

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — PATENTS, DESIGNS AND COPYRIGHT
ss. 37–40 Copyright Act, No. 98 of 1978 ss. 37–40

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[S. 38 repealed by s. 30 of Act No. 125 of 1992.]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

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.

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — PATENTS, DESIGNS AND COPYRIGHT
 ss. 41–43 *Copyright Act, No. 98 of 1978* ss. 41–43

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.]

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — PATENTS, DESIGNS AND COPYRIGHT
s. 43-Sch. *Copyright Act, No. 98 of 1978* s. 43-Sch.

- (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.)

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

No. and year of Act	Title	Extent of Repeal
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

Government Notice no R2530 published in *Government Gazette* no 6252 of 22 December 1978

COPYRIGHT REGULATIONS, 1978

As amended by:

Government Notice no R1211 published in *Government Gazette* no 9775 of 7 June 1985 and amended by Government Notice no 1375 published in *Government Gazette* no 9807 of 28 June 1985.

REGULATIONS

The Minister of Economic Affairs has, by virtue of the powers vested in him in terms of section 39 of the Copyright Act, 1978 (Act 98 of 1978), made the following regulations and with the concurrence of the Minister of Finance prescribed the matters in respect of which fees shall be payable and the tariff of such fees set forth in Schedule 2 hereto:

INTERPRETATION

1. In these regulations, unless the context otherwise indicates—
 - (i) 'archives depot' means an archives depot referred to in section 5 of the Archives Act, 1962 (Act 6 of 1962);
 - (ii) 'Commissioner' means the person performing the functions of the Tribunal referred to in Chapter 4 of these regulations;
 - (iii) 'cumulative effect' means—
 - (a) not more than one short poem, article, story or essay or two excerpts copied from the same author or more than three short poems, articles, stories or essays from the same collective work or periodical volume for the purpose of instructing a particular class during any one term; and
 - (b) not more than nine instances of such multiple copying for one course of instruction to a particular class during any one term;
 - (iiiA) 'local authority' means—
 - (a) any institution, council or body contemplated in section 84(l)(f) of the Provincial Government Act, 1961 (Act 32 of 1961), and includes
 - (b) any statutory body designated as a local authority in terms of paragraph (c) of the definition of 'local authority' in section 1 of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977).⁵³
 - (iv) 'teacher' means any person giving instruction or doing research at any school, university or any other educational institution, by whatever name he may be called;
 - (v) 'the Act' means the Copyright Act, 1978 (Act 98 of 1978), and any expression to which a meaning has been assigned in the Act bears the same meaning when used in these regulations;
 - (vi) 'the office' and 'the Registrar' mean, respectively, the office of the Registrar of Patents where the court records of the Tribunal shall be kept, and the Registrar of Patents as defined by section 7 of the Patents Act, 1978 (Act 57 of 1978);
 - (vii) 'the Tribunal' means the Copyright Tribunal established by section 29 of the Act.

CHAPTER 1

REPRODUCTION REGULATIONS

(Section 13)

Permitted reproduction

- 2 The reproduction of a work in terms of section 13 of the Act shall be permitted—
 - (a) except where otherwise provided, if not more than one copy of a reasonable portion of the work is made, having regard to the totality and meaning of the work;⁵⁴ and

⁵³ This definition was inserted by GN R1211 of 7 June 1985. See n 55 and para 9A.

⁵⁴ This paragraph was substituted by GN R1211 of 7 June, 1985. The previous text was at variance with the Afrikaans text (which is to the same effect as the amended English text) and it allowed for the making of one copy of the work or a reasonable portion thereof.

Copyright Regulations, 1978

- (b) if the cumulative effect of the reproductions does not conflict with the normal exploitation of the work to the unreasonable prejudice of the legal interest and residuary rights of the author.

Reproduction by library or archive depot

3. Subject to the provisions of regulation 2, a library or archives depot or any of its employees acting within the scope of their employment may, after reproduction of a copy of a work, distribute such copy on the following conditions:

- (a) The reproduction or distribution shall not be made with any intention of deriving direct or indirect commercial advantage;
- (b) the collections of the library or archive depot shall be open to the public or available to researchers affiliated to the library or archive depot or to the institution of which it is a part, and to other persons doing research in a specialised field;
- (c) the reproduction of the work shall incorporate a copyright warning;
- (d) the rights of reproduction and distribution shall apply to a copy of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit, for research use, in another library or archive depot: Provided that the copy reproduced is to be placed in the collection of the library or archive depot;
- (e) the right of reproduction shall apply to a copy of a published work duplicated in facsimile form solely for the purpose of replacement of a copy that is deteriorating or that has been damaged, lost, or stolen: Provided that the library or archive depot has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price;
- (f) the rights of reproduction and distribution shall apply to a copy, made from the collection of a library or archive depot to which the user addressed his request or from that of another library or archive depot, of not more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy of a reasonable portion of any other copyrighted work: Provided that the copy shall become the property of the user and the library or archive depot has had no notice that the copy would be used for any purpose other than for private study or the personal or private use of the person using the work;
- (g) the library or archive depot shall display prominently, at the place where orders are accepted, and include on its order form, a copyright warning in terms of regulation 6;
- (h) the rights of reproduction and distribution shall apply to the entire work, or to a substantial portion of it, copied from the collection of a library or archive depot to which the user addressed his request or from that of another library or archive depot, if the library or archive depot has first determined, on the basis of a reasonable investigation, that an unused copy of the copyrighted work cannot be obtained at a fair price: Provided that—
 - (i) the copy shall become the property of the user, and the library or archive depot has had no notice that the copy would be used for any purpose other than private study or the personal or private use of the person using the work; and
 - (ii) the library or archive depot shall display prominently, at the place where orders are accepted, and include on its order form, a copyright warning in terms of regulation 6.

Exemptions and savings

4. Nothing in these regulations contained—

- (a) shall be construed as imposing any liability for copyright infringement upon a library or archive depot or its employees for the unsupervised use of reproducing equipment located on its premises: Provided that a notice that the making of a copy may be subject to the Copyright Act, 1978, shall be prominently displayed on such equipment;
- (b) shall absolve any person who uses such reproducing equipment or who requests a copy under regulation 3(f) from liability for copyright infringement for any such act, or for any later use of such copy, if it exceeds the extent of the copying permitted under the Act;