South Africa Copyright Act 98 of 1978
(with 2015 proposed Amendments in red/strike out)

(Not reflecting changes adopted but not yet incorporated by the IP Laws Amendment Act, http://bit.ly/1HqvocU)

1 Definitions
(1) In this Act, unless the context otherwise indicates-
‘accessible format copy’ means a copy of a work in an alternative manner or form which gives a person with a disability access to the work, including to permit the person to have access as feasibly and comfortably as a person without disability. The accessible format copy is used exclusively by a person with a disability and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the person with a disability;

‘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 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;

‘arbitration’ means arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act 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 66 of 1983 and by s. 1 (b) of Act 125 of 1992.]
‘audio-visual fixation’ means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device:

‘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 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 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 125 of 1992.]

(g) a published edition, means the publisher of the edition;

[Para. (g) substituted by s. 1 (c) of Act 125 of 1992.]

(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) substituted by s. 1 (h) of Act 125 of 1992.]

(i) a computer program, the person who exercised control over the making of the computer program;

[Para. (i) substituted by s. 1 (c) of Act 125 of 1992.]

‘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 electromagnetic waves of frequencies of lower than 3000 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 125 of 1992 and by s. 50 (a) of Act 38 of 1997.]

‘broadcaster’ means a person who undertakes a broadcast;

[Definition of ‘broadcaster’ substituted by s. 50 (b) of Act 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 125 of 1992 and by s. 50 (c) of Act 38 of 1997.

‘collecting society’ means a collecting society established under this Act.

[Definition of ‘collecting society’ inserted by s. 1 (a) of Act 9 of 2002.]

‘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 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 125 of 1992.]

‘copyright’ means copyright under this Act;

‘copyright management information’ means information attached to, or embodied in a copy of a work that-
(a) identifies the work and its author or copyright owner; or
(b) identifies or indicates some or all of the terms and conditions for using the work or indicates that the use of the work is subject to terms and conditions;

‘Corporation’ ......

[Definition of ‘Corporation’ deleted by s. 50 (d) of Act 38 of 1997.]

‘Commission’ means a Commission established in terms of section 185 of the Companies Act, 2008 (Act 71 of 2008);

‘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;

‘craft works’ means works of pottery, glasswork, sewing, knitting, crochet, jewellery, tapestry, woodwork, lace work, embroidery, paper tolling, folk art and hand-made toys;

‘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 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 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;

'emitted signal' means a signal which goes to a satellite;

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

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

'exclusive licensee' shall be construed accordingly;

'infringing copy', in relation to-

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

(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 or 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 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;

[jDefinition of 'infringing copy' amended by s. 1 (b) of Act 52 of 1984 and substituted by s. 1 (l) of Act 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'......

[jDefinition of 'licence' deleted by s. 1 (m) of Act 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;

[jDefinition of 'licence scheme' substituted by s. 1 (n) of Act 125 of 1992.]

'licensing body'......

[jDefinition of 'licensing body' deleted by s. 1 (o) of Act 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, but shall not include a computer program;

[Para. (g) substituted by s. 50 (e) of Act 38 of 1997.]
[Definition of 'literary work' substituted by s. 1 (p) of Act 125 of 1992.]

'Minister' means the Minister of Trade and Industry; [Definition of 'Minister' substituted by s. 1 (c) of Act 66 of 1983, by s. 1 of Act 13 of 1988 and by s. 1 (b) of Act 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 125 of 1992.]

‘orphan works’ means works in which copyright still subsists but the right holder, both the creator of the work or the successor in title cannot be located;

'parallel importation of goods’, also known as “gray market goods” refers to genuine branded goods that are imported into a market and sold there without the consent of the owner in trademark;

'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 125 of 1992.]

‘digital rights systems’ means a collection of systems used to protect the rights of electronic media. These include digital music, photographs, videos, portable document format, presentations, documents and movies as well as other data that is stored and transferred digitally;

‘person with a disability’ means a person who is blind, has a visual impairment, a perceptual or reading disability which cannot be improved to give visual function substantially, equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability or is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading regardless of any other disabilities;

'phonogram’ means any exclusively aural fixation of sounds of a performance or of other sounds; the fixation of the sounds of a performance, or of other sounds, or of a representation of sounds other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

'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;
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;  

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

'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;  

'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;  

'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; (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; (c) any work, includes a reproduction made from a reproduction of that work, means a copy made of a fixation or audio-visual fixation of a performance;  

'reproduce' and 'reproducing' shall be construed accordingly;  

'Tribunal’ means the Intellectual Property Tribunal established in terms of section 29 of the Copyright Act, 1978 (Act 98 of 1978);  

'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;
‘technological protection measure’ means any process, treatment, mechanism, technology, device, system or component that in the normal course of its operation is designed to prevent or restrict infringement of copyright work that is protected by a technological protection measure;

‘technological protection measure work’ means a copyright work that is protected by a technological protection measure;

‘Technological protection measure circumvention device’ means a device primarily designed, produced or adapted for purposes of enabling or facilitating the circumvention of a technological protection measure;

'this Act' includes the regulations;

'work' a work contemplated in section 2;

[Definition of ‘work’ inserted by s. 1 (w) of Act 125 of 1992.]

'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 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 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) [sic], 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 125 of 1992.]
[Date of commencement of s. 1: 30 June 1978.]

CHAPTER 1
COPYRIGHT IN ORIGINAL WORKS (ss 2-22)

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

[Para. (d) substituted by s. 2 (a) of Act 125 of 1992.]
[Para. (h) added by s. 2 of Act 52 of 1984.]
[Para. (i) added by s. 2 (b) of Act 125 of 1992.]
[Sub-s. (1) amended by s. 2 (a) of Act 56 of 1980.]

(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 56 of 1980, by s. 2 (c) of Act 125 of 1992 and by s. 51 of Act 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 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 125 of 1992.]

(c) in the case of copyright that vests in the state due to the fact that the owner cannot be located, is unknown or is dead, the term of such copyright shall be perpetual.

(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 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 125 of 1992 and by s. 52 of Act 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 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 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 52 of 1984.]

(f) being a computer program, is first published or made in the Republic,

[Para. (f) inserted by s. 4 of Act 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 funded by or under the direction or control of the state or such international organizations as may be prescribed shall be owned by the state or such international organization.

(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 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 52 of 1984 and by s. 5 of Act 125 of 1992.]

(5) Section 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 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 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 56 of 1980.]
(h) communicating to the public of their works, by wire or wireless means including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

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 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 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 56 of 1980.]
(g) communicating to the public of their works, by wire or wireless means including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.
7A  Resale royalty right

(1) A creator of artistic work shall, with respect to original works of art enjoy the inalienable resale royalty right on the commercial resale of his or her created work of art subsequent to the first transfer by the author or creator of such work of art.

(2) Resale royalty shall be payable at the rate of 5% of the commercial resale price or as prescribed by the Minister.

(3) A creator of artistic work, shall be entitled to receive resale royalty if –
   (a) at the time when a contract for resale of the artistic work is completed –
       (i) the artist is a citizen or resident of South Africa; and
       (ii) the term of validity of the resale right has not expired.
   (b) in the case of a deceased artist, the deceased was at the time of death, a citizen or resident in South Africa;
   (c) resale or any part of the transaction, take place within South Africa; and
   (d) the contract for resale of the artistic work is completed on or after the commencement of this Act.

(4) A resale right applies whether or not the artist -
   (a) Is or was the first owner of any copyright in the work; or
   (b) Has entered into an agreement with any person to assign, waive, or charge a resale right into contravention of this Act.

7B  Proof of the author or creator

(1) Where a mark or name purporting to identify a person as a creator of an artistic work appears on such work, the person whose name appears is unless the contrary is proved, presumed to be the creator of such work.

(2) If it is found that, artistic work is work of more than one (1) creator, the presumption in subsection (1) applies to each artist linked with such art work.

7C  Duration of resale right

(1) A creator of artistic work’s resale right expires at the end of the period of fifty (50) years from the end of the calendar year in which such artist died.

(2) In the case of-
   (a) an artistic work, the resale right of the work that is computer-generated expires, at the end of the period of fifty (50) years from the end of the calendar year in which the work was created;
   (b) an artistic work created by an unknown artist, the resale right of the work expires at the end of the period of fifty (50) years from the end of the calendar year in which the work is first made available to the public including, by exhibition in public;
   (c) an artistic work by joint artists, the resale right continues -
(i) if the identity of all the artists is known, until the end of the period of fifty (50) years from the end of the calendar year in which the last of the artists dies; or

(ii) if the identity of one (1) or more, but not all, of the artists is known, until the end of the period of fifty (50) years after the death of the last of the artists whose identity is known.

(3) After the expiry of the period contemplated in subsection (1)(c), of a resale right in an artistic work created by an unknown artist, the resale right in that work does not revive if the identity of the artist becomes known.

7D. Assignment and waiver

(1) An assignment and waiver of resale right is prohibited.

(2) A term of an agreement which purport to assign or waive a resale right is unenforceable.

7E. Transmission of resale right

(1) A resale right may be transmitted on the death of the holder in the following manner:

   (a) the right passes to a person by testamentary disposition of the holder; or

   (b) if there is no direction, by testamentary disposition of the holder and by operation of law.

