

Copyright Act 98 of 1978 (CA)

Topic: Intellectual Property

IN A CALABASH

Introduction

Copyright is a universal right which is governed and regulated in each country by a specific law. In South Africa, this is the Copyright Act 98 of 1978 (CA).

People and legal entities write, publish, present, distribute and/or produce informative documents, letters, adverts, documents, opinions, pamphlets and summaries every day.

In terms of copyright, any person who is an author of an above-mentioned document will be the exclusive owner of such document, unless such a person has given this right to another party.

Objectives of the Act

The CA regulates and controls the concept and legal right known as copyright.

Application of the Act and its implication to Tourism

The CA applies to all original works, materials and publications which are eligible for copyright.

Owner/Author

The CA applies to all persons and entities that produce completely original works, materials and publications which are eligible for copyright. The producer of such material will have the exclusive right to use and control the material unless he or she has granted permission to others to use the material.

Others

The CA applies to any person who intends to use any material which is copyright protected. Such person must get express permission to use or distribute that material from the copyright owner.

No one may use material which is owned under copyright by another without express permission from the owner.

Summary of the provisions of the Act

Copyright work

The following works, if they are original, are eligible for copyright–

- literary, musical or artistic work or a sound recording, from the date it was produced or first published in South Africa;
- a broadcast, from the date it was first produced or made in South Africa;
- a programme-carrying signal, from the date it was first produced or emitted to a satellite from a place in South Africa;
- a cinematograph film, from the date it was produced or first published or made in South Africa;
- a published edition, from the date it was first published in South Africa; or
- a computer program, from the date it was first produced or published in South Africa.

Creation of copyright

Once a person produces an original piece of work, copyright will automatically exist in that work from the time that the work is created.

In other words, copyright exists from the time the work is created, and no registration is required to ensure that the copyright right is protected or reserved in favour of the author, with one exception: cinematograph films must be registered.

Copyright will therefore be conferred automatically on a work which is eligible for copyright at the time when it is created by the author or, in the case of joint authorship, one of the authors.

The owner/author

The person who produces or writes the work will own the copyright in the work.

Said differently, the author of any work eligible for copyright is generally the person who makes or creates the work.

There are some exceptions to this general rule–

- the copyright in any literary or artistic work made by an author in the course of his employment by the proprietor of a newspaper, magazine or the like belongs to the proprietor of the newspaper, magazine, etc. for the purposes of being so published, but in all other respects the copyright subsisting in the work vests in the author;
- a person who commissions a photograph, painting or drawing of a portrait, making of a gravure, making of a cinematograph film or making of a sound recording and who pays for it pursuant to the commission will be the owner of the copyright subsisting in the work so made; and
- the copyright in a piece of work, be it a paper on a specific topic, an advertisement, computer programme, opinion, agreement etc. which is made in the course of an

author's employment by a person who is under a contract of service or apprenticeship will be owned by the employer.

There is one caveat regarding copyright: where copyright work is produced by another on one's behalf, one has paid for the right to such copyright and the producer of such work has agreed to give one the right to the copyright, the ownership of the copyright will only be one's if one gets a written assignment of such copyright from the person who has produced that work. In other words, the copyright must be transferred in writing into one's name. This must be done under an assignment of copyright document which will record the agreement to assign the right and must be signed by the person who produced the copyright work.

Copyright transferrable

Copyright is moveable property and, as such, may be transferred from one person to another.

However, for any such transfer to be effective, the transfer must be done in writing under a deed of assignment which must record the agreement to assign and be signed by the person who is assigning the copyright to one.

© marking



The copyright notation '©' indicating that a work is copyright protected is not a legal requirement under the Act.

However, inserting the symbol '©' or word 'copyright' to indicate that a work is copyright protected will be an advantage and will, unless the contrary is proven, indicate that the person described in the document or appearing next to the copyright notation is the author and owner of the work.

It is therefore advisable for a copyright work to be marked with the internationally recognised copyright sign '©', the year in which the work was created or published and the name(s) of the author(s) and copyright owner(s) and, preferably, accompanied by the words 'copyright reserved' or words to that effect.

Such a copyright warning may serve as legal notice to a potential infringer.

Duration of copyright

The duration of any copyright in respect of any written, literary, musical or artistic works other than photographs shall be the life of the author plus fifty years from the end of the year in which the author dies.

The duration of copyright in respect of cinematograph films, photographs and computer programmes is fifty years from the end of the year in which the work is lawfully made available to the public or, failing this, fifty years from the end of the year in which the work is made.

The duration of copyright of sound recordings is fifty years from the end of the year in which the recording was first published.

The duration of copyright in respect of broadcasts is fifty years from the end of the year in which the broadcast first takes place.

In respect of programme-carrying signals, the duration of copyright is fifty years from the end of the year in which the signals were emitted to a satellite.

Copyright in respect of published editions will endure for fifty years from the end of the year in which the edition was first published.

Broadcast of music and royalties

In the absence of an agreement to the contrary, no person may broadcast, cause the transmission of or play a sound recording, such as a radio station to a public audience, which he or she does not own without payment of a royalty to the owner of the relevant copyright.

The amount of any royalty 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.



WHAT HAPPENS IF YOU DO NOT COMPLY?

In addition to any civil claim for damages, when a person infringes another's copyright without the authority of the owner of the copyright at a time when copyright subsists in a work, he or she is guilty of an offence. A person convicted of any offence referred to above shall be liable to a fine of up to R5 000 or R10 000. A convicted person may also be subject to imprisonment for a period of up to three or five years or to both such fine and imprisonment.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

In order to ensure compliance with the CA and in order to protect one's rights, any person, business or trading entity, including the State—

- must ensure that it protects all its works and publications eligible for copyright and/or in which copyright subsists;
- must not use another party's copyright without permission;
- must be aware of and inform employees when copyright created and who will own it;
- take ownership of another's copyright, by way of a written assignment;
- protect all material using the universal © copyright notation on all documentations; and
- take steps to stop any person who has infringed a copyright.

FURTHER INFORMATION

Regulators

Department of Trade and Industry (dti)

Companies and Intellectual Property Commission (CIPC)

South African Music Rights Organisation (SAMRO)

Websites

www.thedti.gov.za

www.cipc.co.za

www.samro.org.za