



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

FOR THE REPUBLIC OF SOUTH AFRICA

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

R1,00 Prys • Price
R0,10 Plus 10% BTW • VAT

R1,10 Verkoopprys • Selling price
Buitelands **R1,40** Other countries
Posvry • Post free

Vol. 325

KAAPSTAD, 10 JULIE 1992

CAPE TOWN, 10 JULY 1992

No. 14129

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1913.

10 Julie 1992

No. 1913.

10 July 1992

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 125 van 1992: Wysigingswet op Outeursreg, 1992.

No. 125 of 1992: Copyright Amendment Act, 1992.

GENERAL EXPLANATORY NOTE:

- [** **]** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Copyright Act, 1978, so as to amend, delete or insert certain definitions; to make provision that computer programs be eligible for copyright as a separate category of work; to further provide for the conditions to be met before works become eligible for copyright; to further regulate copyright in broadcasts and programme-carrying signals; to further provide for the protection of the moral rights of the author of a work; to further provide for dealing with the infringement of copyright and for the remedies available upon such infringement; to further provide for presumptions in proceedings relating to infringement of copyright; to further prescribe penalties for infringements of copyright; to further provide for the seizure of imported infringing copies; to further regulate the procedure relating to applications to the Copyright Tribunal; to extend the powers of the Copyright Tribunal regarding the granting of licences; and to make provision for appeals against decisions of the Copyright Tribunal; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 2 July 1992.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 98 of 1978, as amended by section 1 of Act 56 of 1980, section 1 of Act 66 of 1983, section 1 of Act 52 of 1984 and section 1 of Act
5 13 of 1988

1. Section 1 of the Copyright Act, 1978 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the addition to the definition of “adaptation” of the following paragraph:
- 10 “(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;”;
- 15 (b) by the substitution for paragraph (c) of the definition of “artistic work” of the following paragraph:

- “(c) works of **[artistic]** craftsmanship **[or works of craftsmanship of a technical nature]** not falling within either paragraph (a) or (b);”;
- 5 (c) by the substitution for paragraphs (c), (e) and (f) of the definition of “author” of the following paragraphs, respectively:
- “(c) a sound recording, means the person by whom the arrangements for the **[first fixing of the sounds of a performance or of other sounds]** making of the sound recording were made;
- 10 (e) a broadcast, means the **[Corporation]** first broadcaster;
- (f) a programme-carrying signal, means the **[Corporation]** first person emitting the signal to a satellite;”;
- (d) by the addition of the following paragraphs to the definition of “author”:
- 15 “(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;
- (i) a computer program, the person who exercised control over the making of the computer program;”;
- 20 (e) by the substitution for the definition of “broadcast” of the following definition:
- “‘broadcast’, when used as a noun, means a broadcasting service as defined in section 1 of the Broadcasting Act, 1976 (Act No. 73 of 1976), and includes the emitting of programme-carrying signals to a satellite, and **[a reference to ‘broadcast’]**, when used as a **[noun]** verb, shall be construed accordingly;”;
- 25 (f) by the substitution for the definition of “cinematograph film” of the following definition:
- 30 “‘cinematograph film’ means the **[first]** fixation by any means whatsoever on film or any other material of a sequence of images capable, when used in conjunction with any 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;”;
- 35 (g) by the insertion after the definition of “cinematograph film” of the following definition:
- 40 “‘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;”;
- (h) by the substitution for the definition of “copy” of the following definition:
- 45 “‘copy’ means a reproduction **[in written form or in the form of a recording or a cinematograph film or in any other material form]** 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;”;
- 50 (i) by the substitution for the definition of “distribution” of the following definition:
- “‘distribution’, in relation to
- 55 **[(a) a sound recording, means any act by which records embodying the sound recording are offered, directly or indirectly, to the general public or any section thereof;**
- (b) a programme-carrying [signals] signal, means any operation by which a distributor transmits a derived [signals] signal to the general public or any section thereof;**”;
- 60 (j) by the substitution for the definition of “distributor” of the following definition:

