of Act</i>	<i>Title</i>	<i>Extent of Repeal</i>

Act No. 63 of 1965	Copyright Act, 1965	The whole, except section 46
Act No. 56 of 1967	Copyright Amendment Act, 1967	The whole
Act No. 75 of 1972	Copyright Amendment Act, 1972	The whole
Act No. 64 of 1975	Copyright Amendment Act, 1975	The whole

**Footnotes**

\* Proposed amendments: Refer Act 66/1983, ss. 4 and 5.