(2) In the case of a bequest of an artistic work by an artist who did not transfer ownership of that work in his or her lifetime, the bequest must be read as including the resale right, unless the will of the artist or a codicil to that will provides otherwise.

(3) If, a resale right that passes to a person as contemplated in subsection (1)(a) is able to be exercised by two (2) or more persons, it may be exercised by each of them independently of the other.

(4) If resale royalties are recovered by the collecting agency after the death of a holder, those resale royalties must be treated as part of the deceased holder’s estate.”.

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 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 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.

[Para. (g) added by s. 6 of Act 52 of 1984 and substituted by s. 1 of Act 61 of 1989 and by s. 8 (b) of Act 125 of 1992.] [Sub-s. (1) amended by s. 5 (a) of Act 56 of 1980.] (2) ...... [Sub-s. (2) deleted by s. 8 (c) of Act 125 of 1992.]

(h) communicating to the public of their works, by wire or wireless means including, the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

9 Nature of copyright in sound recordings
Copyright in a sound recording vests the exclusive right to do so 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 of their works, by wire or wireless means including, the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

[S. 9 substituted by s. 6 of Act 56 of 1980, amended by s. 7 of Act 52 of 1984 and substituted 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.

(aA) A person who intend to broadcast, cause transmission of or play a sound recording as contemplated in section 9(c), (d), or (e) give the copyright owner or Collecting Society a notice in the prescribed manner of his or her intention to perform such acts, indicating where practicable the date of the proposed performance, proposed terms and conditions for the payment of royalty and ask the copyright owner or Collecting Society to sign the proposal attached thereto.

(aB) The copyright owner or Collecting Society must as soon as is reasonably practicable upon receipt of such notice respond to such proposal.

(aC) If the copyright owner or Collecting Society rejects or proposes different terms and conditions to such proposal and the copyright owner or Collecting Society proposal is rejected after negotiations, either party may in the prescribed manner refer the matter to the Tribunal.
(aD) The Tribunal must adjudicate such matter as soon as reasonably practicable and where possible, before the performance which is the subject of such application, make any order it deems fit including, but not limited to an order that-

(a) a provisional payment of royalty is made into a trust account of an attorney nominated by the copyright owner or Collecting Society pending the finalization of the terms and royalty payable; Provided that such amount shall be paid over the copyright owner or Collecting Society as it represents the difference, if any, between the amount determined as the appropriate royalty and the amount already paid and any balance, if any, must be repaid.

(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. Provided that in the absence of such agreement, the amount of royalty shall be determined by the Tribunal.

(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 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 11 of 1967): Provided that such royalty payable for such use of sound recording shall be divided equally between the copyright owner and performer.

(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. Provided that in the absence of such agreement, the amount of royalty shall be determined by the Tribunal.

(e) 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 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 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.]

(4) Notwithstanding the transfer of the copyright work in a literary, musical, artistic work in a cinematographic film, television, radio, photography, crafts work or computer program to the owner, the author or creator of the copyright work shall have the right to claim a royalty fee as and when the copyright work is used.

(5) In the absence of an agreement to the contrary, the person who sells craft work must ensure that-

(a) payment of a royalty fee is made to the person who created the craft work; and
(b) the person who purchased the craft work and re-sells the work makes payment of royalty to the creator of the craft work as contemplated in section 7A of the Act.

COLLECTING SOCIETY

9B Registration
(1) There shall be one Collecting Society per copyright and per set of rights with regard to all music rights such as performance, needletime and mechanical, to be registered and regulated by the Commission.

(2) In cases where there is no Collecting Society, contractual arrangements between copyright owners and creator shall be allowed as prescribed by the Minister.

(3) Any person or an institution that intends to act as a representative Collecting Society by -
   (a) administering on behalf of any copyright owners, on behalf of an organisation representing copyright owners, the right to receive payment of a royalty in terms of this Act; or
   (b) administering on behalf of performers, on behalf of a performers’ organisation, the right to receive payment of a royalty in terms of section 5(1)(b) of the Performers’ Protection Act, 1967 (Act 11 of 1967), must be registered and accredited by the Commission in terms of this Act.

(4) Any person or institution referred to in subsection (2) may, in the prescribed manner, lodge a written application with the Commission for registration as such.

(5) The Commission may for purposes of issuing a registration certificate, consult with any person or institution and may grant such registration certificate with such terms and conditions determined by the Commission.

(6) The Commission shall not register any applicant unless the Commission is satisfied that -
   (a) the applicant, having scrutinized the application and supporting documents, may be able to ensure adequate, efficient and effective administration relating to collection of royalties; and
   (b) the applicant may satisfactorily comply with any condition for accreditation, relevant provisions of the Companies Act, 2008 (Act 71 of 2008), Broad- Based Black Economic Empowerment Act, 2003 (Act 53 of 2003), as amended and any applicable and relevant legislation;

(7) A registration certificate issued in terms of this Act shall be valid for a period not exceeding five (5) years and unless it is suspended or cancelled, may in the prescribed manner, be renewed on such terms and conditions determined by the Commission.

9C. Administration of rights by Collecting Society
(1) Subject to such terms and conditions as may be prescribed -
(a) a Collecting Society may accept from an owner of rights exclusive
authorisation to administer any right in any work by issue of licences or collection of
licence fees or both; and
(b) an owner of rights shall have the right to withdraw such authorisation without
prejudice to the rights of the Collecting Society concerned.

(2) A Collecting Society may enter into an agreement with any foreign society or
organisation administering rights corresponding to rights under this Act, to entrust to such
foreign society or organisation the administration in any foreign country of rights administered
by the said Collecting Society in the Republic: Provided that no such Collecting Society or
organisation shall permit any discrimination in regard to the terms of licence or the distribution
of royalties collected.

(3) Subject to such conditions as may be prescribed, a Collecting Society may –
(a) issue a licence in respect of any rights under this Act;
(b) collect royalties in pursuance of such licences;
(c) distribute such royalties among owners of rights after making deductions for
its own expenses; and
(d) perform any other prescribed function in a manner consistent with the
provisions of this Act.

9D. Control of Collecting Society by owners of rights
(1) Collecting society shall be subject to the collective control of the owners of rights
under this Act whose rights it administers and shall, in such manner as may be prescribed –
(a) obtain the approval of such owners of rights for its procedures of collection
and distribution of royalties;
(b) obtain their approval for the utilisation of any amounts collected as royalties
for any purpose other than distribution to the owner of rights; and
(c) provide to such owners regular, full and detailed information concerning all its
activities, in relation to the administration of their rights.
(2) Royalties distributed among the owners of rights shall, as far as may be, be distributed
in proportion to the actual use of their works.

9E. Submission of returns and reports
(1) A Collecting Society must submit to the Commission such returns and reports at any
time a may be prescribed.
(2) The Commission may call for any report and also call for any records of any
Collecting Society for purposes of satisfying the Commission that the affairs of such Collecting
Society are conducted in a manner consistent with registration conditions or that royalties
collected by the Collecting Society in respect of rights administered by such Collecting Society
are being utilised or distributed in accordance with the provisions of this Act.

9F. Suspension and cancellation of registration of Collecting Society
(1) The Commission may, if it is satisfied that a Collecting Society is being managed in a manner that contravenes registration conditions, in terms of this Act or managed in a manner detrimental to the interests of the owners of rights concerned, issue a compliance notice or apply to the Tribunal for an order to institute an inquiry into the affairs of such Collecting Society.

(2) The Commission may, if it is of the opinion that it will be in the interest of the owners of rights concerned, apply to the Tribunal for an order suspending the registration of such society pending an inquiry for such period as may be specified in the order.

(3) The Commission may, after such inquiry and if it is of the opinion that it will be in the interest of the owners of rights concerned, apply to the Tribunal for an order of cancellation of the registration.

(4) During the period of suspension or cancellation of registration and following the order of the Tribunal, the Commission shall be responsible for the administration and discharge of functions of the Collecting Society: Provided that, the Tribunal may, on application by the Commission appoint any suitable person to assist the Commission in the administration and discharging of the functions of the Collecting Society.”.

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 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 56 of 1980.]

10A (1) The broadcasting industry is under obligation to develop the culture and support the growth of local content in specified areas for the Republic, by amongst others -

(a) guiding the broadcast to develop and protect the national identity, culture, character and strengthen the social and economic fabric of the country;

(b) promoting local broadcasting, local programming and production of local television content, as defined in the Independent Broadcasting Authority Act, 1995 (Act 36 of 1995), as amended, by –

(i) broadcasting 80% of local television content in public channels, consistently with applicable local content quotas as may be developed by the broadcasting industry and relevant laws; and

(ii) broadcasting 60% of local television content in private channels, consistently with applicable local content quotas as may be developed by the broadcasting industry and relevant laws;
(c) promoting local broadcasting, local programming and production in radio and ensure that maxim allowance of time is given for broadcasting of recorded music (needle time) of local content, consistently with local content quotas as may be developed by the broadcasting industry to increase the play of such music as follows:

(i) 80% of play of local music in public and community radio stations; and
(ii) 60% of play of local music in private radio stations;

(d) promoting compliance with subsections (1)(a), (b), (c) above by-

(i) obliging the institution regulating the broadcasting industry to use measure to ensure compliance with the obligation to promote local programming; and
(ii) monitor developments of copyright law and its implications in the broadcasting industry.