- “ ‘distributor’, in relation to a programme-carrying **[signals]** signal, means the person who decides that the transmission of the derived signal to the general public or any section thereof shall take place;”;
- 5 (k) by the substitution for the definition of “emitted signal” of the following definition:
 “ ‘emitted signal’ means a **[programme-carrying]** signal which goes to **[or passes through]** a satellite;”;
- 10 (l) by the substitution for the definition of “infringing copy” of the following definition:
 “ ‘infringing copy’, in relation to—
 (a) a literary, musical or artistic work or a published edition, means a **[reproduction]** copy thereof;
 (b) a sound recording, **[or a substantial part thereof]** means a record embodying that recording;
 15 (c) a cinematograph film, means a copy of the film or a still photograph made therefrom; **[and]**
 (d) a broadcast, means a cinematograph film of it or a copy of a cinematograph film of it or a sound recording of it or a record embodying a sound recording of it or a still photograph **[or an individual image or a copy of a still photograph] made therefrom; and**
 20 (e) a computer program, means a copy of such computer program,
 25 being in any such case an article the making of which constituted an infringement of the copyright in the work, recording, cinematograph film, **[or] 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;”;
- 30 (m) by the deletion of the definition of “licence”;
- (n) by the substitution for the definition of “licence scheme” of the following definition:
 “ ‘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;”;
- 40 (o) by the deletion of the definition of “licensing body”;
- (p) by the substitution for the definition of “literary work” of the following definition:
 45 “ ‘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;
 50 (c) textbooks, treatises, histories, biographies, essays and articles;
 (d) encyclopaedias and dictionaries;
 (e) letters, reports and memoranda;
 (f) lectures, **[addresses]** speeches and sermons; and
 55 (g) **[written]** tables and compilations, but shall not include a computer program.”
- (q) by the insertion after the definition of “Minister” of the following definition:
 “ ‘musical work’ means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;”;
- 60 (r) by the substitution for the definition of “performance” of the following definition:

- “ ‘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, **[addresses]** speeches and sermons, includes delivery thereof; and references to ‘perform’ in relation to a work **[or an adaptation of a work]** shall be construed accordingly: Provided that ‘performance’ shall not include broadcasting or rebroadcasting or transmitting a work in a diffusion service;”;
- 5
- (s) by the substitution for the definition of “plate” of the following definition:
- 10 “ ‘plate’ includes any stereotype, stone, block, mould, matrix, transfer, negative **[or other similar appliance]**, record, disc, storage medium or any version of a work of whatsoever nature used to make copies.”;
- 15
- (t) by the substitution for the definition of “programme” of the following definition:
- 20 “ ‘programme’, in relation to a programme-carrying **[signals]** signal, means a body of live or recorded material consisting of images or sounds or both, embodied in a **[signals]** signal [emitted for the purpose of ultimate distribution]”;
- (u) by the insertion after the definition of “programme” of the following definition:
- 25 “ ‘programme-carrying signal’ means a signal embodying a program which is emitted and passes through a satellite;”;
- (v) by the substitution for the definition of “sound recording” of the following definition:
- 30 “ ‘sound recording’ means **[the direct exclusively aural]** any fixation of sounds **[of a performance or of other sounds]** capable of being reproduced, but does not include a sound-track associated with a cinematograph film;”;
- (w) by the insertion of the following definition after the definition of “this Act”:
- 35 “ ‘work’ a work contemplated in section 2;”;
- (x) by the addition of the following subsections:
- 40 “(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.
- 45 (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.
- 50 (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.
- 55 (d) Publication shall not include—
- (i) a performance of a musical or dramatic work, cinematograph film or sound recording;
- 60 (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.
- 5 (e) For the purposes of sections 6, 7 and 11(b), a work shall be deemed to be published if copies thereof have been issued to the public."

