



# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 753.

18 April 1984

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

No. 52 van 1984: Wysigingswet op Outeursreg, 1984.

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

No. 52 of 1984: Copyright Amendment Act, 1984.

**GENERAL EXPLANATORY NOTE:**

**[** Words in bold type in square brackets indicate omissions from existing enactments.

       Words underlined with solid line indicate insertions in existing enactments.

# ACT

To amend the Copyright Act, 1978, so as to make provision for copyright in published editions; to extend the term of copyright in certain unpublished works; to further define the nature of copyright in cinematograph films and sound recordings; to create certain presumptions in respect of the proof of infringements of copyright in cinematograph films; to create certain new offences; and to make provision for increased penalties; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)  
(Assented to 30 March 1984.)*

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

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

5 (a) by the addition in subsection (1) to the definition of “author” of the following paragraph:

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

Amendment of section 1 of Act 98 of 1978, as amended by section 1 of Act 56 of 1980 and section 1 of Act 66 of 1983.

10 (b) by the substitution in subsection (1) for paragraph (a) of the definition of “infringing copy” of the following paragraph:

“(a) a literary, musical or artistic work or a published edition, means a reproduction thereof;” and

15 (c) by the insertion in subsection (1) after the definition of “prospective owner” of the following definition:

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

20 2. Section 2 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraph:

“(h) published editions.”

Amendment of section 2 of Act 98 of 1978, as amended by section 2 of Act 56 of 1980.

3. Section 3 of the principal Act is hereby amended—

(a) by the addition to paragraph (a) of subsection (2) of the following proviso:

25 “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;

30 (iii) the offer for sale to the public of records thereof;

Amendment of section 3 of Act 98 of 1978.

## COPYRIGHT AMENDMENT ACT, 1984

Act No. 52, 1984

- (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;"; and
- 5 (b) by the addition to subsection (2) of the following paragraph:  
"(f) published editions, fifty years from the end of the year in which the edition is first published."
4. Section 4 of the principal Act is hereby amended—
- 10 (a) by the deletion at the end of paragraph (c) of subsection (1) of the word "or"; and  
 (b) by the addition to subsection (1) of the following paragraph:  
 15 "(e) being a published edition, is first published in the Republic."
5. Section 5 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:  
 Amendment of section 4 of Act 98 of 1978.
- 20 "(4) Copyright conferred by this section on a cinematograph film, photograph, sound recording, broadcast, [or] programme-carrying signal or published edition shall be subject to the same term of copyright provided for in section 3 for a similar work."
6. Section 8 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraph:  
 Amendment of section 8 of Act 98 of 1978, as amended by section 5 of Act 56 of 1980.
- 25 "(g) importing (other than importing for the private and domestic use of the importer), selling, letting, offering or exposing for sale or hire by way of trade, or distributing, directly or indirectly, a reproduction or an adaptation of the film."
7. Section 9 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:  
 Amendment of section 9 of Act 98 of 1978, as substituted by section 6 of Act 56 of 1980.
- 30 "(b) importing (other than importing for the private and domestic use of the importer), selling, letting, offering or exposing for sale or hire by way of trade, or distributing, directly or indirectly, a reproduction of the sound recording."
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8. The following section is hereby inserted in the principal Act after section 11:  
 Insertion of section 11A in Act 98 of 1978.
- 40 "Nature of copyright in published editions. 11A. 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."
9. The following section is hereby inserted in the principal Act after section 19:  
 Insertion of section 19A in Act 98 of 1978.
- 45 "General exceptions from protection of published editions. 19A. The provisions of sections 12 (1), (2), (4), (5), (8) and (12) shall mutatis mutandis apply with reference to published editions."
10. Section 26 of the principal Act is hereby amended by the addition of the following subsections:  
 Amendment of section 26 of Act 98 of 1978, as amended by section 3 of Act 66 of 1983.
- 50 "(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—
- 55 (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

## COPYRIGHT AMENDMENT ACT, 1984

Act No. 52, 1984

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, it shall be presumed, until the contrary is proved, that any person trading in the selling, letting or distribution of copies of cinematograph films and who was found in possession of a reproduction or adaptation of such a cinematograph film, sold or let for hire or by way of trade offered or exposed for sale or hire such reproduction or adaptation.”