(2) Section 10A shall have a retrospective operation, as the date of publication and adoption of quotas for programming of local content as may be developed for the broadcasting industry.

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 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 125 of 1992 and substituted by s. 53 of Act 38 of 1997.]
11C  **Nature of copyright in craft work**

(1) Copyright in craft work vests the exclusive right to do or to authorize the doing of any of the following acts in relation to the whole craft work or a substantial part thereof:

(a) create the original craft work automatically protected by copyright from the time they are created, as-

   (i) work the person who created the craft; or
   (ii) work assigned to the creator by the manufacturer, publisher or employer, which copyright work is owned by the creator and the persons who assigned the work, respectively.

(b) design or draw a pattern for a craft item including, templates, drawings of shapes, diagrams, paintings and sculptures for crafts work;
(c) reproduce the work; or
(d) make arrangement or other transformation of the work.

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 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 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 informative 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 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 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 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 125 of 1992.]

(14) The copyright in a literary or musical work shall not be infringed by translation of such work by a person or a public body giving or receiving instruction provided that-

(a) such translation is not done for commercial purposes;

(b) such translation may be used for private, educational, teaching, judicial proceedings, research and profession advice purposes only; or
(c) such work is translated from or into any language and communicated to the public for non-commercial public information purposes.

(15) The copyright in a literary or musical work shall not be infringed by communication from an educational establishment to persons affiliated as persons receiving instruction at or from such education establishment of reproductions and the translations permitted by this Act solely for private, educational and research purposes provided this is done through a secure network.

12A General exceptions from protection of copyright for fair use

(1) Notwithstanding any provision of this Act, fair use of work eligible for copyright includes the use by reproduction in copies, translation or by any other means which does not require the granting of licence as specified in the Schedule hereto.

(2) Notwithstanding any provision of this Act, fair use of work for purposes such as criticism, comment, news reporting, judicial proceedings, professional advice, teaching which may include, making multiple copies for classroom use, scholarship or research is not an infringement of copyright.

(3) Notwithstanding any provision of this Act, the use of digitized copyright material published in the internet and other electronic media shall be restricted for educational purposes, unless covered by an explicit notice for request for licence to use the digitized material.

(4) Fair use of copyright work shall allow for some limited and reasonable use of copyright work for purposes of cartoon, parody or pastiche work in songs, films, photographs, video clips, literature, electronic research reports or visual art for non-commercial use, without having to request a permission specified in the Schedule hereto. The use includes-

(a) quoting the works of the copyright owner in a manner that is reasonable and fair;
(b) making copies of eBooks or compact discs purchased by the user; or
(c) transferring of purchased compact discs onto the user’s MP3 format player.

(5) In determining whether the use of copyright work in any particular case is fair use, the following factors shall be considered:

(a) the purpose and character of the use including, whether such use is of a commercial nature or is for non-profit educational purposes;
(b) the nature of the copyrighted work
(c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
(d) whether the use of the copyrighted work is fair and proportionate, by considering further that-
   (i) the use of copyrighted work is of few lines of a song, literature or few parts of a film or art work for cartoon, parody or pastiche;
   (ii) the use of the whole copyrighted work for cartoon, parody or pastiche for commercial use shall require the issuance of licence; and
   (iii) the use of copyrighted work is compatible with fair practice in that the source and the name of the author are mentioned in the publication, broadcast, recording or the platform where the copyrighted work is displayed.
(e) the effect of the fair use upon the potential market for of the value of the copyrighted work.
(6) The provision of subsection (1) and (2) shall apply to the use of copyrighted work not for commercial gain.

(7) Notwithstanding any provision of this Act, parallel importation of trademarked goods is allowed in relation to-
   
   (a) goods that have been exhausted to be resold in the area from which the goods originate; and
   
   (b) the extent to which the owner of the trademarked goods can control the distribution of trademarked goods.

(8) Encryption of computer-generated data is allowed to an extent that it is necessary to decrypt data in a protected state without resulting into incrimination.

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 56 of 1980.]

13A Temporary reproduction

(1) Anyone is permitted to make temporary copies of a work which are transient or incidental and which are an integral and essential part of a technical process provided that the sole purpose of such copies is to enable a transmission of a work in a network between third parties by an intermediary or a lawful use of work which have no independent economic significance.

13B Reproduction for educational activities

(1) For the purpose of educational activities copies may be made of works, recordings of works, broadcast in radio and television provided the copying is for fair use and has received permission and instructions not exceeding the extent justified by the purpose.

(2) Educational establishments may incorporate the copies made under subsection (1) in printed and electronic course packs, study packs, resource lists and in any other material to be used in the course of instruction or in virtual learning environments, managed learning environments, virtual research environments and library environments hosted on a secure network and accessible only by the persons giving and receiving instructions at or from the the educational establishment making such copies.

(3) Persons receiving instruction may incorporate portions of works in printed or electronic form in assignments and portfolios, theses and in dissertations for personal use and library deposit.

(4) The source of the work reproduced and the name of the author shall be indicated as far as is practicable on all copies made under subsection (1) to (3).

(5) The permission under subsection (1) shall not extend to reproductions for commercial purposes and shall include the reproduction of whole textbooks where the textbook is either out of print, the owner of the right cannot be found, authorized copies of the same edition of the textbook are not for sale in the country or cannot be obtained at a price reasonably related to that normally charged in the country for comparable works.
13C  **Inter-library document supply**

(1) Libraries may supply to each other whether by post, fax or secure electronic transmission, provided that the electronic file is deleted immediately after printing a paper copy of an electronic copy of a work.

(2) A paper copy may be supplies by the receiving library to a user of such library.

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 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 13 of 1988.]

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

(b) ......

[Para. (b) deleted by s. 2 (1) (b) of Act 13 of 1988.][Sub-s. (3A) inserted by s. 2 of Act 66 of 1983.]

(4) The provisions of section 12 (1), (2), (4), (5), (9), (10), (12) and (13), (14) and (15) shall mutatis mutandis, in so far as they can be applied, apply with reference to artistic works.

[S. 14 substituted by s. 12 of Act 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), (14) and (15) 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 sound-track 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 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), (14) and (15)
shall mutatis mutandis apply with reference to sound recordings.
[S. 17 substituted by s. 15 of Act 125 of 1992.]

18 General exceptions regarding protection of broadcasts
The provisions of section 12 (1) to (5) inclusive, (12) and (13), (14) and (15) shall
mutatis mutandis apply with reference to broadcasts. [S. 18 substituted by s. 16 of Act 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 sections 12 (1), (2), (4), (5), (8), (12) and (13), (14) and (15) shall
mutatis mutandis apply with reference to published editions.
[S. 19A inserted by s. 9 of Act 52 of 1984 and substituted by s. 17 of Act
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), (14) and (15) 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 125 of
1992.]

19C General exceptions regarding protection of copyright work for archives, libraries,
museums and galleries
(1) Archives, public libraries, other libraries, museums and galleries that are publically
funded in whole or in part may-
   (a) use and distribute copies of works as part of their activities in accordance with
      subsections (2) – (7) provided this is not done for commercial purposes;
(b) make copies of works in their collection for the purpose of back-up and preservation;
(c) may make or procure a copy of the work from another institution if a copy of such a work is missing or incomplete: provided the work cannot be reasonably acquired through general trade or from the publisher; and
(d) make copies of works that should be available in their collections in their chosen format, if they cannot reasonably be acquired in such format through general trade or from the publisher.

(2) Archives, public libraries, other libraries, museums and galleries that are publically funded in whole or in part must-
   (a) request permission to shift the format of the copyright work, if the copyright work may not, in its original form be migrated, used or preserved due to outmoded technologies.
(3) The provision in subsection (2)(a) shall operate retrospectively and apply to pending applications.
(4) The provision in subsection (2)(a) does not allow for the archives, public libraries, other libraries, museums and galleries that are publically funded to shift the format of the copyright work and give them to other people.
(5) Such institutions may make copies of works where the permission of the author or other owner of copyright cannot after reasonable endeavor be obtained or where the work is not available by general trade or from the publisher.
(6) Copies of copyright work that are made in whatever format or acquired pursuant to the Act, may be used by users for personal use or study on the premises of the establishment with or without the means of technical equipment and can be lent to users. The same applies in special cases to copies made in accordance with subsection (1)(b).
(7) This Act does not prevent the making of copies in accordance with the provisions of this Act.

19D General exceptions regarding protection of copyright work for a person with disability

(1) It shall be permitted without the authorisation of the author or other owner of copyright to make an accessible format of a work for the benefit of a person with a disability, to supply that accessible format or copies of that accessible format to persons with a disability by any means including, by non-commercial lending or by electronic communication by wire or wireless means and undertake any intermediate steps to achieve these objectives, provided that the following conditions are met
   (a) the person or organisation wishing to undertake any activity under this provision has lawful access to that work or a copy of that work;
   (b) the work is converted to an accessible format which may include, any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to a person with a disability; and
   (c) the activity is undertaken on a non-profit basis
(2) A person with a disability to whom the work is communicated by wire or wireless means as a result of activity under subsection (1) shall be permitted without the authorisation of the owner of copyright to reproduce the work for personal use. This provision is without prejudice to any other limitations or exceptions that such person is able to enjoy.