Amendment of section 2 of Act 98 of 1978, as amended by section 2 of Act 56 of 1980 and section 2 of Act 52 of 1984

2. Section 2 of the principal Act is hereby amended—
- 10 (a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:
 " (d) cinematograph films **[to which are assimilated works expressed by a process analogous to cinematography]**";
- 15 (b) by the addition to the said subsection of the following paragraph:
 "(i) computer programs.";
- (c) by the substitution for subsection (2) of the following subsection:
 " (2) A **[literary, musical or artistic]** work, except a broadcast or programme-carrying signal, shall not be eligible for copyright unless the work has been written down, recorded or otherwise reduced to material form."; and
- 20 (d) by the insertion after subsection (2) of the following subsection:
 "(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.".
- 25

Amendment of section 3 of Act 98 of 1978, as amended by section 3 of Act 52 of 1984

3. Section 3 of the principal Act is hereby amended—
- 30 (a) by the substitution for subsection (1) of the following subsection:
 " (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—
- 35 (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:
- 40 Provided that a work of architecture erected in the Republic or any other artistic work incorporated in a building or any other permanent structure [located] in the Republic, shall be eligible for copyright, whether or not the author was a qualified person.";
- (b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
 45 "(b) cinematograph films [and], photographs and computer programs, fifty years from the end of the year in which the work is [lawfully] made available to the public with the consent of the owner of the copyright or, failing such an event within fifty years from the making of the work, fifty years from the end of the year in which the work is made;"; and
- 50 (c) by the substitution for paragraph (a) of subsection (3) of the following paragraph:
 "(a) In the case of anonymous or pseudonymous [literary, musical or artistic] works, the copyright therein shall subsist for fifty years from the end of the year in which the work is [lawfully] 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.".
- 55

Amendment of section 4 of Act 98 of 1978, as amended by section 4 of Act 52 of 1984

4. Section 4 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (e) of the following paragraph:

- 5 “(f) being a computer program, is first published or made in the Republic.”.

Amendment of section 5 of Act 98 of 1978, as amended by section 5 of Act 52 of 1984

5. Section 5 of the principal Act is hereby amended by the substitution for 10 subsection (4) of the following subsection:

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

15 **Amendment of section 6 of Act 98 of 1978, as amended by section 3 of Act 56 of 1980**

6. Section 6 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) publishing the work if it was hitherto unpublished.”.

20 **Amendment of section 7 of Act 98 of 1978, as amended by section 4 of Act 56 of 1980**

7. Section 7 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) publishing the work if it was hitherto unpublished.”.

25 **Amendment of section 8 of Act 98 of 1978, as amended by section 5 of Act 56 of 1980, section 6 of Act 54 of 1984 and section 1 of Act 61 of 1989**

8. Section 8 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following 30 paragraph:
 “(a) Reproducing the film in any manner or form, including making a still photograph therefrom.”;
- (b) by the substitution for paragraph (g) of subsection (1) of the following 35 paragraph:
 “(g) letting, or offering or exposing for hire by way of trade, directly or indirectly, a [reproduction or an adaptation] copy of the film.”; and
- (c) by the deletion of subsection (2).

Amendment of section 10 of Act 98 of 1978, as amended by section 7 of Act 56 of 1980

40 9. Section 10 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) Reproducing, directly or indirectly, the broadcast in any manner or form, including, in the case of a television broadcast, making a still photograph [of an individual image] therefrom.”.

45 **Insertion of section 11B in Act 98 of 1978**

10. The following section is hereby inserted in the principal Act after section 11A:

“Nature of copyright in computer programs

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

- 5 (a) Reproducing the computer program in any manner or form;
 (b) publishing the computer program if it was hitherto unpublished;
 (c) reproducing or publishing an adaptation of the program;
 (d) making an adaptation of the computer program;
 (e) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the computer program.”

10 Amendment of section 12 of Act 98 of 1978

11. Section 12 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 15 “Copyright shall not be infringed **[if]** by any fair dealing with a literary or musical work **[is used solely and then only to the extent reasonably necessary]**—”;
- (b) by the substitution in subsection (1) for the words following upon subparagraph (ii) of paragraph (c) of the following words:
 20 **“[Provided that, subject to the provisions of section 13, the expression ‘used’ shall not be construed as authorizing the making of a copy of the whole or a substantial part of the work in question] Provided [further] that, in the case of paragraphs (b) and (c)(i), [that] the source shall be mentioned, as well as the name of the author if it appears on the work.”;**
- 25 (c) by the substitution for subsection (9) of the following subsection:
 “(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.”;
- 30 (d) by the substitution for subsection (10) of the following subsection:
 “(10) The provisions of subsections **[(1) to (4) inclusive and]** (6) and (7) shall apply also with reference to a work or an adaptation thereof which is transmitted in a diffusion service.”;
- (e) by the substitution for subsection (12) of the following subsection:
 35 “(12) The copyright in a literary or musical work **[or an adaptation thereof]** shall not be infringed by the use thereof in a *bona fide* demonstration **[thereof to a specific client by a licensed dealer in]** of radio or television receivers or any type of recording equipment or playback equipment to a client by a dealer in such equipment.”;
- 40 (f) by the addition of the following subsection:
 “(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.”