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

Amendment of section 27 of Act 98 of 1978.

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

“(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, or, in the case where such work consists of a cinematograph film registered in terms of the Registration of Copyright in Cinematograph Films Act, 1977 (Act No. 62 of 1977), articles which are reproductions or adaptations of the cinematograph film, shall be guilty of an offence.”;

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

“(6) A person convicted of an offence under subsection (1) shall be liable—

(a) in the case of a first conviction, to a fine not exceeding five **[hundred] thousand** rand or to imprisonment for a period not exceeding **[six months] 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 **[one] ten** thousand rand or to imprisonment for a period not exceeding **[one year] 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 **[ten] fifty** thousand rand or ten years, as the case may be, in respect of articles comprised in the same transaction.” and

“(8) (a) In the case of a conviction of a person of an offence in

terms of subsection (1) in respect of the copyright in a cinematograph film the court may in its discretion, in addition to any other penalty which it may impose under subsection (6), prohibit that person from a date and for a period determined by the court, from carrying on, or having any direct or indirect financial interest in, or deriving any direct or indirect financial benefit

## COPYRIGHT AMENDMENT ACT, 1984

Act No. 52, 1984

from, any business which sells, lets, offers, exposes or distributes reproductions or adaptations of cinematograph films.

- 5 (b) Any person who commits an act contrary to a prohibition contemplated in paragraph (a), shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand rand or to imprisonment for a period not exceeding five years.”

12. The following section is hereby substituted for section 28 of the principal Act—

Substitution of section 28 of Act 98 of 1978.

“Provision for restricting importation of copies.

15 28. (1) The owner of the copyright in any published literary or musical work or any published cinematograph film [or], any sound recording or any published edition may give notice in writing to the [Secretary] Commissioner for Customs and Excise (in this section referred to as ‘the [Secretary] Commissioner’)—

- 20 (a) that he is the owner of the copyright in the work [cinematograph film or sound recording]; and  
 (b) that he requests the [Secretary] Commissioner to treat as prohibited goods, during a period specified in the notice, copies of the work [cinematograph film or sound recording] to which this section applies:

25 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 [Secretary] 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 [cinematograph film or sound recording] to which the notice relates or as a result of anything done by him in relation to a copy so detained.

30 (2) This section shall apply to any [printed] copy of the work [cinematograph film or sound recording] in question made outside the Republic which if it had been made in the Republic would be an infringing copy of the work [cinematograph film or sound recording].

35 (3) Where a notice has been given under this section in respect of a work [cinematograph film or sound recording] 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 [cinematograph film or sound recording] to which this section applies shall be prohibited.

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

45 (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 [or artistic] work or any cinematograph film [or], sound recording or published edition published elsewhere.”

## COPYRIGHT AMENDMENT ACT, 1984

Act No. 52, 1984

13. Section 37 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: Amendment of section 37 of Act 98 of 1978.
- 5     “(a) in relation to literary, musical or artistic works, cinematograph films, **[and]** sound recordings and published editions first published in that country as it applies in relation to literary, musical or artistic works, cinematograph films, **[and]** sound recordings and published editions first published in the Republic;”.
- 10 14. Section 43 of the principal Act is hereby amended— Amendment of section 43 of Act 98 of 1978.
- (a) by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words:  
       “subject to the provisions of paragraphs (c) and (d), nothing in this Act contained shall—”;
- 15     (b) by the deletion of paragraph (b); and
- (c) by the addition of the following paragraph:  
       “(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.”.
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- 25
15. (1) This Act shall be called the Copyright Amendment Act, 1984, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. Short title and commencement.
- 30 (2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.