(3) It shall be permitted without the authorisation of the author or other owner of copyright to export to or import from another country, copies of an accessible format of a work referred to in subsection (1), to or by a person with a disability or an organisation that serves persons with a disability, as long as such activity is undertaken on a non-profit basis by that person or organization.

(4) For the purposes of this section, accessible format means in such a format as may be required to address the needs created by the specific disability of a person with a disability in order to access and use a work to substantially the same degree as a person without a disability.

(5) For the purposes of this section, a person with a disability means a person that requires an accessible format in order to access and use a work to substantially the same degree as a person without a disability.

(6) This exception is subject to the obligations of indicating the source and the name of the author on the copy as far as practicable.

19E General Exceptions regarding protection of copyrighted craft work

(1) Copyright does not prevent the use or re-use of –

(a) physical items which contain copyright images and do not involve the exclusive rights which the copyright seeks to protect;

(b) the edges of a material which has printed designs and does not involve any of the copyright owner’s exclusive rights, unless the shape of the outline of the craft work reproduces a distinctive part of the copyright work; or

(c) pre-printed physical material, such as, craft work in postcards or cloth items.

(2) Photocopying artistic craft work for other use not stipulated in the provisions of this Act, requires permission from the relevant copyright owner if the artistic work is covered in copyright.

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 125 of 1992.]
(3) Notwithstanding the transfer of the copyright work in a television, film, radio, photography or crafts work to the owner, the creator of the copyright work has the moral right to –

(a) be attributed as the creator;
(b) not to be falsely attributed; and
(c) not to have their work treated in a derogatory manner.

(4) Notwithstanding the transfer of the copyright work in a television, film, radio, photography or crafts work to the owner, the creator of the copyright work or the performer has, exclusive of contractual arrangements, the moral right to receive royalty payments –

(a) when repeats of the film, television, radio, photography or art work is used as prescribed by the Minister.”

20A Protection of performers’ moral and economic rights

(1) For purposes of this Act “communication to the public of a performance”, means the transmission to the public by any medium, otherwise than by broadcasting of an unfixed performance or of a performance fixed in an audio-visual fixation including, making a performance fixed in an audio-visual fixation, audible or visible or audible and visible to the public.

(2) A performer shall, even after the transfer of those rights, as regards his or her live performances or performances fixed in audio-visual fixations, have the right -

(i) to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and
(ii) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, taking due account of the nature of audio-visual fixations.

(3) The rights granted to a performer in accordance with subsection (2) shall, after a performers death, at least until the expiry of other rights granted in terms of this section and exercisable by any authorized person, be maintained, at least until the expiry of a period of fifty (50) years computed from the end of the year in which the performance was fixed.

(4) A performer shall enjoy the exclusive right of authorising his or her performances in relation to -

(a) the broadcasting and communication to the public of his or her unfixed performances except where the performance is already a broadcast performance;
(b) the fixation of his or her unfixed performances;
(c) the direct or indirect reproduction of his or her performances fixed in audio-visual fixations, in any manner or form;
(d) the making available to the public of the original and copies of his or her performances fixed in audio-visual fixations through sale or other transfer of ownership;
(e) the commercial rental to the public of the original and copies of his or her performances fixed in audio-visual fixations, even after distribution of such copies by or pursuant to authorization by the performer;
(f) the making available to the public of his or her performances fixed in audio-visual fixations by wire or wireless, in such a way that members of the public may access them from a place and at a time individually chosen by them; and
(g) the broadcasting and communication to the public of their performances
fixed in audio-visual fixations.

20B Transfer of rights
Where a performer has consented to fixation of his or her performance in an audio-visual fixation, the exclusive rights of authorization granted to a performer in terms of section 3, subsections (4) paragraphs (c), (d), (e), (f) and (g) which shall be owned or exercised by or transferred to the producer of such audio-visual fixation, subject to a prescribed written contractual agreement which shall give the performer the right to receive royalties for any use of the performance.

20C Protection of rights of producers of phonograms
(1) For purposes of this Act “communication to the public of a phonogram” means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance, the sounds or the representations of sounds fixed in a phonogram.

(2) A producer of a phonogram shall enjoy the exclusive right of authorizing -
(a) the direct or indirect reproduction of his or her phonograms, in any manner or form;
(b) the making available to the public of the original and copies of his or her phonogram through sale or other transfer of ownership;
(c) the commercial rental to the public of the original and copies of his or her phonogram, even after distribution of them by or pursuant to, authorization by the producer; or
(d) the making available to the public of his or her phonogram, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

(3) A performer and producer of phonogram shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonogram published for commercial purposes for broadcasting or for any communication to the public.

(4) Subject to the provisions of this Act, no person shall without the consent of the performer -
(a) make available to the public of the original and copies of performance fixed in audio-visual fixation through sale or otherwise of such performer;
(b) commercially rent out to the public of the original and copies of performance fixed in audio-visual fixation of such a performer; or
(c) make available to the public of performance fixed in audio-visual fixation by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

(5) A person who intends to-
(a) broadcast or communicate an unfixed performance or performance fixed in audio-visual fixation of a performer to the public must-
(i) make a fixation of the unfixed performance or performance fixed in audio-visual fixation of a performer;
(ii) make a reproduction of a fixation of a performance or performance fixed in audio-visual fixation of a performer;
(iii) make available to the public of the original and copies of performance fixed in audio-visual fixation through sale or otherwise of a performer;
(iv) commercially rent out to the public of the original and copies of performance fixed in audio-visual fixation of such a performer;
(v) make available to the public of performance fixed in audio-visual fixation of a performer by wire or wireless, in such a way that members of the public may access them from a place and at a time individually chosen by them; and
(vi) give the copyright owner, performer or Collecting Society, a notice in the prescribed manner of his or her intention to perform such acts, indicating where practical, the date of the proposed performance, proposed terms and conditions for the payment of royalty and ask the copyright owner or Collecting Society to sign the proposal attached thereto.

(6) The copyright owner, performer or Collecting Society must as soon as reasonably possible, upon receipt of such notice, respond to such proposal.

(7) If the copyright owner, performer or Collecting Society rejects such proposal or proposes different terms and conditions and the parties could not agree on either proposals, either party may in the prescribed manner refer the matter to the Tribunal.

(8) The Tribunal must adjudicate such matter as soon as it is reasonable, practicable and where possible, before the performance which is the subject of the application take place and may make any order it deems fit including, but not limited to, an order that -

(a) a provisional payment of royalty be made into a trust account of an attorney nominated by the copyright owner, performer or Collecting Society pending the finalization of the terms and royalty payable: Provided that such amount shall be paid over to the copyright owner, performer or Collecting Society, as it represents the difference if any, between the amount determined as the appropriate royalty and the amount already paid and balance if any, must be repaid.

20D Prohibited conduct in respect technological protection measure

(1) The prohibited conduct in respect of the technological protection measure, the use of a technological protection measure circumvention device and the exceptions related to technological protection measure, contemplated in sections 280 and 28P of the Copyright Act, 1978 (Act 98 of 1978), shall mutatis mutandis apply in respect of performances fixed or fixed in audio-visual fixations.

(2) Contravention of the technological protection measure provisions contemplated in subsection (1) shall be an offence and a person convicted thereof shall be liable in terms of the provisions of this Act.

20E Prohibited conduct in respect of copyright management information

The prohibited conduct in respect of the removal or modification of copyright management information attached to or embodied in a copy of work, consonant with the exceptions relating to such removal or modification contemplated in sections 28Q and 28R of the Copyright Act, 1978 (Act 98 of 1978), shall mutatis mutandis apply in respect of performances that are fixed or fixed in audio-visual fixations.

20F Digital rights management

(1) The library or archive must communicate the conditions for using a digital copy with authenticated users or persons with legitimate right to use the digital material, including –
(a) advising the authenticated person that the digital copy is lawfully obtained;
(b) ensuring that each user is informed in writing about the limitations and extent of fair use of the digital material in terms of this Act;
(c) ensuring that the digital copy is communicated to the user in a form that cannot be altered or modified;
(d) verifying that the number of digital copies used are not more than the number of the users;
(e) giving a written notice that sets out the terms of the use of the digital copy to the authenticated user; and
(f) as soon as is reasonably practicable, destroying any additional copy made in the process of making the digital copy.

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 56 of 1980.]

(3) Ownership of any copyright whose owner cannot be located, is unknown or is deceased shall vest in the state: Provided that if the owner of such copyright is located at anytime, ownership of such copyright shall be conferred back to such owner.

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: Provided that, copyright owned by, vesting on, or under the custody of the state may not be assigned.

(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 sublicence, the exclusive sublicenser, as stipulated in the Schedule hereto or as the case may be: Provided that such assignment of copyright shall be valid for a period of 25 years from the date of agreement of such assignment.

(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.

22A Assignment and licences in respect of orphan works

(1) A person who wishes to obtain a licence to do an act which is subject to copyright in respect of orphan works, must make an application to the Commission.

(2) Before making an application in the prescribed manner, the applicant shall publish his or her intention to make such application in the national gazette and two (2) daily newspapers having national circulation within the Republic, in English and any other official language.

(3) Every such application shall be made in such form as may be prescribed and shall be accompanied by copies of the published advertisement issued in terms of sub-section (2) and such fee as may be prescribed.