45 Substitution of section 14 of Act 98 of 1978

12. The following section is hereby substituted for section 14 of the principal Act:

“Special exception in respect of records of musical works

- 50 **14.** (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 **[sound recording or a copy] record** of the work or of an adaptation

thereof in the Republic, whether from an imported disc, tape, matrix or otherwise, if—

- 5
- (a) **[copies of]** records embodying the work or **[of]** 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;
- 10
- (b) before making the **[sound recording or copy]** 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 **[copy]** 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
- 15
- (d) in the case of a **[copy]** 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.

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(2) Where a **[sound recording or copy]** 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—

25

- (a) the words consist or form part of a literary work in which copyright subsists; and
- (b) the **[copies]** 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
- 30
- (c) the conditions specified in subsection (1)(b) and (d) are fulfilled in relation to the owner of that copyright,
- the making of the **[sound recording or copy]** record shall not constitute an infringement of the copyright in the literary work.
- 35

(3) For the purposes of this section an adaptation of a work shall be deemed to be similar to an adaptation thereof **[contained]** embodied in a previous **[sound recording or copy]** 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.

40

(4) A manufacturer may for the purposes of paragraph (a) of subsection (1) make the prescribed enquiries in order to ascertain whether the previous **[sound recording or copy]** 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 **[copies]** records shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.

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

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- (a) a **[copy]** record of the whole of a work or an adaptation thereof unless the previous **[copies]** records referred to in paragraph (a) of that subsection were **[copies]** records of the whole of the work or of a similar adaptation; or
- 55
- (b) a **[sound recording or copy]** record of a part of a work or an adaptation thereof unless the **[sound recordings or copies]** 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.”.
- 60

Amendment of section 15 of Act 98 of 1978, as amended by section 2 of Act 66 of 1983 and section 2 of Act 13 of 1988

13. Section 15 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

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

Substitution of section 16 of Act 98 of 1978

14. The following section is hereby substituted for section 16 of the principal Act:

“General exceptions regarding protection of cinematograph films

16. (1) The provisions of section **[12(1) to] 12(1)(b) and (c), (2), (3), (4), [inclusive and] (12) and (13)** shall *mutatis mutandis* apply with reference to cinematograph films.

- 15 (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.”

20 **Substitution of section 17 of Act 98 of 1978**

15. The following section is hereby substituted for section 17 of the principal Act:

“General exceptions regarding protection of sound recordings

- 25 17. The provisions of section **[12(1) to] 12(1)(b) and (c), (2), (3), (4), [inclusive and] (5), (12) and (13)** shall *mutatis mutandis* apply with reference to sound recordings.”

Substitution of section 18 of Act 98 of 1978

16. The following section is hereby substituted for section 18 of the principal Act:

30 **“General exceptions regarding protection of broadcasts**

18. The provisions of section 12(1) to **[(4)] (5) inclusive, (12) and (13)** shall *mutatis mutandis* apply with reference to broadcasts.”

Substitution of section 19A of Act 98 of 1978, as inserted by section 9 of Act 52 of 1984

35 17. The following section is hereby substituted for section 19A of the principal Act:

“General exceptions regarding protection of published editions

- 40 19A. The provisions of sections 12(1), (2), (4), (5), (8) **[and], (12) and (13)** shall *mutatis mutandis* apply with reference to published editions.”

Insertion of section 19B in Act 98 of 1978

18. The following section is hereby inserted in the principal Act after section 19A:

“General exceptions regarding protection of computer programs

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

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

- 10 (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
- 15 (c) such copy is destroyed when the possession of the computer program in question, or authorized copy thereof, ceases to be lawful.”.