(4) Where an application is made to the Commission in terms of this section, the Commission may, after holding any inquiry as may be prescribed, grant to the applicant a licence.
to do such act which is subject to copyright, subject to the payment of a royalty and subject to such other terms and conditions as the Commission may determine.

(5) The Commission, upon receipt of such application and having been satisfied that the applicant has undertaken reasonable steps prescribed in this section may, issue a licence subject to terms and conditions it may deem appropriate.

(6) Before issuing a licence, the Commission must be satisfied that an applicant has undertaken the following steps in locating the copyright owner:
   (a) conducted a search of the records of the database of the register of copyright in the Commission that are available to the public through either the internet or any other means relevant to identifying and locating registered copyright owners;
   (b) conducted a search of reasonably available sources of copyright authorship and ownership information and where appropriate, licensor information;
   (c) conducted a search using appropriate technology tools, printed publications and where reasonable, internal or external expert assistance are enlisted;
   (d) conducted a search using any other database including, databases that are available to the public through the internet or any other means; and
   (e) has undertaken actions that are reasonable and appropriate in terms of the facts relevant to the search including, actions based on facts known at the start of the search and facts uncovered during the search including, actions as directed by the Commission and review any records not available to the public through the Internet that are known to be useful in identifying and locating the copyright owner.

(7) Before making an application, the applicant shall, in the prescribed manner publish his or her intention to make such application in the national gazette and two (2) daily newspapers having national circulation within the Republic, in English and any other official language.

(8) Every such application shall be made in such form as may be prescribed and shall be accompanied by copies of the published advertisement issued in terms of sub-section (2) and such fee as may be prescribed.

(9) Where an application is made to the Commission in terms of this section, it may, after holding any such inquiry as may be prescribed, grant to the applicant a licence to do such act which is subject to copyright subject to the payment of such royalty and subject to such other terms and conditions as the Commission may determine.

(10) Where a licence is granted in terms of this section, the Commission may, by order, direct the applicant to deposit the amount of the royalty determined in a particular account so as to enable the owner of the copyright or as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.

(11) A licence issued in terms of this section is non-exclusive and is subject to such terms and conditions as the Commission may determine.

(12) The owner of a copyright may, not later than five (5) years after the expiration of a licence issued in terms of this section, collect the royalties fixed in the licence or in default of their payment by initiating a legal suit to recover such royalties.

(13) Any person who can adduce evidence that he or she is the owner of orphan works, he or she may have the copyrighted work returned to him or her with a claim in law to recover any fees that accrued to the copyright work.

CHAPTER 2 INFRINGEMENTS OF COPYRIGHT AND REMEDIES (ss 23-28)
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 right to do or to authorize.

[Sub-s. (1) substituted by s. 20 (a) of Act 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 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 125 of 1992.]

(4) Any person who –

(a) tampers with information managing copyright, as contemplated in subsection 20A(16) of the Act, shall be guilty of an offence;

(b) omits to pay the author or creator of the copyright work a royalty fee as and when the copyright work is used as contemplated in subsection 9(4) of the Act, is guilty of an offence;

(c) omits to pay the creator of craft work a royalty fee as and when the craft work is sold at a higher price or is re-sold to a second and third seller, as contemplated in section 9(5) of the Act, is guilty of an offence;

(d) unreasonably refuses to grant permission for the use of copyright work for educational, judicial proceedings and the reproduction in copies of the copyrighted work, translation of copyrighted work in a usable language or format shifting, is guilty of an offence;

(e) contravenes the technological protection measure provisions contemplated in this Act shall be guilty of an offence and a person convicted thereof is liable in terms of the provisions of this Act;

(f) contravenes the provisions in relation to orphan works as contemplated in this Act, is guilty of an offence;
(g) collects fees outside the membership of Collecting Society is committing an
offence;

(h) engages in a conduct that is prohibited in respect of technological protection
measures stipulated in this Act, is guilty of an offence actionable in terms of the Act;

(i) contravenes the provision in relation to prohibition of conduct in respect of
copyright management information, commits a copyright infringement that is actionable in terms
of the Act; or.

(j) contravenes the provisions relating to the royalty rights of the creator in the
case of resale of copyrighted work shall be guilty of an offence.

(5) a broadcasting institution that contravenes the principles of this Act, for failure
to promote local broadcasting and local programming in television and radio, shall be guilty of
offence.

(6) Any person who is found guilty as contemplated in section 23(4) above, shall be
liable on conviction to imprisonment for a period not exceeding ten (10) years or to a fine not
exceeding fifty thousand (R50 000) or to both imprisonment and a fine. Deregistration of
institutions found guilty as contemplated in the provisions of this Act, shall be a measure of last
resort.

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 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 125 of 1992 and
substituted by s. 55 of Act 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 125 of 1992 and
substituted by s. 55 of Act 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 125 of 1992 and
substituted by s. 55 of Act 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 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-license 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.

[Sub-s. (2) added by s. 22 of Act 125 of 1992 and substituted by s. 56 of Act 38 of 1997.] [S. 25 substituted by s. 1 of Act 39 of 1986.]

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 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 66 of 1983, by section 10 of Act 52 of 1984 and by s. 3 (1) of Act 13 of 1988 and substituted by s. 23 of Act 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 52 of 1984 and by s. 3 of Act 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.

(5A) (1) Any person who at the time when the copyright subsists in a work or technological protection measure work -

(a) make, import, sell, distribute, let for hire, offer or expose for sale or hire or advertise for sale or hire, a technological protection measure and circumvention device if

   (i) such a person knows or has reason to believe that it will or is likely to be used to infringe copyright in a technological protection measure work;

   (ii) such person intends to provide a service to another person to enable or assist such person to circumvent an effective technological protection measure; or

   (iii) such person knows or has reason to believe that the service will or is likely to be used by another person to infringe copyright in a technological protection measure work.

(b) publish information enabling or assisting another person to circumvent an effective technological protection measure if such a person knows or has reason to believe that, such information will or is likely to be used to infringe copyright in a technological protection measure work; or

(c) knowingly or having reasonable grounds to know, circumvent an effective technological protection measure applied by the owner of copyright to such work shall be guilty of an offence and shall be liable upon conviction to a fine or imprisonment or to both fine and imprisonment.

(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 52 of 1984 and by s. 24 (a) of Act 125 of 1992.]

(7) ......
27A  Offenses by companies

(1) Where any offence under this Act has been committed by a juristic person, every person who at the time the offence was committed was a director, in charge of or was responsible for the conduct of the business of such juristic person shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a juristic person and it is proved that the offence was committed with the consent of, collusion with or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer, shall also be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

(3) Upon conviction, such juristic person or any person convicted in terms of this section shall be liable to a fine or imprisonment or to both fine and imprisonment as contemplated in section 27(6).

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.

(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 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.

[Sub-s. (5) substituted by s. 25 (b) of Act 125 of 1992.] [S. 28 substituted by s. 12 of Act 52 of 1984.]

28O Prohibited conduct in respect to technological protection measure

(1) No person may make, import, sell, distribute, let for hire, offer or expose for sale or hire, or advertise for sale or hire, a technological protection measure circumvention device if such a person knows or has reason to believe that it will or is likely to be used to infringe copyright in a technological protection measure work.

(2) No person may provide a service to another person if -
   (a) such person intends the service to enable or assist another person to circumvent an effective technological protection measure; and
   (b) such person knows or has reason to believe that the service will, or is likely to be used by another person to infringe copyright in a technological protection measure work.

(3) No person may publish information enabling or assisting another person to circumvent an effective technological protection measure if such a person knows or has reason to believe that, such information will or is likely to be used to infringe copyright in a technological protection measure work.

(4) No person may, during the subsistence of the copyright in a work and without the licence of the owner of copyright in such work, knowingly or having reasonable grounds to know, circumvent an effective technological protection measure applied by the owner of the copyright to such work.

(5) A technological protection measure shall be deemed to be effective where the use of the work is controlled by the owner, exclusive licensee or person assigned copyright in such work through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or a copy control mechanism which achieves the protection objective.

(6) The provisions of this section must be read together with the provisions of sections 86, 87 and 88 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002).

28P Exceptions in respect of technological protection measure

(1) Notwithstanding the provisions of section 28A, nothing in this Act shall prevent any person from using a technological protection measure circumvention device to perform -
   (a) a permitted act or an act that falls within the general public interest exceptions in sections, 12, 13, 14, 15, 16, 17, 18, 19, 19A, 19B, 19C, 19D of this Act;
   (b) any lawfully authorized investigative, protective or intelligence activity as an agent, employee or officer of an organ of the state; or
   (c) any permitted act as prescribed from time to time by the Minister.

(2) A person or user of a technological protection measure work who wishes to circumvent a technological protection measure so as to perform a permitted act or exempted act
as contemplated in subsection (1) but cannot practically do so because of such a technological protection measure may –

(a) apply to the copyright owner for assistance to enable such person or user to circumvent such technological protection measure so as to perform a permitted act; or

(b) if the copyright owner has refused such person’s or user’s request or has failed to respond to it within reasonable time, engage the services of any other person for assistance to enable such person or user to circumvent a technological protection measure so as to perform a permitted act: Provided that any such other person enabling circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including, his name, address and all relevant particulars necessary to identify him and the purpose for which he or she has been enabled.

28Q Enforcement functions of the Commission

(1) The Commission established in terms of section 185 of the Companies Act, 2008, (Act 71 of 2008) must enforce this Act by-

(a) performing all enforcement functions as empowered by this Act and the Companies Act, 2008;

(b) referring matters to and appearing before the Tribunal;

(c) dealing with any other matter referred to it by any person, Tribunal or any other regulatory authority.

28R Prohibited conduct in respect of copyright management information

(1) No person may remove or modify any copyright management information attached to or embodied in a copy of a work.

(2) No person may in the course of business make, import, sell, let for hire, offer or expose for sale or hire, advertise for sale or hire a copy of a work if any copyright management information attached to or embodied in the copy, has been removed or modified without the authority of the copyright owner.

28S Exceptions in respect of copyright management information

(1) The prohibition in section 28Q does not apply if a person –

(a) has the authority of the copyright owner to remove or modify the copyright management information;

(b) does not know and has no reason to believe that the removal or modification will induce, enable, facilitate or conceal an infringement of the copyright in the work; or

(c) does not know and has no reason to believe that any copyright management information attached to or embodied in the copyright has been removed or modified without the authority of the copyright owner.

CHAPTER 3 COPYRIGHT TRIBUNAL, REGULATORY AND ENFORCEMENT AGENCIES (ss 29-36)

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 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.

(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.

(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 125 of 1992.]
**29 Regulatory and Enforcement Agencies**

(1) There is hereby established a juristic person to be known as the Intellectual Property Tribunal, which -

(a) has jurisdiction throughout the Republic;
(b) is independent and subject only to the Constitution and the law;
(c) must carry out the functions and exercise the powers assigned to it by or in terms of the provisions of this Act or any legislation and
(d) must perform its functions impartially and without fear or favour.

(2) Each organ of the state must assist the Tribunal to maintain its independence, impartiality and to perform its functions effectively.

(3) In carrying out its functions, the Tribunal may -

(a) have regard to international developments in the intellectual property arena; or
(b) consult any person, organisation or institution with regard to any matter within its jurisdiction.

(4) The Tribunal consists of a chairperson and not less than ten (10) members appointed by the Minister on a full or part-time basis

**29A Functions of the Tribunal**

(1) The Tribunal must carry out the functions and exercise the powers and functions assigned to it in terms this Act or any legislation.

(2) The Tribunal may -

(a) adjudicate any application or referral made to it in terms of this Act, Companies Act, 2008 (Act 71 of 2008) or any legislation and make any appropriate order in respect applications or referrals;

(b) hear appeals or review any decision of the Commission or any accredited dispute resolution institution;

(c) adjudicate any application or referral made to it by any person, institution or regulatory authority where the dispute which is the subject of the application or referral relates to intellectual property rights;

(d) settle disputes relating to payment of royalties or terms of agreements entered into as required by this Act or agreement entered into to regulate a relationship or matter in relation to intellectual property rights.

**29B Appointment of members of Tribunal**

(1) The Minister must appoint persons -

(a) with suitable qualifications and experience in economics, law, commerce or public affairs; and

(b) with adequate legal training and experience to satisfy the requirements of section 29G(1)(b) of this Act as members of the Tribunal.

(2) The Minister must designate a member of the Tribunal as a chairperson and another member as a deputy chairperson of the tribunal.

(3) The deputy chairperson perform functions of chairperson whenever –

(a) the office of chairperson is vacant; or
the chairperson is for any other reason temporarily unable to perform those functions.

(4) The Minister, in consultation with the Minister of Finance, must determine remuneration, allowances, benefits and other special terms and conditions of employment of members of the Tribunal.

29C Qualifications for appointment
(1) To be eligible for appointment as a member of the Tribunal and to continue to hold that office, a person must, in addition to satisfying any other specific requirements set out in this Act -
   (a) not be subject to any disqualification set out in subsection (2) of this Act; and
   (b) have submitted to the Minister a written declaration stating that he or she is not disqualified in terms of subsection (2).

(2) A person may not be appointed or continue to be a member of the Tribunal, if that person -
   (a) is an office-bearer of any political party, movement or organisation;
   (b) has or through a related person acquires a personal financial interest that may conflict or interfere with the proper performance of the duties of a member of the Tribunal;
   (c) is disqualified in terms of section 69 of the Companies Act, 2008 (Act 71 of 2008) from serving as a director of a company;
   (d) is subject to an order of court holding that person to be mentally unfit or disordered;
   (e) has been found in any civil or criminal proceedings by a court of law, whether in the Republic or elsewhere to have acted fraudulently, dishonourably, in breach of a fiduciary duty or of any other offence for which such person has been sentenced to direct imprisonment without the option of a fine;
   (f) has been removed from a position of trust; or
   (g) has at any time found to be in contravention of this Act.

29D Term of office of members of the Tribunal
(1) Each member of the Tribunal including, the chairperson and deputy chairperson serves for a term of five (5) years which may be renewed only once for a further period of five (5) years.

(2) The chairperson may, on one (1) month written notice addressed to the Minister -
   (a) resign from the Tribunal; or
   (b) resign as chairperson, but remain as a member of the Tribunal.

(3) A member of the Tribunal other than the chairperson may resign by giving at least one (1) month written notice to the Minister.

(4) In an event of the expiry of the term of office of a member of the Tribunal and the member has a matter pending for adjudication before the Tribunal, the member may continue to act as a member in respect of that matter only.

29E Removal or suspension of members of Tribunal
(1) The Minister may, at any time, remove or suspend a member of the Tribunal from office if such a member -
(a) becomes subject to any of the disqualifications referred to in section 29C(2);
(b) repeatedly fails to the satisfaction of the Minister and board to perform the
duties of the Tribunal;
(c) due to a physical, mental illness or disability, becomes incapable of
performing the functions of that office; (d) contravenes any provision of this Act;
(e) is found guilty of a serious misconduct; or
(f) engages in any activity that may undermine the integrity of the Tribunal.

29F  Conflict and disclosure of interest
(1) A member of the Tribunal may not represent any person before the Tribunal.
(2) If, during a hearing in which a member of the Tribunal is participating, it appears to
the member that the matter concerns a financial or other interest of the member as contemplated
in section 29C(b), the member must -
(a) immediately and fully disclose the fact and nature of such interest to the
chairperson, deputy chairperson and the presiding member at that hearing as the case may be;
and
(b) withdraw from any further involvement in that hearing.
(3) A member must not -
(a) make private use of or profit from any confidential information obtained as a
result of performing his or her official duties as a member of the Tribunal;
(b) divulge any information referred to in paragraph (a) to any third party, except
as required and as part of the official functions as a member of the Tribunal.

29G  Proceedings of the Tribunal
(1) The chairperson is responsible for managing the case files of the Tribunal, and must,
take into account the complexity of a matter, assign each matter referred to the Tribunal to -
(a) a member of the Tribunal; or
(b) a panel composed of any three (3) members of the Tribunal.
(2) When assigning a matter to a Tribunal panel in terms of subsection (1) paragraph (b),
the chairperson may -
(a) ensure that at least one (1) member of the Tribunal panel is a person with
suitable legal qualifications and experience; and
(b) designate a member of the Tribunal panel to preside over the proceedings of
the Tribunal.
(3) If, a member of the panel is unable to complete the proceedings in a matter assigned
to that panel due to resignation, illness, death, removal, suspension or withdrawal from a hearing
in terms of this Act, the chairperson, may -
(a) direct that the hearing of that matter proceed before the remaining members
of the panel, subject to the requirements of subsection (2)(a); or
(b) terminate the proceedings before that panel and constitute a new panel which
may include any member of the original Tribunal panel, and direct the Tribunal panel to conduct
a new hearing.
(4) The decision of a Tribunal on a matter referred to it must be in writing and include
reasons for that decision.
(5) The Tribunal shall take a decision whether a matter pending before the Tribunal hearing as contemplated in subsection (1)(a) shall hold with the remaining members of the panel or a panel shall be constituted with a majority of the members of the Tribunal.

(6) A decision, judgment or order of the Tribunal may be served, executed, and enforced as if it were an order of the High Court and is binding subject to review or appeal to a court of law.

29H Hearings before Tribunal

(1) The Tribunal must conduct its hearings in public –
   (a) in an inquisitorial manner;
   (b) as expeditiously as possible;
   (c) as informally as possible; and
   (d) in accordance with the principles of natural justice.

(2) Despite the provision of subsection (1), a Tribunal member presiding at a hearing may exclude members of the public, specific persons or categories of persons from attending the preceding if -
   (a) evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected;
   (b) the proper conduct of the hearing requires it; or
   (c) for any other reason that would be justifiable during proceedings in a High Court.

29I Right to participate in hearing

(1) The following persons may participate in a hearing before the Tribunal, in person or through a representative and may put questions to witnesses and inspect any books, documents or items presented at the hearing:
   (a) the Commission;
   (b) the applicant, complainant and respondent; and
   (c) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Tribunal, such interest is adequately represented by persons participating at the hearing.

29J Powers of a member presiding at hearing

(1) A member of the Tribunal presiding at a hearing may -
   (a) direct or summon any person to appear at any specified time and place;
   (b) question any person under oath or affirmation;
   (c) summon or order any person to -
      (i) produce any book, document or item necessary for purposes of the hearing; or
      (ii) perform any other act in relation to this Act; and
   (d) give direction prohibiting or restricting the publication of any evidence adduced during a Tribunal hearing.