Substitution of section 20 of Act 98 of 1978

19. The following section is hereby substituted for section 20 of the principal Act:

“Moral rights

20 **20.** (1) Notwithstanding the transfer of the copyright in a literary, musical or artistic work, **[or]** 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

25 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 **[oppose]** prevent or object to modifications that are absolutely necessary on technical grounds or for the purpose of commercial exploitation of the work.

30 (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.”.

35

Amendment of section 23 of Act 98 of 1978

20. Section 23 of the principal Act is hereby amended—

- 40 (a) by the substitution for subsection (1) of the following subsection:
“(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 **[may authorize]** has the exclusive right to do or to authorize.”;
- 45 (b) by the deletion in subsection (2) of the word “or” at the end of paragraph (b), the addition of the word “or” at the end of paragraph (c) and the insertion of the following paragraph:
“(d) acquires an article relating to a computer program in the Republic;” and
- (c) by the deletion of subsection (4).

50 Amendment of section 24 of Act 98 of 1978

21. Section 24 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(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, [accounts,] 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.”;

(b) by the insertion of the following subsections after subsection (1):

“(1A) Damages contemplated in subsection (1) may, at the option of the plaintiff, be calculated on the basis of the amount of a reasonable royalty which would have been payable under the circumstances by a licensee or sub-licensee in respect of the copyright concerned.

(1B) In the determination of the amount of damages referred to in subsection (1A) the court shall, in addition to all other material considerations, take the following factors into account:

(a) The extent and nature of the infringement of copyright; and
(b) the amount which could be payable to the owner in respect of the exercise of copyright by some other person.

(1C) If a plaintiff intends to exercise the option contemplated in subsection (1A), he shall give notice in writing to the exclusive licensee or sub-licensee of the copyright concerned of such intention.”; and

(c) by the substitution for subsection (2) of the following subsection:

“(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 [but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not].”.

35 Amendment of section 25 of Act 98 of 1978, as substituted by section 1 of Act 39 of 1986

22. Section 25 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1) thereof:

“(2) If an exclusive licensee or sub-licensee intends to exercise the option contemplated in section 24(1A) he shall give notice in writing to the owner of the copyright concerned of his intention.”.

Substitution of section 26 of Act 98 of 1978, as amended by section 3 of Act 66 of 1983, section 10 of Act 52 of 1984 and section 3 of Act 13 of 1988

23. The following section is hereby substituted for section 26 of the principal Act:

“Onus of proof in proceedings

26. (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 [action] 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 **[an action]** 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—

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(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 **[action was]** 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 **[an action]** 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 **[have been]** 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 **[an action]** 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 **[an action]** 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 **[they bore a label or other mark comprising any one or more of the following statements]** 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 **[mark]** printed matter **[was]** 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 **[mark]** printed matter, [or

(c) that the recording was first published in a country specified on the label or **[mark]**

that label or **[mark]** 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 **[civil or criminal]** proceedings by virtue of this Chapter with regard to the alleged infringement of the copyright in a cinematograph film registered in terms of the Registration of Copyright in Cinematograph Films Act, 1977 (Act No. 62 of 1977), it shall be presumed—

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

(10) In any **[civil or criminal]** 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 **[cinematographic films]** any of the said works, and who was found in possession of a **[reproduction or adaptation of such a cinematographic film]** copy of any of such works, sold or let for hire or by way of trade offered or exposed for sale or hire such **[reproduction or adaptation]** 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.”

Amendment of section 27 of Act 98 of 1978, as amended by section 11 of Act 52 of 1984 and section 3 of Act 61 of 1989

24. Section 27 of the principal Act is hereby amended—

(a) by the substitution for subsection (6) of the following subsection:

“(6) A person convicted of an offence under **[subsection (1)]** 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

[Provided that the total fine or the total period of imprisonment imposed by virtue of this subsection shall not exceed fifty thousand rand or ten years, as the case may be, in respect of articles comprised in the same transaction]."; and

5 (b) by the deletion of subsections (7) and (8).

Amendment of section 28 of Act 98 of 1987, as amended by section 12 of Act 52 of 1984

25. Section 28 of the principal Act is hereby amended—

10 (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The owner of the copyright in any published **[literary or musical] work [or any published cinematographic film, any sound recording or any published edition]** may give notice in writing to the Commissioner for Customs and Excise (in this section referred to as the 'Commissioner')—"; and

15 (b) by the substitution for subsection (5) of the following subsection:

20 "(5) This section shall *mutatis mutandis* apply with reference to an exclusive licensee who has the right to import into the Republic any **[literary or musical] work [or any cinematograph film sound recording or published edition]** published elsewhere."