29K Rules of procedure
Subject to the rules of procedure of the Tribunal, a member of the Tribunal presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case and the requirements of the applicable provision of this Act.

29L  Appeals and reviews

(1) A participant in a hearing before a single member of the Tribunal may appeal against a decision of that member to a full panel of the Tribunal.

(2) Subject to the rules of the High Court, a participant in a hearing before a full panel of the Tribunal may -

(a) apply to the High Court to review the decision of the Tribunal; or
(b) appeal to the High Court against the decision of the Tribunal.

29M  Interim relief

(1) At any time, whether or not a hearing has commenced, any person may apply to the Tribunal for an interim order in respect of that matter before the Tribunal.

(2) The Tribunal may only grant such an order if -

(a) there is prima facie evidence that the allegations may be true; and
(b) an interim order is reasonably necessary to -

(i) prevent serious, irreparable damage to that person; or
(ii) prevent the purposes of this Act from being frustrated.

(c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
(d) the balance of convenience favours the granting of the order.

(3) An interim order in terms of this section must not extend beyond the earlier of -

(a) the conclusion of a hearing into the matter before the Tribunal; or
(b) the date that is six (6) months after the date of issue of the interim order.

(4) If an interim order has been granted and a hearing into that matter has not been concluded within six (6) months after the date of that order, the Tribunal may, on good cause shown, extend the interim order for a further period not exceeding six (6) months.

29N  Orders of the Tribunal

(1) In addition to Tribunal powers in terms of this Act and Companies Act, 2008, (Act 71 of 2008) the Tribunal may make any appropriate order in relation to a matter brought before it, including -

(a) declaring a particular conduct to constitute an infringement of this Act and as such prohibited;
(b) interdicting conduct which constitute an infringement of this Act;
(c) imposing an administrative fine in terms of section 175 of the Companies Act, 2008, (Act 71 of 2008) with or without the addition of any other order in terms of this Act;
(d) confirming a consent agreement in terms of section 174 of the Companies Act, 2008, (Act 71 of 2008), as an order of the Tribunal;
(e) condoning any non-compliance of its rules and procedures on good cause shown;
(f) confirming an order against an unregistered person to cease engaging in any activity that is required to be registered in terms of this Act;

(g) suspending or cancelling the registrant’s registration or accreditation subject to any such terms and conditions the Tribunal deems fit; or

(h) any other appropriate order required to give effect to a right, as contemplated in this Act or any other relevant legislation.

29O Witnessess

(1) Every person giving evidence at a hearing of the Tribunal must answer any relevant question.

(2) The law regarding a witness’s privilege in a criminal case in a court of law applies.

(3) The Tribunal may order a person to answer any question or to produce any article or document, even if it is self-incriminating to do so.

29P Costs

(1) Subject to subsection (2), each party participating in a hearing must bear its own costs.

(2) If the Tribunal -

(a) has not made a finding against a respondent, the member of the Tribunal presiding at a hearing may award costs to the respondent and against a complainant who referred the complaint; or

(b) has made a finding against a respondent, a member of the Tribunal presiding at a hearing may award costs against the respondent and to a complainant who referred the complaint to the Tribunal.

29Q Appointment of staff of the Tribunal

(1) The Chairperson or any delegated official of the Tribunal may –

(a) appoint staff, enter into contract or hire independent contractors to assist the Tribunal in carrying out its functions;

(b) in consultation with the Minister and the Minister of finance, determine the remuneration, allowances, benefits and other terms; and

(c) conditions of members of staff of the Tribunal or those contracted to assist the Tribunal.

29R Finances

(1) The Tribunal is financed from -

(a) money appropriated by Parliament;

(b) any fees or fines payable in terms of this Act or any relevant legislation;

(c) income derived from their respective investment and deposit of surplus money in terms of subsection (2); or

(d) other money accruing from any source.

(2) The Tribunal may invest or deposit money that is not immediately required for contingencies or to meet current expenditures -

(a) on a call or short-term fixed deposit with any registered bank of 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 46 of 1984).

29S Reviews and reports to Minister

(1) The Minister may, at any time, conduct an audit review of the performance and exercise of the functions by the Tribunal.

(2) In addition to any other reporting requirement set out in this Act or any legislation, the Tribunal must report to the Minister annually on its performance and activities, as required by the Public Finance Management Act, 1999 (Act 29 of 1999).

(3) As soon as practicable after receiving a report of a review contemplated in subsection (1), or after receiving a report contemplated in subsection (2), the Minister must transmit and table a copy of the report in Parliament.

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.

[S. 34 substituted by s. 57 of Act 38 of 1997.]

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 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 125 of 1992.]

CHAPTER 4 EXTENSION OR RESTRICTION OF OPERATION OF ACT (ss 37-38)

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 52 of 1984 and by s. 29 (a) of Act 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 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 125 of 1992.]

CHAPTER 5 MISCELLANEOUS PROVISIONS (ss 39-47)

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
(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;
(cF) prescribing rules regulating processes and proceedings of the Tribunal;
(cG) prescribing compulsory and standard contractual terms to be included in
agreements to be entered in terms of this Act;
(cH) prescribing permitted acts for circumvention of technological protection
measures as contemplated in section 28B, after due consideration of the following factors:
(i) the availability for use of works protected by copyright;
(ii) the availability for use of works for non-profit archival and educational
purposes;
(iii) the impact of the prohibition on the circumvention of technological protection
measures applied to works or protected by copyright on criticism, comment, news
reporting, teaching, scholarship, or research;
(iv) the effect of the circumvention of technological protection measures
on the market for or value of works protected by copyright; or
(v) such other factors as the Minister considers appropriate.
(cI) prescribing royalty rates or tariffs for various forms of use;
(cJ) prescribing the appropriate period for retention of unclaimed royalties;
(cK) prescribing code of conduct for Collecting Society and any matter relating to
the reporting, operations, activities and functions of Collecting Society; and
(cL) prescribing the local music content for television and radio broadcasting

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

(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.

[Date of commencement of s. 39: 30 June 1978.]
(e) Before making any regulations in terms of this Act, the Minister must publish the proposed regulations for public comment for a period of not less than thirty (30) calendar days.

39A Unenforceable contractual term

(1) To the extent that a term of a contract purports to prevent or restrict the doing of any act which by virtue of this Act would not infringe copyright or which purport to renounce a right or protection afforded by this Act, such term will be unenforceable.”.

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 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 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 62 of 1963), the Designs Act, 1967 (Act 57 of 1967), and the Patents Act, 1978 (Act 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 61 of 1989.]

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

[Para. (a) substituted by s. 4 (c) of Act 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 61 of 1989.]

(6) The Registrar shall be responsible for the administration of the advisory committee and the subcommittees. [Date of commencement of s. 40: 30 June 1978.]

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 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 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 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 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 52 of 1984 and substituted by s. 33 (a) of Act 125 of 1992.]

(b) ......

[Para. (b) deleted by s. 14 (b) of Act 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 9 of 1916)-

(i) that the owner of the copyright shall, if so required, remunerate the person who is the owner of the 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 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.
44 **Time when 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 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 of s. 45: 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**

**A. Translation Licenses**

1. **Application of the provisions in the Schedule**

   (1) The provisions in this Schedule apply to copyright works which have been published in printed or analogous forms of reproduction.

2. **Application for license**
(1) Any person may, apply to the Intellectual Property Tribunal for a license to make a translation of the work into any of the languages including, Northern Sotho, Zulu, Sotho, Swazi, Tsonga, Tswana, Venda, Xhosa, Afrikaans or Ndebele, the translation in printed or analogous forms of reproduction (hereinafter referred to as “the license”).

(2) Any person may, apply to the Intellectual Property Tribunal for a license to translate copyrighted work, to make the work into a usable or in analogous forms of reproduction.

(3) No license shall be granted until the expiration of the following applicable periods -

(a) within a period of one (1) week from the date of first publication of the original copyrighted work, where the application is for a license for translation into specified languages;

(b) three (3) months from the date of first publication of the original copyrighted work, where the application is for a license for translation into specified languages in general use or any other language in general use; and

(c) one (1) year from the date of first publication of the of the original copyrighted work where the application is for a license for translation into any language that is not stipulated in this Act or languages that are not generally used in the Republic as covered by subsection (1) above.

3. Grant license

(1) Before granting a license, the Intellectual Property Tribunal shall determine that –

(a) no translation of the work into the language in question of copyrighted work has been established in printed or analogous forms of reproduction by or with the authorization of the owner of the right of translation or any previous editions in that language are out of print.

(b) the applicant for the license has established that he/she either has requested and has been denied authorisation from the owner of the right of translation after due diligence on his/her part, was unable to find such owner;

(c) at the same time as addressing the request referred to in (a) and (b) above with the owner, the applicant for the license has informed any organization designated for the purpose of his/her request in which the publisher of the work to be translated is believed to have his principal place of business;

(d) if the applicant could not find the owner of the copyrighted work requiring translation by registered mail or electronic mail (with proof of service), a copy of his/her application to the publisher whose name/s appears on the work and another such copy to any principal place of business referred to above;

(e) no license shall be granted unless the owner of the copyrighted work requiring translation is known or located and has been given an opportunity to be heard;

(f) no license shall be granted until expiration of -

(i) a further period of two (2) days, where the one (1) week period referred to in subsection (3)(a) applies;

(ii) a further period of two (2) weeks, where three (3) months referred to in subsection (3)(b) applies; or

(iii) a further period of three (3) months, where one (1) month referred to in subsection (3)(c) applies.
(g) Such further period shall be computed from the date on which the applicant complies with the requirements mentioned in subsections (a) – (f) or where the identity or the address of the owner of the copyright work requiring translation is unknown from the date on which the applicant also complies with the requirement mentioned in subsection (a) – (f) above; and

(h) If, during either of the said further periods, a translation into the language in question of the copyright work has been published in printed or analogous forms of reproduction by or with the authorization of the owner of the translation right, no license shall be granted.

(2) For works composed mainly of illustrations, a license shall be granted only if the conditions stipulated in (a) – (f) are also fulfilled.

(3) No license shall be granted when the author has withdrawn all copies of the work from circulation.

4. **Scope and conditions of license**

(1) Any license under this Schedule shall –
   (a) be only for the purpose of teaching;
   (b) training, scholarship or research;
   (c) allow publication in a printed or analogous form of reproduction consistently with the conditions stipulated above, provided that –
      (i) the Intellectual Property Tribunal certifies that facilities do not exist for such printing or reproduction or that existing facilities are incapable for economic or practical reasons of ensuring such reproduction, the preparation may be made outside the country if -
         (aa) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in the Republic and the contract between the licensee and the establishment doing the work of reproduction so requires;
         (bb) the said contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done; and
      (cc) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for a license granted under this Schedule.
   (c) not extend to the export of copies made under the license, except as provided in subsection (i);
   (d) be non-exclusive; and
   (e) be transferable.

(2) Copies of a translation published under a license, may be sent abroad by the Government or other public entity provided that -
   (a) the translation is into a language other than the language used in the Republic that will be of use;
   (b) the recipients of the copies are individuals who are South African nationals or are organizational groupings that are nationals in the Republic;
   (c) the recipients will use the copies only for the purpose of teaching, scholarship or research;
   (d) both the sending of the copies abroad and their subsequent distribution to the recipients are without any commercial purpose; and
the government of the foreign country to which the copies are sent has agreed to the receipt or distribution, or both, of the copies into that country.

(3) World Intellectual Property Organisation (WIPO) shall be notified by the Intellectual Property Tribunal of agreements pertaining to license, if any.

(4) The license shall provide for just compensation in favor of the owner of the right of translation that is consistent with standards of royalties normally operating in the case of licenses freely negotiated between persons in the country and owners of translation rights in the country of the owner of the right of translation.

(5) If the licensee is unable to transmit the compensation to the owner of the right of translation due to conversion of currency, he/she shall report the fact to the Intellectual Property Tribunal who shall make all efforts, by the use of international machinery to ensure such transmittal is in internally convertible currency or its equivalent.

(6) As a condition of maintaining the validity of the license, the translation must be correct for such use and all published copies must include the following:
   (a) the original title and name of the author of the work;
   (b) a notice in the language of the translation stating that the copy is available for distribution only in the Republic;
   (c) if the work which is translated was published with a copyright notice, a reprint of that notice must be included.

(7) The license shall terminate if –
   (a) a translation of the work is in the same language or the copyrighted work with substantially the same content as the original publication under the license; and
   (b) a translation of the work is published in printed or analogous forms of reproduction in the country by or with the authorization of the owner, at a price reasonably related to the price normally charged in the country for comparable works. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

5. **License for broadcasting organization**

(1) A license under this Schedule may also be granted to a domestic broadcasting organization, provided that the following conditions are met –
   (a) the translation is made from a copy made and acquired in accordance with the laws of the country;
   (b) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialised technical or scientific research to experts in a particular profession;
   (c) the translation is used exclusively for the purpose specified in (b) above, through broadcasts that are lawfully made and that are intended for recipients in the country, including broadcasts made through the medium of sound or visual recording that have been made lawfully and for the sole purpose of such broadcasts;
   (d) sound or visual recordings of the translation may not be used by broadcasting organizations other than those having their headquarters in the country; and
   (e) all uses made of the translation are without commercial purpose.

(2) A license may also be granted to a domestic broadcasting organization under all of the conditions provided in subsection (1), to translate any text incorporated in an audiovisual fixation
that was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities

**B. Reproduction Licenses**

1. **Application of the provisions in the Schedule**
   (1) The provisions in this Schedule apply to works which have been published in printed or analogous forms of reproduction.

2. **Application for license**
   (1) Any person may, apply to the Intellectual Property Tribunal for a license to reproduce and publish a particular edition of the work in printed or analogous forms of reproduction (hereinafter referred to as “the license”).
   (2) No license shall be granted until the expiration of the following applicable periods, commencing from the date of first publication of the particular edition of the work -
      (a) three (3) years for works, such as, technology and of the natural and physical sciences including, mathematics;
      (b) seven (7) years for works of fiction, poetry, drama and music, and for art books; and
      (c) five (5) years for all other works.

3. **Grant of license**
   (1) Before granting a license, the Intellectual Property Tribunal shall determine that –
      (a) no translation of the work into the language in question of copyrighted work has been established in printed or analogous forms of reproduction by or with the authorization of the owner of the right of translation or any previous editions in that language are out of print;
      (b) the applicant for the license has established that he/she either has requested and has been denied authorisation from the owner of the right of translation after due diligence on his/her part, was unable to find such owner;
      (c) at the same time as addressing the request referred to in (a) and (b) above with the owner, the applicant for the license has informed any organization designated for the purpose of his/her request in which the publisher of the work to be translated is believed to have his principal place of business;
      (d) if the applicant could not find the owner of the copyrighted work requiring translation by registered mail or electronic mail (with proof of service), a copy of his/her application to the publisher whose name/s appears on the work and another such copy to any principal place of business referred to above;
      (e) no license shall be granted unless the owner of the copyrighted work requiring translation is known or located and has been given an opportunity to be heard;
      (f) no license shall be granted until expiration of -
         (i) a further period of two (2) days, where the one (1) week period referred to in subsection (3)(a) applies;
         (ii) a further period of two (2) weeks, where three (3) months referred to in subsection (3)(b) applies; or
(iii) a further period of three (3) months, where one (1) month referred to in subsection (3)(c) applies.

(g) Such further period shall be computed from the date on which the applicant complies with the requirements mentioned in subsections (a) – (f) or where the identity or the address of the owner of the copyright work requiring translation is unknown from the date on which the applicant also complies with the requirement mentioned in subsection (a) – (f) above; and

(h) If, during either of the said further periods, a translation into the language in question of the copyright work has been published in printed or analogous forms of reproduction by or with the authorization of the owner of the translation right, no license shall be granted.

(2) For works composed mainly of illustrations, a license shall be granted only if the conditions stipulated in (a) – (f) are also fulfilled.

(3) No license shall be granted when the author has withdrawn all copies of the work from circulation.

4. **Scope and condition of the license**

(1) Any license under this Schedule shall –

(a) only be for use in connection with systematic instructional activities;

(b) only allow publication in a printed or analogous form of reproduction at a price reasonably related to or lower than, that normally charged in the country for comparable work;

(c) only allow publication within the country and shall not extend to the export of copies made under the license;

(d) where the Intellectual Property Tribunal certifies that facilities do not exist in the country and the contract between the licensee and the establishment doing the work of reproduction so requires, the reproduction may be made outside the country if -

(i) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in the country and the contract between the licensee and the establishment doing the work of reproduction so requires;

(ii) the said contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done;

(iii) the licensee does not entrust the work of reproduction to an establishment created for the purpose of having copies reproduced of works for which a license has been granted under this Schedule;

(iv) be non-exclusive; and

(v) not be transferable.

(2) The license shall provide for just compensation in favor of the owner of the right of reproduction that is consistent with standards of royalties normally operating in the case of licenses freely negotiated between persons in the country and owners of reproduction rights in the Republic of the owner of the right of reproduction.

(3) If the licensee is unable, by reason of currency regulations, to transmit the compensation to the owner of the right of reproduction, he/she shall report the fact to the Intellectual Property Tribunal who shall make all efforts, by the use of international machinery, to ensure such transmittal in internationally convertible currency or its equivalent.
(4) As a condition of maintaining the validity of the license, the reproduction of that particular edition must be accurate and all published copies must include the following:
(a) the title and name of the author of the work;
(b) a notice in the language of the publication stating that the copy is available for distribution only in the Republic; and
(c) if the edition which is reproduced bears a copyright notice, a reprint of that notice.

(5) The license shall terminate if copies of an edition of the work in printed or analogous forms of reproduction are distributed in the Republic, by or with the authorization of the owner of the right of reproduction and in connection with systematic instructional activities, at a price reasonably related to that normally charged in the Republic if such edition is in the same language and is substantially the same in content as the edition which was published under the license.

(6) Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

6. **License for audiovisual fixations**
(1) Under the conditions provided in this Schedule, a license may also be granted –
(a) to reproduce in audio-visual form, a lawfully made audio-visual fixation including, any protected works incorporated in it, provided that the said fixation was prepared and published for the sole purpose of being used in connection with systematic instructional activities; and
(b) to translate any text incorporated in the said fixation into the language or languages generally used in the Republic.