Amendment of section 29 of Act 98 of 1978

26. Section 29 of the principal Act is hereby amended—

25 (a) by the substitution for subparagraph (v) of paragraph (c) of subsection (3) of the following subparagraph:

"(v) **[for]** regulating or prescribing any other matters incidental to or consequential upon any request, application, order or decision under section 36."; and

30 (b) by the addition of the following subsection:

"(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."

Substitution of section 30 of Act 98 of 1978

35 27. The following section is hereby substituted for section 30 of the principal Act:

"General provisions as to jurisdiction of tribunal

40 30. 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

45 (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."

Substitution of section 36 of Act 98 of 1978

28. The following section is hereby substituted for section 36 of the principal Act:

"Appeals

50 36. (1) Any party to proceedings before the tribunal may appeal

against any order or decision of the tribunal pursuant to such proceedings.

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

(3) The court may in respect of any such appeal—
 10 (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;
 15 (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.”

Amendment of section 37 of Act 98 of 1978

20 29. Section 37 of the principal Act is hereby amended—
 (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
 25 “(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;”;
 (b) by the substitution for paragraph (e) of subsection (1) of the following paragraph:
 30 “(e) in relation to broadcasts made and programme-carrying signals **[made or]** emitted to a satellite from places in that country **[or by one or more organizations constituted by or under the laws of that country]** as it applies in relation to broadcasts made and programme-carrying signals **[made or]**
 35 emitted to a satellite **[by the Corporation]** from a place in the Republic.”

Repeal of section 38 of Act 98 of 1978

30. Section 38 of the principal Act is hereby repealed.

Amendment of section 41 of Act 98 of 1978

40 31. Section 41 of the principal Act is hereby amended—
 (a) by the substitution for subsection (1) of the following subsection:
 45 “(1) Nothing in this Act shall affect any right or privilege of the State **[subsisting otherwise than by virtue of any law, or any right or privilege of the state]** or of any other person under any law not expressly repealed, amended or modified by this Act.”; and
 (b) by the substitution for subsection (3) of the following subsection:
 50 “(3) **[Nothing in this Act shall affect the operation of any rule of equity relating to breaches of trust or confidence]** The provisions of this Act shall not derogate from any rule of law relating to confidential or privileged information, unlawful competition or personality rights.”

Repeal of section 42 of Act 98 of 1978

32. Section 42 of the principal Act is hereby repealed.

Amendment of section 43 of Act 98 of 1978, as amended by section 14 of Act 52 of 1984

5 33. Section 43 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) **[subject to the provisions of paragraphs (c) and (d)]** nothing in this Act contained shall—

- 10 (i) subject to paragraph (d), affect the ownership, duration or **[validity]** existence of any copyright which subsists under the Copyright Act, 1965 (Act No. 63 of 1965); or
- 15 (ii) subject to paragraph (c), be construed as creating **[any]** copyright **[which]** in any type of work in which copyright **[did]** could not subsist prior to 11 September 1965.”; and

(b) by the substitution for paragraph (c) of the following paragraph:

“(c) the copyright in a cinematograph **[films]** 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 **[films]** film treated as an original dramatic **[works]** work under section 35 of the Third Schedule to the Designs Act, 1916 (Act No. 9 of 1916)—

- 20 (i) that the **[author]** owner of the copyright shall, if so required, remunerate the person who is the owner of the copyright in that **[film]** original dramatical work for the purposes of that Act, which remuneration shall be determined by arbitration if agreement thereon cannot be reached; and
- 25 (ii) **[the author shall indemnify the user against any further claims relating to the copyright in the film]** 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
- 30 (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.”.
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Substitution of section 44 of Act 98 of 1978

45 34. The following section is hereby substituted for section 44 of the principal Act:

“Time when work is made

50 44. (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 **[to some other]** otherwise reduced to material form.

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

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

Short title

35. This Act shall be called the Copyright Amendment Act, 1992.